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VICTORIA.

MINUTES OF THE PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL.

SESSION 1952-53.

WITH A COPY OF THE DOCUMENTS ORDERED TO BE PRINTED.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 1.

MONDAY, 22ND DECEMBER, 1952.

1. The Council met pursuant to the Proclamation of His Excellency the Governor, bearing date the eleventh day of December, 1952, which Proclamation was read by the Clerk and is as follows :—

FIXING THE TIME FOR HOLDING THE FIRST SESSION OF THE THIRTY-NINTH PARLIAMENT OF VICTORIA.

PROCLAMATION

By His Excellency the Governor of the State of Victoria, and its Dependencies in the Commonwealth of Australia, &c., &c., &c.

I, THE Governor of the State of Victoria, in the Commonwealth of Australia, do by this my Proclamation fix Monday, the twenty-second day of December, 1952, as the time for the commencement and holding of the First Session of the Thirty-ninth Parliament of Victoria, for the despatch of business, at the hour of Eleven o'clock in the forenoon, in the Parliament Houses, situate in Spring-street, in the City of Melbourne: And the Honorable the Members of the Legislative Council and the Members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

Given under my Hand and the Seal of the State of Victoria aforesaid, at Melbourne, this eleventh day of December, in the year of our Lord One thousand nine hundred and fifty-two, and in the first year of the reign of Her Majesty Queen Elizabeth II.

(L.S.) DALLAS BROOKS.

By His Excellency's Command,

JOHN G. B. McDONALD,
Premier.

GOD SAVE THE QUEEN!

The Honorable Mr. Justice Sholl, the Commissioner from His Excellency the Governor appointed to open the Parliament, having been introduced to the Council Chamber by the Usher of the Black Rod, His Honour desired the Usher of the Black Rod to request the presence of the Members of the Legislative Assembly to hear the Commission read for the commencement and holding of this present Session of the Parliament.

The Members of the Legislative Assembly having presented themselves, the Honorable Mr. Justice Sholl said—

MR. PRESIDENT AND HONORABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL:

GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

His Excellency the Governor, not thinking fit to be present in person, has been pleased to cause Letters Patent to issue, under the seal of the State, constituting me his Commissioner to do in his name all that is necessary to be performed in this Parliament. This will more fully appear from the Letters Patent which will now be read by the Clerk.

11751/52. (240 copies.)

Then the said Letters Patent were read by the Clerk as follows, viz. :—

ELIZABETH THE SECOND, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas Queen, Defender of the Faith :

WHEREAS by Proclamation issued the eleventh day of December, One thousand nine hundred and fifty-two, by His Excellency General Sir REGINALD ALEXANDER DALLAS BROOKS, Knight Commander of Our Most Honorable Order of the Bath, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Companion of Our Distinguished Service Order, Governor of Our State of Victoria and its Dependencies in the Commonwealth of Australia, &c., &c., &c., Monday, the twenty-second day of December, One thousand nine hundred and fifty-two, was fixed as the time for the commencement and holding of the next Session of Our Parliament of Victoria, at the hour of Eleven o'clock in the forenoon, in the Parliament Houses, in the City of Melbourne: AND forasmuch as for certain causes the said SIR REGINALD ALEXANDER DALLAS BROOKS cannot conveniently be present in person in Our said Parliament at that time: NOW KNOW YE THAT WE, trusting in the discretion, fidelity, and care of Our trusty and well-beloved the Honorable REGINALD RICHARD SHOLL, Judge of Our Supreme Court of the State of Victoria, do give and grant by the tenor of these presents unto the said REGINALD RICHARD SHOLL, full power in Our name to begin and hold the said Session of Our said Parliament, and to do everything which for and by Us, or the said SIR REGINALD ALEXANDER DALLAS BROOKS, shall be there to be done; commanding also by the tenor of these presents all whom it may concern to meet Our said Parliament, and the said REGINALD RICHARD SHOLL that he diligently attend in the premises and form aforesaid. In testimony whereof We have caused the Seal of Our said State to be hereunto affixed.

Witness Our trusty and well-beloved General SIR REGINALD ALEXANDER DALLAS BROOKS, Knight Commander of Our Most Honorable Order of the Bath, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Companion of Our Distinguished Service Order, Governor of Our State of Victoria and its
(L.S.) Dependencies in the Commonwealth of Australia, &c., &c., &c., at Melbourne in Our said State this eighteenth day of December, One thousand nine hundred and fifty-two, and in the first year of Our reign.

DALLAS BROOKS.

By His Excellency's Command,

JOHN CAIN,

Premier.

Entered on Record by me in the Register of Patents,
Book 32, page 157, this eighteenth day of December,
One thousand nine hundred and fifty-two.

L. CHAPMAN, Under-Secretary.

Then the Honorable Mr. Justice Sholl said— .

MR. PRESIDENT AND HONORABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL :

GENTLEMEN OF THE LEGISLATIVE ASSEMBLY :

I have it in command from His Excellency to let you know that, later this day, His Excellency will declare to you in person, in this place, the causes of his calling this Parliament together; and, Gentlemen of the Legislative Assembly, as it is necessary before you proceed to the despatch of business that a Speaker of the Legislative Assembly be chosen, His Excellency requests that you, in your Chamber, will proceed to the choice of a proper person to be Speaker.

The Members of the Legislative Assembly then withdrew.

The Commissioner withdrew.

2. The President took the Chair and read the Prayer.

3. APPROACH OF HIS EXCELLENCY THE GOVERNOR.—The approach of His Excellency the Governor was announced by the Usher of the Black Rod.

His Excellency came into the Council Chamber, and commanded the Usher of the Black Rod to desire the immediate attendance of the Legislative Assembly, who being come with their Speaker, His Excellency was pleased to speak as follows :—

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

I have called you together as early as practicable after the recent General Election of Members of the Legislative Assembly for the consideration of public business which requires your immediate attention.

Since I last addressed you the British Commonwealth of Nations has sustained a grievous loss in the death of His Majesty King George the Sixth, who, by his devotion to duty and splendid example, inspired the affection and loyalty of his people.

Appropriate action was taken in this State to proclaim Her Majesty Queen Elizabeth the Second, and the people of Victoria are contemplating with pleasure the visit in 1954 of Her Majesty and His Royal Highness the Duke of Edinburgh.

My Ministers are planning special Celebrations in this State to enable the people of Victoria to join with those of other parts of the Empire in paying tribute to the Queen on the occasion of Her Majesty's Coronation.

It is regretted that, during the recess, the death occurred of the Honorable Trevor Harvey, who rendered valuable service to the State as Minister of the Crown and Member of the Legislative Council.

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

The Estimates of Revenue and Expenditure for the financial year 1952–1953 will be resubmitted to you without delay.

Other urgent financial measures will be presented for approval before the Christmas adjournment.

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

During the adjournment, my advisers intend to conduct a survey of the whole financial position of the State. In particular, the financial relationship between the Commonwealth and the States, in regard to both loan moneys and revenue, requires close examination.

Many of the Government's proposals for social and economic reforms turn on the availability of finance.

When Parliament meets next year, my Ministers expect to be able to bring forward measures designed to accelerate the construction of homes.

Steps will be taken to stimulate and extend land settlement with a view to encouraging increased primary production.

The natural increase in the population, together with considerable overseas migration to this State, has presented an acute problem in education. My Ministers propose a determined attempt to increase accommodation and facilities for education.

In addition to Bills relating to these matters, my advisers intend, when Parliament assembles next year, to introduce a measure providing for a redistribution of State electoral districts on the basis of two State electorates for each Federal electorate.

The legislation governing superannuation payments to public servants, teachers and railwaymen will be amended.

Bills relating to Benefits Associations, Workers Compensation, Factories and Shops, and Road Traffic will also be brought forward.

I now leave you to the discharge of your duties in the earnest hope that, with the blessing of Divine Providence, your work may be beneficial to the whole of the community.

Which being concluded, a copy of the Speech was delivered to the President, and a copy to Mr. Speaker, and His Excellency the Governor left the Chamber.

The Legislative Assembly then withdrew.

4. PRIVILEGE BILL.—PUBLIC TRUSTEE (COMMON FUND) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to amend Section Fifty-four of the *Public Trustee Act* 1939, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

5. TEMPORARY CHAIRMEN OF COMMITTEES.—The President laid upon the Table the following Warrant nominating the Temporary Chairmen of Committees :—

LEGISLATIVE COUNCIL—VICTORIA.

Pursuant to the provisions of the Standing Order of the Legislative Council numbered 160, I do hereby nominate—

The Honorable Gilbert Lawrence Chandler,

The Honorable Paul Jones,

The Honorable Herbert Charles Ludbrook, and

The Honorable William MacAulay

to act as Temporary Chairmen of Committees whenever requested to do so by the Chairman of Committees or whenever the Chairman of Committees is absent.

Given under my hand this twenty-second day of December, One thousand nine hundred and fifty-two.

CLIFDEN EAGER,

President of the Legislative Council.

6. COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President laid upon the Table the following Warrant appointing the Committee of Elections and Qualifications :—

LEGISLATIVE COUNCIL—VICTORIA.

Pursuant to the provisions of *The Constitution Act Amendment Act* 1928, I do hereby appoint—

The Honorable Percy Thomas Byrnes,
The Honorable Gilbert Lawrence Chandler,
The Honorable Archibald McDonald Fraser,
The Honorable Percival Pennell Inchbold,
The Honorable Sir James Kennedy,
The Honorable Gordon Stewart McArthur, and
The Honorable William Slater

to be members of a Committee to be called " The Committee of Elections and Qualifications."

Given under my hand this twenty-second day of December, One thousand nine hundred and fifty-two.

CLIFDEN EAGER,

President of the Legislative Council.

7. LEAVE OF ABSENCE.—The Honorable Sir James Kennedy moved, by leave, That leave of absence be granted to the Honorable Gilbert Lawrence Chandler for three months on account of ill-health.

Question—put and resolved in the affirmative.

8. STANDING ORDERS COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables the President, P. T. Byrnes, Sir Frank Clarke, A. M. Fraser, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner be members of the Select Committee on the Standing Orders of the House ; three to be the quorum.

Question—put and resolved in the affirmative.

9. HOUSE COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne be members of the House Committee.

Question—put and resolved in the affirmative.

10. LIBRARY COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables the President, G. L. Chandler, P. P. Inchbold, R. R. Rawson, and W. Slater be members of the Joint Committee to manage the Library.

Question—put and resolved in the affirmative.

11. PRINTING COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables the President, E. P. Cameron, G. L. Chandler, J. W. Galbally, H. C. Ludbrook, W. MacAulay, A. R. Mansell, and F. M. Thomas be members of the Printing Committee ; three to be the quorum.

Question—put and resolved in the affirmative.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

13. PUBLIC WORKS COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables W. MacAulay and H. V. MacLeod be appointed members of the Public Works Committee.

The Honorable Sir James Kennedy moved, as an amendment, That the name " H. V. MacLeod " be omitted with the view of inserting in place thereof the name " H. C. Ludbrook ".

Question—That the name proposed to be omitted stand part of the question—put.

The Council divided.

Ayes, 17.	Noes, 13.
The Hon. D. L. Arnott,	The Hon. P. T. Byrnes,
A. J. Bailey (*Teller*),	E. P. Cameron,
T. W. Brennan (*Teller*),	T. H. Grigg (*Teller*),
P. L. Coleman,	P. P. Inchbold,
D. P. J. Ferguson,	Sir James Kennedy,
A. M. Fraser,	H. C. Ludbrook,
J. W. Galbally,	G. S. McArthur,
C. P. Gartside,	W. MacAulay,
J. J. Jones,	A. R. Mansell,
P. Jones,	I. A. Swinburne (*Teller*),
H. V. MacLeod,	G. J. Tuckett,
R. R. Rawson,	D. J. Walters,
M. P. Sheehy,	A. G. Warner.
W. Slater,	
A. Smith,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.—Amendment negatived.

Question—That the Honorables W. MacAulay and H. V. MacLeod be appointed members of the Public Works Committee—put and resolved in the affirmative.

14. State Development Committee.—The Honorable P. L. Coleman moved, by leave, That the Honorable A. R. Mansell be appointed a member of the State Development Committee.

Debate ensued.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, by leave, That the Honorable H. C. Ludbrook be appointed a member of the State Development Committee.

Question—put and resolved in the affirmative.

15. The Late Honorable Trevor Harvey.—The Honorable P. L. Coleman moved, by leave, That this House place on record its deep regret at the death of the Honorable Trevor Harvey, one of the Members for the Gippsland Province and a Minister of the Crown, and its keen appreciation of the valuable services rendered by him to the Parliament and the people of Victoria.

And other Honorable Members and the President having addressed the House—

The question was put, and Honorable Members signifying their assent by rising in their places, unanimously resolved in the affirmative.

16. Adjournment.—The Honorable P. L. Coleman moved, That the House, out of respect to the memory of the late Honorable Trevor Harvey, do now adjourn until a quarter to Eight o'clock this day.

Question—put and resolved in the affirmative.

And then the Council, at forty minutes past Five o'clock, adjourned until a quarter to Eight o'clock this day.

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1. The President resumed the Chair.

2. Revenue Deficit Funding Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Money for Transfer to the Consolidated Revenue to meet the Deficit therein for the Year* 1951–1952" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

3. Public Works Loan Application Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Monies for Public Works and other Purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

4. LOCAL GOVERNMENT (IMPORTED HOUSES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to further amend Section Nine hundred and one of the 'Local Government Act* 1946'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman for the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

5. RAILWAY LOAN APPLICATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Moneys for Works and Purposes relating to Railways, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

6. STATE FORESTS LOAN APPLICATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Monies for Works and other Purposes relating to State Forests*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

7. PAPERS.—The Honorable P. L. Coleman presented, by command of His Excellency the Governor—

Indeterminate Sentences Board—Report for the year 1951–52.

Ordered to lie on the Table.

The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Adult Education Act 1946—Report of the Council of Adult Education for the year 1951–52.

Apprenticeship Acts—Amendment of Regulations—

Aircraft Mechanic Trades Apprenticeship Regulations.
Boilermaking Trades Apprenticeship Regulations.
Dental Mechanic Trade Apprenticeship Regulations.
Engineering Trades Apprenticeship Regulations.
Motor Mechanics Trades Apprenticeship Regulations.
Moulding Trades Apprenticeship Regulations.
Watchmaking Trades Apprenticeship Regulations.

Constitution Act Amendment Act 1928—Part IX.—

Statement of appointments and alterations in classification in the Department of the Legislative Assembly.
Statements of persons temporarily employed in the Departments of the Legislative Council and the Legislative Assembly (two papers).

Co-operative Housing Societies Acts—Co-operative Housing Societies (General) Regulations (No. 8).

Crimes Act 1928—Amendment of Rules of Court.

Education Act 1928—Amendment of Regulations—

Regulations XVI.—Allowance for Conveyance of Pupils to Primary Schools.
Regulation XVII.—Conveyance of Pupils to Post-primary Schools and Classes.
Regulation XLIII.—Nomination of Teachers for Courses at the University or Other Approved Institutions.

Explosives Act 1928—Orders in Council relating to—

Classification of Explosives—Class 3—Nitro-Compound.
Definition of Explosives—Class 3—Nitro-Compound.

Factories and Shops Acts—Report of the Chief Inspector of Factories and Shops for the year 1951.

Fisheries Acts—Notices of Intention to issue Proclamations—

Regarding the marking of nets and/or fixed engines in any inland waters in which the use of nets and/or fixed engines is or may be permitted.
To prohibit all fishing in or the taking of fish from Swan Lake (near Sydenham Inlet) from 1st September to 31st October (both days inclusive) in each year and to fix a bag limit for bream taken from such waters.

Gas and Fuel Corporation Act 1950—Report, Balance-sheet, and Profit and Loss Account of the Gas and Fuel Corporation for the year 1951–52.

Health Act 1928—Report of the Commission of Public Health for the year 1950–51.

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Infectious Diseases Hospital Act 1928—Infectious Diseases Hospital Regulations 1952.

Land Act 1928—

Certificate of the Minister of Education relating to the proposed compulsory resumption of land for the purpose of a school at Koonung Heights.

Schedules of country lands proposed to be sold by public auction (two papers).

Land Tax Act 1928—Statement of moneys received and expended for the year 1951–52.

Melbourne and Metropolitan Board of Works Act 1928—Statement of Accounts and Balance-sheet of the Board together with Schedule of Contracts for the year 1951–52.

Mental Hygiene Authority Act 1950—Mental Hygiene Authority Regulations 1952 (No. 6).

Poisons Acts—Pharmacy Board of Victoria—

Proclamations amending—

Second Schedule to Poisons Act 1928 (two papers).

Fourth Schedule to Poisons Act 1928.

The Poisons Regulations 1952.

Police Regulation Acts—

Amendment of Police Regulations 1951.

Determinations Nos. 40 and 41 of the Police Classification Board (two papers).

Public Service Act 1946—

Amendment of Public Service (Governor in Council) Regulations—Part IV.—Leave of Absence.

Amendment of Public Service (Public Service Board) Regulations—

Part II.—Promotions and Transfers.

Part III.—Salaries, Increments, and Allowances (twenty papers).

Part VI.—Travelling Expenses.

Railways Act 1928—Reports of the Victorian Railways Commissioners—

Annual Report for the year 1951–52.

Quarterly Reports for the quarters ended 30th June and 30th September, 1952 (two papers).

Registration of Births Deaths and Marriages Acts—Births Deaths and Marriages Regulations 1952.

River Murray Waters Act 1915—Report of the River Murray Commission for the year 1951–52.

Soil Conservation and Land Utilization Acts—Report of the Soil Conservation Authority for the year 1951–52.

Soldier Settlement Act 1945—Report of the Soldier Settlement Commission for the year 1951–52.

State Electricity Commission Act 1928—Report of the State Electricity Commission for the year 1951–52.

Teaching Service Act 1946—Amendment of Teaching Service (Teachers Tribunal) Regulations.

Water Acts—Amendment of Regulations—

Board of Examiners of Engineers of Water Supply.

General Regulations for the Election of Commissioners.

Weights and Measures Acts—Weights and Measures Regulations 1952.

8. SPEECH OF HIS EXCELLENCY THE GOVERNOR.—The President reported the Speech of His Excellency the Governor.

The Honorable A. Smith moved, That the Council agree to the following Address to His Excellency the Governor in reply to His Excellency's Opening Speech :—

MAY IT PLEASE YOUR EXCELLENCY—

We, the Legislative Council of Victoria, in Parliament assembled, beg to express our loyalty to our Most Gracious Sovereign, and to thank Your Excellency for the gracious Speech which you have been pleased to address to Parliament.

Debate ensued.

The Honorable P. T. Byrnes moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

9. WATER SUPPLY LOAN APPLICATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Money for Works and other Purposes relating to Irrigation Water Supply Drainage Flood Protection and River Improvement*" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

10. PUBLIC TRUSTEE (COMMON FUND) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable P. Jones having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

11. REVENUE DEFICIT FUNDING BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

12. PUBLIC WORKS LOAN APPLICATION BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

13. LOCAL GOVERNMENT (IMPORTED HOUSES) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

14. RAILWAY LOAN APPLICATION BILL.—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

15. STATE FORESTS LOAN APPLICATION BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

16. HOSPITAL BENEFITS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Hospital Benefits and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

17. WATER SUPPLY LOAN APPLICATION BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

9

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

18. HOSPITAL BENEFITS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

19. APPROPRIATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply a sum out of the Consolidated Revenue to the service of the year ending on the thirtieth day of June One thousand nine hundred and fifty-three and to appropriate the Supplies granted in this and the last preceding Session of Parliament*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, was read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

20. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the Council, at its rising, adjourn until a day and hour to be fixed by the President or, if the President is unable to act on account of illness or other cause, by the Chairman of Committees, which time of meeting shall be notified to each Honorable Member by telegram or letter.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at one minute past Eleven o'clock, adjourned until a day and hour to be fixed by the President or, if the President is unable to act on account of illness or other cause, by the Chairman of Committees, which time of meeting shall be notified to each Honorable Member by telegram or letter.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: J. J. GOURLEY, Government Printer, Melbourne.

[1751/52.—2]

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 2.

TUESDAY, 10TH MARCH, 1953.

1. The Council met in accordance with adjournment, the President, pursuant to resolution, having fixed this day at half-past Four o'clock as the time of meeting.

2. The President took the Chair and read the Prayer.

3. RETURN TO WRIT.—The President announced that on the 8th January last he had issued a Writ for the election of a Member to serve for the Gippsland Province in the place of the Honorable Trevor Harvey, deceased, and that such Writ had been returned to him and by the indorsement thereon it appeared that William Oliver Fulton had been elected in pursuance thereof.

4. SWEARING-IN OF NEW MEMBER.—The Honorable William Oliver Fulton, having been introduced, took and subscribed the Oath of Allegiance.

5. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Governor, informing the Council that he had, on the 23rd December last, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Revenue Deficit Funding Act.
Public Works Loan Application Act.
Local Government (Imported Houses) Act.
Railway Loan Application Act.
State Forests Loan Application Act.
Water Supply Loan Application Act.
Hospital Benefits Act.

6. PARLIAMENTARY ELECTIONS (STATE SERVANTS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to State Servants who are elected Members of Parliament*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

7. FACTORIES AND SHOPS (INDUSTRIAL APPEALS COURT) BILL.—On the motion (by leave without notice) of the Honorable A. M. Fraser, leave was given to bring in a Bill relating to the Industrial Appeals Court, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

8. TRUSTEE BILL.—On the motion (by leave without notice) of the Honorable W. Slater, leave was given to bring in a Bill to consolidate and amend the Law relating to Trustees, and the said Bill was read a first time and ordered to be printed and, by leave and after debate, to be read a second time later this day.

11751/52. (240 copies.)

9. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Apprenticeship Acts—Amendment of Regulations—

Aircraft Mechanic Trades Apprenticeship Regulations.
Boilermaking Trades Apprenticeship Regulations (two papers).
Bootmaking Trades Apprenticeship Regulations.
Bread Trade Apprenticeship Regulations.
Bricklaying Trade Apprenticeship Regulations.
Butchering Trades Apprenticeship Regulations.
Carpentry and Joinery Trades Apprenticeship Regulations.
Cooking Trade Apprenticeship Regulations.
Dental Mechanic Trade Apprenticeship Regulations.
Electrical Trades Apprenticeship Regulations (three papers).
Electroplating Trade Apprenticeship Regulations (two papers).
Electroplating Trade Regulations (No. 1).
Engineering Trades Apprenticeship Regulations (two papers).
Fibrous Plastering Trade Apprenticeship Regulations.
Furniture Trades Apprenticeship Regulations.
Hairdressing Trades Apprenticeship Regulations.
Instrument Making Trade Apprenticeship Regulations.
Motor Mechanics Trades Apprenticeship Regulations (two papers).
Moulding Trades Apprenticeship Regulations (three papers).
Painting Trades Apprenticeship Regulations.
Pastrycooking Trade Apprenticeship Regulations.
Plastering Trade Apprenticeship Regulations.
Plumbing and Gasfitting Trades Apprenticeship Regulations.
Printing and Allied Trades Apprenticeship Regulations.
Printing Trades (Country) Apprenticeship Regulations (two papers).
Radio Tradesman Trade Apprenticeship Regulations.
Sheet Metal Trade Apprenticeship Regulations (three papers).
Watchmaking Trades Apprenticeship Regulations.

Companies Act 1938—Return by Prothonotary of business of the Supreme Court in connexion with the winding-up of Companies during the year 1952.

Country Fire Authority Acts—Country Fire Authority (Fireworks) Regulations 1953.

Dried Fruits Act 1938—Statement showing details of Receipts and Expenditure under the Dried Fruits Act during the year 1952.

Education Act 1928—Amendment of Regulations—

Regulation XII. (D).—Certificate of Competency in Horticulture.
Regulation XIV.—Science Certificates.
Regulation XVII.—Conveyance of Pupils to Post-Primary Schools and Classes.

Education Acts and University Acts—Amendment of Regulation XXI.—Scholarships.

Explosives Act 1928—

Orders in Council relating to—

Classification of Explosives—Class 3—Nitro-Compound ; Class 6—Ammunition.
Definition of Explosives—Class 3—Nitro-Compound ; Class 6—Ammunition.

Report of the Chief Inspector of Explosives on the working of the Act during the year 1951.

Fire Brigades Act 1928—Report of the Metropolitan Fire Brigades Board for the year 1951–52.

Free Library Service Board Act 1946—Report of the Free Library Service Board for the year 1951–52.

Land Act 1928—

Certificate of the Minister of Education relating to the proposed compulsory resumption of land for the purpose of a school at Pascoe Vale North.

Schedule of country lands proposed to be sold by public auction.

Legal Profession Practice Acts—Council of Legal Education—Amendment of Rules relating to the Qualification and Admission of Candidates.

Marketing of Primary Products (Egg and Egg Pulp) Act 1951—Report of the Egg and Egg Pulp Marketing Board for the pool year 1951–52.

Mental Hygiene Authority Act 1950—

Mental Hygiene Authority Regulations 1953 (No. 1).
Report of the Mental Hygiene Authority for the year 1951–52.

Midwives Acts—Midwives Regulations 1952 (No. 3).

Milk and Dairy Supervision Acts—

Amendment of Dairy Produce Regulations.
Regulation prescribing a Milk Depot.

Motor Car Act 1951—

Regulation prescribing Speed Limit.
Statistical Returns by Authorized Third-Party Insurers for the year 1951–52.

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Motor Car Act 1951 and Workers Compensation Act 1951—Report, Profit and Loss Account, and Balance-sheet for the year 1951–52 of—

State Accident Insurance Office.
State Motor Car Insurance Office.

Nurses Act 1928—Amending Nurses Regulations 1952 (No. 2).

Poisons Acts—Pharmacy Board of Victoria—

Dangerous Drugs Regulations 1953.
Proclamations amending Sixth Schedule to Poisons Act 1928 (two papers).

Police Regulation Acts—Determination No. 42 of the Police Classification Board.

Portland Harbor Trust Act 1949—Accounts and Statement of Receipts and Expenditure of the Portland Harbor Trust Commissioners for the year 1951–52.

Public Library National Gallery and Museums Acts—Reports, with Statement of Income and Expenditure, for the year 1951–52, of the—

Trustees of the Museum of Applied Science.
Trustees of the National Gallery.
Trustees of the National Museum.
Trustees of the Public Library.
Building Trustees of the Public Library, National Gallery and Museums.

Public Service Act 1946—

Amendment of Public Service (Governor in Council) Regulations—Part II.—Hours of Duty and Times of Attendance of Officers and Employees.

Amendment of Public Service (Public Service Board) Regulations—

Part I.—Appointments to the Administrative, Professional, and Technical and General Divisions.
Part II.—Promotions and Transfers.
Part III.—Salaries, Increments and Allowances (twenty-seven papers).
Part VI.—Travelling Expenses.

Public Works Committee Acts—Sixteenth General Report of the Public Works Committee.

Road Traffic Acts—

Amendment of Road Traffic Regulations 1939.
Regulation—Major Street.

Teaching Service Act 1946—Amendment of Regulations—

Teaching Service (Classification, Salaries and Allowances) Regulations.
Teaching Service (Governor in Council) Regulations.
Teaching Service (Teachers Tribunal) Regulations (three papers).

Town and Country Planning Act 1944—Report of the Town and Country Planning Board for the year 1951–52.

Water Acts—Report of the State Rivers and Water Supply Commission for the year 1951–52.

Workers Compensation Act 1951—Workers Compensation Board Fund—Balance-sheet and Statement of Receipts and Expenditure for the year 1951–52.

Zoological Gardens Act 1936—Amendment of Regulations—Charges for Admission.

10. Days of Business.—The Honorable P. L. Coleman moved, That Tuesday, Wednesday, and Thursday in each week be the days on which the Council shall meet for the despatch of business during the present Session, and that half-past Four o'clock be the hour of meeting on each day; that on Tuesday and Thursday in each week the transaction of Government business shall take precedence of all other business; and that on Wednesday in each week Private Members' business shall take precedence of Government business; and that no new business be taken after half-past Ten o'clock.

Question—put and resolved in the affirmative.

11. Address-in-Reply to Speech of His Excellency the Governor.—The Order of the Day for the resumption of the debate on the question, That the Council agree to the Address to His Excellency the Governor in reply to His Excellency's Opening Speech (for Address, see page 7 *ante*), having been read—

Debate resumed.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the Address be presented to His Excellency the Governor by the President and such Members of the Council as may wish to accompany him.

Question—put and resolved in the affirmative.

12. Parliamentary Elections (State Servants) Bill.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

13. TRUSTEE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable J. W. Galbally moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

14. TRUSTEE BILL.—The Honorable W. Slater moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.

Question—put and resolved in the affirmative.

15. FACTORIES AND SHOPS (INDUSTRIAL APPEALS COURT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

16. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 24th instant.

Question—put and resolved in the affirmative.

And then the Council, at two minutes past Nine o'clock, adjourned until Tuesday, the 24th instant.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 3.

TUESDAY, 24TH MARCH, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Governor, informing the Council that he had, on the 17th instant, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Parliamentary Elections (State Servants) Act.
Factories and Shops (Industrial Appeals Court) Act.

3. SUPERANNUATION POLICE AND STATE PENSIONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision with respect to Temporary Payments additional to certain Pensions payable under the Superannuation Acts and the Police Regulation Acts and to certain Non-Contributory State Pensions*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. WATER (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Borrowing by River Improvement Trusts and to amend the Water Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. ADOPTION OF CHILDREN (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Adoption of Children Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman for the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. TRANSPORT REGULATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Fifty-three of the 'Transport Regulation Act* 1933'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. TRUSTEE (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Four of the 'Trustee Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

11751/52. (240 copies.)

8. MELBOURNE AND METROPOLITAN BOARD OF WORKS (BORROWING POWERS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to increase the Borrowing Powers of the Melbourne and Metropolitan Board of Works*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. HEALTH (PLUMBERS AND GAS-FITTERS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Two of the 'Health Act* 1935'" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

10. FACTORIES AND SHOPS (INDUSTRIAL APPEALS COURT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

11. PAPERS.—The Honorable P. L. Coleman presented, by command of His Excellency the Governor—

Education—Report of the Minister of Education for the year 1951–52.

Ordered to lie on the Table.

The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Country Fire Authority Acts—

Amendment of Regulations (three papers).

Report of the Country Fire Authority for the year 1951–52.

Crimes Act 1928—Amendment of Criminal Appeal Rules 1950.

Education Act 1928—Amendment of Regulation XXXV.—Girls' Secondary Schools.

Geelong Waterworks and Sewerage Act 1928—Balance-sheet of the Geelong Waterworks and Sewerage Trust as at 30th June, 1952.

Grain Elevators Act 1934—Report of the Grain Elevators Board for the year ended 31st October, 1951.

Land Act 1928—Schedule of country lands proposed to be sold by public auction.

Mental Hygiene Authority Act 1950—Mental Hygiene Authority Regulations 1953 (No. 2).

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—

Part II.—Promotions and Transfers.

Part III.—Salaries, Increments and Allowances (eleven papers).

Rural Finance Corporation Act 1949—Report of the Rural Finance Corporation, together with Balance-sheet and Profit and Loss Account for the year 1951–52.

Superannuation Act 1928—Report of the State Superannuation Board for the year 1951–52.

University Act 1928—Report and Financial Statements of the University of Melbourne, together with Statutes and Regulations and Amendments allowed by His Excellency the Governor, for the year 1951.

Water Acts—Amendment of Regulations for the granting of Certificates of Qualification as Engineers of Water Supply.

12. MAINTENANCE (AMENDMENT) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to amend the Maintenance Acts and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

13. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at nineteen minutes past Five o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 4.

WEDNESDAY, 25TH MARCH, 1953.

1. The President took the Chair and read the Prayer.

2. ADDRESSES TO HER MAJESTY QUEEN ELIZABETH II. AND HIS EXCELLENCY THE GOVERNOR—DEATH OF HER MAJESTY QUEEN MARY.—The President announced the receipt of a Message from the Assembly transmitting an Address to Her Majesty the Queen and an Address to His Excellency the Governor adopted this day by the Assembly and desiring the concurrence of the Council therein.

The Address to Her Majesty the Queen was read by the Clerk, and is as follows :—

TO THE QUEEN'S MOST EXCELLENT MAJESTY :

MOST GRACIOUS SOVEREIGN :

We, the Legislative Assembly of Victoria, in Parliament assembled, beg to express our heartfelt sympathy with Your Majesty, His Royal Highness the Duke of Edinburgh, Her Majesty the Queen Mother, and members of the Royal Family, in your great sorrow at the death of Her Majesty Queen Mary.

We gratefully acknowledge the inspiring example set by Her Majesty Queen Mary during her long and noble life by her truly Christian devotion to duty, her deep womanly feeling for and tender sympathy with the sick and needy, and her loving motherly attributes.

The Honorable P. L. Coleman moved, That this House agree with the Assembly in the Address to Her Majesty the Queen, and that the blank in the Address be filled up by the insertion of the words " Legislative Council and the ".

The question was put and, Honorable Members signifying their assent by rising in their places, unanimously resolved in the affirmative.

The Address to His Excellency the Governor was read by the Clerk, and is as follows :—

MAY IT PLEASE YOUR EXCELLENCY :

We, the Legislative Assembly of Victoria, in Parliament assembled, respectfully request that Your Excellency will be pleased to communicate to the Right Honorable the Secretary of State for Commonwealth Relations the accompanying Address for presentation to Her Majesty the Queen.

The Honorable P. L. Coleman moved, That this House agree with the Assembly in the Address to His Excellency the Governor, and that the blank in the Address be filled up by the insertion of the words " Legislative Council and the ".

Question—put and resolved in the affirmative.

Ordered—That a Message be sent to the Assembly acquainting them that the Council have concurred with the Assembly in adopting the Address to Her Majesty the Queen and the Address to His Excellency the Governor and have filled up the blanks therein by the insertion of the words " Legislative Council and the ".

3. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the House, out of respect to the memory of Her late Majesty Queen Mary, do now adjourn.

Question—put and resolved in the affirmative.

And then the Council, at fifty-six minutes past Four o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 5.

TUESDAY, 31ST MARCH, 1953.

1. The President took the Chair and read the Prayer.

2. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

   Co-operative Housing Societies Acts—Report of the Registrar of Co-operative Housing Societies for the year 1951–52.

   Dairy Products Acts—Report of the Victorian Dairy Products Board for the six months ended 31st December, 1952.

   Land Act 1928—Certificate of the Minister of Education relating to the proposed compulsory resumption of land for the purpose of a school at St. Albans East.

   Poisons Acts—Pharmacy Board of Victoria—Proclamations—

      Amending Second Schedule to Poisons Act 1928.

      Application of Part III. of the Poisons Act 1928 to additional substances and preparations.

   Portland Harbor Trust Act 1949—

      Amendment of Regulations.

      Portland Harbor Trust Commissioners' Regulations 1951.

   Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances.

   Victorian Inland Meat Authority Act 1942—Report of the Victorian Inland Meat Authority for the year 1951–52.

3. WATER (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. M. Fraser moved, That this Bill be now read a second time.

   The Honorable P. T. Byrnes moved, That the debate be now adjourned.

   Question—That the debate be now adjourned—put and resolved in the affirmative.

   Ordered—That the debate be adjourned until the next day of meeting.

4. ADOPTION OF CHILDREN (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

   Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

11751/52. (240 copies.)

5. TRANSPORT REGULATION (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with an amendment and desiring their concurrence therein.

6. SELECT COMMITTEE (POTATO MARKETING) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to a certain Select Committee of the Legislative Assembly, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, was read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

7. MAINTENANCE (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable J. W. Galbally moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

8. MAINTENANCE (AMENDMENT) BILL.—The Honorable W. Slater moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.

Question—put and resolved in the affirmative.

9. MELBOURNE AND METROPOLITAN BOARD OF WORKS (BORROWING POWERS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

10. ELECTORAL DISTRICTS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make provision for the Redivision of the State of Victoria into Electoral Districts for the Legislative Assembly, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

11. HEALTH (PLUMBERS AND GAS-FITTERS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. M. Fraser moved, That this Bill be now read a second time.

Debate ensued.

The Honorable W. O. Fulton moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

12. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at thirty-nine minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

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No. 6.

WEDNESDAY, 1ST APRIL, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Governor informing the Council that he had transmitted to the Right Honorable the Secretary of State for Commonwealth Relations, for presentation to Her Majesty the Queen, the joint Address of Sympathy passed by both Houses of the Legislature of Victoria, on the death of Her Majesty Queen Mary.

3. PAPER.—The following Paper, pursuant to the directions of several Acts of Parliament, was laid upon the Table by the Clerk :—

Poisons Acts—Commission of Public Health—Proclamation—Potent Drugs.

4. WATER (AMENDMENT) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

5. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Coal Mine Workers Pensions Act* 1942'" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. PUBLIC ACCOUNT (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Seventeen of the 'Public Account Act* 1951'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 2, be postponed until the next day of meeting.

8. TRUSTEE (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

9. WORKERS COMPENSATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Workers Compensation Act* 1951', *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

10. SUPERANNUATION POLICE AND STATE PENSIONS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters reported that the Committee had made progress in the Bill, and had agreed to the following resolution :—

That it be a suggestion to the Legislative Assembly that they make the following amendment in the Bill, viz. :—

Clause 6, line 21, after "at the rate" insert "per annum"—

and asked leave to sit again.

On the motion of the Honorable P. L. Coleman, the Council adopted the resolution reported from the Committee of the whole.

Ordered—That the Bill be returned to the Assembly with a Message suggesting that the Assembly amend the same as set forth in the foregoing resolution.

Resolved—That the Council will, on the next day of meeting, again resolve itself into a Committee of the whole.

11. ELECTORAL DISTRICTS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. M. Fraser moved, That this Bill be now read a second time.

The Honorable Sir James Kennedy moved, That the debate be now adjourned.

Debate ensued.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

12. TRANSPORT REGULATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have disagreed with the amendment made in such Bill by the Council, but have made an amendment in the Bill, and desiring the concurrence of the Council therein.

Ordered—That the foregoing Message be taken into consideration on the next day of meeting.

13. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Wednesday next.

Question—put and resolved in the affirmative.

And then the Council, at one minute past Eleven o'clock, adjourned until Wednesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 7.

WEDNESDAY, 8TH APRIL, 1953.

1. The President took the Chair and read the Prayer.

2. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Apprenticeship Acts—Amendment of Regulations—

Aircraft Mechanic Trades Apprenticeship Regulations.
Boilermaking Trades Apprenticeship Regulations.
Bread Trade Apprenticeship Regulations.
Bricklaying Trade Apprenticeship Regulations.
Butchering Trades Apprenticeship Regulations.
Carpentry and Joinery Trades Apprenticeship Regulations.
Cooking Trade Apprenticeship Regulations.
Electrical Trades Apprenticeship Regulations.
Electroplating Trade Apprenticeship Regulations.
Engineering Trades Apprenticeship Regulations.
Furniture Trades Apprenticeship Regulations (two papers).
Hairdressing Trades Apprenticeship Regulations.
Instrument Making Trade Apprenticeship Regulations.
Motor Mechanics Trades Apprenticeship Regulations.
Moulding Trades Apprenticeship Regulations.
Painting Trades Apprenticeship Regulations.
Pastrycooking Trade Apprenticeship Regulations (two papers).
Plastering Trade Apprenticeship Regulations.
Plumbing and Gasfitting Trades Apprenticeship Regulations.
Printing and Allied Trades Apprenticeship Regulations.
Printing Trades (Country) Apprenticeship Regulations.
Radio Tradesman Trade Apprenticeship Regulations.
Sheet Metal Trade Apprenticeship Regulations.
Watchmaking Trades Apprenticeship Regulations.

11751/52. (240 copies)

Coal Mine Workers Pensions Acts—Statements of Accounts of the Pensions Tribunal for the years 1950–51 and 1951–52, duly audited (two papers).

Explosives Act 1928—Orders in Council relating to—
Classification of Explosives—Class 3—Nitro-Compound; Class 6—Ammunition.
Definition of Explosives—Class 3—Nitro-Compound; Class 6—Ammunition.

Marketing of Primary Products Act 1935—Maize Marketing Board—Regulations—Eighteenth period of time for the computation of or accounting for the net proceeds of the sale of maize.

Milk Pasteurization Act 1949—Amendment of Regulations.

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—

Part I.—Appointments to the Administrative, Professional, and Technical and General Divisions.

Part II.—Promotions and Transfers.

Part III.—Salaries, Increments and Allowances (two papers).

3. Electoral Districts Bill.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

Question—put.

The Council divided.

Ayes, 17.	Noes, 16.
The Hon. D. L. Arnott,	The Hon. P. T. Byrnes,
A. J. Bailey,	E. P. Cameron,
T. W. Brennan (*Teller*),	G. L. Chandler (*Teller*),
P. L. Coleman,	Sir Frank Clarke,
D. P. J. Ferguson,	W. O. Fulton,
A. M. Fraser,	T. H. Grigg,
J. W. Galbally,	P. P. Inchbold,
C. P. Gartside,	Sir James Kennedy,
J. J. Jones,	H. C. Ludbrook,
P. Jones (*Teller*),	G. S. McArthur,
H. V. MacLeod,	W. MacAulay (*Teller*),
R. R. Rawson,	A. R. Mansell,
M. P. Sheehy,	I. A. Swinburne,
W. Slater,	G. J. Tuckett,
A. Smith,	D. J. Walters,
F. M. Thomas,	A. G. Warner.
G. L. Tilley.	

And so it was resolved in the affirmative.

The Honorable P. T. Byrnes having asked whether the Bill could proceed as the second reading had not been passed with the concurrence of an absolute majority of the whole number of the Members of the Legislative Council, and other Honorable Members having addressed the President on the matter—

The President said—

Upon the question raised by Mr. Byrnes, the statutory provisions to be considered are the *Constitution (Reform) Act* 1937, No. 4533, section 4, and *The Constitution Act*, sections 60 and 61. I think it would be useful if I read those sections so far as they are relevant to the question raised upon the Bill now under consideration. Section 4 of the *Constitution (Reform) Act* 1937 provides—

> It shall not be lawful to present to the Governor for Her Majesty's assent any Bill by which an alteration in the constitution of the Council or of the Assembly (other than such alterations as are referred to in section sixty-one of *The Constitution Act*) or in Schedule D to *The Constitution Act* or in any amendment of the said Schedule or in any provision substituted therefor may be made unless the second and third readings of such Bill have been passed with the concurrence of an absolute majority of the whole number of the members of the Council and of the Assembly respectively.

Section 4 continues—

> This section shall be read as in aid of and not in derogation from the provisions of section sixty of *The Constitution Act* . . . .

Section 60 of *The Constitution Act* is as follows:—

> The Legislature of Victoria as constituted by this Act shall have full power and authority from time to time by any Act or Acts to repeal alter or vary all or any of the provisions of this Act and to substitute others in lieu thereof. Provided that it shall not be lawful to present to the Governor of the said colony for Her Majesty's assent any Bill—

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The words that follow are the important ones—

> by which an alteration in the constitution of the said Legislative Council or Legislative Assembly or in the said Schedule hereunto annexed marked D may be made unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members of the Legislative Council and of the Legislative Assembly respectively . . . .

Section 61—as amended—upon which the question now under consideration seems to hinge, is lengthy, but the relevant parts of it are as follows :—

> Notwithstanding anything herein contained it shall be lawful for the said Legislature from time to time by any Act or Acts . . . . to establish new electoral provinces or districts and from time to time to vary or alter any electoral province or district and to appoint alter or increase or decrease the number of members of the Legislative Houses to be chosen by any electoral province or district and to increase the whole number of members of the said Legislative Houses . . . .

This Bill is clearly one which, if passed into law, would alter the constitution of the Assembly. But, in my opinion, the alterations made by the Bill are such as are referred to in section 61 of *The Constitution Act*. This Bill therefore, in my opinion, is excluded from the requirement of an absolute majority of the whole number of members of this House for its second and third readings contained in section 4 of the Act of 1937, and also from the same requirement of section 60 of *The Constitution Act*—assuming that the proviso to section 60 applies to a Bill such as this, which does not purport to alter or vary any of the provisions of *The Constitution Act* itself.

I rule that the second reading may be validly passed by this House in the ordinary way by a simple majority of members, and that it is within the competence of this House, if it thinks fit, to proceed with the Bill and to pass it through its remaining stages in the usual way.

I may add that in two instances since the passing of the Constitution (Reform) Act of 1937, statutory majorities were not thought by Parliament to be required for the second and third readings of Bills of the same general character as the present Bill. I refer to the *Electoral Districts Act* 1944 (No. 5028), which provided for the redivision of Victoria into Assembly electoral districts, and to the *Legislative Council Reform Act* 1950 (No. 5465), which provided for the redefinition of boundaries of Council electoral provinces. In each of those instances the same general procedure was adopted, as with the present Bill, of leaving it to Commissioners to propose the boundaries of the electorates within the general principles laid down by the Bill, authorizing the Governor in Council—upon a resolution of approval by both Houses under the 1944 Act, and in the absence of a resolution of disapproval by both Houses under the 1950 Act—to declare by proclamation the electorates so proposed, and providing that the electorates so declared and proclaimed should thereafter be the electoral districts and electoral provinces respectively, for the purposes of The Constitution Act Amendment Acts. And the present Legislative Assembly and Legislative Council are constituted by members elected for districts and provinces brought into existence under those Acts of 1944 and 1950 respectively.

My ruling is, therefore, in my opinion, strongly supported by Parliamentary precedent.

I offer one further observation upon the matter which seems to lie at the root of the argument of all honorable members who have spoken in favour of the point of order. That argument seems to be entirely met by sub-clause (2) of clause 10 of the Bill which provides that on, from, and after the date of the dissolution or other lawful determination of the Legislative Assembly occurring next after the publication of the proclamation of the electoral districts by the Governor in Council, such electoral districts shall be the electoral districts for the Legislative Assembly ; and that the names and boundaries so declared shall be substituted for those provided for in the Seventeenth Schedule to the principal Act. It appears to me that that is the complete answer to the arguments forcibly put by Mr. Warner and Mr. Byrnes that the alterations of boundaries and the creation of new electoral districts are not under the Bill being made by Parliament but by some outside authority.

This Bill certainly delegates to the Commissioners named in the Bill authority to propose a redivision of Assembly electorates within the limits imposed by the Bill and authorizes the Governor in Council to proclaim that redivision unless both Houses pass resolutions disapproving of it. Then sub-clause (2) of clause 10 comes into operation and gives the proposed redivision the force of law and, thereafter, that redivision becomes part of the statute law of Victoria contained in the principal Act and the Seventeenth Schedule thereto. For the reasons I have given, I think the proceedings on this Bill may now continue in the ordinary course. What I have said would apply equally to the third reading if there should be a simple majority for it. I shall say no more at the present time.

On the motion of the Honorable A. M. Fraser the Bill was committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters reported that the Committee had made progress in the Bill, and asked leave to sit again.

Resolved—That the Council will, on the next day of meeting, again resolve itself into the said Committee.

4. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 2 to 5 inclusive, be postponed until the next day of meeting.

5. WORKERS COMPENSATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable A. G. Warner moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until Tuesday next.

And then the Council, at thirty minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 8.

THURSDAY, 9TH APRIL, 1953.

1. The President took the Chair and read the Prayer.

2. PARKING OF VEHICLES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Infringement of By-laws and Regulations concerning the Parking of Vehicles, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

3. MELBOURNE HARBOR TRUST (TOLLS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section One hundred and eleven of the 'Melbourne Harbor Trust Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. SUPERANNUATION POLICE AND STATE PENSIONS BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that the Assembly, having considered the Message of the Council suggesting on the consideration of the Bill in Committee that the Assembly make an amendment in such Bill, have made the suggested amendment and desiring the concurrence of the Council therein.

Ordered—That the foregoing Message be referred to the Committee of the whole on the Bill.

5. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

Police Regulation Acts—Amendment of Police Regulations 1951.
Road Traffic Act 1935—Regulation—Major Streets.

6. PUBLIC ACCOUNT (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

7. TRANSPORT REGULATION (AMENDMENT) BILL.—The Order of the Day for the consideration of the amendment made in this Bill by the Council and disagreed with by the Assembly and the amendment made by the Assembly in the Bill having been read, the said amendments were read and are as follows:—

Amendment made by the Legislative Council.	How dealt with by the Legislative Assembly.
1. Clause 2, line 18, after "vehicles" insert "carrying passengers".	Disagreed with but the following amendment made in the Bill:— Clause 2, lines 16–18, omit "commercial passenger vehicles and commercial goods vehicles" and insert "commercial goods vehicles carrying passengers and commercial passenger vehicles".

On the motion of the Honorable P. L. Coleman, the Council did not insist on their amendment disagreed with by the Assembly, but agreed to the amendment made by the Assembly in the Bill, and ordered the Bill to be returned to the Assembly with a Message acquainting them therewith.

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8. Superannuation Police and State Pensions Bill.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill, including the amendment made by the Assembly which was suggested by the Council, without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same, including the amendment made by the Assembly which was suggested by the Council, without amendment.

9. Electoral Districts Bill.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted.

The Honorable A. M. Fraser moved, That the Bill be now read a third time.

Question—put.

The Council divided.

Ayes, 17.	Noes, 15.
The Hon. D. L. Arnott,	The Hon. P. T. Byrnes,
A. J. Bailey,	E. P. Cameron,
T. W. Brennan,	G. L. Chandler,
P. L. Coleman,	W. O. Fulton (*Teller*),
D. P. J. Ferguson,	T. H. Grigg,
A. M. Fraser,	P. P. Inchbold,
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur,
P. Jones,	W. MacAulay,
H. V. MacLeod,	A. R. Mansell (*Teller*),
R. R. Rawson,	I. A. Swinburne,
M. P. Sheehy (*Teller*),	G. J. Tuckett,
W. Slater,	D. J. Walters,
A. Smith (*Teller*),	A. G. Warner.
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

The Honorable P. T. Byrnes having asked whether the third reading of this Bill required to be passed with the concurrence of an absolute majority of the whole number of the Members of the Legislative Council—

The President said—

In my opinion this Bill does not require an absolute majority of the whole number of members of the House on its third reading and a simple majority is sufficient. Therefore, I rule accordingly. There is no need for me to add anything to what I said last night on the point of order raised by Mr. Byrnes when the Bill was read a second time. All the reasons that I gave on that point of order are equally applicable to the question now raised by Mr. Byrnes.

The Honorable A. M. Fraser.—How do the seventeen members who came into this House last year stand?

The President.—I did not hear the interjection of the Minister and perhaps it is just as well. I would not think that any further question would be in order in the present circumstances. I have ruled upon the point of order raised. I do not know whether the Minister of Labour wishes to question it in any way. As I have just said, I did not hear his interjection, but it would be irrelevant in any circumstance.

The Honorable A. M. Fraser.—What I said was that if the point of order is right, how do the seventeen members who were elected to this House in June of last year stand? What is their position in the House?

The President.—That is not a matter for me as President. I have ruled upon this Bill and I go no further.

Question—That the Bill do pass—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

10. Coal Mine Workers Pensions (Amendment) Bill.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

11. HEALTH (PLUMBERS AND GAS-FITTERS) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

12. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at thirty-four minutes past Eight o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 9.

TUESDAY, 14TH APRIL, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Governor, informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Adoption of Children (Amendment) Act.
Select Committee (Potato Marketing) Act.
Melbourne and Metropolitan Board of Works (Borrowing Powers) Act.
Water (Amendment) Act.
Trustee (Amendment) Act.
Public Account (Amendment) Act.
Transport Regulation (Amendment) Act.
Superannuation Police and State Pensions Act.
Coal Mine Workers Pensions (Amendment) Act.
Health (Plumbers and Gas-fitters) Act.

3. TRANSFER OF LAND BILL.—On the motion (by leave without notice) of the Honorable W. Slater, leave was given to bring in a Bill to amend and consolidate the Law relating to the Simplification of the Title to and the Dealing with Estates in Land, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. L. Coleman moved, by leave, That so much of the Sessional Orders as provides that no new business shall be taken after the hour of half-past Ten o'clock be suspended for the remainder of this week.

Question—put and resolved in the affirmative.

5. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk: —

Friendly Societies Act 1928, Industrial and Provident Societies Act 1928, Building Societies Act 1928, Trade Unions Act 1928, Superannuation and Other Trust Funds Validation Act 1932, and Benefit Associations Act 1951—Report of the Registrar of Friendly Societies for the year 1952.

Fungicides Acts—Fungicides Regulations 1953.

Teaching Service Act 1946—Amendment of Regulations—

Teaching Service (Classification, Salaries, and Allowances) Regulations.
Teaching Service (Teachers Tribunal) Regulations (two papers).

6. WORKERS COMPENSATION BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters reported that the Committee had agreed to the Bill with amendments.

On the motion of the Honorable W. Slater, the Bill was re-committed to a Committee of the whole in respect of clause 14.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with further amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

7. THE GEELONG GAS COMPANY'S BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to further amend 'The Geelong Gas Company's Act* 1858'" and desiring the concurrence of the Council therein.

11751/52. (240 copies.)

Bill ruled to be a Private Bill.

The Honorable J. W. Galbally moved, That this Bill be dealt with as a Public Bill except in relation to the payment of fees.

Question—put and resolved in the affirmative.

The Honorable J. W. Galbally, having produced a receipt showing that the sum of £20 had been paid into the Treasury for the public uses of the State to meet the expenses of the Bill, moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be printed and to be read a second time on the next day of meeting.

8. PARKING OF VEHICLES BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

9. ADJOURNMENT.—ALTERATION OF HOUR OF MEETING.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until to-morrow at Two o'clock.

Question—put and resolved in the affirmative.

And then the Council, at fifty-one minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 10.

WEDNESDAY, 15TH APRIL, 1953.

1. The President took the Chair and read the Prayer.

2. PRESENTATION OF ADDRESS TO HIS EXCELLENCY THE GOVERNOR.—The President reported that, accompanied by Honorable Members, he had, this day, waited upon His Excellency the Governor and had presented to him the Address of the Legislative Council, adopted on the 10th March last, in reply to His Excellency's Opening Speech, and that His Excellency had been pleased to make the following reply:—

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL:

In the name and on behalf of Her Majesty the Queen I thank you for your expressions of loyalty to our Most Gracious Sovereign contained in the Address you have just presented to me.

I fully rely on your wisdom in deliberating upon the important measures to be brought under your consideration, and I earnestly hope that the results of your labours will be conducive to the advancement and prosperity of this State.

3. BENEFIT ASSOCIATIONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make provision with respect to Benefit Associations and Business, to amend the 'Benefit Associations Act* 1951' *and to provide Certain Protection from Personal Liability*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave and after debate, to be read a second time later this day.

4. WORKERS COMPENSATION BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

5. PAPER.—The following Paper, pursuant to the directions of several Acts of Parliament, was laid upon the Table by the Clerk:—

Cemeteries Acts—Certificate of the Minister of Health in relation to the purchase or taking of certain lands for the purposes of the Wodonga Public Cemetery.

6. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 1, be postponed until later this day.

7. TRANSFER OF LAND BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable J. W. Galbally moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

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8. TRANSFER OF LAND BILL.—The Honorable W. Slater moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.

Question—put and resolved in the affirmative.

9. MELBOURNE HARBOR TRUST (TOLLS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

10. THE GEELONG GAS COMPANY'S BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair, and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

11. BENEFIT ASSOCIATIONS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with an amendment and desiring their concurrence therein.

12. ELECTORAL DISTRICTS BILL.—The President announced that he had received the following communication from the Clerk of the Parliaments:—

15th April, 1953.

DEAR MR. PRESIDENT:

I consider it my duty to report to both Houses that, on Friday 10th instant, a writ was issued out of the Supreme Court against me as Clerk of the Parliaments, seeking a declaration by the Court that it would be unlawful for me to present the Electoral Districts Bill to His Excellency the Governor for Her Majesty's Assent. The issue of the writ appears not to impose any legal restraint on me in carrying out the duties imposed on me by the Joint Standing Orders of both Houses. The Official Secretary to His Excellency the Governor has been notified that the Bill is ready for presentation to His Excellency and I await advice from the Official Secretary as to when and where it will be convenient for His Excellency, on behalf of Her Majesty, to give the necessary assent to the Bill.

I attach herewith a certified copy of the writ.

Yours faithfully,
H. K. McLACHLAN,
Clerk of the Parliaments.

The Honorable the President of the Legislative Council,
Parliament House,
Melbourne.

13. BARLEY MARKETING (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Barley Marketing Act 1948'*" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave and after debate, was read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time, after debate, and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

And the Council having continued to sit until after Twelve of the clock—

THURSDAY, 16TH APRIL, 1953.

14. BENEFIT ASSOCIATIONS BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have agreed to the amendment made by the Council in this Bill with amendments and desiring the concurrence of the Council therein.

Ordered—That the foregoing Message be now taken into consideration.

And the said amendment was read and is as follows :—

Amendment made by the Legislative Council.	How dealt with by the Legislative Assembly.
1. Clause 3, paragraph (*b*), omit this paragraph and insert :— " (*b*) after the words ' of this Act ' there shall be inserted the following proviso :— ' Provided that in the case of an association carrying on funeral benefit business— (*a*) any such exemption Order of the Governor in Council may be made subject to such terms and conditions as the Governor in Council thinks fit ; and (*b*) (where an order for winding-up, including such an order validated by the *Benefit Associations Act* 1953, was made by the Minister before the commencement of this Act) the following provisions shall apply :— (i) the winding-up order shall be discharged upon the making of the exemption Order ; (ii) the exemption Order may where necessary provide for the re-transfer and re-vesting of such property as has by reason of the operation of sub-section (2) of section twenty-six of this Act been transferred to and vested in the Registrar ; (iii) no new contributors shall be accepted by the association after the date of the exemption Order ; (iv) no contributor to the association shall be deemed to have ceased to be a contributor or to be disentitled to any benefit by reason only of not having paid any contribution after the date of the winding-up order and before the date of the exemption Order but nothing in this sub-paragraph shall be deemed to require the association to credit any contributor with any contribution which he has not paid ; and (v) if the association contravenes or fails to comply with the last two preceding sub-paragraphs or with any term or condition contained in the exemption Order the Minister may make a new winding-up order which shall as from the date upon which it is made have the same force and effect in all respects as if it were made under section twenty-six of this Act and as if it were an order to which sections four and five of the *Benefit Associations Act* 1953 apply.' "	Agreed to with the following amendments :— In paragraph (*b*) of the proviso, omit " commencement of this Act " and insert " commencement of that Act ". In sub-paragraph (v) of paragraph (*b*) of the proviso, after the words " two preceding sub-paragraphs " insert the words " or either of them ".

On the motion of the Honorable A. M. Fraser, the Council agreed to the amendments made by the Assembly on the amendment of the Council, and ordered the Bill to be returned to the Assembly with a Message acquainting them therewith.

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15. CONSOLIDATED REVENUE BILL (No. 1).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply out of the Consolidated Revenue the sum of Twenty million two hundred and forty thousand three hundred and twelve pounds to the service of the year One thousand nine hundred and fifty-three and One thousand nine hundred and fifty-four*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, was read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

16. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until a day and hour to be fixed by the President or, if the President is unable to act on account of illness or other cause, by the Chairman of Committees, which time of meeting shall be notified to each Honorable Member by telegram or letter.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at thirty-three minutes past Three o'clock in the morning, adjourned until a day and hour to be fixed by the President or, if the President is unable to act on account of illness or other cause, by the Chairman of Committees, which time of meeting shall be notified to each Honorable Member by telegram or letter.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 11.

TUESDAY, 8TH SEPTEMBER, 1953.

1. The Council met in accordance with adjournment, the President, pursuant to resolution, having fixed this day at half-past Four o'clock as the time of meeting.

2. The President took the Chair and read the Prayer.

3. RETURN TO WRIT.—The President announced that on the 27th July last he had issued a Writ for the election of a Member to serve for the North-Eastern Province in the place of the Honorable Percival Pennell Inchbold, deceased, and that such Writ had been returned to him and by the indorsement thereon it appeared that Archibald Keith Bradbury had been elected in pursuance thereof.

4. SWEARING-IN OF NEW MEMBER.—The Honorable Archibald Keith Bradbury, having been introduced, took and subscribed the Oath of Allegiance.

5. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR—DEATH OF HER MAJESTY QUEEN MARY.—The Honorable P. L. Coleman presented a Message from His Excellency the Governor informing the Council that the following telegram had been received from the Right Honorable the Secretary of State for Commonwealth Relations :—

"Your telegram of the 26th March, conveying the text of a joint Address of sympathy passed by both Houses of the Legislature of Victoria, has been laid before The Queen. I have it in Command to request you to convey to the Members of the Legislative Council and the Legislative Assembly an expression of the deep appreciation with which Her Majesty and the members of the Royal Family have received their kind message".

6. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. L. Coleman presented Messages from His Excellency the Governor informing the Council—

That he had, on the 21st April last, given the Royal Assent to the under-mentioned Acts presented to him by the Clerk-Assistant of the Legislative Council, for and in the absence of the Clerk of the Parliaments, viz. :—

Workers Compensation Act.
Parking of Vehicles Act.
Melbourne Harbor Trust (Tolls) Act.
The Geelong Gas Company's Act.
Barley Marketing (Amendment) Act.
Benefit Associations Act.
Consolidated Revenue Act.

That he had, on the 3rd June last, given the Royal Assent to the under-mentioned Act presented to him by the Clerk of the Parliaments, viz. :—

Electoral Districts Act.

7. ELECTORAL DISTRICTS BILL.—The President announced that he had received the following communication from the Clerk of the Parliaments :—

DEAR MR. PRESIDENT : 4th June, 1953.

On the 15th April, 1953, I reported to you that a writ had been issued out of the Supreme Court against me as Clerk of the Parliaments seeking a declaration by the Court that it would be unlawful for me to present the Electoral Districts Bill to His Excellency the Governor for Her Majesty's Assent.

On the 17th April, His Honour Mr. Justice Sholl, in Chambers, made an order restraining me from presenting or endeavouring to present to the Governor for Her Majesty's Assent the Bill in question until the hearing of a motion for the continuance of the injunction to be made on the 23rd April.

On the 23rd April, His Honour Mr. Justice Sholl, in the Supreme Court, ordered that the motion for the continuance of the injunction granted in Chambers on the 17th April, be referred to the Full Court for hearing on the 27th April, and further ordered that the said injunction be continued until such hearing or until further order.

11751/52. (240 copies.)

On the 27th April, the motion for the continuance of the injunction came before the Full Court consisting of His Honour Mr. Justice Gavan Duffy, His Honour Mr. Justice Martin, and His Honour Mr. Justice O'Bryan, when it was agreed that the hearing of the motion should be treated as the trial of the action, and that the only relief sought was the declaration set out in the writ.

The Solicitor-General (Mr. H. A. Winneke, Q.C.), Mr. G. Gowans, Q.C., and Mr. G. A. Pape, of Counsel, instructed by the Crown Solicitor (Mr. F. G. Menzies), appeared on my behalf.

At the conclusion of argument on the 30th April the Court reserved its decision and extended the injunction until the delivery of judgment.

On the 21st May, 1953, the Full Court unanimously adjudged that it would not be unlawful for me to present the Bill to His Excellency the Governor. I immediately advised the Official Secretary to the Governor of the Court's judgment and awaited advice as to when it would be convenient for His Excellency to give the necessary assent to the Bill.

His Excellency, on behalf of Her Majesty, assented to the Bill on the 3rd June, 1953.

Yours faithfully,

H. K. McLACHLAN,
Clerk of the Parliaments.

The Honorable the President of the Legislative Council,
Parliament House,
Melbourne.

8. STATUTE LAW REVISION COMMITTEE—MAINTENANCE (AMENDMENT) BILL.—The Honorable F. M. Thomas brought up a Report from the Statute Law Revision Committee on the proposals contained in the Maintenance (Amendment) Bill.

Ordered to lie on the Table and be printed together with the Minutes of Evidence.

9. PAPERS.—The Honorable P. L. Coleman presented, by command of His Excellency the Governor—

Licensing Court and Licences Reduction Board—Report and Statement of Accounts for the year 1951–52.

Penal Establishments, Gaols, and Reformatory Prisons—Report and Statistical Tables for the year 1952.

Severally ordered to lie on the Table.

The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Apprenticeship Acts—Amendment of Regulations—

Aircraft Mechanic Trades Apprenticeship Regulations (two papers).
Boilermaking Trades Apprenticeship Regulations (two papers).
Bootmaking Trades Apprenticeship Regulations (two papers).
Bread Trade Apprenticeship Regulations (two papers).
Bricklaying Trade Apprenticeship Regulations (two papers).
Butchering Trades Apprenticeship Regulations (two papers).
Carpentry and Joinery Trades Apprenticeship Regulations (two papers).
Cooking Trade Apprenticeship Regulations (two papers).
Dental Mechanic Trade Apprenticeship Regulations (two papers).
Electrical Trades Apprenticeship Regulations (two papers).
Electroplating Trade Apprenticeship Regulations (two papers).
Engineering Trades Apprenticeship Regulations (two papers).
Fibrous Plastering Trade Apprenticeship Regulations.
Furniture Trades Apprenticeship Regulations (three papers).
Hairdressing Trades Apprenticeship Regulations (two papers).
Instrument Making Trade Apprenticeship Regulations (two papers).
Motor Mechanics Trades Apprenticeship Regulations (three papers).
Moulding Trades Apprenticeship Regulations (two papers).
Painting Trades Apprenticeship Regulations (two papers).
Pastrycooking Trade Apprenticeship Regulations (two papers).
Plastering Trade Apprenticeship Regulations (two papers).
Plumbing and Gasfitting Trades Apprenticeship Regulations (two papers).
Printing and Allied Trades Apprenticeship Regulations (two papers).
Printing Trades (Country) Apprenticeship Regulations (two papers).
Radio Tradesman Trade Apprenticeship Regulations (two papers).
Sheet Metal Trade Apprenticeship Regulations (three papers).
Watchmaking Trades Apprenticeship Regulations (two papers).

Benefit Associations Acts—Benefit Associations Regulations 1953.

Cemeteries Acts—Certificates of the Minister of Health in relation to the purchase or taking of certain lands for the purposes of the New Cheltenham Public Cemetery and Woorndoo Public Cemetery (two papers).

Coal Mines Regulation Act 1928—Report of the General Manager of the State Coal Mines, including the State Coal Mines Balance-sheet and Statement of Accounts, duly audited, &c., for the year 1951–52.

Constitution Act Amendment Acts—Amendment of Victorian Parliamentary Elections Regulations.

Constitution Statute—Statement of Expenditure under Schedule D to Act 18 and 19 Vict., Cap. 55, and Acts 3660 and 5380 during the year 1952–53.

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Country Fire Authority Acts—

Amendment of Country Fire Authority (General) Regulations.
Country Fire Authority (Disposal of Industrial Waste) Regulations 1953.
Regulations relating to the Issue of Debentures.

Country Roads Act 1928—Report of the Country Roads Board for the year 1951-52.

County Court Act 1928—Amendment of County Court Rules 1930 (two papers).

Dietitians Registration Act 1942—Amendment of Regulations.

Education Act 1928—Amendment of Regulations—

Regulation VIII. (A).—Infant Teacher's Certificate—Second Class.
Regulation VIII. (B).—Infant Teacher's Certificate—First Class.
Regulation IX. (A).—Second Class Honours.
Regulation IX. (B).—First Class Honours.
Regulation XVI.—Allowance for Conveyance of Pupils to Primary Schools.
Regulation XVII.—Conveyance of Pupils to Post-Primary Schools and Classes.
Regulation XIX.—Allowances for School Requisites and Maintenance to Pupils attending Post-Primary Schools and Classes.
Regulation XXI.—Scholarships.
Regulation XXXVIII.—Technical Schools.

Exhibitions Act 1890—Report of the Exhibition Trustees, together with Statement of Receipts and Expenditure for the year 1951-52.

Explosives Act 1928—Report of the Chief Inspector of Explosives on the working of the Act for the year 1952.

Fire Brigades Acts—Regulations relating to the Issue of Debentures.

Fisheries Acts—Notices of Intention to issue Proclamations—

To permit netting in Freshwater or Taylor's Lake in the Parish of Corop.
To prescribe a bag limit for trout taken from Lake Learmonth and any waters flowing thereinto (except Morton's Cutting).
To prohibit all fishing in or the taking of fish from portion of the Campaspe River from 1st September to 30th November (both days inclusive) in each year.
To revoke the Proclamation prohibiting netting within 100 feet of Austin's Baths and jetty at Limeburners Bay.
To revoke the Proclamation respecting an area closed against netting near Port Welshpool.

Forests Act 1928—Report of the Forests Commission for the year 1951-52.

Fruit and Vegetables Acts—Amendment of Regulations—Potatoes.

Hospitals and Charities Act 1948—

Certificate of the Minister of Health relating to the proposed compulsory resumption of land for the purposes of the Rosebud Hospital.

Order in Council removing Dr. John Garvan Hurley as a Member of the Hospitals and Charities Commission.

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for purposes of schools at Aspendale, Badger Creek, Balwyn, Dandenong, Frankston, Mentone, Ringwood, Wallace and Warragul (nine papers).

Schedule of country lands proposed to be sold by public auction (three papers).

Lands Compensation Act 1928—Return under section 37 showing particulars of purchases, sales, or exchanges of land by the State Electricity Commission for the year 1952-53.

Legal Profession Practice Act 1946—Solicitors (Professional Conduct and Practice) Rules.

Local Government Act 1946—

General Regulations authorizing maximum charges for municipal markets, weighbridges and saleyards.

Orders in Council relating to—

Compulsory voting at election of councillors for the City of Richmond and the Shires of Dandenong and Keilor (two papers).

Voting by post at elections of councillors for the City of Richmond and the Boroughs of Camperdown and Inglewood (two papers).

Marketing of Primary Products Act 1935—

Proclamations—

Declaring that a Marketing Board shall be constituted in relation to Seed Beans.

Declaring that Eggs shall become the property of the Egg and Egg Pulp Marketing Board for a further period of two years.

Declaring that Maize shall become the property of the Maize Marketing Board for a further period of two years.

Regulations—

Amendment of 1935 Regulations.

Egg and Egg Pulp Marketing Board Regulations 1953.

Mental Hygiene Authority Act 1950—Mental Hygiene Authority Regulations 1953 (No. 3).

Milk Board Acts—

Amendment of Regulations.
Statement and Account showing all moneys received and paid by the Milk Board during the year 1951-52 and all assets and liabilities of the Board.

Milk Pasteurization Act 1949—

Amendment of 1952 Regulations.

Regulations prescribing districts.

Parking of Vehicles Act 1953—Regulations.

Poisons Acts—Pharmacy Board of Victoria—Proclamation amending Sixth Schedule to Poisons Act 1928.

Police Regulation Acts—

Amendment of Police Regulations 1951.
Determination No. 43 of the Police Classification Board.

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—

Part II.—Promotions and Transfers.
Part III.—Salaries, Increments and Allowances (ninety-one papers).
Part VI.—Travelling Expenses.

Public Trustee Acts—Order in Council authorizing the Public Trustee to act in certain capacities without payment of charges.

Railways Act 1928—Reports of the Victorian Railways Commissioners for the quarters ended 31st December, 1952, and 31st March, 1953 (two papers).

Registration of Births, Deaths and Marriages Act 1928—General Abstract of the number of Births, Deaths, and Marriages registered during the year 1952 in Victoria.

River Improvement Act 1948—Lough Calvert Drainage Trust—Regulations for the Election and Term of Office of Commissioners.

Road Traffic Acts— Amendment of Regulations (four papers).

State Savings Bank Act 1928—General Orders Nos. 45 and 46 (two papers).

Supreme Court Acts—Amendment of Rules of the Supreme Court (two papers).

Teaching Service Act 1946—

Amendment of Regulations—

Teaching Service (Classification, Salaries and Allowances) Regulations (five papers).
Teaching Service (Governor in Council) Regulations (two papers).
Teaching Service (Teachers Tribunal) Regulations (seventeen papers).
Report of the Teachers Tribunal for the year 1951–52.

Town and Country Planning Act 1944—Shire of Broadmeadows Planning Scheme 1949.

Trade Unions Act 1928—Report of the Government Statist for the year 1952.

Transport Regulation Acts—Transport Consolidated Regulations.

Weights and Measures Acts—Amendment of Weights and Measures Regulations, 1952.

Workers Compensation Act 1951—

Amendment of Workers Compensation Regulations 1942.
Workers Compensation (Return of Workers Compensation Business) Regulations 1953.

10. The Late Honorable Percival Pennell Inchbold.—The Honorable P. L. Coleman moved, by leave, That this House place on record its deep regret at the death of the Honorable Percival Pennell Inchbold, one of the Members for the North-Eastern Province, a former Minister of the Crown, and a former Chairman of Committees of the Council, and its keen appreciation of the long and valuable services rendered by him to the Parliament and the people of Victoria.

And other Honorable Members and the President having addressed the House—

The question was put and, Honorable Members signifying their assent by rising in their places, unanimously resolved in the affirmative.

11. Adjournment.—Alteration of Hour of Meeting.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until to-morrow at half-past Seven o'clock.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the House, out of respect to the memory of the late Honorable Percival Pennell Inchbold, do now adjourn.

Question—put and resolved in the affirmative.

And then the Council, at thirty-one minutes past Five o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

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No. 12.

WEDNESDAY, 9TH SEPTEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. ADDRESSES TO HER MAJESTY QUEEN ELIZABETH II. AND HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT—CORONATION OF HER MAJESTY.—The President announced the receipt of a Message from the Assembly transmitting an Address to Her Majesty the Queen and an Address to His Excellency the Administrator of the Government adopted this day by the Assembly and desiring the concurrence of the Council therein.

The Address to Her Majesty the Queen was read by the Clerk, and is as follows:—

TO THE QUEEN'S MOST EXCELLENT MAJESTY:

MOST GRACIOUS SOVEREIGN:

We, the Legislative Assembly of Victoria, in Parliament assembled, beg leave to convey to Your Majesty our respectful congratulations on the occasion of Your Coronation, and we hope that, under the Divine Blessing, Your Majesty's reign may be a long and happy one bringing peace and prosperity to Your Majesty's subjects.

We express the earnest conviction that, under the influence of Your Majesty, the peoples of Your Commonwealth will become even more strongly united in their friendly relations and in their common allegiance to the Throne.

We eagerly await the visit of Your Majesty and His Royal Highness the Duke of Edinburgh next year, and the privilege of personally assuring Your Majesty of our loyalty to the Throne and our affection for Your Majesty's person.

The Honorable P. L. Coleman moved, That this House agree with the Assembly in the Address to Her Majesty the Queen, and that the blank in the Address be filled up by the insertion of the words "Legislative Council and the".

Question—put and resolved in the affirmative.

The Address to His Excellency the Administrator of the Government was read by the Clerk, and is as follows:—

MAY IT PLEASE YOUR EXCELLENCY:

We, the Legislative Assembly of Victoria, in Parliament assembled, respectfully request that Your Excellency will be pleased to communicate to the Right Honorable the Secretary of State for Commonwealth Relations the accompanying Address for presentation to Her Majesty the Queen.

The Honorable P. L. Coleman moved, That this House agree with the Assembly in the Address to His Excellency the Administrator of the Government, and that the blank in the Address be filled up by the insertion of the words "Legislative Council and the".

Question—put and resolved in the affirmative.

Ordered—That a Message be sent to the Assembly acquainting them that the Council have concurred with the Assembly in adopting the Address to Her Majesty the Queen and the Address to His Excellency the Administrator of the Government and have filled up the blanks therein by the insertion of the words "Legislative Council and the".

3. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

Constitution Act Amendment Act 1928—Part IX.—Statement of Appointments and Alterations of Classification in the Department of the Legislative Assembly.

Explosives Act 1928—Orders in Council relating to—

Classification of Explosives—Class 3—Nitro-Compound; Class 6—Ammunition.
Definition of Explosives—Class 3—Nitro-Compound; Class 6—Ammunition.

Police Regulation Acts—Determinations Nos. 44 and 45 of the Police Classification Board.

Soldier Settlement Acts—Regulations.

Weights and Measures Acts—Amendment of Weights and Measures Regulations 1952.

4. MELBOURNE AND METROPOLITAN BOARD OF WORKS BILL.—On the motion of the Honorable G. L. Chandler, leave was given to bring in a Bill to provide for the Reconstitution of the Melbourne and Metropolitan Board of Works, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. LANDLORD AND TENANT (AMENDMENT) BILL.—On the motion of the Honorable C. P. Gartside, leave was given to bring in a Bill to amend the Landlord and Tenant Acts, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. FACTORIES AND SHOPS (LONG SERVICE LEAVE) BILL.—On the motion of the Honorable A. M. Fraser, leave was given to bring in a Bill relating to Long Service Leave, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. TRUSTEE COMPANIES (COMMISSION) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill relating to the Commission chargeable by Trustee Companies, and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

8. EVIDENCE (AMENDMENT) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to amend Section One hundred and sixteen of the *Evidence Act* 1928, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. CORONERS BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to amend the Law relating to Coroners, and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

10. CROWN HOTEL, TRARALGON, LICENCE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Restoration and Making Good of a certain Victualler's Licence at Traralgon for the Remainder of the Year One thousand nine hundred and fifty-three*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable A. M. Fraser moved, That this Bill be dealt with as a Public Bill except in relation to the payment of fees.

Question—put and resolved in the affirmative.

The Honorable A. M. Fraser, having produced a receipt showing that the sum of £20 had been paid into the Treasury for the public uses of the State to meet the expenses of the Bill, moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be printed and, by leave, to be read a second time later this day.

11. BARLEY MARKETING BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Barley Marketing Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

12. CROWN HOTEL, TRARALGON, LICENCE BILL.—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

13. BARLEY MARKETING BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

14. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at fifty-eight minutes past Nine o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 13.

TUESDAY, 15TH SEPTEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT.—The Honorable P. L. Coleman presented a Message from His Excellency the Administrator of the Government informing the Council that he had, on the 10th instant, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Crown Hotel, Traralgon, Licence Act.
Barley Marketing Act.

3. PAPERS.—The Honorable P. L. Coleman presented, by command of His Excellency the Administrator of the Government—

Electoral Districts Bill—Proceedings had in the Supreme Court of Victoria in the cases of J. G. B. McDonald and K. Dodgshun, Plaintiffs, and H. K. McLachlan, Defendant, in Action No. 553; and J. G. B. McDonald and K. Dodgshun, Plaintiffs, and John Cain and others, Defendants, in Action No. 554.

Ordered to lie on the Table.

The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Apprenticeship Acts—Amendment of Regulations—

Advisory Committees Regulations.
Boilermaking Trades Apprenticeship Regulations.
Butchering Trades Apprenticeship Regulations.
Silverware and Silverplating Trades Apprenticeship Regulations.

Marketing of Primary Products Act 1935—Onion Marketing Board—Regulations.

Public Service Act 1946—Amendment of Public Service (Governor in Council) Regulations—Part IV.—Leave of Absence (four papers).

Town and Country Planning Act 1944—City of Moorabbin Planning Scheme.

4. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 1, be postponed until after Nos. 2 to 4 inclusive.

5. CORONERS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

11751/52. (240 copies.)

6. EVIDENCE (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

7. TRUSTEE COMPANIES (COMMISSION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable Sir James Kennedy moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

8. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

And then the Council, at thirty-one minutes past Five o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 14.

TUESDAY, 22ND SEPTEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. CONSOLIDATED REVENUE BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply out of the Consolidated Revenue the sum of Thirteen million five hundred and forty-six thousand six hundred and ninety-one pounds to the service of the year One thousand nine hundred and fifty-three and One thousand nine hundred and fifty-four*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

3. CONSOLIDATED REVENUE BILL (No. 3).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply out of the Consolidated Revenue the sum of One million three hundred and twenty-nine thousand three hundred and forty-five pounds to the service of the year One thousand nine hundred and fifty-two and One thousand nine hundred and fifty-three*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

4. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

   Friendly Societies Act 1928—Report of the Government Statist for the year 1951-52.

   Police Regulation Acts—Amendment of Police Regulations 1951.

   Public Service Act 1946—Amendment of Public Service (Governor in Council) Regulations—Part IV.—Leave of Absence.

   Teaching Service Act 1946—Amendment of Teaching Service (Teachers Tribunal) Regulations.

5. FACTORIES AND SHOPS (LONG SERVICE LEAVE) BILL—The Order of the Day for the second reading of this Bill having been read, the Honorable A. M. Fraser moved, That this Bill be now read a second time.

   The Honorable A. G. Warner moved, That the debate be now adjourned.

   Question—That the debate be now adjourned—put and resolved in the affirmative.

   Ordered—That the debate be adjourned until Tuesday, the 6th October next.

6. TRUSTEE COMPANIES (COMMISSION) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair; and the Honorable D. J. Walters reported that the Committee had made progress in the Bill, and asked leave to sit again.

   Resolved—That the Council will, on the next day of meeting, again resolve itself into the said Committee.

11751/52. (240 copies.)

7. CONSOLIDATED REVENUE BILL (No. 2).—The Order of the Day for the second reading of this Bill having been read, the Honorable P. L. Coleman moved, That this Bill be now read a second time.

The Honorable A. G. Warner moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

8. CONSOLIDATED REVENUE BILL (No. 3).—The Order of the Day for the second reading of this Bill having been read, the Honorable P. L. Coleman moved, That this Bill be now read a second time.

The Honorable P. T. Byrnes moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

9. ADJOURNMENT.—ALTERATION OF HOUR OF MEETING.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until to-morrow at half-past Seven o'clock.

Question—put and resolved in the affirmative.

And then the Council, at twelve minutes past Eight o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 15.

WEDNESDAY, 23RD SEPTEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. FREE PRESBYTERIAN CHURCH PROPERTY BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to vary the Trusts of Property in Victoria held in connection with the Free Presbyterian Church of Victoria in order to facilitate the Union of that Church with the Presbyterian Church of Eastern Australia and to vest such Property in Corporate Trustees, and for other purposes*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable W. Slater moved, That this Bill be dealt with as a Public Bill.

Question—put and resolved in the affirmative.

The Honorable W. Slater moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time and ordered to be printed and to be read a second time on the next day of meeting.

3. BENDIGO GAS COMPANY'S BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Capital Shares and Borrowing Powers of the Bendigo Gas Company*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable W. Slater moved, That this Bill be dealt with as a Public Bill except in relation to the payment of fees.

Question—put and resolved in the affirmative.

Ordered—That the Bill be read a first time on the next day of meeting.

4. GOODS (SALE OF SHEEP SKINS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to certain Deductions known as Draft Allowance in connection with the Sale of Sheep Skins*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. SUPERANNUATION (NEWPORT "A" EMPLOYÉS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Superannuation Contributions and Benefits in respect of certain Persons employed at Newport 'A' Power Station, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

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6. PUBLIC TRUSTEE (COMMON FUND) BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have agreed to the same with an amendment and desiring the concurrence of the Council therein.

Ordered—That the foregoing Message be now taken into consideration.

And the said amendment was read and is as follows:—

Clause 1, sub-clause (1), line 7, omit "1952" and insert "1953".

On the motion of the Honorable W. Slater, the Council agreed to the amendment made by the Assembly and ordered the Bill to be returned to the Assembly with a Message acquainting them therewith.

7. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

Education Act 1928—Report of the Council of Public Education for the year 1952–53.

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—

Part II.—Promotions and Transfers (three papers).

Part III.—Salaries, Increments and Allowances (ten papers).

Part VI.—Travelling Expenses.

River Improvement Act 1948—Lough Calvert Drainage Trust—Amendment of Regulations for the Election and Term of Office of Commissioners.

8. LOCAL GOVERNMENT (BUILDING REGULATIONS COMMITTEE) BILL.—On the motion of the Honorable I. A. Swinburne, leave was given to bring in a Bill to amend Part XLIX. of the *Local Government Act* 1946, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. TRANSPORT REGULATION (BOARD AND LICENCES) BILL.—On the motion of the Honorable P. T. Byrnes, leave was given to bring in a Bill to amend the Transport Regulation Acts, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

10. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of the Orders of the Day, General Business, be postponed until the next day of meeting.

11. FOOTSCRAY AND MARIBYRNONG TRAMWAY CONSTRUCTION BILL.—On the motion of the Honorable P. L. Coleman, leave was given to bring in a Bill to authorize the Construction by the Melbourne and Metropolitan Tramways Board of an Electric Tramway to join the Footscray and Maribyrnong Tramways, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

12. CONSOLIDATED REVENUE BILL (No. 2).—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

The Honorable I. A. Swinburne moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

13. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

And then the Council, at forty-one minutes past Ten o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 16.

TUESDAY, 29TH SEPTEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

   Fungicides Acts—Weed Destroyers Regulations 1953 (No. 1).

   Melbourne and Metropolitan Tramways Act 1928—Report and Statement of Accounts of the Melbourne and Metropolitan Tramways Board for the year 1952–53.

   Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances.

   Town and Country Planning Act 1944—Eildon Sub-Regional Planning Scheme 1951.

   Workers Compensation Act 1951—Amendment of Workers Compensation (Return of Workers Compensation Business) Regulations 1953.

3. CONSOLIDATED REVENUE BILL (No. 2).—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

   Ordered—That the Bill be returned to the Assembly with a Message acquainting them that Council have agreed to the same without amendment.

4. CO-OPERATIVE HOUSING SOCIETIES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Co-operative Housing Societies Act* 1944'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. MELBOURNE HARBOR TRUST (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Melbourne Harbor Trust Act* 1928'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the House do now adjourn.

   Debate ensued.

   Question—put and resolved in the affirmative.

And then the Council, at twenty-six minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

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No. 17.

WEDNESDAY, 30TH SEPTEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT.—The Honorable P. L. Coleman presented a Message from His Excellency the Administrator of the Government informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

   Public Trustee (Common Fund) Act.
   Consolidated Revenue Act.

3. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, General Business, No. 1, be postponed until the next day of meeting.

4. LANDLORD AND TENANT (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable C. P. Gartside moved, That this Bill be now read a second time.

   The Honorable W. Slater moved, That the debate be now adjourned.

   Question—That the debate be now adjourned—put and resolved in the affirmative.

   Ordered—That the debate be adjourned until Wednesday, the 14th October next.

5. LOCAL GOVERNMENT (BUILDING REGULATIONS COMMITTEE) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

   The Honorable P. L. Coleman moved, That the debate be now adjourned.

   Question—That the debate be now adjourned—put and resolved in the affirmative.

   Ordered—That the debate be adjourned until Wednesday, the 14th October next.

6. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, General Business, No. 4, be postponed until the next day of meeting.

7. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. L. Coleman moved, That so much of the Sessional Orders as provides that no new business shall be taken after half-past Ten o'clock and that the hour of meeting on Thursday shall be half-past Four o'clock be suspended for the remainder of this week and that, for the remainder of this week, new business may be taken at any hour and the hour of meeting on Thursday shall be Eleven o'clock.

   Question—put and resolved in the affirmative.

8. CONSOLIDATED REVENUE BILL (No. 3).—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

   Ordered—That the Bill returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

9. TRUSTEE COMPANIES (COMMISSION) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

   House in Committee.

   The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

   Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

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10. GOODS (SALE OF SHEEP SKINS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

11. SUPERANNUATION (NEWPORT "A" EMPLOYÉS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

12. FREE PRESBYTERIAN CHURCH PROPERTY BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

13. BENDIGO GAS COMPANY'S BILL.—The Order of the Day for the first reading of this Bill having been read, the Honorable W. Slater produced a receipt showing that the sum of £20 had been paid into the Treasury for the public uses of the State and moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time and ordered to be printed and, by leave and after debate, was read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

14. FOOTSCRAY AND MARIBYRNONG TRAMWAY CONSTRUCTION BILL.—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

15. ENTERTAINMENTS TAX BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Imposition of a Tax upon Payments for Admission to Entertainments*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

And then the Council, at ten minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Conucil.

No. 18.

THURSDAY, 1ST OCTOBER, 1953.

1. The President took the Chair and read the Prayer.

2. PAPER.—The following Paper, pursuant to the direction of an Act of Parliament, was laid upon the Table by the Clerk:—

   Mental Hygiene Authority Act 1950—Mental Hygiene Authority Regulations 1953 (No. 4).

3. ENTERTAINMENTS TAX BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. L. Coleman moved, That this Bill be now read a second time.

   The Honorable Sir James Kennedy moved, That the debate be now adjourned.

   Debate ensued.

   Question—That the debate be now adjourned—put.

   The Council divided.

Ayes, 15.	Noes, 16.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott (*Teller*),
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
Sir Frank Clarke,	D. P. J. Ferguson,
W. O. Fulton (*Teller*),	A. M. Fraser,
T. H. Grigg (*Teller*),	J. W. Galbally,
Sir James Kennedy,	C. P. Gartside,
H. C. Ludbrook,	J. J. Jones (*Teller*),
G. S. McArthur,	H. V. MacLeod,
W. MacAulay,	R. R. Rawson,
A. R. Mansell,	M. P. Sheehy,
I. A. Swinburne,	W. Slater,
D. J. Walters,	A. Smith,
A. G. Warner.	F. M. Thomas,
	G. L. Tilley.

   And so it passed in the negative.

   Debate on the main question continued.

   The Honorable A. G. Warner moved, That the debate be now adjourned.

   Debate ensued.

   Question—That the debate be now adjourned—put.

   The Council divided.

Ayes, 14.	Noes, 16.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan,
Sir Frank Clarke,	P. L. Coleman,
W. O. Fulton,	D. P. J. Ferguson,
T. H. Grigg,	J. W. Galbally,
Sir James Kennedy,	C. P. Gartside,
H. C. Ludbrook,	J. J. Jones,
G. S. McArthur,	P. Jones,
W. MacAulay (*Teller*),	H. V. MacLeod,
A. R. Mansell (*Teller*),	R. R. Rawson,
I. A. Swinburne,	M. P. Sheehy (*Teller*),
D. J. Walters,	W. Slater,
A. G. Warner.	A. Smith,
	F. M. Thomas (*Teller*),
	G. L. Tilley.

   And so it passed in the negative.

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Debate on the main question continued.

Question—That this Bill be now read a second time—put.

The Council divided.

Ayes, 17.	Noes, 14.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan (*Teller*),	E. P. Cameron (*Teller*),
P. L. Coleman,	Sir Frank Clarke,
D. P. J. Ferguson,	W. O. Fulton,
A. M. Fraser,	T. H. Grigg,
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur,
P. Jones (*Teller*),	W. MacAulay,
H. V. MacLeod,	A. R. Mansell,
R. R. Rawson,	I. A. Swinburne,
M. P. Sheehy,	D. J. Walters,
W. Slater,	A. G. Warner.
A. Smith,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

And then the Council, at half-past Four o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 19.

TUESDAY, 6TH OCTOBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT.—The Honorable P. L. Coleman presented a Message from His Excellency the Administrator of the Government informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Consolidated Revenue Act.
Goods (Sale of Sheepskins) Act.
Superannuation (Newport "A" Employés) Act.
Free Presbyterian Church Property Act.
Bendigo Gas Company's Act.
Entertainments Tax Act.

3. PAPERS.—The Honorable P. L. Coleman presented, by command of His Excellency the Administrator of the Government—

Police—Report of the Chief Commissioner of Police for the year 1952.

Ordered to lie on the Table.

The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Explosives Act 1928—Orders in Council relating to—

Classification of Explosives—Class 3—Nitro-Compound.

Definition of Explosives—Class 3—Nitro-Compound.

Land Act 1928—Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Corryong and Harrisfield (two papers).

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—

Part II.—Promotions and Transfers.

Part III.—Salaries, Increments and Allowances (two papers).

State Electricity Commission Acts and Public Authorities Marks Act 1930—Electrical Approvals Regulations (Approval of Equipment) 1953.

Teaching Service Act 1946—Amendment of Teaching Service (Teachers Tribunal) Regulations.

4. FACTORIES AND SHOPS (LONG SERVICE LEAVE) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

The Honorable P. T. Byrnes moved, That the debate be now adjourned.

Debate ensued.

Question—That the debate be now adjourned—put.

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The Council divided.

Ayes, 16.	Noes, 15.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey (*Teller*),
E. P. Cameron,	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
W. O. Fulton,	D. P. J. Ferguson,
C. P. Gartside,	A. M. Fraser,
T. H. Grigg,	J. W. Galbally,
Sir James Kennedy,	J. J. Jones,
H. C. Ludbrook,	P. Jones,
G. S. McArthur (*Teller*),	R. R. Rawson,
W. MacAulay,	M. P. Sheehy (*Teller*),
H. V. MacLeod,	W. Slater,
A. R. Mansell (*Teller*),	A. Smith,
I. A. Swinburne,	F. M. Thomas,
D. J. Walters,	G. L. Tilley.
A. G. Warner.	

And so it was resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the debate be adjourned until Tuesday next.

Debate ensued.

Question—That the debate be adjourned until Tuesday next—put.

The Council divided.

Ayes, 16.	Noes, 15.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott (*Teller*),
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan (*Teller*),
G. L. Chandler (*Teller*),	P. L. Coleman,
W. O. Fulton,	D. P. J. Ferguson,
C. P. Gartside,	A. M. Fraser,
T. H. Grigg,	J. W. Galbally,
Sir James Kennedy,	J. J. Jones,
H. C. Ludbrook,	P. Jones,
G. S. McArthur,	R. R. Rawson,
W. MacAulay,	M. P. Sheehy,
H. V. MacLeod,	W. Slater,
A. R. Mansell,	A. Smith,
I. A. Swinburne (*Teller*),	F. M. Thomas,
D. J. Walters,	G. L. Tilley.
A. G. Warner.	

And so it was resolved in the affirmative.

5. Co-operative Housing Societies (Amendment) Bill.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

6. Melbourne Harbor Trust (Amendment) Bill.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters reported that the Committee had agreed to the Bill with amendments.

Ordered—That the Report be taken into consideration on the next day of meeting.

7. Adjournment.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 20th instant.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at forty-two minutes past Eleven o'clock, adjourned until Tuesday, the 20th instant.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. Houston, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 20.

TUESDAY, 20TH OCTOBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT—CORONATION OF HER MAJESTY QUEEN ELIZABETH II.—The Honorable P. L. Coleman presented a Message from His Excellency the Administrator of the Government informing the Council that the following despatch had been received from the Right Honorable the Acting Secretary of State for Commonwealth Relations :—

"I have the honour to state that your despatch No. 55 of the 15th September has been laid before The Queen, and I have it in Command to request you to convey to the Members of the Legislative Council, through the President, and the Members of the Legislative Assembly, through the Speaker, expressions of Her Majesty's sincere thanks for their Address of Congratulations on the occasion of Her Majesty's Coronation".

3. MESSAGE FROM HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT.—The Honorable P. L. Coleman presented a Message from His Excellency the Administrator of the Government informing the Council that he had, on the 13th instant, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz :—

Co-operative Housing Societies (Amendment) Act.

4. STATUTE LAW REVISION COMMITTEE—TRUSTEE BILL.—The Honorable F. M. Thomas brought up a Report from the Statute Law Revision Committee on the proposals contained in the Trustee Bill.

Ordered to lie on the Table and be printed together with the Minutes of Evidence.

5. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Anti-Cancer Council Act 1936—Report and Statement of Accounts of the Anti-Cancer Council for the year 1952–53.

Apprenticeship Acts—Proclamation defining the Metropolitan District.

Crimes Act 1928—Amendment of Indeterminate Sentences Regulations 1931.

Education Act 1928—Amendment of Regulations—

Regulation XXI.—Scholarships.
Regulation XLVIII.—Residences.

Gas and Fuel Corporation Act 1950—Report, Balance-sheet, and Profit and Loss Account of the Gas and Fuel Corporation for the year 1952–53.

Geelong Harbor Trust Acts—Accounts and Statement of Receipts and Expenditure of the Geelong Harbor Trust for the year 1952.

Land Act 1928—Certificate of the Minister of Education relating to the proposed compulsory resumption of land for the purpose of a school at South Yarra.

Portland Harbor Trust Act 1949—Amendment of Regulations.

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances (seven papers).

State Savings Bank Act 1928—Statements and Returns of the State Savings Bank for the year 1952–53.

Teaching Service Act 1946—Amendment of Teaching Service (Classification, Salaries and Allowances) Regulations (two papers).

Victorian Inland Meat Authority Act 1942—Statement of guarantee given to the Commonwealth Bank by the Treasurer of Victoria.

11751/52. (240 copies.)

6. WRONGS (DAMAGE BY AIRCRAFT) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill relating to Liability in respect of Damage caused by Aircraft, and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. PRICES REGULATION (CONTINUATION) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to continue the Operation of the Prices Regulation Acts, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

8. FACTORIES AND SHOPS (LONG SERVICE LEAVE) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters reported that the Committee had made progress in the Bill, and asked leave to sit again.

Resolved—That the Council will, on the next day of meeting, again resolve itself into the said Committee.

9. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

And then the Council, at nine minutes past Eleven o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 21.

TUESDAY, 27TH OCTOBER, 1953.

1. The President took the Chair and read the Prayer.

2. WHEAT MARKETING BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Wheat Industry Stabilization Act* 1948', *and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

3. CANCER INSTITUTE (LOAN MONEYS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to increase the amount of Loan Moneys to be applied under the 'Cancer Institute Act* 1948'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. NURSES AND MIDWIVES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Fees payable under the Nurses Acts and the Midwives Acts*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. OPTICIANS REGISTRATION (FEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Fourteen and Twenty-two of the 'Opticians Registration Act* 1935'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. GRAIN ELEVATORS (DAMAGES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Recovery of Damages by the Grain Elevators Board*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. FOOTSCRAY AND MARIBYRNONG TRAMWAY CONSTRUCTION BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

8. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

   Electoral Districts Act 1953—Report by the Commissioners appointed for the purpose of the Re-division of the State of Victoria into Electoral Districts for the Legislative Assembly, together with Map.

   Fisheries Acts—Notices of Intention to issue Proclamations—

   To prohibit all fishing in or taking of fish from Wooroonooke Lake until the last day preceding the first Saturday in September, 1954.

   To revoke the Proclamation permitting netting in Watson's, Wooroonooke, and Dew's Lakes, near Charlton.

   Land Act 1928—Certificate of the Minister of Education relating to the proposed compulsory resumption of land for the purpose of a school at Traralgon.

11751/52. (240 copies.)

Soil Conservation and Land Utilization Act 1947—Soil Conservation Authority District Advisory Committee Election Regulations 1953.

Supreme Court Acts—Amendment of Rules of the Supreme Court.

Totalizator Acts—Amendment of Totalizator Regulations 1931.

Transport Regulation Acts—Report of the Transport Regulation Board for the year 1952–53.

9. MELBOURNE HARBOR TRUST (AMENDMENT) BILL.—The Order of the Day for the consideration of the Report from the Committee of the whole on this Bill having been read, the Honorable A. G. Warner moved, That the Bill be re-committed to a Committee of the whole in respect of clause 2.

Debate ensued.

Question—put.

The Council divided.

Ayes, 15.	Noes, 16.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan (*Teller*),
G. L. Chandler,	P. L. Coleman,
Sir Frank Clarke,	D. P. J. Ferguson,
W. O. Fulton (*Teller*),	A. M. Fraser,
T. H. Grigg,	J. W. Galbally,
Sir James Kennedy,	C. P. Gartside,
H. C. Ludbrook (*Teller*),	J. J. Jones,
G. S. McArthur,	P. Jones (*Teller*),
W. MacAulay,	R. R. Rawson,
A. R. Mansell,	M. P. Sheehy,
I. A. Swinburne,	W. Slater,
D. J. Walters,	A. Smith,
A. G. Warner.	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

On the motion of the Honorable J. W. Galbally, the Report was adopted and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

10. FACTORIES AND SHOPS (LONG SERVICE LEAVE) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters reported that the Committee had made progress in the Bill, and asked leave to sit again.

Resolved—That the Council will, later this day, again resolve itself into the said Committee.

11. WHEAT MARKETING BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

12. FACTORIES AND SHOPS (LONG SERVICE LEAVE) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

And then the Council, at fifty minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

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No. 22.

WEDNESDAY, 28TH OCTOBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT.—The Honorable P. L. Coleman presented a Message from His Excellency the Administrator of the Government informing the Council that he had, on the 27th instant, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—

Footscray and Maribyrnong Tramway Construction Act.

3. TATTERSALL CONSULTATIONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Promotion in Victoria and the Conduct of Sweepstakes known as Tattersall Sweep Consultation Care of George Adams, and for other purposes*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable P. L. Coleman moved, That this Bill be dealt with as a Public Bill except in relation to the payment of fees.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman, having produced a receipt showing that the sum of £20 had been paid into the Treasury for the public uses of the State to meet the expenses of the Bill, moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be printed and to be read a second time on the next day of meeting.

4. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Land Act 1928—Certificate of the Minister of Education relating to the proposed compulsory resumption of land for the purpose of a school at Keon Park.

Medical Act 1928—Dental Board of Victoria—Amendment of Regulations relating to Elections.

Mental Hygiene Authority Act 1950—Mental Hygiene Authority Regulations 1953 (No. 5).

Public Service Act 1946—Report of the Public Service Board for the year 1951-52.

5. POSTPONEMENT OF ORDERS OF THE DAY.—

Ordered, after debate, That the consideration of Orders of the Day, General Business, Nos. 1 and 2, be postponed until Wednesday, the 11th November next.

Ordered—That the consideration of Orders of the Day, General Business, Nos. 3 and 4, be postponed until the next day of meeting.

6. WRONGS (DAMAGE BY AIRCRAFT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

7. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 2, be postponed until later this day.

8. CANCER INSTITUTE (LOAN MONEYS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

9. NURSES AND MIDWIVES BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

10. OPTICIANS REGISTRATION (FEES) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

11. GRAIN ELEVATORS (DAMAGES) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

12. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Wednesday next.

Question—put and resolved in the affirmative.

And then the Council, at thirty-six minutes past Six o'clock, adjourned until Wednesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 23.

WEDNESDAY, 4TH NOVEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT.—The Honorable P. L. Coleman presented a Message from His Excellency the Administrator of the Government informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Wheat Marketing Act.
Melbourne Harbor Trust (Amendment) Act.
Cancer Institute (Loan Moneys) Act.
Nurses and Midwives Act.
Opticians Registration (Fees) Act.
Grain Elevators (Damages) Act.
Coroners Act.
Evidence (Amendment) Act.

3. ARCHITECTS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Architects Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. BUILDING SOCIETIES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Building Societies Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. ESSENDON LAND (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Essendon Land Act* 1934' *and to make further Provision with respect to Parts of the Land therein referred to, and for other purposes*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable W. Slater moved, That this Bill be dealt with as a Public Bill.

Question—put and resolved in the affirmative.

The Honorable W. Slater moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. MARKETING (EGG AND EGG PULP) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Four of the 'Marketing of Primary Products (Egg and Egg Pulp) Act* 1951'" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. HOTHAM HEIGHTS LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Grant of certain Land at Mount Hotham to a certain Company*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable J. W. Galbally moved, That this Bill be dealt with as a Public Bill.

Question—put and resolved in the affirmative.

The Honorable J. W. Galbally moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time and ordered to be printed and to be read a second time on the next day of meeting.

11751/52. (240 copies.)

8. MELBOURNE HARBOR TRUST (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

9. CORONERS BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

10. EVIDENCE (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

11. FACTORIES AND SHOPS (WAGES BOARDS) BILL.—On the motion (by leave without notice) of the Honorable A. M. Fraser, and after debate, leave was given to bring in a Bill to amend Section Twenty-one and repeal Section Twenty-three of the *Factories and Shops Act* 1934, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

12. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Constitution Act Amendment Act 1928—Part IX.—Statement of persons temporarily employed in the Departments of the Legislative Council and the Parliament Library (two papers.)

Country Fire Authority Acts—Regulations relating to the issue of debentures.

Fire Brigades Acts—Amendment of Metropolitan Fire Brigades General Regulations 1951.

Housing Acts—Report of the Housing Commission for the year 1950–51.

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances (nine papers).

Teaching Service Act 1946—Amendment of Teaching Service (Classification, Salaries and Allowances) Regulations.

13. POSTPONEMENT OF ORDERS OF THE DAY.—

Ordered—That consideration of Order of the Day, General Business, No. 1, be postponed until the next day of meeting.

Ordered—That consideration of Order of the Day, General Business, No. 2, be postponed until Wednesday, the 18th instant.

14. TATTERSALL CONSULTATIONS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. L. Coleman moved, That this Bill be now read a second time.

Debate ensued.

The Honorable Sir James Kennedy moved, as an amendment, That all the words after "That" be omitted with the view of inserting in place thereof the words "this House declines to read this Bill a second time because the House is of the opinion that the promotion and conduct of lotteries and sweepstakes should not be further legalized in Victoria until the views of the electors thereon have been ascertained by referendum".

The Honorable P. T. Byrnes moved, That the debate be now adjourned.

Debate ensued.

Question—That the debate be now adjourned—put.

The Council divided.

Ayes, 13.	Noes, 18.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
W. O. Fulton (*Teller*),	D. P. J. Ferguson,
T. H. Grigg,	A. M. Fraser,
Sir James Kennedy,	J. W. Galbally,
G. S. McArthur,	C. P. Gartside,
W. MacAulay,	J. J. Jones,
A. R. Mansell,	P. Jones (*Teller*),
I. A. Swinburne,	H. C. Ludbrook,
D. J. Walters,	H. V. MacLeod,
A. G. Warner (*Teller*).	R. R. Rawson,
	M. P. Sheehy (*Teller*),
	W. Slater,
	A. Smith,
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

Debate on the main question and on the amendment continued.

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And the Council having continued to sit until after Twelve o'clock—

THURSDAY, 5TH NOVEMBER, 1953.

Debate continued.

Question—That the words proposed to be omitted stand part of the question—put.

The Council divided.

Ayes, 19.	Noes, 12.
The Hon. D. L. Arnott, A. J. Bailey, T. W. Brennan, P. L. Coleman, D. P. J. Ferguson, A. M. Fraser, J. W. Galbally, C. P. Gartside, J. J. Jones, P. Jones, H. C. Ludbrook, G. S. McArthur, H. V. MacLeod, R. R. Rawson (*Teller*), M. P. Sheehy, W. Slater, A. Smith, F. M. Thomas (*Teller*), G. L. Tilley.	The Hon. A. K. Bradbury (*Teller*), P. T. Byrnes, E. P. Cameron, G. L. Chandler, W. O. Fulton, T. H. Grigg, Sir James Kennedy, W. MacAulay, A. R. Mansell (*Teller*), I. A. Swinburne, D. J. Walters, A. G. Warner.

And so it was resolved in the affirmative.—Amendment negatived.

Question—That this Bill be now read a second time—put.

The Council divided.

Ayes, 18.	Noes, 13.
The Hon. D. L. Arnott (*Teller*), A. J. Bailey, T. W. Brennan, P. L. Coleman, D. P. J. Ferguson, A. M. Fraser, J. W. Galbally, C. P. Gartside, J. J. Jones, P. Jones, H. C. Ludbrook, G. S. McArthur, R. R. Rawson, M. P. Sheehy, W. Slater, A. Smith (*Teller*), F. M. Thomas, G. L. Tilley.	The Hon. A. K. Bradbury, P. T. Byrnes, E. P. Cameron (*Teller*), G. L. Chandler, W. O. Fulton, T. H. Grigg, Sir James Kennedy, W. MacAulay (*Teller*), H. V. MacLeod, A. R. Mansell, I. A. Swinburne, D. J. Walters, A. G. Warner.

And so it was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with an amendment and desiring their concurrence therein.

15. SWINE COMPENSATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Stamp Duty payable on Statements on Sales of Pigs and the Carcasses of Pigs, and the Compensation payable under the Swine Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

16. WORKERS COMPENSATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Workers Compensation Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

17. COUNTRY FIRE AUTHORITY (FINANCE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Fifty of the 'Country Fire Authority Act* 1944*' and Section Seventeen of the 'Country Fire Authority Act* 1946*'*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

18. LAND SURVEYORS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Law relating to Surveyors*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

19. WRONGS (DAMAGE BY AIRCRAFT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

20. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

And then the Council, at twenty-one minutes past Three o'clock in the morning, adjourned until Tuesday next.

ROY S. SARAH.
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 24.

TUESDAY, 10TH NOVEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT.—The Honorable P. L. Coleman presented a Message from His Excellency the Administrator of the Government informing the Council that he had, this day, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—

Wrongs (Damage by Aircraft) Act.

3. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Constitution Act Amendment Act 1928—Part IX.—Statement of persons temporarily employed in the Department of the Legislative Assembly.

Explosives Act 1928—Amendment of Regulations relating to the carriage of explosives.

Fire Brigades Acts—Metropolitan Fire Brigades Board (Contributions) Regulations 1953.

Health Act 1928—Report of the Commission of Public Health for the year 1952-53.

Land Act 1928—Certificate of the Minister of Education relating to the proposed compulsory resumption of land for the purpose of a school at Oak Park.

Road Traffic Act 1935—Amendment of Regulations.

Teaching Service Act 1946—Amendment of Regulation L.—Studentships and Courses at Teachers' Colleges or other Approved Institutions.

4. FACTORIES AND SHOPS (WAGES BOARDS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. M. Fraser moved, That this Bill be now read a second time.

The Honorable A. G. Warner moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

11751/52. (240 copies.)

5. PRICES REGULATION (CONTINUATION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable A. G. Warner moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until later this day.

6. ARCHITECTS (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that Council have agreed to the same without amendment.

7. PRICES REGULATION (CONTINUATION) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

Question—put.

The Council divided.

Ayes, 17.	Noes, 14.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron,
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson,	W. O. Fulton,
A. M. Fraser,	T. H. Grigg,
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones (*Teller*),	G. S. McArthur,
P. Jones,	W. MacAulay (*Teller*),
H. V. MacLeod,	A. R. Mansell (*Teller*),
R. R. Rawson,	I. A. Swinburne,
M. P. Sheehy (*Teller*),	D. J. Walters,
W. Slater,	A. G. Warner.
A. Smith,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

8. POISONS (HEROIN) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to Prohibit the Manufacture and Preparation of Heroin*" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. TATTERSALL CONSULTATIONS BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendment made by the Council in this Bill.

10. FACTORIES AND SHOPS (LONG SERVICE LEAVE) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

11. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at seven minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

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No. 25.

WEDNESDAY, 11TH NOVEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. LANDLORD AND TENANT (AMENDMENT) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

The Honorable W. Slater moved, That the debate be now adjourned.

Debate ensued.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until Wednesday, the 25th instant.

3. LOCAL GOVERNMENT (BUILDING REGULATIONS COMMITTEE) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

The Honorable P. L. Coleman moved, That the debate be now adjourned.

Debate ensued.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until Wednesday, the 25th instant.

4. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, General Business, No. 3, be postponed until Wednesday, the 25th instant.

5. RAILWAYS (MT. BUFFALO CHALET) BILL.—On the motion of the Honorable P. L. Coleman, leave was given to bring in a Bill relating to the Management of the Chalet at Mount Buffalo by The Victorian Railways Commissioners, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. MELBOURNE AND METROPOLITAN TRAMWAYS BILL.—On the motion of the Honorable P. L. Coleman, leave was given to bring in a Bill to amend the *Melbourne and Metropolitan Tramways Act* 1928, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. FACTORIES AND SHOPS (WAGES BOARDS) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

Question—put.

The Council divided.

Ayes, 17.	Noes, 14.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron,
P. L. Coleman,	G. L. Chandler (*Teller*),
D. P. J. Ferguson,	W. O. Fulton,
A. M. Fraser,	T. H. Grigg (*Teller*),
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur,
P. Jones,	W. MacAulay,
H. V. MacLeod,	A. R. Mansell,
R. R. Rawson (*Teller*),	I. A. Swinburne,
M. P. Sheehy,	D. J. Walters,
W. Slater,	A. G. Warner.
A. Smith,	
F. M. Thomas,	
G. L. Tilley (*Teller*).	

And so it was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

8. CASTLEMAINE GAS COMPANY'S BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to increase the Borrowing Powers of the Castlemaine Gas Company*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable A. M. Fraser moved, That this Bill be dealt with as a Public Bill except in relation to the payment of fees.

Question—put and resolved in the affirmative.

Ordered—That the Bill be read a first time on the next day of meeting.

9. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 2 to 5 inclusive, be postponed until later this day.

10. SWINE COMPENSATION BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

11. JUNIOR LEGACY, MELBOURNE (DUREAU MEMORIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to certain Property held in Trust for the purposes of Junior Legacy, Melbourne, and for other purposes*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable W. Slater moved, That this Bill be dealt with as a Public Bill.

Question—put and resolved in the affirmative.

The Honorable W. Slater moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time and ordered to be printed and to be read a second time on the next day of meeting.

12. GAS AND FUEL CORPORATION (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Gas and Fuel Corporation Act* 1950'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

13. BUILDING SOCIETIES BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with an amendment and desiring their concurrence therein.

14. ESSENDON LAND (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

15. MARKETING (EGG AND EGG PULP) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

16. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

And then the Council, at thirty-three minutes past Ten o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 26.

TUESDAY, 17TH NOVEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT.—The Honorable P. L. Coleman presented a Message from His Excellency the Administrator of the Government informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Tattersall Consultations Act.
Factories and Shops (Long Service Leave) Act.
Architects (Amendment) Act.
Swine Compensation Act.
Essendon Land (Amendment) Act.
Marketing (Egg and Egg Pulp) Act.

3. HEALTH (PROPRIETARY MEDICINES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to alter the Title of and to amend the 'Health (Patent Medicines) Act* 1942', *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. PAPERS.—The Honorable P. L. Coleman presented, by command of His Excellency the Administrator of the Government—

Indeterminate Sentences Board—Report for the year 1952-53.

Ordered to lie on the Table.

The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Agricultural Colleges Acts—Amendment of Regulations.

Dried Fruits Act 1938—Amendment of Regulations.

Fisheries Acts—Notice of Intention to issue a Proclamation regarding the marking of nets and/or fixed engines in any inland waters in which the use of nets and/or fixed engines is or may be permitted.

Land Act 1928—Certificate of the Minister of Education relating to the proposed compulsory resumption of land for the purpose of a school at Beaumaris North.

Marketing of Primary Products Act 1935—Regulations—Onion Marketing Board—Forty-first and forty-second periods of time for the computation of or accounting for the net proceeds of the sale of onions.

Milk and Dairy Supervision Acts—Amendment of Regulations—Milk Depots.

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—

Part II.—Promotions and Transfers.
Part III.—Salaries, Increments and Allowances (fourteen papers).

Teaching Service Act 1946—Amendment of Teaching Service (Classification, Salaries and Allowances) Regulations.

Weights and Measures Acts—Amendment of Weights and Measures Regulations 1952.

5. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 and 2, be postponed until later this day.

11751/52. (240 copies.)

6. COUNTRY FIRE AUTHORITY (FINANCE) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

7. LAND SURVEYORS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

8. BUILDING SOCIETIES BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendment made by the Council in this Bill.

9. POISONS (HEROIN) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

10. WORKERS COMPENSATION (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

11. REVENUE DEFICIT FUNDING BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Money for Transfer to the Consolidated Revenue to meet the Deficit therein for the year* 1952–53" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

12. RAILWAYS (MT. BUFFALO CHALET) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

13. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 7, be postponed until the next day of meeting.

14. CASTLEMAINE GAS COMPANY'S BILL.—The Order of the Day for the first reading of this Bill having been read, the Honorable A. M. Fraser produced a receipt showing that the sum of £20 had been paid into the Treasury for the public uses of the State and moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time and ordered to be printed and, by leave and after debate, was read a second time and committed to a Committee of the whole.

House in Committee.

The Deputy-President resumed the Chair; and the Honorable W. MacAulay having reported the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

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15. JUNIOR LEGACY, MELBOURNE (DUREAU MEMORIAL) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The Deputy-President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

16. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at thirty-five minutes past Nine o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 27.

TUESDAY, 24TH NOVEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. STATE FORESTS LOAN APPLICATION BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Monies for Works and other Purposes relating to State Forests*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

3. REVOCATION AND EXCISION OF CROWN RESERVATIONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Revocation of the Permanent Reservations and Crown Grants of certain Lands, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. JURIES (FEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to increase the Rates of Compensation payable to Jurors and consequentially to amend the Law relating to Court Fees payable for Civil Cases tried before Juries*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. PUBLIC AND BANK HOLIDAYS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Public Holidays and Bank Holidays*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. LOCAL GOVERNMENT (IMPORTED HOUSES) BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to further amend Section Nine hundred and one of the 'Local Government Act* 1946'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. BALLAARAT GAS COMPANY'S BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to further amend 'The Ballaarat Gas Company's Act* 1857'" and desiring the concurrence of the Council therein.

   Bill ruled to be a Private Bill.

   The Honorable P. L. Coleman moved, That this Bill be dealt with as a Public Bill except in relation to the payment of fees.

   Question—put and resolved in the affirmative.

   The Honorable P. L. Coleman, having produced a receipt showing that the sum of £20 had been paid into the Treasury for the public uses of the State to meet the expenses of the Bill, moved, That this Bill be now read a first time.

   Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be printed and to be read a second time on the next day of meeting.

11751/52. (240 copies.)

8. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to extend the Operation of the Building Operations and Building Materials Control Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. CONSOLIDATED REVENUE BILL (No. 4).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply out of the Consolidated Revenue the sum of Seven million six hundred and sixty-four thousand five hundred and seventy pounds to the service of the year One thousand nine hundred and fifty-three and One thousand nine hundred and fifty-four*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

10. TRUSTEE COMPANIES (COMMISSION) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

11. PRICES REGULATION (CONTINUATION) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

12. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

Dairy Products Acts—Report of the Dairy Products Board for the six months ended 30th June, 1953.

Fisheries Acts—Notice of Intention to revoke the Proclamation respecting certain fishing in Wurdee Boluc Storage Reservoir, Parish of Tutegong.

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Albion, Oberon, and Somerton (three papers).

Schedule of country lands proposed to be sold by public auction.

Local Government Act 1946—Amendment of Uniform Building Regulations.

Masseurs Act 1928—Amending Masseurs Regulations 1953.

Ministry of Health Act 1943—Ministry of Health (Pre-School Child Development) Regulations 1953.

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances (four papers).

Teaching Service Act 1946—Amendment of Regulation XXI.—Scholarships.

Town and Country Planning Act 1944—City of Moorabbin Planning Scheme—Section 1—Amendment No. 1.

13. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 to 4 inclusive, be postponed until later this day.

14. HOTHAM HEIGHTS LAND BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with an amendment and desiring their concurrence therein.

15. MAINTENANCE (AMENDMENT) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

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16. OLDHAM TRUSTS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to certain Policies of Insurance on the Lives of Trevor Donald Oldham and Kathleen MacLeod Oldham*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable W. Slater moved, That this Bill be dealt with as a Public Bill.

Question—put and resolved in the affirmative.

The Honorable W. Slater moved, That this Bill be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time and ordered to be printed and, by leave, to be read a second time later this day.

17. REVENUE DEFICIT FUNDING BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

18. OLDHAM TRUSTS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

19. CONSOLIDATED REVENUE BILL (No. 4).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

20. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at thirty-two minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 28.

WEDNESDAY, 25TH NOVEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Governor, informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz.:—

Building Societies Act.
Country Fire Authority (Finance) Act.
Land Surveyors Act.
Poisons (Heroin) Act.
Workers Compensation (Amendment) Act.
Castlemaine Gas Company's Act.
Junior Legacy, Melbourne (Dureau Memorial) Act.
Trustee Companies (Commission) Act.
Prices Regulation (Continuation) Act.
Factories and Shops (Wages Boards) Act.
Consolidated Revenue Act.

3. FACTORIES AND SHOPS (WAGES BOARDS) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

4. RAILWAYS (MT. BUFFALO CHALET) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

5. PAPER.—The following Paper, pursuant to the direction of an Act of Parliament, was laid upon the Table by the Clerk:—

Grain Elevators Act 1934—Report of the Grain Elevators Board for the year ended 31st October, 1952.

6. POSTPONEMENT OF ORDERS OF THE DAY.—

Ordered, after debate, That the consideration of Orders of the Day, General Business, Nos. 1 and 2, be postponed until Wednesday, the 9th December next.

Ordered, after debate, That the consideration of Order of the Day, General Business, No. 3, be postponed until the next day of meeting.

Ordered—That the consideration of Order of the Day, General Business, No. 4, be postponed until the next day of meeting.

7. LANDLORD AND TENANT BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to amend the Landlord and Tenant Acts, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

8. STATUTE LAW REVISION BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to revise the Statute Law and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. STATUTES AMENDMENT BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to amend the Administration and Probate Acts the County Court Acts the Employers and Employés Acts the *Fences Act* 1928 the Imprisonment of Fraudulent Debtors Acts the Instruments Acts the Melbourne and Metropolitan Tramways Acts the Property Law Acts the Transfer of Land Acts the Wrongs Acts and the Companies Acts and for other purposes relating to the said Acts, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

10. MELBOURNE AND METROPOLITAN TRAMWAYS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

11. GAS AND FUEL CORPORATION (FINANCIAL) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

12. HEALTH (PROPRIETARY MEDICINES) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House aodpted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

13. STATE FORESTS LOAN APPLICATION BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

14. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

And then the Council, at thirty-four minutes past Ten o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 29.

TUESDAY, 1ST DECEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Governor, informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Railways (Mt. Buffalo Chalet) Act.
Revenue Deficit Funding Act.
Oldham Trusts Act.
Gas and Fuel Corporation (Financial) Act.
State Forests Loan Application Act.
Hotham Heights Land Act.

3. STATUTE LAW REVISION COMMITTEE (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Five of the 'Statute Law Revision Committee Act* 1948'" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. HOUSING BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Housing Acts, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. LICENSING (CHAIRMAN OF COURTS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to extend temporarily the Current Term of Office of the Chairman of Licensing Courts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. BOOKMAKERS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Registration of Bookmakers and Bookmakers' Clerks, to amend the Stamps Acts and other Acts, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. SUPERANNUATION POLICE AND STATE PENSIONS (EXTENSION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to extend the Operation of the 'Superannuation Police and State Pensions Act* 1953'" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

8. HOTHAM HEIGHTS LAND BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendment made by the Council in this Bill.

11751/52. (240 copies.)

9. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Apprenticeship Acts—

Amendment of Engineering Trades Apprenticeship Regulations.
Proclamation proclaiming Apprenticeship Trades.

Marketing of Primary Products (Egg and Egg Pulp) Act 1951—Report of the Egg and Egg Pulp Marketing Board for the Pool Year ended 4th July, 1953.

Railways Act 1928—Report of the Victorian Railways Commissioners for the year 1952–53.

River Improvement Act 1948—Tambo River Improvement Trust—Regulations for the Election and Term of Office of Commissioners.

State Electricity Commission Act 1928—Report of the State Electricity Commission for the year 1952–53.

Victorian Inland Meat Authority Act 1942—Report of the Victorian Inland Meat Authority for the year 1952–53.

10. REVOCATION AND EXCISION OF CROWN RESERVATIONS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

11. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 2 and 3, be postponed until later this day.

12. LOCAL GOVERNMENT (IMPORTED HOUSES) BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

13. BALLAARAT GAS COMPANY'S BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

The Honorable P. L. Coleman moved, That it be an instruction to the Committee that they have power to consider a new clause relating to moneys now owing by The Ballaarat Gas Company to the Treasurer of Victoria and the securities to be given therefor.

Question—put and resolved in the affirmative.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, and had amended the title thereof, which title is as follows: "*An Act to further amend 'The Ballaarat Gas Company's Act* 1857' *and for purposes in relation thereto*", the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

14. JURIES (FEES) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The Deputy-President resumed the Chair; and the Honorable G. L. Chandler having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

15. PUBLIC AND BANK HOLIDAYS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The Deputy-President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

16. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 6 and 7, be postponed until later this day.

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17. STATUTE LAW REVISION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable W. Slater moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

18. STATUTE LAW REVISION BILL.—The Honorable W. Slater moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.

Question—put and resolved in the affirmative.

19. STATUTES AMENDMENT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable Sir James Kennedy moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

20. LATROBE VALLEY WATER AND SEWERAGE BILL.—The Deputy-President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision with respect to the Supply of Water in the Latrobe Valley, to amend the 'Latrobe Valley Drainage Act* 1951', *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

21. SUPERANNUATION POLICE AND STATE PENSIONS (EXTENSION) BILL.—This Bill was, according Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The Deputy-President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

22. POLICE OFFENCES (TROTTING RACES) BILL.—The Deputy-President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Trotting Races*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

23. CORIO TO NEWPORT PIPELINE BILL.—The Deputy-President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to authorize the Granting to The Shell Company of Australia Limited of Leases Easements Licences or other Authorities for an Oil Pipeline over Crown Lands and Lands vested in or controlled by Public Statutory Corporations between Corio and Newport, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

24. MAINTENANCE (AMENDMENT) BILL.—The Deputy-President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

25. HEALTH (PROPRIETARY MEDICINES) BILL.—The Deputy-President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

26. TRUSTEE BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put, was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report after debate, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

And then the Council, at forty minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 30.

WEDNESDAY, 2ND DECEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. PAPER.—The following Paper, pursuant to the directions of several Acts of Parliament, was laid upon the Table by the Clerk :—

   Supreme Court Acts—Rules of the Supreme Court—Amendment of Rules of Procedure in Civil Proceedings.

3. POSTPONEMENT OF ORDERS OF THE DAY.—

   Ordered—That the consideration of Order of the Day, General Business, No. 1, be postponed until later this day.

   Ordered—That the consideration of Order of the Day, General Business, No. 2, be postponed until Wednesday next.

4. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. L. Coleman moved, That so much of the Sessional Orders as provides that no new business shall be taken after the hour of half-past Ten o'clock and that the hour of meeting on Thursdays shall be half-past Four o'clock be rescinded and that for the remainder of the Session new business may be taken at any hour and the hour of meeting on Thursdays shall be half-past Ten o'clock.

   Question—put and resolved in the affirmative.

5. GOODS (TEXTILE PRODUCTS) BILL.—On the motion of the Honorable A. M. Fraser, leave was given to bring in a Bill relating to Trade Descriptions of Textile Products, and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. L. Coleman moved, That this Bill be now read a second time.

   Debate ensued.

   Question—That this Bill be now read a second time—put.

   The Council divided.

Ayes, 17.	Noes, 14.
The Hon. D. L. Arnott (*Teller*),	The Hon. A. K. Bradbury,
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron,
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson,	W. O. Fulton (*Teller*),
A. M. Fraser,	T. H. Grigg,
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur,
P. Jones,	W. MacAulay,
H. V. MacLeod,	A. R. Mansell (*Teller*),
R. R. Rawson,	I. A. Swinburne,
M. P. Sheehy,	D. J. Walters,
W. Slater,	A. G. Warner.
A. Smith (*Teller*),	
F. M. Thomas,	
G. L. Tilley.	

   And so it was resolved in the affirmative. Bill read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

   Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

7. STATUTE LAW REVISION COMMITTEE (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

   Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

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8. LICENSING (CHAIRMAN OF COURTS) BILL.—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

9. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 4, be postponed until the next day of meeting.

10. MOTOR CAR (VISITING CARS AND DRIVERS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Twenty and Twenty-three of the 'Motor Car Act* 1951'" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

11. BALLAARAT GAS COMPANY'S BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

12. STATUTES AMENDMENT BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adpoted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

13. BOOKMAKERS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

14. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 7 to 12 inclusive, be postponed until later this day.

15. MELBOURNE AND METROPOLITAN BOARD OF WORKS (RECONSTITUTION) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

16. CORRECTION IN TRUSTEE BILL.—The President announced that he had received a Report from the Clerk notifying, in conformity with Standing Order No. 300, that he had made the following correction in the Trustee Bill, viz.:—

Clause 65, sub-clause (2), line 11, the word "any" has been inserted instead of the words "any any".

And then the Council, at fifteen minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 31.

THURSDAY, 3RD DECEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 and 2, be postponed until later this day.

3. LATROBE VALLEY WATER AND SEWERAGE BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

   Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

4. HOUSING BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

   Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

5. POLICE OFFENCES (TROTTING RACES) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

   Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

6. LABOUR AND INDUSTRY BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Ministry of Labour and Industry, to amend and consolidate the Law relating to Industrial Matters and the Supervision and Regulation of Factories Shops and other Premises, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

And then the Council, at nine minutes past Five o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 32.

TUESDAY, 8TH DECEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Governor, informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Maintenance (Amendment) Act.
Revocation and Excision of Crown Reservations Act.
Local Government (Imported Houses) Act.
Health (Proprietary Medicines) Act.
Juries (Fees) Act.
Public and Bank Holidays Act.
Superannuation Police and State Pensions (Extension) Act.
Ballaarat Gas Company's Act.

3. LICENSING (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Licensing Acts, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. LOCAL GOVERNMENT (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Local Government Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. SEWERAGE DISTRICTS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Sewerage Districts Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. COUNTRY SEWERAGE LOAN APPLICATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to Sanction the Issue and Application of Loan Money for Sewerage and other Works in Country Districts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

7. POLICE OFFENCES (CRANBOURNE AND WERRIBEE RACE-COURSES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Race-meetings at Cranbourne and Werribee Race-courses*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

8. ENTERTAINMENTS TAX (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Entertainments Tax Act* 1953'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

11751/52. (240 copies).

9. PATRIOTIC FUNDS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Title and Sections Two and Sixteen of the 'Patriotic Funds Act* 1939'" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

10. WATER SUPPLY LOAN APPLICATION BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Money for Works and other Purposes relating to Irrigation Water Supply Drainage Flood Protection and River Improvement*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

11. BOOKMAKERS BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

12. LATROBE VALLEY WATER AND SEWERAGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a communication from the Clerk of the Parliaments (pursuant to Joint Standing Order No. 21), calling attention to a clerical error in this Bill, viz.:—In clause 5, page 4, line 13, the word "Drainage" has been inserted instead of the word "Sewerage" and acquainting the Council that they have agreed that such error be corrected by the insertion of the word "Sewerage" instead of the word "Drainage" in clause 5, page 4, line 13, and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Council concurred with the Assembly in the correction of the clerical error discovered in this Bill and ordered that the communication from the Clerk of the Parliaments be returned to the Assembly with a Message acquainting them therewith.

13. STANDING ORDER—PROCEEDINGS ON OPENING OF PARLIAMENT.—The Honorable P. L. Coleman moved, by leave, that the following be adopted as a Standing Order of the Council to follow Standing Order 22:—

> 22A. Whenever Her Majesty the Queen is personally present in Victoria and attends in the Council Chamber to declare in person the cause of the calling together of the Parliament, references in the Standing Orders numbered 11, 12, 13, 14, 16, 18, 21, and 22 to His Excellency the Governor shall be read as references to Her Majesty the Queen.

Question—put and resolved in the affirmative.

Ordered—That the new Standing Order 22A be laid before his Excellency the Governor and his approval requested thereto.

14. STATUTE LAW REVISION COMMITTEE—STATUTE LAW REVISION BILL.—The Honorable F. M. Thomas brought up a Report from the Statute Law Revision Committee on the proposals contained in the Statute Law Revision Bill.

Ordered to lie on the Table and be printed together with the Minutes of Evidence.

15. STATUTE LAW REVISION COMMITTEE—TRANSFER OF LAND BILL.—The Honorable F. M. Thomas brought up a Report from the Statute Law Revision Committee on the proposals contained in the Transfer of Land Bill.

Ordered to lie on the Table and be printed together with the Minutes of Evidence.

16. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

Country Fire Authority Acts—Regulations relating to the Issue of Debentures.

Explosives Act 1928—Orders in Council relating to—

Classification of Explosives—Class 3—Nitro-Compound; Class 7—Firework.

Definition of Explosives—Class 3—Nitro-Compound; Class 7—Firework.

Fisheries Acts—Notice of Intention to issue a Proclamation to prohibit the use of certain seine nets in the waters of Port Phillip between Mentone Pier and Mornington Pier.

Free Library Service Board Act 1946—Report of the Free Library Service Board for the year 1952–53.

Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances (six papers).

Town and Country Planning Act 1944—City of Brunswick Planning Scheme (No. 2) 1952.

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17. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. L. Coleman moved, That so much of the Sessional Orders as provides that the hour of meeting on Wednesdays shall be half-past Four o'clock be rescinded and that for the remainder of the Session the hour of meeting on Wednesdays shall be Eleven o'clock.

Question—put and resolved in the affirmative.

18. LANDLORD AND TENANT BILL.—This Bill was according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

19. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 2 and 3, be postponed until later this day.

20. LABOUR AND INDUSTRY BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. M. Fraser moved, That this Bill be now read a second time.

Debate ensued.

And the Council having continued to sit until after Twelve of the clock—

WEDNESDAY, 9TH DECEMBER, 1953.

Debate continued.

The Honorable A. G. Warner moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until Thursday next.

21. CO-OPERATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled *"An Act to provide for the Formation Registration and Management of Co-operative Societies and for other purposes"* and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

22. MOTOR CAR (FEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled *"An Act to amend Section Eight of the 'Motor Car Act* 1951'" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

23. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at twelve minutes past One o'clock in the morning, adjourned until this day.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 33.

WEDNESDAY, 9TH DECEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. POSTPONEMENT OF ORDERS OF THE DAY.—

Ordered, after debate, That the consideration of Order of the Day, General Business, No. 1, be postponed until Wednesday next.

Ordered—That the consideration of Order of the Day, General Business, No. 2, be postponed until the next day of meeting.

3. TRANSPORT REGULATION (BOARD AND LICENCES) BILL.—DISCHARGE OF ORDER OF THE DAY.—The Order of the Day for the second reading of this Bill having been read—

The Honorable P. T. Byrnes moved, That the said Order be discharged.

Question—put and resolved in the affirmative.

Ordered—That the Bill be withdrawn.

4. CO-OPERATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. W. Galbally moved, That this Bill be now read a second time.

The Honorable Sir James Kennedy moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until Friday next.

5. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 2 to 5 inclusive, be postponed until later this day.

6. LICENSING (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. M. Fraser moved, That this Bill be now read a second time.

The Honorable Sir James Kennedy moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

7. MEDICAL (REGISTRATION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Fourteen of the 'Medical Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

8. GAS AND FUEL CORPORATION (MORDIALLOC UNDERTAKING) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Purchase by the Gas and Fuel Corporation of Victoria of the Gas Undertaking of the City of Mordialloc*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. GAS AND FUEL CORPORATION (TRARALGON UNDERTAKING) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Purchase by the Gas and Fuel Corporation of Victoria of the Gas Undertaking of the Shire of Traralgon*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

10. CORIO TO NEWPORT PIPELINE BILL.—The Order of the Day for the second reading of this Bill having been read—

Bill ruled to be a Private Bill.

The Honorable J. W. Galbally moved, That this Bill be dealt with as a Public Bill except in relation to the payment of fees.

Question—put and resolved in the affirmative.

The Honorable J. W. Galbally, having produced a receipt showing that the sum of £20 had been paid into the Treasury for the public uses of the State to meet the expenses of the Bill, the Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

11. MOTOR CAR (VISITING CARS AND DRIVERS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

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12. LOCAL GOVERNMENT (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The Deputy-President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

13. SUPREME COURT (JUDGES) BILL.—The Deputy-President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Seven of the 'Supreme Court Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman for the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

14. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 8, be postponed until later this day.

15. COUNTRY SEWERAGE LOAN APPLICATION BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable G. L. Chandler having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

16. SEWERAGE DISTRICTS (AMENDMENT) BILL.—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable G. L. Chandler having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

17. GOODS (TEXTILE PRODUCTS) BILL.—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable G. L. Chandler having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

18. STATUTE LAW REVISION BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable G. L. Chandler having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.

19. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 10 to 12 inclusive, be postponed until later this day.

20. WATER SUPPLY LOAN APPLICATION BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

21. ORDER OF THE COUNCIL RESCINDED.—The Honorable A. M. Fraser moved, by leave, That the Order of the Council, appointing Thursday next for the resumption of the debate on the second reading of the Labour and Industry Bill be rescinded, and that the resumption of the debate on the second reading of the said Bill be made an Order of the Day for later this day.

Question—put and resolved in the affirmative.

22. LABOUR AND INDUSTRY BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

The Honorable I. A. Swinburne moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

23. ORDER OF THE COUNCIL RESCINDED.—The Honorable A. M. Fraser moved, by leave, That the Order of the Council, appointing the next day of meeting for the resumption of the debate on the second reading of the Licensing (Amendment) Bill be rescinded, and that the resumption of the debate on the second reading of the said Bill be made an Order of the Day for later this day.

Question—put and resolved in the affirmative.

24. LICENSING (AMENDMENT) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

The Honorable P. T. Byrnes moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until the next day of meeting.

25. POLICE OFFENCES (CRANBOURNE AND WERRIBEE RACE-COURSES) BILL.—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with an amendment and desiring their concurrence therein.

26. LAND TAX (EXEMPTIONS AND RATES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to certain Exemptions from Land Tax and to declare the rate of Land Tax for the year ending the thirty-first day of December One thousand nine hundred and fifty-four*" and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

27. TRUSTEE BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

28. ENTERTAINMENTS TAX (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

29. PATRIOTIC FUNDS (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

30. MOTOR CAR (FEES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

Debate ensued.

Question—That this Bill be now read a second time—put.

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The Council divided.

Ayes, 15.	Noes, 13.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron (*Teller*),
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson,	W. O. Fulton,
A. M. Fraser,	T. H. Grigg,
J. J. Jones,	Sir James Kennedy,
P. Jones (*Teller*),	G. S. McArthur,
H. V. MacLeod,	W. MacAulay,
R. R. Rawson,	A. R. Mansell,
M. P. Sheehy,	I. A. Swinburne,
W. Slater,	D. J. Walters,
A. Smith,	A. G. Warner.
F. M. Thomas,	
G. L. Tilley (*Teller*).	

And so it was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

And then the Council, at Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 34.

THURSDAY, 10TH DECEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

   Geelong Harbor Trust Acts—

   Amendment of Principal Regulations (two papers).

   Amendment of Regulations relating to the creation and issue of Debentures and Inscribed Stock.

   Hospitals and Charities Act 1948—Report of the Hospitals and Charities Commission for the year 1952–53.

   Soldier Settlement Act 1945—Report of the Soldier Settlement Commission for the year 1952–53.

   Town and Country Planning Act 1944—Report of the Town and Country Planning Board for the year 1952–53.

3. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. L. Coleman moved, That during the remainder of the Session the Council shall meet for the despatch of business on Fridays and that Eleven o'clock shall be the hour of meeting.

   Question—put and resolved in the affirmative.

4. LICENSING (AMENDMENT) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair; and the Honorable D. J. Walters reported that the Committee had made progress in the Bill, and asked leave to sit again.

   Resolved—That the Council will, later this day, again resolve itself into the said Committee.

5. LAND SETTLEMENT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Land Settlement, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable A. M. Fraser, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

6. STANDING ORDER—PROCEEDINGS ON OPENING OF PARLIAMENT.—The President announced the receipt of a communication from the Clerk of the Council reporting that, pursuant to the resolution of the Council, the new Standing Order 22A, relating to the Proceedings on the Opening of Parliament by Her Majesty the Queen, adopted by the Council on the 8th instant, was this day laid before His Excellency the Governor for his approval, and that His Excellency was pleased to approve of the same.

7. LABOUR AND INDUSTRY BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

8. ERROR IN DIVISION LIST.—The President informed the Council that in a Division which took place in Committee this day, the Tellers for the "Ayes" had omitted to record the name of the Honorable A. M. Fraser; whereupon the President directed the Clerk to correct the Division List accordingly.

9. TRANSPORT (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Transport Regulation Acts, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

10. TOWN AND COUNTRY PLANNING BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Town and Country Planning Acts, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. W. Galbally, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

11. RAILWAY LOAN APPLICATION BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Moneys for Works and Purposes relating to Railways, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

12. PUBLIC WORKS LOAN APPLICATION BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Money for Public Works and other Purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

13. GOODS (TEXTILE PRODUCTS) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

14. STATUTE LAW REVISION BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

15. POLICE OFFENCES (CRANBOURNE AND WERRIBEE RACE-COURSES) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendment made by the Council in this Bill.

16. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

Factories and Shops Acts—Report of the Chief Inspector of Factories and Shops for the year 1952.

Housing Acts—Report of the Housing Commission for the year 1951-52.

Marketing of Primary Products Act 1935—Regulations—Travelling Expenses (two papers).

State Saving Bank Act 1928—General Order No. 47.

17. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 3, be postponed until the next day of meeting.

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18. GAS AND FUEL CORPORATION (MORDIALLOC UNDERTAKING) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

19. GAS AND FUEL CORPORATION (TRARALGON UNDERTAKING) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

20. SUPREME COURT (JUDGES) BILL.—This Bill was, according to Order, read a second time with the concurrence of an absolute majority of the whole number of the Members of the Legislative Council and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time with the concurrence of an absolute majority of the whole number of the Members of the Legislative Council and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

21. LANDLORD AND TENANT BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have agreed to the same with amendments and desiring the concurrence of the Council therein.

Ordered—That the foregoing Message be taken into consideration of the next day of meeting.

22. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at fifty-one minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 35.

FRIDAY, 11TH DECEMBER, 1953.

1. The President took the Chair and read the Prayer.

2. MELBOURNE AND METROPOLITAN BOARD OF WORKS (RECONSTITUTION) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

3. MELBOURNE AND METROPOLITAN TRAMWAYS BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

4. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

Public Library National Gallery and Museums Acts—Reports, with Statements of Income and Expenditure, for the year 1952–53 of the—

Trustees of the Museum of Applied Science.
Trustees of the National Gallery.
Trustees of the National Museum.
Trustees of the Public Library.
Building Trustees of the Public Library, National Gallery and Museums.

5. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. L. Coleman moved, That so much of the Sessional Orders as provides that the hour of meeting on Tuesdays shall be half-past Four o'clock be rescinded and that for the remainder of the Session the hour of meeting on Tuesdays shall be half-past Two o'clock.

Question—put and resolved in the affirmative.

6. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 and 2, be postponed until later this day.

7. CO-OPERATION BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

8. STATUTES AMENDMENT BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

9. LICENSING (AMENDMENT) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters reported that the Committee had agreed to the Bill with amendments.

On the motion of the Honorable A. M. Fraser, the Bill was re-committed to a Committee of the whole in respect of clause 29 and new clause AA.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with further amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

10. LANDLORD AND TENANT BILL.—The Order of the Day for the consideration of the amendments made in this Bill by the Assembly having been read, the said amendments were read and are as follows:—

1. Clause 2, lines 16–20, omit words beginning "with respect to" and ending at the end of the clause and insert—

"with respect to—

(*a*) any premises which are in existence at the commencement of this Act and which were not let to a tenant at any time between the thirty-first day of December One thousand nine hundred and forty and the said commencement; or

(*b*) any premises which are erected or the erection of which is completed after the said commencement."

2. Clause 6, omit this clause.

3. Clause 11, sub-clause (1), line 2, before "dwelling-house" insert "single".

4. ,, sub-clause (1), paragraph (*b*), line 14, at the end of the paragraph insert "and the lessee has not accepted that offer within fourteen days after the receipt thereof by him".

5. ,, sub-clause (2), line 16, before "dwelling-house" insert "single".

6. ,, sub-clause (3), line 22, before "dwelling-house" insert "single".

7. Clause 12, page 9, line 43, omit "and twenty".

8. Clause 17, sub-clause (2), page 12, line 20, to page 13, line 15, omit the inserted sub-section (4) and insert:—

"(4) The court shall not refuse to make an order under sub-section (1) of this section by reason only of any of the matters referred to in paragraph (*a*) or paragraph (*c*) of that sub-section where the application is made on the ground that the premises, being a dwelling-house, are reasonably required for occupation by the lessor and the court is satisfied—

(*a*) that the lessor is a person of one of the following classes:—

(i) a person who at the date of the giving of notice to quit has been the owner of the dwelling-house for not less than ten years and whose income, together with that of his or her spouse (if living with him or her), does not exceed a rate of Seven hundred and fifty pounds per annum;

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(ii) a married person who and whose spouse desire to live together in the dwelling-house in any case where either the lessor or his or her spouse is receiving or, if they were living in the dwelling-house, would be entitled to receive an age pension under the Commonwealth Act known as the *Social Services (Consolidation) Act* 1947–1953 or a service pension under section eighty-four of the Commonwealth Act known as the *Repatriation Act* 1920–1953;

(iii) a married person who and whose spouse desire to live together in the dwelling-house in any case where the joint income of the lessor and his or her spouse at the said date does not exceed a rate of Five hundred pounds per annum;

(iv) a widow or widower or a married person living apart from his or her spouse or a single person who is receiving or if he or she were living in the dwelling-house would be entitled to receive an age pension or a service pension as aforesaid;

(v) a widow or widower or a married person living apart from his or spouse or a single person, whose age in the case of a man is not less than sixty-five years and in the case of a woman is not less than sixty years, and whose income at the said date does not exceed a rate of Two hundred and fifty pounds per annum;

(vi) a person in receipt of an invalid pension under the Commonwealth Act known as the *Social Services (Consolidation) Act* 1947–1953 or a service pension under section eighty-five of the Commonwealth Act known as the *Repatriation Act* 1920–1953;

(vii) a person in receipt of a total permanent incapacity pension under the Commonwealth Act known as the *Repatriation Act* 1920–1953 whose income, together with the income (if any) of his or her spouse, if living with him or her, from sources other than pensions or allowances under the said Act, does not at the said date exceed a rate of Two hundred and fifty pounds per annum; and

(*b*) that the lessor or his or her spouse, if living with him or her, owns no other dwelling-house in Victoria and has not within the period of twelve months immediately prior to the giving of notice to quit owned any such dwelling-house—

but any order made in any such case which could not have been made apart from the provisions of this sub-section shall not take effect until such date as is expressed therein, being not less than six months after the date upon which the order is made."

9. Heading preceding clause 24, omit "Evictions" and insert "Tenancy".
10. Clause 24, line 8, omit "Evictions" and insert "Tenancy".
11. ,, line 15, omit "Evictions" and insert "Tenancy".
12. ,, line 22, omit "Evictions" and insert "Tenancy".
13. ,, line 38, omit "Evictions" and insert "Tenancy".
14. ,, page 17, line 3, omit "Evictions" and insert "Tenancy".
15. ,, page 17, line 8, omit "Evictions" and insert "Tenancy".

On the motion of the Honorable W. Slater, and after debate, the Council agreed to the amendments made by the Assembly, and ordered the Bill to be returned to the Assembly with a Message acquainting them therewith.

11. Land Settlement Bill.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters reported that the Committee had made progress in the Bill, and asked leave to sit again.

Resolved—That the Council will, later this day, again resolve itself into the said Committee.

12. LABOUR AND INDUSTRY BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

13. LABOUR AND INDUSTRY BILL—LANDLORD AND TENANT BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the following resolution :—

> That the Clerk of the Parliaments be authorized so far as may be necessary to re-number the sections in the Labour and Industry Bill consequentially on the deletion of clauses and the insertion of new clauses, and to substitute for any reference in the Bill to any section thereof the appropriate reference to the sections as re-numbered in accordance with the foregoing authority—

and desiring the concurrence of the Council therein.

The Honorable A. M. Fraser moved, That the Council agree to the foregoing resolution with the following amendments :—

1. After " Labour and Industry Bill " insert " and the Landlord and Tenant Bill ".
2. Omit " the Bill " and insert " the Bills ".

Question—put and resolved in the affirmative.

Ordered—That a Message be sent to the Assembly acquainting them that the Council have agreed to the foregoing resolution with amendments and desiring their concurrence therein.

14. TRANSPORT (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

15. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 6, be postponed until later this day.

16. RAILWAY LOAN APPLICATION BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

17. PUBLIC WORKS LOAN APPLICATION BILL (No. 2).—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable G. L. Chandler having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

18. LAND TAX (EXEMPTIONS AND RATES) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

19. TOWN AND COUNTRY PLANNING BILL.—This Bill was, according to Order and after debate, read a second time and committed, after debate, to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters reported that the Committee had made progress in the Bill, and asked leave to sit again.

Resolved—That the Council will, later this day, again resolve itself into the said Committee.

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20. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Adult Education Act 1946—Report of the Council of Adult Education for the year 1952–53.

Country Fire Authority Acts—

Amendment of Country Fire Authority Superannuation Fund Regulations 1951.

Country Fire Authority Superannuation and Endowment Assurance Regulations 1953.

Water Acts—Report of the State Rivers and Water Supply Commission for the year 1952–53.

21. MEDICAL (REGISTRATION) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

And the Council having continued to sit until after Twelve of the clock—

SATURDAY, 12TH DECEMBER, 1953.

22. LAND SETTLEMENT BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report.

The Honorable A. M. Fraser moved, That the Bill be now read a third time.

Question—put.

The Council divided.

Ayes, 15.	Noes, 13.
The Hon. A. J. Bailey (*Teller*),	The Hon. A. K. Bradbury,
T. W. Brennan (*Teller*),	P. T. Byrnes,
P. L. Coleman,	E. P. Cameron,
D. P. J. Ferguson,	G. L. Chandler,
A. M Fraser,	W. O. Fulton (*Teller*),
J. W. Galbally,	T. H. Grigg,
C. P. Gartside,	Sir James Kennedy,
J. J. Jones,	H. C. Ludbrook (*Teller*),
P. Jones,	G. S. McArthur,
H. V. MacLeod,	W. MacAulay,
R. R. Rawson,	A. R. Mansell,
W. Slater,	D. J. Walters,
A. Smith,	A. G. Warner.
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.—Bill read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

23. LICENSING (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

24. LABOUR AND INDUSTRY BILL—LANDLORD AND TENANT BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in the resolution authorizing the Clerk of the Parliaments to re-number clauses and substitute references consequentially on the deletion of clauses and the insertion of new clauses in these Bills.

25. CO-OPERATION BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

26. LICENSING (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a communication from the Clerk of the Parliaments (pursuant to Joint Standing Order No. 21), calling attention to a clerical error in this Bill, viz .—In clause 29, sub-clause (1), the words " of the Principal Act " have been omitted after the words " section two hundred and sixty-six " and been corrected by the insertion of the words " of the Principal Act " after the words " section two hundred and sixty-six " in clause 29, sub-clause (1), and desiring the concurrence of the Council therein.

On the motion of the Honorable A. M. Fraser, the Council concurred with the Assembly in the correction of the clerical error discovered in this Bill and ordered that the communication from the Clerk of the Parliaments be returned to the Assembly with a Message acquainting them therewith.

27. ADDRESS OF WELCOME TO HER MAJESTY QUEEN ELIZABETH II.—The President announced the receipt of a Message from the Assembly transmitting an Address to Her Majesty the Queen adopted this day by the Assembly and desiring the concurrence of the Council therein.

The Address to Her Majesty the Queen was read by the Clerk, and is as follows :—

TO HER MOST EXCELLENT MAJESTY QUEEN ELIZABETH THE SECOND:

MAY IT PLEASE YOUR MOST GRACIOUS MAJESTY:

We, the Legislative Assembly of Victoria

in Parliament assembled, cordially welcome Your Majesty and His Royal Highness the Duke of Edinburgh to this State of Victoria.

We desire to convey to Your Majesty the expression of our loyalty and devotion to the Throne and Person of Your Majesty and we are delighted that Your Majesty has graciously seen fit to visit this part of Your Commonwealth.

We earnestly hope that Your visit will be a pleasant and a happy one and feel sure that it will strengthen the friendly association under the Crown of the peoples of the Commonwealth.

The Honorable P. L. Coleman moved, That this House agree with the Assembly in the Address to Her Majesty the Queen, and that the blank in the Address be filled up by the insertion of the words " Legislative Council and the ".

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the Address to Her Majesty the Queen, agreed to this day by both Houses, be presented to Her Majesty on the day of her arrival in the State of Victoria.

Question—put and resolved in the affirmative.

Ordered—That a Message be sent to the Assembly acquainting them that the Council have concurred with the Assembly in adopting the Address to Her Majesty the Queen and have filled up the blank therein by the insertion of the words " Legislative Council and the ", and have agreed to the following resolution, viz. :—

"That the Address to Her Majesty the Queen, agreed to this day by both Houses, be presented to Her Majesty on the day of her arrival in the State of Victoria"—

and desiring the concurrence of the Assembly therein.

28. LAND SETTLEMENT BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

29. APPROPRIATION BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply a sum out of the Consolidated Revenue to the service of the year ending on the thirtieth day of June One thousand nine hundred and fifty-four and to appropriate the Supplies granted in this Session of Parliament*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave and after debate, was read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

30. ADDRESS OF WELCOME TO HER MAJESTY QUEEN ELIZABETH II.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the resolution of the Council that the Address to Her Majesty the Queen, agreed to this day by both Houses, be presented to Her Majesty on the day of her arrival in the State of Victoria.

31. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Thursday, the 14th January next.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at three minutes past Ten o'clock in the morning, adjourned until Thursday, the 14th January next.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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SESSION 1952–53.

BILLS ASSENTED TO AFTER THE FINAL ADJOURNMENT OF BOTH HOUSES AND BEFORE THE PROROGATION.

The following Messages from His Excellency the Governor were received after the final adjournment of both Houses :—

DALLAS BROOKS,

Governor of Victoria.

The Governor informs the Legislative Council that he has, on this day, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz :—

Building Operations and Building Materials Control (Extension) Act 1953.
Statute Law Revision Committee (Amendment) Act 1953.
Licensing (Chairman of Courts) Act 1953.
Housing Act 1953.
Police Offences (Trotting Races) Act 1953.
Bookmakers Act 1953.
Latrobe Valley Water and Sewerage Act 1953.
Corio to Newport Pipeline Act 1953.
Motor Car (Visiting Cars and Drivers) Act 1953.
Local Government (Amendment) Act 1953.
Country Sewerage Loan Application Act 1953.
Sewerage Districts (Amendment) Act 1953.
Water Supply Loan Application Act 1953.
Entertainments Tax (Amendment) Act 1953.
Patriotic Funds (Amendment) Act 1953.
Motor Car (Fees) Act 1953.

The Governor's Office,
Melbourne, 15th December, 1953.

DALLAS BROOKS,

Governor of Victoria.

The Governor informs the Legislative Council that he has, on this day, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz :—

Goods (Textile Products) Act 1953.
Statute Law Revision Act 1953.
Police Offences (Cranbourne and Werribee Race-courses) Act 1953.
Melbourne and Metropolitan Board of Works (Reconstitution) Act 1953.
Melbourne and Metropolitan Tramways Act 1953.
Statutes Amendment Act 1953.
Gas and Fuel Corporation (Mordialloc Undertaking) Act 1953.
Gas and Fuel Corporation (Traralgon Undertaking) Act 1953.
Landlord and Tenant Act 1953.
Transport (Amendment) Act 1953.
Railway Loan Application Act 1953.
Public Works Loan Application Act 1953.
Land Tax (Exemptions and Rates) Act 1953.
Medical (Registration) Act 1953.
Supreme Court (Judges) Act 1953.
Licensing (Amendment) Act 1953.
Land Settlement Act 1953.

The Governor's Office,
Melbourne, 22nd December, 1953.

DALLAS BROOKS,

Governor of Victoria.

The Governor informs the Legislative Council that he has, on this day, given the Royal Assent to the undermentioned Acts of the present Session presented to him by the Clerk of the Parliaments, viz :—

Co-operation Act 1953.
Trustee Act 1953.
Labour and Industry Act 1953.

The Governor's Office,
Melbourne, 23rd December, 1953.

On the 23rd December, 1953, His Excellency the Governor gave the Royal Assent to the following Act, presented by Mr. Speaker :—

Appropriation Act 1953.

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SESSION 1952–53.

QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO.

QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO—*continued.*

Name of Member and Subject-matter.	Number of Notice-Paper. (Question.)	Page in *Hansard.* (*Reply.*)
MANSELL, Hon. A. R.—		
Land Development by Australian Mutual Provident Society—Construction of development road	34	3151
RAWSON, Hon. R. R.—		
Immigration—Conference of State Ministers with Commonwealth Government	7	605
Railways Department—Upper Fern Tree Gully–Gembrook service ..	7	606
SHEEHY, Hon. M. P.—		
Totalizator—Maximum use of facilities for betting	9	721
SWINBURNE, Hon. I. A.—		
Railways Department—Wangaratta–Whitfield service	*	980
Snob's Creek Hatchery	31	2717
State Electricity Commission—Yarrabulla Creek bridges	26	2199
TILLEY, Hon. G. L.—		
Education Department—Erection of Boneo-road school	4	377
Government Licences—Revenue from issue of licences	9	721
Railways Department—Wonthaggi–Melbourne service	7	606
WALTERS, Hon. D. J.—		
Railways Department—		
Closing of certain lines—Transport by road in such cases	2	322
Kerang–Murrabit service	12	863
WARNER, Hon. A. G.—		
Landlord and Tenant Act—Exclusion of certain dwellings	14	1042
State Electricity Commission—Sale of equipment	14	1043

* Question asked without notice.

VICTORIA

GOVERNMENT GAZETTE.

Published by Authority.

[*Registered at the General Post Office, Melbourne, for transmission by post as a newspaper.*]

No. 10] WEDNESDAY, JANUARY 13. [1954

PROROGUING THE PARLIAMENT OF VICTORIA.

PROCLAMATION

By His Excellency the Governor of the State of Victoria and its Dependencies in the Commonwealth of Australia, &c., &c., &c.

WHEREAS The Parliament of Victoria stands adjourned until Thursday, the fourteenth day of January 1954: Now I, the Governor of the State of Victoria, in the Commonwealth of Australia, do by this my Proclamation prorogue the said Parliament of Victoria until Tuesday, the ninth day of February, 1954.

Given under my Hand and the Seal of the State of Victoria aforesaid, at Melbourne, this thirteenth day of January, in the year of our Lord One thousand nine hundred and fifty-four, and in the second year of the reign of Her Majesty Queen Elizabeth II.

(L.S.) DALLAS BROOKS.

By His Excellency's Command,

JOHN CAIN,
Premier.

GOD SAVE THE QUEEN

No. 10—218/54. By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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SELECT COMMITTEES

APPOINTED DURING THE SESSION 1952–53.

No. 1.—ELECTIONS AND QUALIFICATIONS.

Appointed (by Mr. President's Warrant) 22nd December, 1952.

The Hon. P. T. Byrnes
G. L. Chandler
A. M. Fraser
P. P. Inchbold
The Hon. Sir James Kennedy
G. S. McArthur
W. Slater.

No. 2.—STANDING ORDERS.

Appointed 22nd December, 1952.

The Hon. the President
P. T. Byrnes
Sir Frank Clarke
A. M. Fraser
J. W. Galbally
The Hon. C. P. Gartside
T. H. Grigg
W. MacAulay
D. J. Walters
A. G. Warner.

No. 3.—HOUSE (JOINT).

Appointed 22nd December, 1952.
(*See* Act No. 3660, s. 367.)

The Hon. the President (*ex officio*)
P. T. Byrnes
E. P. Cameron
The Hon. P. Jones
Sir James Kennedy
I. A. Swinburne.

No. 4.—LIBRARY (JOINT).

Appointed 22nd December, 1952.
(*See* Act No. 3660 s. 375.)

The Hon. the President
G. L. Chandler
P. P. Inchbold
The Hon. R. R. Rawson
W. Slater.

No. 5.—PRINTING.

Appointed 22nd December, 1952.

The Hon. the President
E. P. Cameron
G. L. Chandler
J. W. Galbally
The Hon. H. C. Ludbrook
W. MacAulay
A. R. Mansell
F. M. Thomas.

No. 6.—STATUTE LAW REVISION (JOINT).

Appointed 22nd December, 1952.

(*See* Act No. 5285, s. 2.)

The Hon. T. W. Brennan
P. T. Byrnes
H. C. Ludbrook
The Hon. G. S. McArthur
I. A. Swinburne
F. M. Thomas.

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1952-53.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 1.

TUESDAY, 14TH APRIL, 1953.

No. 1.—WORKERS COMPENSATION BILL.—Clause 4—

4. (1) In sub-sections (1) and (2) of section five of the Principal Act the words " by accident " are hereby repealed.

(2) The Principal Act is hereby amended as follows :—

(*a*) In sub-section (2) of section one for the words " Notice of Accidents " there shall be substituted the words " Notice of Injuries " ;

(*b*) In section seven—

(i) the words " by accident " are hereby repealed ; and

(ii) for the words " the accident " there shall be substituted the words " the injury " ;

(*c*) In section eight—

(i) in sub-section (1) for the word " accident " (wherever occurring) there shall be substituted the word " injury " ;

(ii) in sub-section (2) the words " by accident " are hereby repealed ; and

(iii) in sub-section (2) for the words " the accident " there shall be substituted the words " the injury " ;

(*d*) In the clauses appended to section nine for the word " accident " (wherever occurring) there shall be substituted the word " injury " ;

(*e*) In sub-section (1) of section twelve—

(i) the words " by accident " are hereby repealed ; and

(ii) for the words "the accident" there shall be substituted the words " the injury " ;

(*f*) In section fifteen for the word " accident " there shall be substituted the word " injury " ;

(*g*) In section twenty-five the words " by accident " are hereby repealed ;

(*h*) In paragraph (*c*) of sub-section (1) of section twenty-six the words " by accident " are hereby repealed ;

11753/53. (140 copies.)

(*i*) In sub-section (1) of section twenty-seven for the word " accident " there shall be substituted the word " injury " ;

(*j*) In the heading preceding section forty-one for the word " ACCIDENTS " there shall be substituted the word " INJURIES " ;

(*k*) In section forty-one—

(i) in paragraph (*a*) for the word " accident " (wherever occurring) there shall be substituted the word " injury " ;

(ii) in paragraph (*b*) for the words " such accident " there shall be substituted the words " the injury " ;

(iii) in paragraph (*b*) the words " the accident causing " are hereby repealed; and

(iv) in paragraph (*a*) of the proviso for the word " accident " (wherever occurring) there shall be substituted the word "injury " ;

(*l*) In paragraph (*c*) of section forty-two for the word " accident " there shall be substituted the word " injury " ;

(*m*) In sub-section (1) of section forty-four the expression " accident (if any)and " is hereby repealed ;

(*n*) In section forty-five—

(i) in paragraph (*a*) of sub-section (1) for the word " accidents " there shall be substituted the word " injuries " ;

(ii) in sub-section (2) for the word " accident " (wherever occurring) there shall be substituted the word " injury " ; and

(iii) in sub-section (3) for the word " accidents " (wherever occurring) there shall be substituted the word " injuries " and for the word " accident " (wherever occurring) there shall be substituted the word " injury " ;

(*o*) In section fifty-nine—

(i) in sub-section (1) for the word " accident " (wherever occurring) there shall be substituted the word " injury " ; and

(ii) in sub-section (3) for the word " accidents " there shall be substituted the word " injuries " and for the word " accident " (wherever occurring) there shall be substituted the word " injury " ;

(*p*) In sub-section (1) of section sixty-three the words " caused by an accident " are hereby repealed ;

(*q*) In sub-section (1) of section sixty-four the words " for accidents happening " are hereby repealed ;

(*r*) In paragraph (*a*) of sub-section (6) of section eighty-one the words " for accidents " are hereby repealed ; and

(*s*) In paragraph (*d*) of section eighty-two for the word " accidents " there shall be substituted the word " injuries ".

(3) In sub-section (1) of section six of the Principal Act after the word " disallowed " there shall be inserted the words " and if it is proved that the injury to a worker was deliberately self-inflicted no compensation shall be payable under this Act."

—(*Hon. W. Slater.*)

Question—That clause 4 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 13.
The Hon. D. L. Arnott,	The Hon. P. T. Byrnes,
A. J. Bailey (*Teller*),	E. P. Cameron,
T. W. Brennan,	G. L. Chandler,
P. L. Coleman,	W. O. Fulton,
D. P. J. Ferguson,	T. H. Grigg,
A. M. Fraser,	P. P. Inchbold,
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook (*Teller*),
J. J. Jones,	G. S. McArthur,
P. Jones (*Teller*),	W. MacAulay,
H. V. MacLeod,	A. R. Mansell (*Teller*),
R. R. Rawson,	I. A. Swinburne,
M. P. Sheehy,	A. G. Warner.
W. Slater,	
A. Smith,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

No. 2.—Workers Compensation Bill.—Clause 5—

5. In the proviso to sub-section (2) of section eight of the Principal Act for the words " deems not to have been reasonably incidental to any such journey " (wherever occurring) there shall be substituted the words " considers would ordinarily have materially added to the risk of injury ".

—(*Hon. W. Slater.*)

Question—That clause 5 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 13.
The Hon. D. L. Arnott,	The Hon. P. T. Byrnes,
A. J. Bailey,	E. P. Cameron,
T. W. Brennan (*Teller*),	G. L. Chandler,
P. L. Coleman,	W. O. Fulton (*Teller*),
D. P. J. Ferguson,	T. H. Grigg,
A. M. Fraser,	P. P. Inchbold,
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur (*Teller*),
P. Jones,	W. MacAulay,
H. V. MacLeod,	A. R. Mansell,
R. R. Rawson,	I. A. Swinburne,
M. P. Sheehy,	A. G. Warner.
W. Slater,	
A. Smith (*Teller*),	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

No. 3.—Parking of Vehicles Bill.—Clause 3—

3. (1) When any parking infringement occurs in relation to any vehicle the person who at the time of the occurrence of the infringement is the owner of the vehicle shall by virtue of this section be and be deemed to be guilty of an offence against the by-law rule or regulation concerned in all respects as if he were the actual offender guilty of the infringement unless the court is satisfied that the vehicle was a stolen vehicle or a vehicle illegally taken or used.

(2) Nothing in the foregoing provisions of this section shall affect the liability of the actual offender, but where the full amount of any penalty has been paid by the actual offender or owner in relation to any parking infringement no further penalty shall be imposed on or recovered from the owner or actual offender in relation thereto.

(3) (*a*) Notwithstanding anything in the foregoing provisions of this section no owner of the vehicle shall by virtue of this section be guilty of an offence if—

(i) before or within fourteen days after the issue of a summons in respect of the parking infringement concerned he supplies in a sworn statement in writing to the informant the name and address of the person who was in charge of the vehicle at the relevant time ; or

(ii) he satisfies the court that he did not know and could not with reasonable diligence have ascertained such name or address.

(*b*) Any statement purporting to be made under sub-paragraph (i) of paragraph (*a*) of this sub-section if produced in any proceedings against the person named therein and in respect of the parking infringement concerned shall be *prima facie* evidence that such person was in charge of the vehicle at all relevant times relating to the infringement.

—(*Hon. W. Slater.*)

Amendment proposed—That the following new sub-clause be added to the clause :—

" ( ) Evidence of any prior conviction for any parking infringement shall not be tendered or received in evidence except with respect to some other parking infringement."

—(*Hon. Sir James Kennedy.*)

Question—That the new sub-clause proposed to be added be so added—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 10.	Noes, 17.
The Hon. E. P. Cameron,	The Hon. D. L. Arnott,
T. H. Grigg (*Teller*),	A. J. Bailey,
P. P. Inchbold (*Teller*),	T. W. Brennan,
Sir James Kennedy,	P. L. Coleman,
H. C. Ludbrook,	D. P. J. Ferguson (*Teller*),
G. S. McArthur,	A. M. Fraser,
W. MacAulay,	J. W. Galbally,
A. R. Mansell,	C. P. Gartside,
I. A. Swinburne,	J. J. Jones (*Teller*),
A. G. Warner.	P. Jones,
	H. V. MacLeod,
	R. R. Rawson,
	M. P. Sheehy,
	W. Slater,
	A. Smith,
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

WEDNESDAY, 15TH APRIL, 1953.

No. 4.—BARLEY MARKETING (AMENDMENT) BILL.—Clause 2—

2. (1) At the end of sub-section (2) of section four of the Principal Act there shall be inserted the following paragraph :—

" (*e*) an officer of the Department of Agriculture of Victoria ".

(2) At the end of section four of the Principal Act there shall be inserted the following sub-section :—

" (12) (*a*) Each member of the Board shall be paid out of the funds of the Board remuneration for his services and allowances and reimbursements for travelling and living away from home on journeys taken in the course of his duties at such rates as are determined by the Minister of Agriculture of Victoria and the Minister of Agriculture of South Australia.

(*b*) If upon being requested by the Board or a member thereof to determine any such rate (whether by way of the original fixation or a variation of the rate) the said Ministers do not agree upon it within three months after the request the said Ministers shall jointly appoint a person to determine such rate ; and the decision of the person so appointed shall be binding and remain in force until altered by a subsequent determination of the said Ministers or of a person appointed by them pursuant to this paragraph."

(3) Paragraph (*d*) of sub-section (5) of section four of the Principal Act is hereby repealed.

(4) (*a*) The Board as constituted at the time of the enactment of this section pursuant to the arrangement made under section four of the Principal Act shall remain so constituted until the reconstitution (not later than the seventh day of September One thousand nine hundred and fifty-three) of the Board pursuant to a further such arrangement, and the Board as so reconstituted shall be and be deemed to be the same Board and no act matter or thing shall be affected or abated thereby.

(*b*) The rates of remuneration and allowances payable to members of the Board at the time of the enactment of this section pursuant to the arrangement made under section four of the Principal Act shall remain in force until other rates are determined under sub-section (12) of the said section four as amended by this section.

—(*Hon. W. Slater.*)

Question—That clause 2 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 14.	Noes, 11.
The Hon. D. L. Arnott (*Teller*),	The Hon. P. T. Byrnes,
A. J. Bailey,	E. P. Cameron,
T. W. Brennan,	G. L. Chandler,
P. L. Coleman,	C. P. Gartside,
D. P. J. Ferguson,	P. P. Inchbold (*Teller*),
A. M. Fraser,	Sir James Kennedy,
J. W. Galbally,	G. S. McArthur,
J. J. Jones,	H. V. MacLeod,
P. Jones,	A. R. Mansell,
R. R. Rawson (*Teller*),	I. A. Swinburne,
M. P. Sheehy,	A. G. Warner (*Teller*).
W. Slater,	
A. Smith,	
G. L. Tilley.	

And so it was resolved in the affirmative.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1952-53.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 2.

TUESDAY, 6TH OCTOBER, 1953.

No. 1.—MELBOURNE HARBOR TRUST (AMENDMENT) BILL.—Clause 2—

2. (1) The Principal Act is hereby amended as follows :—

(*a*) In section four for the word "five" (where twice occurring) there shall be substituted the word "six";

(*b*) At the end of section eight there shall be inserted the following sub-sections :—

"(2) One other of such Commissioners other than the chairman shall be a person appointed from a panel of the names of not less than three persons submitted to the Minister by the governing body for the time being of the Melbourne branch of the Waterside Workers Federation of Australia."

* * * * * * *

—(*Hon. J. W. Galbally.*)

Amendment proposed—That the words "the Melbourne branch of the Waterside Workers Federation of Australia" be omitted with the view of inserting in place thereof the words "the Melbourne Trades Hall Council".

—(*Hon. C. P. Gartside.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 15.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron (*Teller*),
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson,	W. O. Fulton,
A. M. Fraser,	C. P. Gartside,
J. W. Galbally,	T. H. Grigg (*Teller*),
J. J. Jones (*Teller*),	Sir James Kennedy,
P. Jones,	H. C. Ludbrook,
R. R. Rawson,	G. S. McArthur,
M. P. Sheehy,	W. MacAulay,
W. Slater,	H. V. MacLeod,
A. Smith (*Teller*),	A. R. Mansell,
F. M. Thomas,	I. A. Swinburne,
G. L. Tilley.	A. G. Warner.

The Tellers having declared the numbers for the "Ayes" and for the "Noes" to be respectively fifteen, or equal, the Chairman gave his voice with the "Ayes" in order to allow of further consideration of the subject and declared the question to have been resolved in the affirmative.

11753/53. (140 copies.)

No. 2.—Melbourne Harbor Trust (Amendment) Bill.—Clause 2 (*as amended*)—

2. (1) The Principal Act is hereby amended as follows :—

(*a*) In section four for the word " five " (where twice occurring) there shall be substituted the word " six " ;

(*b*) At the end of section eight there shall be inserted the following sub-sections :—

" (2) One other of such Commissioners other than the chairman shall be a person appointed from a panel of the names of not less than three persons submitted to the Minister by the governing body for the time being of the Melbourne branch of the Waterside Workers Federation of Australia.

(3) If the said governing body fails within one month after the receipt of a request in writing from the Minister in that behalf to submit a panel of names as aforesaid, the Governor in Council may without such submission appoint a person to be a Commissioner and any Commissioner so appointed shall for all purposes be deemed to be duly appointed." ;

(*c*) In section twenty for the word " three " there shall be substituted the word " four " ; and

(*d*) In sub-section (2) of section twenty-one for the words " three or four " there shall be substituted the words " four or five ".

(2) Nothing in the foregoing provisions of this section shall affect the constitution of the Commissioners until a Commissioner is appointed under sub-section (2) of section eight of the Principal Act as amended by the last preceding sub-section, and thereupon the Commissioner so appointed shall be joined to the existing Commissioners who shall, subject to the Principal Act, continue to hold office for the terms for which they were respectively appointed, and the Commissioners shall be deemed to be the same body before and after the change of constitution and no act matter or thing shall be affected or abated thereby.

—(*Hon. J. W. Galbally.*)

Question—That clause 2 as amended stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 13.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron,
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson,	W. O. Fulton,
A. M. Fraser,	T. H. Grigg,
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur,
P. Jones (*Teller*),	W. MacAulay,
H. V. MacLeod,	A. R. Mansell (*Teller*),
R. R. Rawson,	I. A. Swinburne,
M. P. Sheehy,	A. G. Warner.
W. Slater,	
A. Smith,	
F. M. Thomas (*Teller*),	
G. L. Tilley.	

And so it was resolved in the affirmative.

No. 3.—Melbourne Harbor Trust (Amendment) Bill.—Clause 4—

4. In section seventy-two of the Principal Act after the word " wharfingers " (where twice occurring) there shall be inserted the word " stevedores ".

—(*Hon. J. W. Galbally.*)

Amendment proposed—That the following new sub-clause be added to the clause :—

" ( ) At the end of section seventy-two of the Principal Act there shall be inserted the following proviso :—

' Provided that the Commissioners shall not establish or conduct business as stevedores and shall not license any persons to act as stevedores for the purpose of conducting or operating any business other than the handling of coal.' "

—(*Hon. P. T. Byrnes.*)

Question—That the new sub-clause proposed to be added be so added—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 13.	Noes, 17.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
W. O. Fulton,	D. P. J. Ferguson,
T. H. Grigg,	A. M. Fraser,
Sir James Kennedy,	J. W. Galbally,
H. C. Ludbrook,	C. P. Gartside,
G. S. McArthur (*Teller*),	J. J. Jones,
W. MacAulay (*Teller*),	P. Jones,
A. R. Mansell,	H. V. MacLeod,
I. A. Swinburne,	R. R. Rawson,
A. G. Warner.	M. P. Sheehy (*Teller*),
	W. Slater,
	A. Smith,
	F. M. Thomas,
	G. L. Tilley (*Teller*).

And so it passed in the negative.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1952-53.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 3.

TUESDAY, 27TH OCTOBER, 1953.

No. 1.—FACTORIES AND SHOPS (LONG SERVICE LEAVE) BILL.—Clause 4—

4. (1) The continuous employment by an employer of a worker who is employed by him at the commencement of this Act shall for the purposes of this Act commence at the actual date (before the commencement of this Act) of such employment:

Provided that in computing entitlement to long service leave under this Act—

(*a*) any continuous employment before the commencement of this Act to the extent to which it is in excess of twenty years shall be disregarded;

(*b*) any long service leave (or payment in lieu thereof) granted to the worker in respect of any period of employment which is under this section taken into account in computing the worker's entitlement to long service leave under this Act shall be taken into account and be deemed to have been leave taken under this Act.

* * * * * * *

—(*Hon. A. M. Fraser.*)

Amendment proposed—That sub-clause (1) be omitted with the view of inserting in place thereof the following new sub-clause:—

"(1) In calculating any period of continuous employment of a worker which comprises or contains any period of employment of the worker before the commencement of this Act—

(*a*) any such period of employment before the commencement of this Act shall for the purposes of this Act be counted as being three-quarters of the actual duration of such period:

Provided that nothing in this paragraph shall operate so as to reduce the period of continuous employment before the commencement of this Act with which a worker is to be credited to less than ten years;

(*b*) any long service leave (or payment in lieu thereof) granted to the worker in respect of any such period of employment before the commencement of this Act shall be taken into account and be deemed to have been leave taken under this Act."

—(*Hon. A. G. Warner.*)

Question—That the sub-clause proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 14.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron,
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson (*Teller*),	Sir Frank Clarke,
A. M. Fraser,	W. O. Fulton,
J. W. Galbally,	T. H. Grigg (*Teller*),
C. P. Gartside,	Sir James Kennedy,
J. J. Jones,	H. C. Ludbrook,
P. Jones,	G. S. McArthur,
H. V. MacLeod,	W. MacAulay,
R. R. Rawson,	A. R. Mansell,
M. P. Sheehy,	I. A. Swinburne,
W. Slater,	A. G. Warner.
A. Smith (*Teller*),	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

No. 2.—Factories and Shops (Long Service Leave) Bill.—Clause 8—

8. (1) If a worker who is entitled to any amount of long service leave dies before or while taking such leave his employer shall thereupon pay to his personal representative a sum equal to the amount of ordinary pay that would have been payable to the worker in respect of the period of long service leave not taken by the worker less any amount already paid to the worker in respect of any such leave not taken.

(2) Where a worker who has completed more than twenty years continuous employment with an employer dies while still in the continuous employment of such employer his employer (in addition to any sum payable under sub-section (1) of this section) shall thereupon pay to his personal representative in respect of any period (hereinafter called the fractional period) of such continuous employment which is after the last accrual of entitlement to long service leave under paragraph (*a*) of sub-section (2) of the last preceding section a sum equal to the amount of his ordinary pay for a period equalling one-eightieth of such fractional period.

(3) Where a worker who has completed at least ten but less than twenty years of continuous service with an employer dies while still in the employment of such employer his employer shall thereupon pay to his personal representative a sum equal to the amount of his ordinary pay for a period equalling one-eightieth of the period of his continuous employment.

(4) Except as provided in this section and in sub-section (2) of section four of this Act payment shall not be made by an employer to a worker or his personal representative in lieu of any long service leave or part thereof to which the worker is entitled under this Act nor shall any such payment be accepted by any worker or his personal representative.

—(*Hon. A. M. Fraser.*)

Amendment proposed—That the following new sub-clause be inserted to follow sub-clause (3) :—

" ( ) With the approval of the Industrial Appeals Court (which approval may be given if in the opinion of the Court there are special circumstances that justify such a course) an employer, in lieu of granting to a worker any amount of long service leave to which the worker is entitled or any part of such leave, may pay to the worker a sum equal to the worker's ordinary pay for a period equal to such amount of leave or part thereof."

—(*Hon. P. T. Byrnes.*)

Question—That the new sub-clause proposed to be inserted be so inserted—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 13.	Noes, 17.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott (*Teller*),
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
W. O. Fulton (*Teller*),	D. P. J. Ferguson,
T. H. Grigg,	A. M. Fraser,
Sir James Kennedy,	J. W. Galbally,
H. C. Ludbrook,	C. P. Gartside,
G. S. McArthur,	J. J. Jones,
W. MacAulay (*Teller*),	P. Jones,
A. R. Mansell,	H. V. MacLeod,
I. A. Swinburne,	R. R. Rawson (*Teller*),
A. G. Warner.	M. P. Sheehy,
	W. Slater,
	A. Smith,
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

No. 3.—Factories and Shops (Long Service Leave) Bill.—Clause 9—

9. (1) When a worker becomes entitled to long service leave under this Act such leave shall be granted by the employer as soon as practicable having regard to the needs of his establishment; but the taking of such leave may be postponed to such date as is mutually agreed or in default of agreement as the Industrial Appeals Court having regard to the problems involved directs. In no case shall any entitlement to long service leave be lost or in any way affected by failure or refusal of the employer to grant the leave.

* * * * * * * *

—(*Hon. A. M. Fraser.*)

The Clause having been amended by the omission of sub-clause (1)—

Amendment proposed—That the following new sub-clause be inserted in place thereof:—

"(1) When a worker becomes entitled to long service leave under this Act such leave shall be granted by the employer as soon as practicable (but save as otherwise expressly provided in this section not before the thirty-first day of December One thousand nine hundred and fifty-four) having regard to the needs of his establishment; but subject to this Act—

(*a*) the taking of such leave may be postponed to such date as is mutually agreed or in default of agreement as the Industrial Appeals Court having regard to the problems involved directs but no such direction shall require such long service leave to commence before the expiry of six months from the date of such direction;

(*b*) the taking of such leave may (if the entitlement has accrued) be advanced to such date before the thirty-first day of December One thousand nine hundred and fifty-four as is mutually agreed;

(*c*) in no case shall any entitlement to long service leave be lost or in any way affected by the foregoing provisions of this sub-section or by failure or refusal of the employer to grant the leave."

—(*Hon. A. M. Fraser.*)

Further amendment proposed—That the words "thirty-first day of December One thousand nine hundred and fifty-four" (where first occurring) be omitted from the proposed amendment with the view of inserting in place thereof the words "thirtieth day of June One thousand nine hundred and fifty-six".

—(*Hon. P. T. Byrnes.*)

Question—That the words proposed to be omitted stand part of the proposed amendment—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 13.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey (*Teller*),	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron (*Teller*),
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson,	W. O. Fulton,
A. M. Fraser,	T. H. Grigg,
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside (*Teller*),	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur,
P. Jones,	W. MacAulay,
H. V. MacLeod,	A. R. Mansell (*Teller*),
R. R. Rawson,	I. A. Swinburne,
M. P. Sheehy,	A. G. Warner.
W. Slater,	
A. Smith,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

By Authority: W. M. Houston, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1952-53.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 4.

THURSDAY (MORNING), 5TH NOVEMBER, 1953.

No. 1.—TATTERSALL CONSULTATIONS BILL.—Clause 8—

8. Tickets shall not be sold except (whether on personal application or by post)—

(*a*) by or on behalf of the promoter at the offices of the promoter; or

(*b*) if so authorized by the regulations and subject to the regulations, by accredited representatives of the promoter.

—(*Hon. P. L. Coleman.*)

Amendment proposed—That the words " but not so as to create more than six addresses from which tickets may be sold " be inserted after the words " accredited representatives of the promoter ".

—(*Hon. A. G. Warner.*)

Question—That the words proposed to be inserted be so inserted—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 13.	Noes, 16.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey (*Teller*),
E. P. Cameron,	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
W. O. Fulton,	D. P. J. Ferguson,
T. H. Grigg (*Teller*),	A. M. Fraser,
Sir James Kennedy,	J. W. Galbally,
H. C. Ludbrook (*Teller*),	C. P. Gartside,
G. S. McArthur,	J. J. Jones,
W. MacAaulay,	P. Jones,
A. R. Mansell,	R. R. Rawson,
I. A. Swinburne,	M. P. Sheehy,
A. G. Warner.	W. Slater,
	A. Smith,
	F. M. Thomas,
	G. L. Tilley (*Teller*).

And so it passed in the negative.

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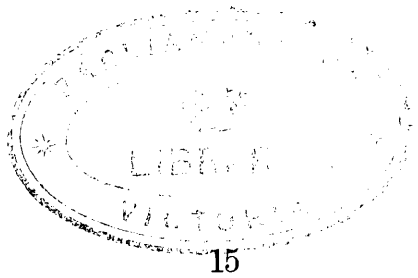

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1952-53.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 5.

TUESDAY, 10TH NOVEMBER, 1953.

No. 1.—PRICES REGULATION (CONTINUATION) BILL.—Clause 2—

2. For sub-section (1) of section fifty-seven of the Principal Act as amended by any Act there shall be substituted the following sub-section :—

"(1) This Act shall remain in force until the thirty-first day of December One thousand nine hundred and fifty-five."

—(*Hon. W. Slater.*)

Amendment proposed—That the words "thirty-first day of December One thousand nine hundred and fifty-five" be omitted with the view of inserting in place thereof the words "thirtieth day of June One thousand nine hundred and fifty-four".

—(*Hon. P. T. Byrnes.*)

Notice having been given of a proposed amendment to omit the words after the word "December"—

Question—That the words down to and including the word "December" proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 13.
The Hon. D. L. Arnott (*Teller*),	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron,
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson,	W. O. Fulton,
A. M. Fraser,	T. H. Grigg,
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur (*Teller*),
P. Jones,	W. MacAulay,
H. V. MacLeod,	A. R. Mansell,
R. R. Rawson (*Teller*),	I. A. Swinburne,
M. P. Sheehy,	A. G. Warner.
W. Slater,	
A. Smith,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1952-53.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 6.

WEDNESDAY, 2ND DECEMBER, 1953.

No. 1.—STATUTES AMENDMENT BILL.—Clause 5—

5. (1) At the end of section five of the *Fences Act* 1928 there shall be inserted the following sub-section :—

"(2) Save as otherwise expressly provided in this Part of this Act the provisions of this Part of this Act shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of the *Statutes Amendment Act* 1953 and no contract or agreement made or entered into either before or after the commencement of that Act shall operate to annul or vary or exclude any of the provisions of this Part of this Act or to indemnify any person against any claims made under this Part of this Act."

(2) This section shall be read and construed as one with the *Fences Act* 1928 which Act and this section of this Act may be cited together as the Fences Acts.

—(*Hon. W. Slater.*)

Amendment proposed—That the words "whether made before or" be omitted with the view of inserting in place thereof the word "made".

—(*Hon. E. P. Cameron.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 16.	Noes, 13.
The Hon. D. L. Arnott, A. J. Bailey, T. W. Brennan (*Teller*), P. L. Coleman, D. P. J. Ferguson, A. M. Fraser, J. W. Galbally, C. P. Gartside, J. J. Jones, P. Jones, R. R. Rawson, M. P. Sheehy, W. Slater, A. Smith, F. M. Thomas (*Teller*), G. L. Tilley.	The Hon. A. K. Bradbury (*Teller*), P. T. Byrnes, E. P. Cameron, G. L. Chandler, W. O. Fulton, T. H. Grigg (*Teller*), Sir James Kennedy, H. C. Ludbrook, G. S. McArthur, W. MacAulay, A. R. Mansell, I. A. Swinburne, A. G. Warner.

And so it was resolved in the affirmative.

11753/52. (140 copies).

THURSDAY, 3RD DECEMBER, 1953.

No. 2.—HOUSING BILL.—Clause 2—

2. (1) At the end of sub-section (1) of section four of the Principal Act as amended by any Act there shall be inserted the expression—

" and

(*d*) the development of land for housing and related purposes ".

(2) Sub-section (1) of section four of the *Housing Act* 1943 as amended by any Act is hereby amended as follows :—

(*a*) For paragraph (*f*) there shall be substituted the following paragraph :—

" (*f*) with the consent of the Minister—

(i) develop any land for housing and related purposes ;

(ii) set apart any land for gardens parks open spaces or places of recreation ;

(iii) erect buildings (additional to houses) which in the opinion of the Commission are necessary or desirable for the development of any area where the Commission is building houses or for the requirements of residents in any such area " ;

(*b*) In paragraph (*i*) after the words " or any part thereof " there shall be inserted the expression " whether with or without any buildings thereon (other than houses erected by the Commission) " ;

(*c*) In paragraph (*j*) after the words " land of the Commission " there shall be inserted the words " whether with or without any buildings thereon " ;

(*d*) In paragraph (*k*) after the words " the Commission " (where first occurring) there shall be inserted the expression " or any land with buildings thereon (other than houses erected by the Commission) vested in the Commission ".

—(*Hon. P. L. Coleman.*)

Amendment proposed—That sub-clause (2) be omitted.

—(*Hon. A. G. Warner.*)

Question—That the sub-clause proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 8.
The Hon. D. L. Arnott, A. J. Bailey, T. W. Brennan, P. L. Coleman, D. P. J. Ferguson, A. M. Fraser, J. W. Galbally, C. P. Gartside, J. J. Jones, P. Jones, R. R. Rawson, M. P. Sheehy (*Teller*), W. Slater, A. Smith, I. A. Swinburne, F. M. Thomas (*Teller*), G. L. Tilley.	The Hon. E. P. Cameron, G. L. Chandler (*Teller*), T. H. Grigg (*Teller*), Sir James Kennedy, H. C. Ludbrook, G. S. McArthur, H. V. MacLeod, A. G. Warner.

And so it was resolved in the affirmative.

No. 3.—HOUSING BILL.—Clause 3—

3. (1) With the consent of the Governor in Council the Commission by agreement with and for and on behalf of any Department municipality or public or local authority or public utility corporation may carry out or cause to be carried out in respect of any land in any area which is being developed by the Commission any works which such Department municipality authority or corporation is empowered to carry out, including (without affecting the generality of the foregoing) works for or in connexion with the construction of roads the drainage of land and the provision of water sewerage electricity and gas.

(2) Any such agreement may include provisions relating to any matters preliminary or incidental to the works or to the handing over of the works after completion, and any such Department municipality authority or corporation is hereby authorized to enter into and to give effect to any such agreement notwithstanding anything in any Act.

(3) If in the opinion of the Governor in Council any such Department municipality authority or corporation—

(*a*) unreasonably refuses or fails to enter into any such agreement ; or

(*b*) requires terms or conditions which are unreasonable ; or

(*c*) does not negotiate make or give effect to any such agreement with due diligence and despatch—

the Governor in Council, after consultation between the Minister and any other Minister concerned, may make such Order in the matter as he thinks fit, and such Order shall be given effect to by all parties concerned in all respects as if it were an agreement made pursuant to the foregoing provisions of this section.

—(*Hon. P. L. Coleman.*)

Question—That clause 3 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 9.
The Hon. D. L. Arnott (*Teller*), A. J. Bailey, T. W. Brennan, P. L. Coleman, D. P. J. Ferguson, A. M. Fraser, J. W. Galbally, C. P. Gartside, J. J. Jones, P. Jones, R. R. Rawson, M. P. Sheehy, W. Slater, A. Smith, I. A. Swinburne, F. M. Thomas, G. L. Tilley (*Teller*).	The Hon. A. K. Bradbury, E. P. Cameron (*Teller*), G. L. Chandler, T. H. Grigg, Sir James Kennedy, H. C. Ludbrook (*Teller*), G. S. McArthur, H. V. MacLeod, A. G. Warner.

And so it was resolved in the affirmative.

By Authority: W. M. Houston, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1952-53.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 7.

TUESDAY, 8TH DECEMBER, 1953.

No. 1.—LANDLORD AND TENANT BILL.—Clause 15—

15. (1) In paragraph (*b*) of sub-section (2) of section forty-five of the *Landlord and Tenant Act* 1948 after the words " by the lessee " there shall be inserted the words " and that the business was commenced or is carried on with the express or implied consent of the lessor ".

(2) At the end of section forty-five of the *Landlord and Tenant Act* 1948 there shall be inserted the following sub-sections :—

" (4) The court shall not refuse to make an order under sub-section (1) of this section by reason only of any of the matters referred to in paragraph (*a*) or paragraph (*c*) of that sub-section where the application is made on the ground that the premises, being a dwelling-house, are reasonably required for occupation by the lessor and the court is satisfied—

(*a*) that the lessor is a person of one of the following classes :—

(i) a married person who and whose spouse desire to live together in the dwelling-house in any case where either the lessor or his or her spouse is receiving or, if they were living in the dwelling-house, would be entitled to receive an age pension under the Commonwealth Act known as the *Social Services* (*Consolidation*) *Act* 1947–1953 ;

(ii) a married person who and whose spouse desire to live together in the dwelling-house in any case where the joint income of the lessor and his or her spouse does not exceed a rate of Five hundred pounds per annum ;

(iii) a widow or widower or a married person living apart from his or her spouse or a single person whose age, in any such case, is not less than sixty-five years and who is receiving or, if he or she were living in the dwelling-house, would be entitled to receive an age pension under the said Commonwealth Act ;

(iv) a widow or widower or a married person living apart from his or her spouse or a single person whose age, in any such case, is not less than sixty-five years and whose total income does not exceed a rate of Two hundred pounds per annum ;

(v) a person in receipt of an invalid pension under the said Commonwealth Act ; or

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(vi) a person in receipt of a total permanent incapacity pension under the Commonwealth Act known as the *Repatriation Act* 1920–53 whose income, together with the income (if any) of his or her spouse, from sources other than pensions or allowances under the said Act, does not exceed a rate of One hundred pounds per annum; and

(*b*) that the lessor or his or her spouse (if living with him or her) owns no other dwelling-house in Victoria and has not within the period of twelve months immediately prior to the giving of notice to quit owned any such dwelling-house—

but any order made in any such case which could not have been made apart from the provisions of this sub-section shall not take effect until such date as is expressed therein, being not less than six months after the date upon which the order is made.

* * * * * * *

—(*Hon. W. Slater.*)

Amendment proposed—That the inserted sub-section (4) of sub-clause (2) be omitted with the view of inserting in place thereof the following new inserted sub-section (4):—

"(4) The court shall not refuse to make an order under sub-section (1) of this section by reason only of any of the matters referred to in paragraph (*a*) or paragraph (*c*) of that sub-section where the application is made on the ground that the premises, being a dwelling-house or shared accommodation in a dwelling-house, are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with and is wholly or partly dependent on him (and notwithstanding that the premises or any part or parts of the premises have been sub-let by the lessee), and the court is satisfied—

(*a*) that the lessor owns no other dwelling-house reasonably available to him or to the person who ordinarily resides with him (as the case may be); and

(*b*) that the lessor has given to the lessee notice to quit in accordance with the following scale, that is to say:—

(i) where the lessor has been the owner of the dwelling-house for not more than four years—twelve months' notice;

(ii) where the lessor has been the owner of the dwelling-house for more than four years but not more than six years—nine months' notice;

(iii) where the lessor has been the owner of the dwelling-house for more than six years but not more than eight years—six months' notice;

(iv) where the lessor has been the owner of the dwelling-house for more than eight years but not more than ten years—three months' notice; and

(v) where the lessor has been the owner of the dwelling-house for more than ten years—one month's notice."

—(*Hon. C. P. Gartside.*)

Notice having been given of a proposed amendment after the expression "Social Services Consolidation Act 1947–1953"—

Question—That the words of the inserted sub-section (4) down to and including the expression "Social Services Consolidation Act 1947–1953" proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 17.
The Hon. D. L. Arnott, A. J. Bailey, T. W. Brennan (*Teller*), P. L. Coleman, D. P. J. Ferguson, A. M. Fraser, J. W. Galbally, J. J. Jones, P. Jones (*Teller*), R. R. Rawson, M. P. Sheehy, W. Slater, A. Smith, F. M. Thomas, G. L. Tilley.	The Hon. A. K. Bradbury, P. T. Byrnes, E. P. Cameron, G. L. Chandler, Sir Frank Clarke, W. O. Fulton, C. P. Gartside, T. H. Grigg, Sir James Kennedy, H. C. Ludbrook (*Teller*), G. S. McArthur, W. MacAulay (*Teller*), H. V. MacLeod, A. R. Mansell, I. A. Swinburne, G. J. Tuckett, A. G. Warner.

And so it passed in the negative.

No. 2.—Landlord and Tenant Bill.—Clause 15—

[*For this clause, see Division No. 1 above.*]

—(*Hon. W. Slater.*)

The clause having been amended by the omission of the inserted sub-section (4) *of sub-clause* (2):—

Amendment proposed—That the following new inserted sub-section (4) be inserted in place thereof:—

"(4) The court shall not refuse to make an order under sub-section (1) of this section by reason only of any of the matters referred to in paragraph (*a*) or paragraph (*c*) of that sub-section where the application is made on the ground that the premises, being a dwelling-house or shared accommodation in a dwelling-house, are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with and is wholly or partly dependent on him (and notwithstanding that the premises or any part or parts of the premises have been sub-let by the lessee), and the court is satisfied—

(*a*) that the lessor owns no other dwelling-house reasonably available to him or to the person who ordinarily resides with him (as the case may be); and

(*b*) that the lessor has given to the lessee notice to quit in accordance with the following scale, that is to say:—

(i) where the lessor has been the owner of the dwelling-house for not more than four years—twelve months' notice;

(ii) where the lessor has been the owner of the dwelling-house for more than four years but not more than six years—nine months' notice;

(iii) where the lessor has been the owner of the dwelling-house for more than six years but not more than eight years—six months' notice;

(iv) where the lessor has been the owner of the dwelling-house for more than eight years but not more than ten years—three months' notice; and

(v) where the lessor has been the owner of the dwelling-house for more than ten years—one month's notice."

—(*Hon. C. P. Gartside.*)

Question—That the new inserted sub-section (4) proposed to be inserted be so inserted—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 15.
The Hon. A. K. Bradbury (*Teller*), P. T. Byrnes, E. P. Cameron, G. L. Chandler, Sir Frank Clarke, W. O. Fulton, C. P. Gartside, T. H. Grigg (*Teller*), Sir James Kennedy, H. C. Ludbrook, G. S. McArthur, W. MacAulay, H. V. MacLeod, A. R. Mansell, I. A. Swinburne, G. J. Tuckett, A. G. Warner.	The Hon. D. L. Arnott, A. J. Bailey (*Teller*), T. W. Brennan, P. L. Coleman, D. P. J. Ferguson, A. M. Fraser, J. W. Galbally, J. J. Jones (*Teller*), P. Jones, R. R. Rawson, M. P. Sheehy, W. Slater, A. Smith, F. M. Thomas, G. L. Tilley.

And so it was resolved in the affirmative.

No. 3.—Landlord and Tenant Bill.—Proposed new clause A.—

A. The provisions of Parts II., III., IV,, and V. of the *Landlord and Tenant Act* 1948 shall not apply with respect to any premises which were not let at the thirty-first day of December One thousand nine hundred and forty and have not been let at any time after that date and before the commencement of this Act.

—(*Hon. A. G. Warner.*)

Motion made and question put—That new clause A be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 15.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan (*Teller*),
G. L. Chandler,	P. L. Coleman,
Sir Frank Clarke,	D. P. J. Ferguson,
W. O. Fulton,	A. M. Fraser,
C. P. Gartside,	J. W. Galbally,
T. H. Grigg,	J. J. Jones,
Sir James Kennedy,	P. Jones,
H. C. Ludbrook,	R. R. Rawson,
G. S. McArthur (*Teller*),	M. P. Sheehy,
W. MacAulay,	W. Slater,
H. V. MacLeod,	A. Smith (*Teller*),
A. R. Mansell (*Teller*),	F. M. Thomas,
I. A. Swinburne,	G. L. Tilley.
G. J. Tuckett,	
A. G. Warner.	

And so it was resolved in the affirmative.

No. 4.—Landlord and Tenant Bill.—Proposed new clauses B and C—

B. (1) This section shall apply with respect to all prescribed premises (other than shared accommodation) which were let at the thirty-first day of December One thousand nine hundred and forty or were let after that date before the first day of March One thousand nine hundred and forty-five.

(2) Notwithstanding anything to the contrary in the Landlord and Tenant Acts, the lessor of any prescribed premises to which this section applies may, subject to the express provisions of any written lease of the premises for a fixed term which has not expired, by notice in writing served on the lessee require that after the expiration of one month from the service of that notice the rent of the prescribed premises shall be increased to such amount as is specified in the notice, not being more than Twenty per centum in excess of—

(*a*) the rent payable in respect of the premises at the thirty-first day of December One thousand nine hundred and forty; or

(*b*) (where the premises were not in existence or not let at that date) the rent payable under the lease by which the premises were first let after that date—

and the amount so specified shall from the expiration of the said period of one month be the fair rent of the prescribed premises for all purposes and, subject to the following sub-section, the Landlord and Tenant Acts (except section twenty-five of the *Landlord and Tenant Act* 1948) shall apply thereto accordingly.

(3) Nothing in the last preceding sub-section or any notice thereunder shall in any way affect the right of any person to apply to a Board for the determination of the fair rent of any premises, or any application for that purpose, or the operation of section twenty-one of the *Landlord and Tenant Act* 1948, or the matters to be taken into consideration in determining a fair rent; but every such determination shall be made in the same manner in all respects as if the last preceding sub-section had not been passed.

C. (1) This section shall apply with respect to all prescribed premises (other than prescribed premises leased solely for the purpose of residence) which were let at the thirty-first day of December One thousand nine hundred and forty or were let after that date before the first day of March One thousand nine hundred and forty-five.

(2) Notwithstanding anything to the contrary in the Landlord and Tenant Acts or the last preceding section, the lessee of any prescribed premises to which this section applies may by agreement in writing with the lessor consent to the increase of the rent of the prescribed premises to such amount as is specified in the agreement, not being more than Thirty per centum in excess of—

(*a*) the rent payable in respect of the premises at the thirty-first day of December One thousand nine hundred and forty; or

(*b*) (where the premises were not in existence or not let at that date) the rent payable under the lease by which the premises were first let after that date—

and the amount so specified shall from the date specified in that behalf in the agreement be the fair rent of the prescribed premises for all purposes and, subject to the following sub-section, the Landlord and Tenant Acts (except section twenty-five of the *Landlord and Tenant Act* 1948) shall apply thereto accordingly.

(3) Where the fair rent of any prescribed premises is fixed pursuant to the last preceding sub-section, no further proceedings for the fixing of the fair rent of those premises shall be commenced by either of the parties to the agreement during the period specified in that behalf in the agreement or, if no such period is specified, during the period of six months next after the date from which the increased rent is payable, except on the ground referred to in paragraph (*b*) or paragraph (*c*) of sub-section (1) of section twenty-five of the *Landlord and Tenant Act* 1948.

—(*Hon. A. G. Warner.*)

Motion made and question put—That new clauses B and C be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 17.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott (*Teller*),
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan,
G. L. Chandler (*Teller*),	P. L. Coleman,
Sir Frank Clarke,	D. P. J. Ferguson,
W. O. Fulton (*Teller*),	A. M. Fraser,
T. H. Grigg,	J. W. Galbally,
Sir James Kennedy,	C. P. Gartside,
H. C. Ludbrook,	J. J. Jones,
G. S. McArthur,	P. Jones,
W. MacAulay,	H. V. MacLeod,
A. R. Mansell,	R. R. Rawson,
I. A. Swinburne,	M. P. Sheehy,
G. J. Tuckett,	W. Slater,
A. G. Warner.	A. Smith,
	F. M. Thomas,
	G. L. Tilley (*Teller*).

And so it passed in the negative.

No. 5.—Landlord and Tenant Bill.—Proposed new clause E—

E. Section twelve of the *Landlord and Tenant Act* 1948 is hereby amended as follows:—

(*a*) In sub-section (3) after the word "determination" there shall be inserted the words "or agreement as hereinafter provided";

(*b*) In sub-section (4) for the words "by a determination" there shall be substituted the words "as hereinafter provided";

(*c*) At the end of the section there shall be inserted the following sub-sections:—

"(5) The fair rent of any prescribed premises (whether fixed by virtue of sub-section (1) or (2) of this section or by determination or agreement) shall not be increased or decreased except—

(*a*) by a determination of the appropriate Board as hereinafter provided; or

(*b*) by an agreement in writing in the prescribed form signed by the lessor and the lessee of the prescribed premises.

(6) When any such agreement is made in accordance with the last preceding sub-section the amount specified therein shall, as from the date specified in that behalf therein (which shall not be earlier than the day upon which the agreement is so made), be for all purposes the fair rent of the prescribed premises and the provisions of this Act (except section twenty-five thereof) shall apply thereto accordingly."

—(*Hon. C. P. Gartside.*)

Motion made and question put—That new clause E be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 15.
The Hon. A. K. Bradbury (*Teller*),	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron (*Teller*),	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
Sir Frank Clarke,	D. P. J. Ferguson (*Teller*),
W. O. Fulton,	A. M. Fraser,
C. P. Gartside,	J. W. Galbally,
T. H. Grigg,	J. J. Jones,
Sir James Kennedy,	P. Jones,
H. C. Ludbrook,	R. R. Rawson (*Teller*),
G. S. McArthur,	M. P. Sheehy,
W. MacAulay,	W. Slater,
H. V. MacLeod,	A. Smith,
A. R. Mansell,	F. M. Thomas,
I. A. Swinburne,	G. L. Tilley.
G. J. Tuckett,	
A. G. Warner.	

And so it was resolved in the affirmative.

No. 6.—LANDLORD AND TENANT BILL.—Proposed new clause F—

F. The provisions of Part V. of the *Landlord and Tenant Act* 1948 as amended by any Act shall not apply in respect of an application for recovery of possession of premises by a lessor in any of the circumstances referred to in sub-section (4) or sub-section (5) of section forty-five of the said Act as amended by the foregoing provisions of this Act.

—(*Hon. C. P. Gartside.*)

Motion made and question put—That new clause F be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 15.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
Sir Frank Clarke,	D. P. J. Ferguson,
W. O. Fulton,	A. M. Fraser,
C. P. Gartside,	J. W. Galbally,
T. H. Grigg,	J. J. Jones,
Sir James Kennedy,	P. Jones,
H. C. Ludbrook,	R. R. Rawson,
G. S. McArthur,	M. P. Sheehy (*Teller*),
W. MacAulay,	W. Slater,
H. V. MacLeod (*Teller*),	A. Smith,
A. R. Mansell,	F. M. Thomas (*Teller*),
I. A. Swinburne (*Teller*),	G. L. Tilley.
G. J. Tuckett,	
A. G. Warner.	

And so it was resolved in the affirmative.

THURSDAY, 10TH DECEMBER, 1953.

No. 7.—LICENSING (AMENDMENT) BILL.—Clause 6—

6. (1) At the end of section sixty-five of the Principal Act there shall be inserted the following sub-sections :—

"(2) In granting or renewing or transferring any licence or the registration of any club the power and discretion of the Court shall not be deemed to be limited by the result of any poll taken before the commencement of the *Licensing (Amendment) Act* 1953.

(3) Notwithstanding anything in the last preceding sub-section or in any other provision of the Licensing Acts where before the commencement of the Principal Act a local option poll had been taken in any electoral district as constituted on the twenty-first day of October One thousand nine hundred and twenty and a resolution that no licences be granted in that district had been carried the following provisions of this sub-section shall take effect :—

(*a*) Before a new licence is granted in any part of the area corresponding with that district the Licensing Court may if it thinks proper order a vote of electors to be taken in the neighbourhood surrounding the proposed site of the premises in respect of which a licence has been applied for.

* * * * * *

—(*Hon. A. M. Fraser.*)

Amendment proposed—That the words "in any district within a licensing area where objection has been lodged to the granting of a new licence or" be inserted after the word "Acts".

—(*Hon. P. T. Byrnes.*)

Question—That the words proposed to be inserted be so inserted—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 12.	Noes, 17.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
W. O. Fulton,	D. P. J. Ferguson,
T. H. Grigg,	A. M. Fraser,
Sir James Kennedy,	J. W. Galbally,
W. MacAulay (*Teller*),	C. P. Gartside,
A. R. Mansell (*Teller*),	J. J. Jones (*Teller*),
I. A. Swinburne,	P. Jones,
G. J. Tuckett,	H. V. MacLeod,
A. G. Warner.	R. R. Rawson,
	M. P. Sheehy,
	W. Slater,
	A. Smith,
	F. M. Thomas (*Teller*),
	G. L. Tilley.

And so it passed in the negative.

No. 8.—Licensing (Amendment) Bill.—Clause 6—

[*For this clause, see Division No. 7 above.*]

—(*Hon. A. M. Fraser.*)

Amendment proposed—That the words " and, upon request by petition signed by not less than two hundred electors residing in the area, shall " be inserted after the word " proper ".

—(*Hon. E. P. Cameron.*)

Question—That the words proposed to be inserted be so inserted—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 14.	Noes, 17.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
W. O. Fulton (*Teller*),	D. P. J. Ferguson,
T. H. Grigg,	A. M. Fraser,
Sir James Kennedy,	J. W. Galbally,
H. C. Ludbrook,	C. P. Gartside,
G. S. McArthur (*Teller*),	J. J. Jones,
W. MacAulay,	P. Jones,
A. R. Mansell,	H. V. MacLeod,
I. A. Swinburne,	R. R. Rawson,
G. J. Tuckett,	M. P. Sheehy,
A. G. Warner.	W. Slater,
	A. Smith (*Teller*),
	F. M. Thomas,
	G. L. Tilley (*Teller*),

And so it passed in the negative.

No. 9.—Licensing (Amendment) Bill.—Clause 19 (*as amended*)—

19. (1) In paragraph (*b*) of section one hundred and seventy-seven after the word " lodger " there shall be inserted the words " or weekly or other boarder or inmate or servant ".

(2) In paragraphs (*a*) and (*b*) of section one hundred and seventy-eight after the word " boarder " there shall be inserted the words " or an inmate or a servant ".

(3) In section one hundred and eighty-three after the word " boarder " (wherever occurring) there shall be inserted the words " or inmate or servant ".

(4) In sub-section (1) of section one hundred and eighty-seven of the Principal Act after the word " boarder " there shall be inserted the words " or inmate ".

—(*Hon. A. M. Fraser.*)

Question—That clause 19 as amended stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 14.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	P. T. Byrnes,
T. W. Brennan,	E. P. Cameron,
P. L. Coleman,	G. L. Chandler (*Teller*),
D. P. J. Ferguson (*Teller*),	W. O. Fulton,
A. M. Fraser,	T. H. Grigg (*Teller*),
J. W. Galbally,	Sir James Kennedy,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur,
P. Jones (*Teller*),	W. MacAulay,
H. V. MacLeod,	A. R. Mansell,
R. R. Rawson,	I. A. Swinburne,
M. P. Sheehy,	G. J. Tuckett,
W. Slater,	A. G. Warner.
A. Smith,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

No. 10.—Labour and Industry Bill.—Clause 3—

3. (1) In this Act unless inconsistent with the context or subject-matter—

* * * * * * *

"Manufacturing process" includes any handicraft or process in or incidental to the making assembling altering repairing renovating preparing ornamenting finishing cleaning washing or adapting of any goods or articles or any part thereof for trade or sale or gain or for purposes ancillary thereto, and "Manufacturing" has a corresponding interpretation.

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(*Hon. A. M. Fraser.*)

Amendment proposed—That the words "(other than repairing merely as incidental to a retail shop business)" be inserted after the word "repairing".

—(*Hon. A. G. Warner.*)

Question—That the words proposed to be inserted be so inserted—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 14.	Noes, 17.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott (*Teller*),
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron,	T. W. Brennan (*Teller*),
G. L. Chandler,	P. L. Coleman,
W. O. Fulton,	D. P. J. Ferguson,
T. H. Grigg (*Teller*),	A. M. Fraser,
Sir James Kennedy,	J. W. Galbally,
H. C. Ludbrook,	C. P. Gartside,
G. S. McArthur,	J. J. Jones,
W. MacAulay (*Teller*),	P. Jones,
A. R. Mansell,	H. V. MacLeod,
I. A. Swinburne,	R. R. Rawson,
G. J. Tuckett,	M. P. Sheehy,
A. G. Warner.	W. Slater,
	A. Smith,
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

No. 11.—Labour and Industry Bill.—Clause 22—

22. (1) Subject to this Act each Wages Board shall consist of such even number of members as is specified by Order of the Governor in Council and a chairman.

(2) The number of members shall be four or six except in any case where the Minister recommends to the Governor in Council that a greater number is required, but in no case shall the number exceed ten.

—(*Hon. A. M. Fraser.*)

Amendment proposed—That the words "Minister recommends to the Governor in Council" be omitted with the view of inserting in place thereof the words "Governor in Council after receiving a recommendation from the Industrial Appeals Court determines".

—(*Hon. A. G. Warner.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 13.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey (*Teller*),	P. T. Byrnes,
T. W. Brennan,	G. L. Chandler,
P. L. Coleman,	W. O. Fulton,
D. P. J. Ferguson (*Teller*),	T. H. Grigg,
A. M. Fraser,	Sir James Kennedy,
J. W. Galbally,	H. C. Ludbrook (*Teller*),
C. P. Gartside,	G. S. McArthur,
J. J. Jones,	W. MacAulay,
P. Jones,	A. R. Mansell (*Teller*),
H. V. MacLeod,	I. A. Swinburne,
R. R. Rawson,	G. J. Tuckett,
M. P. Sheehy,	A. G. Warner.
W. Slater,	
A. Smith,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

FRIDAY, 11TH DECEMBER, 1953.

No. 12.—LAND SETTLEMENT BILL.—Proposed new clause AA—

AA. Any land being—

(*a*) land acquired or set apart under this Act or the Soldier Settlement Acts; or

(*b*) unalienated land of the Crown—

which in the opinion of the Minister is not required for settlement under Part II. of this Act may in such manner and on such terms and conditions as the Minister determines be made available to approved persons or organizations for occupation for purposes of primary production.

—(*Hon. A. M. Fraser.*)

Motion made and question put—That new clause AA be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 13.	Noes, 14.
The Hon. A. J. Bailey,	The Hon. A. K. Bradbury,
T. W. Brennan,	P. T. Byrnes,
P. L. Coleman,	E. P. Cameron,
D. P. J. Ferguson,	G. L. Chandler,
A. M. Fraser,	W. O. Fulton (*Teller*),
J. W. Galbally,	C. P. Gartside,
J. J. Jones,	T. H. Grigg,
P. Jones,	Sir James Kennedy,
R. R. Rawson (*Teller*),	H. C. Ludbrook,
W. Slater,	G. S. McArthur,
A. Smith,	W. MacAulay (*Teller*),
F. M. Thomas,	H. V. MacLeod,
G. L. Tilley (*Teller*).	A. R. Mansell,
	A. G. Warner.

And so it passed in the negative.

SATURDAY (MORNING), 12TH DECEMBER, 1953.

No. 13.—LAND SETTLEMENT BILL.—Proposed new clause CC—

CC. Any unalienated land of the Crown which on the recommendation of the Soldier Settlement Commission is not suitable for its purposes and which in the opinion of the Minister is not required for settlement under Part II. of this Act may in such manner and on such terms and conditions as the Minister determines be made available by the Governor in Council to approved persons or organizations for occupation for purposes of primary production.

—(*Hon. A. M. Fraser.*)

Motion made and question put—That new clause CC be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 12.
The Hon. A. J. Bailey (*Teller*),	The Hon. A. K. Bradbury (*Teller*),
T. W. Brennan,	P. T. Byrnes,
P. L. Coleman,	E. P. Cameron,
D. P. J. Ferguson (*Teller*),	G. L. Chandler,
A. M. Fraser,	W. O. Fulton,
J. W. Galbally,	T. H. Grigg,
C. P. Gartside,	Sir James Kennedy,
J. J. Jones,	H. C. Ludbrook,
P. Jones,	G. S. McArthur,
H. V. MacLeod,	W. MacAulay,
R. R. Rawson,	A. R. Mansell (*Teller*),
W. Slater,	A. G. Warner.
A. Smith,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

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1952-53

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

PROPOSALS CONTAINED IN THE

MAINTENANCE (AMENDMENT) BILL

TOGETHER WITH

MINUTES OF EVIDENCE AND APPENDICES

Ordered by the Legislative Council to be printed, 8th September, 1953.

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D.—No. 1.—PRICE 2s.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

MONDAY, 22ND DECEMBER, 1952.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

TUESDAY, 31ST MARCH, 1953.

8. MAINTENANCE (AMENDMENT) BILL.—The Honorable W. Slater moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

MONDAY, 22ND DECEMBER, 1952.

38. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Mitchell, Mr. Oldham*, Mr. Pettiona, Mr. Randles, Mr. Rylah, and Mr. White (*Allendale*), be appointed members of the Statute Law Revision Committee (*Mr. Cain*)—put and agreed to.

* Died 2nd May, 1953.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of the *Statute Law Revision Committee Act* 1948, have the honour to report as follows:—

1. The Statute Law Revision Committee have examined the Maintenance (Amendment) Bill—a Bill to amend the Maintenance Acts and for other purposes—which was initiated and read a first time in the Legislative Council on the 24th March, 1953, and the proposals in the Bill were, following the adjournment of the second-reading debate on 31st March, 1953, referred to this Committee for examination and report.

2. The Bill is the outcome of discussions of a sub-committee consisting of Judges Book, Moore, Read, and Mulvany, and Mr. Joske, Q.C., of the Chief Justice's Law Reform Committee. A draft Bill prepared by Mr. J. J. Lynch, Assistant Parliamentary Draftsman, was examined by the Judges' Committee, the Solicitor-General, the Secretary of the Law Department, the Chief Stipendiary Magistrate and the Secretary of the Children's Welfare Department. The resultant Bill was introduced and read a first time in the Legislative Assembly on 13th August, 1952, but lapsed whilst in the second-reading stage. The Bill before the Committee is the same as that brought down in 1952, with the addition of clause 10.

3. Appended to this Report is the evidence given by the following witnesses who appeared before the Committee:—

Mr. J. J. Lynch, Assistant Parliamentary Draftsman.
His Honour Judge Book.
His Honour Judge Mulvany.
Mr. Charles McLean, Chief Stipendiary Magistrate.
Mr. H. A. Winneke, Q.C., Solicitor-General.
Mr. J. M. Rodd, President of the Law Institute of Victoria.
Mr. T. A. Pearce, Member of the Council of the Law Institute of Victoria.

In addition, Judge Book and Mr. McLean submitted valuable memoranda which are printed as appendices to this Report.

4. It appears to the Committee that the proposals contained in the Bill can be conveniently grouped as follows:—

(*a*) To provide that wives and children who are deserted or left without means of support shall be adequately provided for having regard to the financial position of all members of the family and their accustomed position in life. As it will be seen from the evidence of Judge Book three separate recommendations of the Chief Justice's sub-committee are relevant to this proposal and these recommendations are as follows:—

(i) To give jurisdiction to make a maintenance order against a husband or father who has either deserted his wife or children without just cause or excuse or left them without means of support without just cause or excuse.

(ii) To amend the definition of " means of support " to make sure that it has regard to the means and ability to pay of the person sought to be made liable (see *Woods* v. *Woods*, 1925 V.L.R. 258, and *Ploog* v. *Ploog*, 1947 V.L.R. 12).

(iii) To give wider discretion to the Justices enabling them to take into account all the financial circumstances of the husband, wife or children, as the case may be, including their assets, income and earnings, before deciding whether an order should be made and if so what the amount of the order should be.

(*b*) The second proposal involves the simplification of appeals by wives who are refused orders for maintenance in the Court of Petty Sessions by conferring upon them a full right of appeal by way of re-hearing to a Court of General Sessions similar to that conferred upon a husband against whom an order has been made. The proposal also involves the clarification and amendment of the law dealing with the powers of magistrates and the Court to review existing orders.

(*c*) The third proposal deals with various amendments to the law to facilitate the enforcement of maintenance orders and the recovery of moneys due under such orders.

5. With regard to the first proposal, sub-clause (1) of clause 2 of the Bill amends the definition of "means of support" in section 3 of the *Maintenance Act* 1928 (hereinafter referred to as the Principal Act).

The proposed new definition of "means of support" requires the Justices or Court in deciding whether wives and children are without means of support to consider the financial position of the husband or father, the accustomed condition in life of the wife and children and the financial position of the wife and children (other than any moneys which the wife is earning or is capable of earning by her own personal exertions).

The Committee felt some concern that whilst the Court had to disregard the wife's earnings or ability to earn it would be obliged to take into account the wife's savings from her own earnings. This position might force a thrifty wife to dissipate her savings from her own earnings before being entitled to claim maintenance and at the request of the Committee, Judge Book in consultation with Mr. Lynch drafted an amendment which appears to be more satisfactory than the definition in the Bill.

The amendment which is set out in the memorandum of Judge Book in the appendix to this Report means that the definition would be read as follows:—

> "'Means of support,' in respect of a wife or children, means lawful and adequate means of support, having regard to the financial position of the husband or father and to the accustomed condition in life and the financial position of the wife or children, but disregarding any moneys which the wife has earned is earning or is capable of earning by her own personal exertion and any savings arising from such earnings."

The Committee recommend that the definition as amended be adopted in lieu of the definition in the Bill.

6. In sub-paragraph (iii) of paragraph (*a*) of clause 4 of the Bill are set out the matters which the Justices or Court should take into consideration when considering the making of a maintenance order.

The Committee are of the opinion that as no provision now exists requiring the Justices or Court to take into account the financial position of the wife and children, the amendment proposed in the Bill might have the effect of requiring the Justices or Court to pay a greater regard to the wife's financial position than was considered desirable. Judge Book at the request of the Committee and after consultation with Mr. Lynch submitted an amendment which appears in his memorandum and is designed to avoid this position.

This amendment if adopted would mean that the Justices or Court may make a maintenance order in appropriate circumstances for such reasonable amount as they consider proper having regard to—

(*a*) the accustomed condition in life of the wife and children;
(*b*) the financial position at the time of the hearing of the wife and children; and
(*c*) the ability of the husband or father to pay.

In ascertaining the financial position of the wife or children the Justices or Court would disregard any moneys which the wife has earned, is earning, or is capable of earning, by her own personal exertion, and any savings arising from such earnings unless in the special circumstances of the case they thought it proper to take those moneys and savings into consideration.

The Committee recommend that sub-paragraph (iii) of paragraph (*a*) of clause 4 of the Bill be adopted subject to the amendment submitted by Judge Book.

7. Sub-clause (2) of clause 2 of the Bill eliminates the words " destitute or deserted " from various titles in the Principal Act. This amendment is in accordance with the new definition of the expression " means of support " introduced by the Bill which makes it plain that the Act is intended to provide for the adequate support of wives and children who are left without just cause or excuse, and eliminates any basis for a contention that the legislation is designed to provide only for wives or children deserted or left in what may be described as destitute circumstances.

Sub-clauses (1) and (2) of clause 3 and sub-paragraph (i) of paragraph (*a*) of clause 4 are directed towards eliminating a number of inconsistent expressions from sections 4 and 6 respectively of the Principal Act and substituting therefor as the basis of claims for maintenance the leaving by husbands or fathers of wives and children without just cause or excuse.

Apart from the fact that these proposed amendments clarify the existing law they have the advantage of consistency with the accepted form of expression contained in section 75 of the Marriage Act relating to the ground of divorce based on desertion and should ensure uniformity between decisions on the question of desertion made under that Act and under the Act now under consideration.

8. Paragraph (*b*) of clause 4 involves two new proposals, one of which re-defines the expression " home of the defendant " as used in sub-section (3) of section 6 of the Principal Act, and the other of which extends what constitutes reasonable cause for the wife leaving the husband.

First it is proposed to amend the present expression " home of the defendant " to " matrimonial home." This appears to the Committee to be necessary particularly in view of the number of wives and children who owing to economic circumstances or for other reasons are living with the husband or father in the home of relatives or other persons.

Secondly it is proposed to add a new ground to those already provided for in sub-section (3) of section 6 of the Principal Act which would justify a wife leaving her husband. The proposed new ground reads as follows:—" . . . . . had been guilty of any conduct constituting just cause or excuse for the wife's leaving the matrimonial home or taking the children from the matrimonial home." This is consistent with modern judicial thinking on the question of constructive desertion as a ground for divorce under the Marriage Act and will bring the Maintenance Act in line with established principles of the law in this direction. The purpose of the new ground is to cover conduct considered by the Court to be such as no self-respecting woman could be expected to tolerate, yet which does not amount to cruelty as defined in the Principal Act inasmuch as danger to bodily or mental health cannot be said to be involved.

It may well be that if this amendment is adopted it is phrased in such wide terms that it will include all the grounds now existing, but the Committee while recommending the amendment are of the opinion that it would be wise to retain the existing grounds which have been provided for in the Maintenance Act for many years.

9. The amendments proposed in clauses 5 and 8 of the Bill relate to the second proposal outlined in paragraph 4 of this Report and seek to clarify and simplify the existing provisions dealing with the right of any aggrieved party to appeal against a maintenance order or refusal to make a maintenance order to the Court of General Sessions by way of re-hearing and the power of both the Court of General Sessions and magistrates to review existing orders.

The Committee commend the provisions of paragraph (*a*) of sub-clause (1) of clause 5 which give to a wife who is refused an order by Justices a similar right of appeal to that which the Principal Act gives to a husband against whom an order is made by Justices. The Committee recommend that the time within which an appeal may be lodged should be extended to fourteen days as it is considered that with the present practice of the Court offices and most legal offices being closed on Saturdays and all public holidays the limitation of the time for lodging an appeal to seven days (unless such time is extended by the Court) may in certain circumstances cause hardship.

The Committee are not in favour of sub-clause (2) of clause 5 which prevents a wife who has appealed to a Court of General Sessions and failed in her appeal from taking further proceedings without leave of the Court for a period of six months. While the Committee appreciate that in some circumstances a wife who has been refused an order on appeal may harass her husband by taking proceedings again in another Court it feels that such risk is a very small one compared to the injustice which may be done to a wife who when her appeal before a Court of General Sessions was heard had no grounds for a maintenance order, but who may have even a few days later been given new grounds by the conduct of her husband. The Court has a discretionary power to order costs against a wife if it considers that she is abusing the process of the Court.

The Committee recommend the adoption of the other proposals in these two clauses which are designed to give a right of appeal to a Court of General Sessions against all orders in maintenance cases, and which clarify and extend the power of the magistrates to review existing orders. The Committee consider that the discretionary power given to the magistrates to discharge an order for the support of a child who has attained the age of sixteen years is desirable.

10. The Bill provides for the following new provisions for better enforcement of maintenance orders and recovery of moneys due thereunder:—

(*a*) Clause 6 provides that maintenance orders made in Victoria may be enforced in Territories of the Commonwealth in the like manner as they are at present enforced in other States of the Commonwealth.

(*b*) Clause 9 provides for a person entitled to the benefit of a maintenance order recovering against the estate of a deceased person arrears of maintenance falling due within twelve months prior to the death.

(*c*) Clause 10 incorporates into the Maintenance Act the existing provisions of the Justices Acts dealing with garnishee proceedings.

The Committee are of the opinion that all these amendments are desirable and recommend their adoption.

11. In clause 7 provision is made for Clerks of Petty Sessions to enforce maintenance orders in certain circumstances. This provision will remove several existing difficulties in regard to the enforcement of maintenance orders. It will provide for the case where the complainant has moved away from the district where the order was made and will save her travelling to the Court which made the original order for the enforcement of payment of arrears. It will also provide for the case where the complainant is no longer available, e.g., because of her death or disappearance, to institute proceedings for enforcement.

The Committee consider that clause 7 is a very desirable improvement in the existing law. They appreciate, as was pointed out in the evidence given by Mr. T. A. Pearce of the Law Institute Council, that this clause will not provide convenient means of enforcing a maintenance order in all cases where the complainant is not living in the vicinity of the Court where the order was made but consider that to recommend the introduction of a better method of enforcing maintenance orders is rather outside the scope of the inquiry in which the Committee is at present engaged. They do, however, recommend that consideration be given generally to the question of enforcement of maintenance orders and in this regard draw attention of the authorities to the provisions of section 116, sub-section (3) of the *Child Welfare Act* 1939 of New South Wales, and section 21, sub-section (2) of the *Deserted Wives and Children Act* (1901-1939) of New South Wales, which, whilst applying in that State to applications made to Justices to vary suspend or discharge maintenance orders, could be adapted to proceedings for enforcement in Victoria.

The provisions are as follows:—

Child Welfare Act 1939, S.116 (3):—

> "(3) An application under this section may be heard and determined by a Court sitting at a place agreed upon by the parties or at the place where the order, the subject of the application, was made."

Deserted Wives and Children Act (1901-1939), S.21 (2):—

"(2) An application under this section shall be heard and determined by Justices sitting at a place agreed upon by the parties or at the place where the order the subject of the application was made:

Provided that the Justices may postpone the hearing of the application and direct that it shall be heard and determined by Justices sitting at some other place specified by them and appoint a day for the hearing."

The Committee also draw attention to the machinery at present provided for the enforcement in Victoria of maintenance orders made in other States.

12. The Committee consider that the proposals contained in the Bill generally are desirable matters of law reform and recommend that the Bill be passed into law as soon as possible subject to the amendments recommended by the Committee in paragraphs 5, 6, and 9 of this Report.

13. During their deliberations the Committee became increasingly concerned with the difficulties of using the Principal Act owing to the numerous amendments which have been made in it from time to time and feel that after this Bill is passed into law this position will be considerably aggravated. They considered recommending that the Act as amended should be reprinted but on the advice of Mr. Normand, Parliamentary Draftsman, as tendered in evidence by Mr. Lynch, the Committee consider that reprinting would not be practicable in this case. They therefore recommend that as soon as this Bill has been passed into law a general consolidation of the Maintenance Acts should be undertaken to ensure that the many persons who have to refer to these Acts should have before them an Act which is readily usable.

14. The Committee desire to express their thanks to all who have assisted them in their deliberations and in the preparation of this Report.

Committee Room,
15th July, 1953.

MAINTENANCE (AMENDMENT) BILL.

MINUTES OF EVIDENCE.

TUESDAY, 14th APRIL, 1953.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. H. C. Ludbrook,	Mr. Rylah,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. J. J. Lynch, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—Mr. Lynch has been asked to attend to give us his general comments on the Bill.

Mr. Lynch.—This Bill is the outcome of discussions of the Chief Justice's Law Reform Committee. The matter was referred to a sub-committee, comprising Judges Book, Moore, Reid, and Mulvany, and Mr. Joske, Q.C. In 1951, the sub-committee submitted a report to the full committee. The report was adopted, and forwarded to the Attorney-General. In 1952, I prepared a draft Bill which was examined by the Judges' committee, by the Solicitor-General, the secretary of the Law Department, the senior metropolitan magistrate and the secretary of the Children's Welfare Department. The Judges requested certain amendments in the draft to give effect to their ideas. I prepared those amendments, which were later incorporated in the measure. The other officials I have mentioned also made suggestions, some of which were included.

The Bill was introduced into the Assembly in 1952, but it lapsed. The Bill introduced this year is precisely the same as that brought down last year, with the addition of clause 10, Mr. Holt, now Minister of Lands, proposed to move the addition of that clause as an amendment. It applies the garnishee provisions of the Justices Act to money owing under maintenance orders.

Sub-clause (1) of clause 2 re-enacts the interpretation of " means of support." The difference is that the amendment makes the financial position of the husband and the accustomed condition of life of the wife and children factors in determining whether means of support are adequate. Previously there were two schools of thought on this question but neither completely won the day. One contended that maintenance was intended to keep a wife and children who had been deserted from being destitute, or on a subsistence level. The other contention was that the allowance ought to be proportionate to the means of the husband and the type of life the wife and children were accustomed to enjoy. The definition in the Bill means that the maintenance is to be proportionate to the means of the husband to pay and the accustomed position in life of the wife and children. If a wealthy man deserts his wife and children, who have been accustomed to a relatively high standard of living, he may be required to continue that standard.

Mr. Brennan.—It has been held that maintenance cannot be obtained by a wife with a large income from property.

Mr. Lynch.—If the income of a deserted wife was sufficient to support her in her accustomed condition of life, she could not be said to be without means of support.

Mr. Randles.—The present definition refers to income from personal exertion.

Mr. Lynch.—A distinction is made between income earned and income derived from property.

Mr. Rylah.—The definition covers a woman left without means of support, and it is merely a guide for the court.

Mr. Lynch.—That is so. The ability of a husband to pay is taken into consideration in the Act.

Sub-clause (2) of clause 2 contains consequential amendments. Under the principal Act, it is not essential that a wife should be deserted in the strict technical sense of the Marriage Act. These amendments were suggested by the Judges' committee, a member of which could advise the committee on the reasons underlying the amendments.

Clause 3 straightens out the language of the principal Act in respect of desertion. The expressions that appear now are " unlawfully deserted," " deserted without reasonable cause or excuse " and so on. The Jugdes decided to adopt the expression " without just cause or excuse." It is referred to in the Marriage Act and appears throughout this clause.

Mr. Pettiona.—Would not the expression be a let out for a husband who proved to the court that he had left his wife with just cause?

Mr. Lynch.—That would be a question of fact. The words cannot be omitted because any going away might then be deemed " desertion." I direct attention to section 4 of the principal Act. It is proposed that in paragraph (*a*) of sub-section (1) of section 4 of the principal Act the words " without just cause or excuse " shall be substituted for the word " unlawfully," and that those words shall also be inserted in paragraph (*b*), where at present there is no such expression.

Mr. Thomas.—Does that mean that maintenance can be claimed for illegitimate children?

Mr. Lynch.—Yes. A man is liable to support his illegitimate children.

Mr. Thomas.—What is the position if he is in gaol and cannot?

Mr. Lynch.—Some years ago, the method of enforcing maintenance orders was changed, and at present a person is not sent directly to gaol if he does not meet a maintenance order but is proceeded against under the Imprisonment of Fraudulent Debtors Act. A person against whom an order is made is sent to gaol only if it is proved that he has the ability to pay and does not, but if he has not that ability he is not imprisoned.

Mr. Thomas.—I had in mind the case of a man who committed a crime and was sentenced to imprisonment for six months, during which time the wife and children were in destitute circumstances.

Mr. Ludbrook.—In such a case they receive social service payments.

Mr. Byrnes.—What is the position of a woman in a border town who is given a maintenance order against a deserting husband who immediately goes to another State? That is the end of the maintenance order, so far as the woman is concerned.

Mr. Lynch.—There is provision in the Maintenance Act for the reciprocal enforcement of orders in all of the States. An order made in Victoria can, by going through a certain process, be enforced in New South Wales or in any other of the Australian States. There is no proposal to amend that provision, except in one small respect, and that is to make that reciprocal arrangement apply also to the territories, that is, the Northern Territory and the Australian Capital Territory.

The Chairman.—Mr. Byrnes has introduced a matter which illustrates the value of this Committee. I would ask him to pursue his inquiries among solicitors in the border region, and if some exact information on the subject could be given to the Committee it could be discussed and might perhaps be the subject of a suggested amendment.

Mr. Lynch.—All the amendments contained in clause 3 are to bring the language used in sub-section (1) of section 4 of the principal Act to a common basis with respect to desertion or leaving without means of support, and the phrase used is "without just cause or excuse," because that is what is used in the Marriage Act and is well understood. There are a great number of decisions about it both here and in England.

Mr. Pettiona.—Would nagging be interpreted as being a just cause?

Mr. Lynch.—I should not like to say. I suggest that one of the Judges would be better qualified to answer that question.

Mr. Pettiona.—Would this Bill cover the case of a man who married a woman of means, who became dependent on that woman as a result of his sickness and was then deserted?

Mr. Lynch.—No. The legislation deals only with deserting husbands and fathers. The principle to which you refer is being adopted in a number of spheres but it has not yet caught up with this legislation.

Clause 4 amends section 6 of the principal Act, which deals with the making of orders. At present subsection (1) provides that if at the hearing of a maintenance summons the justices are satisfied that the wife and children "are in fact" without means of support an order shall be made. The judges think that the whole basis of the jurisdiction should be stated, therefore sub-paragraph (i) of paragraph (*a*) provides that the words "have without just cause or excuse been deserted or left without means of support and still are in fact" shall be substituted for the words "are in fact." That has to be the basis when the application comes before the court.

Mr. Brennan.—The side note to clause 4 reads "Discretionary power to court or justices in respect of making maintenance orders." Is it not a fact that maintenance orders are not made by justices but by a stipendiary magistrate?

Mr. Lynch.—Only so far as the metropolitan area and some other areas are concerned, but in the country it is still possible for an order to be made by a bench of justices. Almost invariably they constitute a court of petty sessions. In the way the Act is framed the power to make an order basically is given to courts of petty sessions or justices. That is why those words are preserved in the Bill, although the making of an order by justices as such is now practically unknown.

The amendment contained in sub-paragraph (ii) gives the court a discretionary power to make the order or not. It is at present provided that when certain things are proved an order shall be made, but the Judges find that they are hampered in some cases. For that reason the word "shall" has been altered to "may." The amendment will not, I think, have any great effect upon the legislation, but the Judges wanted there to be some discretion.

Mr. Pettiona.—There is no obligation to make an order for any statutory amount. If a Judge wanted to do so, he could make an order for 1s. a week.

Mr. Lynch.—I doubt whether an order would be made for such a small amount, although there might be circumstances in which a Judge would want merely to demonstrate his ability to make an order.

The amendment in sub-paragraph (iii) provides a new basis from a monetary point of view, by stating that when it comes to the making of an order the whole financial position of both parties can be taken into account, including the earnings of the wife.

Mr. Ludbrook.—Until recently, was it not the general practice to allow only 12s. 6d. a week for the maintenance of each child?

Mr. Lynch.—No monetary limits either way are fixed in the Act.

Mr. Rylah.—Who suggested this amendment?

Mr. Lynch.—It was recommended by the Judges.

Mr. Brennan.—A deserted wife may have a child of fourteen years earning high wages. Was attention paid to that aspect?

Mr. Lynch.—I do not know. The children may also have property providing them with adequate support. The age of sixteen years does not appear in the Act but it is generally regarded as the age at which a boy can support himself. When children have reached the age of sixteen, applications have been made to have maintenance orders discontinued. There is nothing to say that they shall stop automatically at any particular age.

Mr. Thomas.—Girls start work at fourteen years.

Mr. Lynch.—Yes. The provision is to be based on the condition of life. If children being educated in a secondary school are deserted by a wealthy father, it is thought that they might continue to be so educated.

The Committee adjourned.

WEDNESDAY 15th APRIL, 1953.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. H. C. Ludbrook,	Mr. Rylah,
The Hon. G. S. McArthur,	Mr. R. T. White.
The Hon. I. A. Swinburne,	
The Hon. F. M. Thomas.	

Mr. J. J. Lynch, Assistant Parliamentary Draftsman, was in attendance.

Mr. Lynch.—You asked me yesterday, Mr. Chairman, to give you a considered report on the question of the consolidation and reprinting of the legislation concerning maintenance, and I shall do so now. The Maintenance Act 1928 is a fairly large one. It contains 98 sections and four schedules, and occupies about 52 pages of the statute-book. In addition, there are a number of substantive provisions in subsequent Maintenance Acts, which would increase the bulk of the legislation by, perhaps, another ten pages. Almost all the relatively small amendments in the present Bill affect Part I. of the Maintenance Act 1928, which contains five other Parts. Those other Parts are practically untouched by this Bill.

The bringing forward of a consolidating and amending Bill for the purpose of including the amendments now under consideration would bring into discussion a great number of subject matters with which this Bill does not deal. So that at this stage it would not be advisable to incorporate the amendments proposed in the new measure in a consolidation of the law on this subject. A more practicable suggestion would be to wait until this Bill has been passed, and then a purely consolidating Bill could be introduced and considered on the usual basis of consolidation. The adoption of that method would, of course, depend upon the time available to the Draftsman to complete a consolidation. That would not be an easy task on account of the large amount of new matter which is contained in the amending Acts and for which there is not, as the Acts are at present framed, a ready-made position into which the new provisions could be placed. Consequently, there would need to be a good deal of re-arrangement of the Act in order to incorporate therein the material that has been added in the amending Acts passed since 1928.

Mr. Brennan.—That would have to be done eventually?

Mr. Lynch.—Yes.

Mr. Byrnes.—The very reasons which Mr. Lynch has advanced—the difficulty of ascertaining the law on maintenance, due to the number of amending Acts—is sufficient justification for a consolidation.

Mr. Lynch.—That is true. Some of the amending Acts contain substantive provisions, and a re-arrangement of the sections of the principal Act would be necessary in order to insert the new provisions in their most appropriate places. It would not be a straightforward consolidation in which the amendments of the principal Act could be put into ready-made places.

The reprinting of the Maintenance Act 1928, incorporating the amendments passed since that year, would not be possible for the reasons which I have already given, namely, that some of the principal alterations made in the maintenance law since 1928 are not expressed as amendments of the principal Act, and therfore they could not be incorporated in the reprinting of that Act. They are what we call substantive provisions in the subsequent Acts.

The Chairman.—If a clause were inserted in the amending Bill specifically dealing with that point, would that overcome the difficulty?

Mr. Lynch.—I do not think it would, because then there would be a reprinted Act, including those direct amendments of the principal Act, but not including the clauses which did not belong to, and had not been put into that principal Act. Therefore, there would be something which, on the face of it, appeared to be complete, but which would not in fact be complete.

The Chairman.—What is wanted is a true consolidation?

Mr. Lynch.—That is so.

The Chairman.—The Committee can consider the matter and make its own determination. We are indebted to you, Mr. Lynch, for the information that you have given us.

Mr. Lynch.—I discussed the matter of reprinting with Mr. Normand, and because proposals concerning reprinting are often raised in the House, he asked me to place before the Committee a memorandum which he prepared on the subject of reprinting. Mr. Normands' memorandum is as follows:—

1. A Re-print provision in an amending Act, authorizing the Government Printer to issue copies of the Principal Act with the amendments made by the amending Act incorporated, can rarely be used effectively in Victoria at present.

2. The system of drafting in Victoria has traditionally followed the English system. Under that system a new or additional or supplementary statutory provision (and often a modifying provision) usually takes the form of a substantive clause even in a Bill which is substantially a Bill to amend the existing law.

3. Under other systems of drafting (notably in the Commonwealth, other States of Australia and the Scandinavian countries) an attempt is made to formulate new or additional or supplementary statutory provisions in the form of amendments to the existing statutes, e.g., by inserting new sections, Divisions or even Parts. The new provisions can then be incorporated and printed pursuant to an Act usually an Amendment Incorporation Act.

4. Some such system might eventually be introduced in Victoria. The forms of drafting would then need to be changed so as to take advantage of incorporation and reprinting pursuant to an Amendments Incorporations Act. But unfortunately such a system cannot usefully or effectively be introduced here until there is a general consolidation of the Statutes. In the interval of 27 years since the last general consolidation something approaching 2,000 Acts have been passed. A large proportion of these includes amending Acts containing provisions in a form which would be quite intractable in an Amendments Incorporation system.

5. In present circumstances in Victoria, it may be said that the cases where a reprinting authority clause can usefully be included in an amending Bill are limited to those rare cases where the amending Bill contains a substantial number of amendments which are *all* in the form of direct amendments and there has been no amending or supplementary legislation intervening.

Unless these conditions are present, the reprinting clause will be found to produce confusing or incomplete or misleading results, and, in some cases, no practical results at all.

Mr. Byrnes.—Is it competent for this Committee to make a recommendation to Parliament that a consolidation should be effected?

The Chairman.—Yes. That is one of the specific powers of the Committee and, if the Committee so decides, it can recommend a consolidation. That is a matter for our consideration.

Mr. Lynch.—Reverting to clause 2, a letter was received by the Attorney-General from the Law Institute of Victoria, in which two points were raised. The first matter related to the definition of "means of support." The words used in section 3 of the principal Act, which exclude the wife's earnings are, "other than her own earnings." In this amendment the words used are, "but disregarding any moneys which the wife is earning or is capable of earning by her own personal exertion." The Law Institute points out that there is some difference in the effect of that wording in that the amendment proposed in the present Bill would relate only to a wife's present and future earnings, whereas in the past the original wording has been construed—I do not know whether by a binding decision of a court or whether just in practice—to include savings which she had put together from her own earnings.

Mr. Pettiona.—Would not that in a sense, be capital?

Mr. Lynch.—Yes. I was endeavouring to draw the line between income from personal exertion and income from property. The Law Institute has suggested that I have drawn that line in a somewhat different place from where it was originally. I suggest that the Law Institute might be heard on that point. It is purely a matter of policy.

Mr. Byrnes.—It is an important point. I do not agree that it is capital in the ordinary sense. A woman might have a job for a period and earn a substantial amount of money, £100 or £200 of which she might be able to save. However, that is different from the possession of capital by way of property, such as house or land.

Mr. Randles.—It is capital in a sense, if it is earning say, 2½ per cent. interest.

The Chairman.—I suggest that, if the Committee approves, the Clerks write to the Law Institute saying that the Committee's attention has been drawn to their suggestion on the point and that the Committee would be prepared to hear their representative at a convenient date.

Mr. Brennan.—A point that worries me, as a practising lawyer, is the expression "or is capable of earning." I do not think it is intended that because a woman is strong and healthy she should be expected to seek out a job and earn money for herself.

Mr. Lynch.—I think the idea is that it shall not be said to a woman, "You are capable of earning money," but that she may look to the husband for support.

Mr. Randles.—That opens up the question of what is the position concerning money saved by a wife. It has been decided, I believe, that if a wife can save any money from that which her husband gives her the money still belongs to the husband. That is another straw to split.

Mr. Lynch.—The question of time might arise there. Possibly it would be better to disregard money that a wife might have saved since the desertion.

Mr. Byrnes.—That is what I had in mind because she might not be granted an order until after some delay has occurred. In the meantime she might have found that she could not carry on her job and would have to look after her children and live on the money she had saved.

Mr. Rylah.—I suggest that we do not hear the representative of the Law Institute until after Judge Book has addressed the Committee on this point.

The Chairman.—I think that would be best.

Mr. Pettiona.—In clause 3, which relates to desertion or leaving without means of support, it is proposed to include the words "without just cause or excuse," but no interpretation of those words is given.

Mr. Lynch.—The principal Act contains the word "unlawfully," for which the words "without just cause or excuse," are to be substituted. Those words are to be used because they are the same as those contained in the Marriage Act with respect to desertions. In that setting, the meaning of the words is well fixed. The expression is contained also in the English legislation, and there are hundreds of cases in which a judicial interpretation is given.

I come now to clause 4 and, in particular, the proposed amendment of sub-section (3) of section 6, which contains a reference to leaving the "home of the defendant." The usual expression is "matrimonial home"; it means the place where the parties have lived together and it does not raise the question of who is the owner of the home.

Mr. Pettiona.—The marginal note to proposed new sub-section (3) of section 6 states, "As to what constitutes reasonable cause for wife's leaving matrimonial home, etc." Should not the word "reasonable" be replaced by "just"?

Mr. Lynch.—That should be done. Sub-section (3) of section 6 refers to the causes or excuses for the wife's leaving the matrimonial home which would make the husband guilty of what is called constructive desertion. At present there are four grounds upon which, if a wife leaves home, the husband is deemed to have deserted her, namely, where he—

(*a*) had been guilty of cruelty to his wife or such child or children; or

(*b*) had knowingly or negligently infected his wife with any venereal disease within the meaning of any enactment relating to venereal diseases; or

(*c*) had done any act or used any threat with a view to compelling or inducing his wife to submit herself to prostitution or carnal intercourse with any other man or men; or

(*d*) was an habitual drunkard.

The proposed amendment to sub-section (3) will add another ground for a wife claiming that the husband had deserted her, namely, that he—

(*e*) had been guilty of any conduct constituting just cause or excuse for the wife's leaving the matrimonial home or taking the children from the matrimonial home.

The Chairman.—Is it necessary to retain the causes for a wife leaving the matrimonial home, as stated in sub-section (3) of section 6 of the principal Act, in view of the broad terms in which the proposed new paragraph (*e*) is drafted?

Mr. Lynch.—Practitioners of the law are loath to omit provisions from the law, they prefer to add to them.

The Chairman.—Could the provisions be construed more strictly in the light of the preceding paragraphs in the principal Act?

Mr. Lynch.—That is a matter of policy. The proposals contained in the clause represent the recommendation of the Judges, who, I think, would be the best advisers of this Committee on that aspect.

Clause 5 is long. It relates to appeals, reviews and variations of maintenance orders. Before this provision can be understood, it is necessary to have an appreciation of the present procedure. Orders are made in the lower courts. According to the principal Act, they can be made by a court of petty sessions or by justices. That has been overlaid by a provision in a later Act so that I think it can be said with safety that generally no one except a stipendiary magistrate will in fact make an order. There are now so many exceptions to the powers of justices that I think their jurisdiction has practically disappeared in relation to maintenance proceedings; and I believe that such cases are brought before magistrates only. There may be some odd exceptions in country areas, but they are rare.

Any appeal against an order takes the form of a re-hearing by a court of general sessions. But there is no appeal by way of a re-hearing where an order is not made, that is, where an applicant applies but the lower court refuses to make an order. There is, at the present time, in those circumstances, an ineffectual type of appeal by way of affidavit to adjust a mistake made in a lower court. This type of appeal has been found to be practically useless, and it is seldom availed of.

In addition to its powers as a court of appeal, a court of general sessions has the power to review all orders previously made as a result of new circumstances arising. Moreover, magistrates have been given power to make variations of orders previously made. A magistrate can vary an order, can suspend an order for a limited period, and can put back into operation an order that has been suspended, but he cannot completely discharge an order.

The provision contained in paragraph (*a*) of subclause (1) of clause 5 gives a right of appeal by way of a re-hearing in every case of an order made or refused to be made, and in respect of everything that is in the order.

Mr. Rylah.—That provision will place the wife on the same basis as the husband so far as an appeal is concerned?

Mr. Lynch.—Yes. If there is a refusal to make an order under this provision, the wife will have the right of re-hearing by a court of general sessions. That court will hear all of the evidence and will reach a decision of its own, regardless of what was done in a lower court.

Mr. Randles.—If justices have not the power to make an order, why does the Bill contain a provision which permits an appeal to be made against such an order?

Mr. Lynch.—The provisions of the 1928 Act, which this Bill will amend, refer to the court or justices. At that time, orders were made by the court or justices. The appointment of a magistrate as a sole court is a later substantive provision, in an Act of 1933. That provision was to the effect that, notwithstanding anything in the principal Act, only magistrates shall make maintenance orders under certain circumstances, but basically the power still lies with the court or justices. The change from that position is that the exceptions have become so numerous that there is now practically nothing left to the justices. However, when an amendment of the 1928 Act is considered, it must be drafted in language which fits in with the existing provisions.

Mr. Randles.—The Bill seeks to add a new subsection to the principal Act.

Mr. Lynch.—That is so. The same words as those that appear in the principal Act must be retained in the amendment, even though there may be no instances when justices do consider the matter. My understanding is that, although justices still have the necessary jurisdiction, they do not exercise it in many cases. If it proves that their jurisdiction has been completely discarded, the references to justices could be eliminated in a consolidation. This is a long section, containing eighteen or nineteen subsections, and I am touching on only a few of them. In the others, the words " court or justices " appear, and I must make the provisions of the amendments consistent with the wording of the existing section.

Mr. Rylah.—Has any consideration been given to the specified time—seven days—in which an appeal can be made to the Court of General Sessions?

Mr. Lynch.—Not to my knowledge.

Mr. Rylah.—The effect of the limited time was brought forcibly to my notice only last week in connection with an appeal to the Court of General Sessions. An order was made on the Thursday before Easter, and the defendant who was away in the country did not learn of the conviction until the following Thursday. That was partly due to the cessation of work during the Easter period. By the time he had heard of the order, the period in which he could lodge an appeal had expired. Of course, power is given to the court to extend the period in which an appeal can be made. The point is whether it would be reasonable to extend that period to, say, fourteen days.

Mr. Lynch.—The original sub-section (2) did not contain a limit of seven days in respect of appeals. I think Judge Book or Mr. McLean of the City Court might express an opinion on the practical aspect of that question.

Mr. Brennan.—There is this point: If money has to be paid by the defendant under an order, the wife might suffer a hardship if she had to wait fourteen days for the payment. That is probably the reason why a limit of seven days is applied.

Mr. Byrnes.—That would be a very good reason for the limitation of time because the delay would affect people—a wife and children—who would be in need of the money.

Mr. Brennan.—That is so.

Mr. Lynch.—Where no order has been made by the Court of Petty Sessions and, where under the new power an appeal is made, and then the Court of General Sessions makes an order, there is introduced for the first time into this legislation the making of an original order by a Court of General Sessions. The original order has in the past been made only by a court of petty sessions, so that for the purposes of subsequent review in this case, the order, although made by the Court of General Sessions, has to be regarded as an original order. Those words " original order " are used throughout this section to mean one by which the payment was first ordered to be made. Paragraph (*b*) is consequential upon orders being made for the first time in General Sessions.

Mr. Pettiona.—Is there any particular reason for the removal of the word "other" as provided for in paragraph (*b*) of sub-clause (1) of clause 5?

Mr. Lynch.—The words of sub-section (4) of section 15 of the principal Act deal with what the Court may do upon an appeal. That sub-section reads as follows:—

> The said Court may adjourn the hearing of any appeal under this section and on the hearing thereof may at its discretion quash confirm or vary any original order in whole or in part or in any particular or at its discretion substitute a new order in lieu thereof or may make such other order . . . .

The words "such other order" when they were first enacted, referred to an appeal against an existing order. In the case where an appeal is made against the non-making of an order, an order may be made by the Court of General Sessions for the first time. Therefore it is making an original order rather than an "other" order.

Mr. Randles.—Apparently, if an order made by a Court of General Sessions is regarded as an original order, a court of petty sessions will have the power to review it.

Mr. Lynch.—A magistrate will not have the power to review it exactly, but he may vary it is accordance with changed circumstances. The Bill contains a provision under which a magistrate may vary an order made by a Court of General Sessions. The expression "original order" is used to bring such an order within the ambit of the power of a Court of General Sessions to vary it subsequently, in the light of changed conditions.

Mr. Brennan.—Suppose that a lower court refused to make an order and that the appeal Judge decided to make an order against the original order which would have the effect of back-dating the payments. Would the payments be back-dated?

Mr. Lynch.—I do not know that that would be done. It is not what is intended in the Bill. As the law now stands, an original order is only an order made by a court of petty sessions. However there may be an appeal against the non-making of an order, and an order may then be made for the first time in a Court of General Sessions.

Mr. Pettiona.—Such an order would be retrospective in its effect, would it not? If the court failed, in the first place, to make an order and an appeal was lodged against it, and a decision was made that it was an original order, it might be interpreted as an order to operate from the day when the application was made or when the court first refused to make the order, if it was deemed to be an original order.

Mr. Lynch.—I do not know that the order would have a back-dating effect. An appeal to a Court of General Sessions does not consist of an examination of what happend in a lower court, irrespective of whether a mistake was made or not. An appeal is actually a rehearing. I think those persons who are dealing with the administration of this legislation are best fitted to advise the Committee in regard to this aspect. Section 15 of the principal Act states, *inter alia*—

> Where any order pursuant to the foregoing provisions of this Part . . . . has been made by two justices or by justices or by a court of petty sessions (any such order being hereinafter in this section referred to as an "original order") . . . .

The section goes on to describe what can happen subsequently, upon review. By reason of this Bill, we have a new type of original order—one not made by a Court of Petty Sessions but made by a Court of General Sessions.

Mr. Randles.—How long would it take normally for such an order to be made?

Mr. Lynch.—An appeal would go to the next practicable Court of General Sessions, and it ought to be heard within a month.

Mr. Randles.—That means that a person affected by the appeal could be without maintenance for a month?

Mr. Lynch.—I think any order made would be prospective only, but that is an aspect that might be discussed with a Judge or a magistrate. Sub-sections (17) and (18) are to be repealed as they will be rendered unnecessary by the new provisions concerning the right of appeal.

Sub-clause (2) was suggested in the first place by the Solicitor-General. If a person applies for a maintenance order and it is refused in the lower court, and if the applicant then makes an appeal to the higher court and the application again fails, the person concerned will not be entitled to institute new proceedings —without the leave of the Court of General Sessions —within a period of six months.

Mr. Brennan.—The purpose of that provision being to avoid vexatious litigation?

Mr. Lynch.—Yes. Under section 5 of the 1933 Act, a magistrate has power to vary, suspend or alter an order that has been made, and elsewhere in this Bill he is being vested with a limited power to discharge some of those orders. At present it is not very clear how far the actions of a magistrate, if he exercises that power, are subject to appeal to General Sessions. A magistrate has another power under section 6 of the 1933 Act to order access to children in cases where one of the parties has the custody of the children and there again it is not very clear whether an appeal can be made against his order. Sub-sections (3), (4) and (5) are really associated with this aspect, and it is now being made certain that every power that a magistrate can exercise under the 1933 Act will be subject to appeal by way of re-hearing in the Court of General Sessions. The right of appeal will exist not only concerning his exercise of those powers but also in regard to his refusal to exercise them.

Mr. Rylah.—It is a special right of appeal.

Mr. Lynch.—It completes the principle embodied in the earlier provisions. Where an order is left in operation, that order is deemed to be an original order for the purposes of subsequent review. Many of these sub-clauses did not expressly form part of the original instructions, but they are necessary to complete the idea and to make the new type of order fit into the existing framework. Sub-clause (5) of clause 5 will give to a magistrate power to vary, suspend or revive an order, including one made by a Court of General Sessions. The aim is to make it clear that a magistrate will have power to vary an order which started in a Court of General Sessions as well as one that started in a Court of Petty Sessions. The words "subject to appeal, &c." have been deleted. They were indefinite as to the manner in which an appeal should be made. The procedure is relation to appeals is stated elsewhere.

The Committee adjourned.

THURSDAY, 16th APRIL, 1953.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. H. C. Ludbrook.	Mr. Rylah,
	Mr. R. T. White.

Mr. J. J. Lynch, Assistant Parliamentary Draftsman, was in attendance.

Mr. Lynch.—Part IV. of the Principal Act, which clause 6 of the Bill seeks to amend, provides for reciprocity among the States in the enforcement of maintenance orders. All other States have passed similar legislation. The proposed amendment to section 59 is designed to include Commonwealth territories in the reciprocal arrangement, notably the Australian Capital Territory and the Northern Territory.

Mr. Pettiona.—How does reciprocity operate between the States?

Mr. Lynch.—The Victorian law on this matter is in substantially the same form as that of the other States, and the Parliament of each State passed legislation relating to this subject at about the same time. Two proclamations have to be made, one with respect to the enforcement in Victoria of orders made in the other State and the other to the enforcement in the other State of orders made in Victoria.

Mr. White.—Does the legislation of other States include a provision similar to that contained in clause 6?

Mr. Lynch.—I do not know whether the maintenance Acts of other States include Commonwealth territories for the reciprocal enforcement of orders.

Mr. Pettiona.—Did the State Governments agree at a certain time to pass legislation providing for reciprocity?

Mr. Lynch.—I am not certain whether the Administrations in all the States agreed on the arrangement from the beginning. Originally, it may have been between only two or three States, but similar Acts are now in operation in all of the States, proclamations have been made, and complete reciprocity exists.

Mr. Randles.—The purpose of the amendment in clause 6 is to include the Australian Capital Territory and the Northern Territory. Is not the Northern Territory subject to the laws of South Australia?

Mr. Lynch.—No, although South Australian laws may be applied to the Northern Territory by the operation of a Commonwealth ordinance.

Mr. Randles.—I realize that there is now in existence the Legislative Council of the Northern Territory.

Mr. Byrnes.—Does the fact of the establishment of that Council make any difference to the inter-State reciprocal arrangement?

Mr. Lynch.—The Northern Territory is not a State within the meaning of the Act. The definition in the Principal Act proposed to be amended states, *inter alia*—

> "State other than Victoria" means, in Division two, any State of the Commonwealth or the Dominion of New Zealand . . . . . and in Division three any State of the Commonwealth . . . . . .

Mr. White.—Which State includes the Northern Territory?

Mr. Lynch.—It is not in any State.

Mr. White.—Therefore, is it exempt from the provisions of the State Maintenance Acts?

Mr. Lynch.—At present that is so, but if the proposed amendment is adopted, it will enable reciprocal proclamations to be made between Victoria and the Northern Territory.

The Chairman.—I suppose the reciprocal arrangement does not apply to New Guinea and the Mandated Territories?

Mr. Lynch.—The Mandated Territories are covered by Part V. of the principal Act, which provides for the enforcement, by the adoption of a somewhat more cumbersome method, of maintenance orders in other British Dominions.

The Chairman.—Is Papua included?

Mr. Lynch.—I am uncertain of the exact situation Some alterations have been made recently. The principal countries affected are the United Kingdom and the other Dominions.

Mr. Brennan.—The significance of requiring inclusion of the territories in the legislation may lie in the fact that many seasonal workers migrate from State to State, and there is need for authority to enforce orders made against them wherever they may be.

Mr. Lynch.—Yes. A maintenance order may be made in Victoria against a man who moves to New South Wales. Upon the application of the woman or children in whose favour it is made, the order can be forwarded to the clerk of the appropriate New South Wales court for enforcement against the respondent, both with respect to arrears and to future periodical payments.

If he moves to Canberra he evades Part IV. of the Act, and at present action can then be taken against him only by the initiation of proceedings under Part V. Its provisions are more difficult to invoke, and the procedure followed in the arrangement between the States is, I believe, better and simpler.

Many laws in force in the territories have not been made specifically for those areas, but consist of State enactments applied by ordinance. South Australian legislation may be applied in that fashion to the Northern Territory.

Clause 7 arose from a suggestion made by the Law Institute of Victoria. It was proposed that, when the complainant in a maintenance case—usually a woman—moved from the place where an order had been made, the order should be transferred to another court, as ordinary orders of Courts of Petty Sessions are, so that she could more easily collect the money and to enable the order to be enforced there, if necessary.

Mr. McLean, Chief Metropolitan Magistrate, considered that administrative difficulties would arise if this course was pursued. Unlike an ordinary court order for the payment of one sum of money, which may be enforced by one action, a maintenance order is for a series of payments, perhaps extending over a long period of time. Thus the respondent would be required to pay at one place, and the complainant

would collect at another. If the order was transferred to another court, it might be more difficult for the respondent to make payments, although perhaps easier for the complainant to collect them.

Mr. McLean suggested instead a provision under which, upon the application of the wife, if she had moved from the neighbourhood of a particular court, all necessary proceedings for the enforcement of an order might be taken on her behalf by the clerk of the court at which the order was originally made.

The wife would not have to appear personally at the court to enforce the orders. That was considered to be a satisfactory substitution and was inserted in the Bill, but the Law Institute has again asked for its original suggestion. The Law Institute and Mr. McLean could furnish the Committee with information on that aspect. The provision in the Bill is based on what happens in regard to interstate cases. When an order is made in Victoria and is sent to, say New South Wales, it is the official in New South Wales and not the complainant herself who takes the necessary action to enforce the maintenance order, including, in the last resort, having the defendant imprisoned if he does not make the payments.

Mr. Pettiona.—Paragraph (*a*) of sub-clause (2) of clause 7 provides for the making of rules under which clerks of petty sessions may act. Is there any reason why the power to make rules has been repealed under paragraph (*c*) of sub-clause (1) of clause 5?

Mr. Lynch.—That related to the power of making rules regarding appeals, and is no longer required. Generally, the powers to make rules under the Maintenance Act are by the application of the Justices Act.

Although sub-clause (3), which was suggested by Mr. McLean, is related to the remainder of clause 7 it could stand by itself. It provides that in all proceedings relating to maintenance orders the books of account of the court will be prima facie evidence of what has been paid. That overcomes a difficulty of requiring the attendance in court of the people who received the moneys and who might live a long distance from the court.

Mr. Pettiona.—What would happen if the maintenance payments were not collected from the clerk of petty sessions?

Mr. Lynch.—There is a general provision covering unclaimed moneys, whereby ultimately they are paid into the Consolidated Revenue, always with the saving that if the person entitled to them makes a claim later he shall be paid.

Mr. Rylah.—In the case of maintenance payments, I think it would be found that the clerk would send out a cheque to the complainant as soon as possible. If the Act were reprinted, clause 7 would become what might be called an odd section.

Mr. Lynch.—That is so. The amendments contained in clause 8 were suggested by Mr. McLean. At present, a magistrate on reviewing an order made previously may vary or suspend it, or he can revive one that has been suspended, but he is not authorized to discharge it. When orders are reviewed by General Sessions, it is customary for those made in respect of children to be discharged upon the children attaining the age of sixteen years.

Mr. Randles.—Is there any arbitrary age at which an order is discharged?

Mr. Lynch.—No. As the respondent is under some expense in having an order reviewed by General Sessions, it is proposed that a stipendiary magistrate shall be permitted to discharge an order after a child has reached sixteen years, as that course would almost certainly be followed if the order was reviewed by General Sessions. It will not be mandatory for the magistrate to discharge the order at that time. Since it is proposed in the Bill that the basis of granting maintenance is to be made commensurate with the means and postion in life of the parties, it might not be thought a hardship if the respondent was required to continue payments for a child that was over sixteen years of age. Further, the child might be a cripple, or be suffering from some illness which would require the maintenance payments to go for a longer time.

Mr. Randles.—In the event of the child being a cripple, the social service payments made by the Commonwealth would be a factor.

Mr. Rylah.—It is not suggested that the magistrate should be able to discharge a maintenance order in favour of a wife?

Mr. Lynch.—No. The action of the magistrate in discharging an order will be subject to appeal to the Court of General Sessions.

Clause 9 was proposed by the Judges as a result of Mr. Justice Dean's suggestion. It arises out of a recent decision, after a period of uncertainty for many years, whether money owing on maintenance orders can be regarded as a debt due by the estate of a deceased person. It was recently decided that it could not be regarded as such, that the obligation to pay under certain maintenance orders was a personal one and ceased upon the death of the respondent; therefore arrears of maintenance could not be recovered as a debt due against an estate. Clause 9 provides that arrears due within twelve months before the death can be recovered from the estate.

Clause 10, which was not in the previous Bill, is somewhat allied to clause 9, and was suggested as an amendment by Mr. Holt when the previous measure was being considered by Parliament. It provides that the garnishee provisions of the Justices Act will be available for the enforcement of maintenance orders in the same way as for other judgment debts. This clause has not been considered by the Judges.

Mr. Pettiona.—Could the Wage Attachment Act be amended so that a garnishee order of a deserted wife would have preference over an order obtained, for instance, by a hire purchase company?

Mr. Lynch.—The provisions relating to garnishee orders generally are in the Justices Act. It would be possible to give some judgment creditors preference over others. That situation obtains at present; for instance, the Crown has preference over others in respect to debts.

The Committee adjourned.

THURSDAY, 23RD APRIL, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles.
The Hon. F. M. Thomas.	

His Honour Judge Book and His Honour Judge Mulvany were in attendance.

The Chairman.—I shall ask Judge Book to outline the circumstances in which the Maintenance (Amendment) Bill was recommended by the Chief Justice's Law Reform Committee.

Judge Book.—It is more than two years since the sub-committee of the Chief Justice's Law Reform Committee of which I was chairman submitted its final report, and my memory of the background of the matter is not as clear now as it was then. Representations were made by the Law Institute of Victoria about a comparatively small matter under the Maintenance Act, and the Chief Justice asked me to form a sub-committee to make recommendations. The sub-committee did not submit a draft Bill, but made certain suggestions and those, with others, have been incorporated in the Bill. Eight suggestions, some formal, were made. The first, and perhaps the most important, was—

1. To give jurisdiction to make a maintenance order against a husband or father who has either deserted his wife or children without just cause or excuse or left them without means of support without just cause or excuse.

I link with that one the second and third suggestions, which read—

2. To amend the definition of " means of support " to make sure that it has regard to the means and ability to pay of the person sought to be made liable. (See *Woods* v. *Woods*, 1925 V.L.R. 258, and *Ploog* v. *Ploog*, 1947 V.L.R. 12.)
3. To give wider discretion to the justices enabling them to take into account all the financial circumstances of the husband, wife or children, as the case may be, including their assets, income and earnings, before deciding whether an order should be made and if so what the amount of the order should be.

In explanation of the foregoing suggestions, I should like to say that before the magistrates have jurisdiction to make an order—in other words, before they can really hear and consider a case—they must be satisfied that the wife has been left without means of support. Under the present legislation, " means of support " has been defined to exclude the wife's earnings. It was thought wise to allow that provision to remain, but I notice that an alteration has been made in the Bill. Instead of the words " her own earnings " being used, the following expression is employed in the proposed new definition:—" any moneys which the wife is earning or is capable of earning by her own personal exertion." I understand that the Law Institute of Victoria has queried that alteration because it considers that the amendment would not include savings from the wife's earnings, which are now deemed to be covered by the present section.

The Chairman.—A letter was received by the committee from the Law Institute of Victoria on this subject, and, without finally making up their minds about the matter, the members of the committee were rather impressed with the view that any earnings that the wife had saved should not be taken into account.

Judge Book.—I am inclined to agree with that view.

Judge Mulvany.—I agree also.

Mr. Brennan.—Would their Honours state an opinion on the expression " capable of earning "? A danger could arise because it might be expected that a wife should earn.

Judge Book.—I do not consider that any harm will be caused by including the expression " capable of earning." It is wise to confer upon magistrates the widest possible discretion when a wife has been left without means of support.

Judge Mulvany.—To leave in the words " capable of earning " protects the wife still further. By section 6 of the Act, which is the operative section, the court must be satisfied that the wife or the children (as the case may be) are in fact without means of support. It is only when the magistrate comes to exercise the jurisdiction, that the matters referred to in sub-paragraph (iii) of paragraph (*a*) of clause 4 of the Bill are taken into account. With the Bill in its present form, the justices would not take into account capacity to earn in fixing the amount to be paid.

The Chairman.—It is essential at this stage, if your view is that the wife's earning should be disregarded, that the provision should be as wide as possible.

Judge Mulvany.—That is for the purpose of grounding jurisdiction.

Judge Book.—Other new words which are proposed in sub-clause (1) of clause 2 of the Bill to be included in the definition of " means of support " are " having regard to the financial position of the husband or father." The object is to make it quite clear that that is one of the circumstances to be taken into account. It may be that the Supreme Court decision in the case of *Ploog* v. *Ploog* makes this the law, but there is some doubt about it, and it was considered wise to include the expression referred to.

Clause 4 of the Bill contains the most important departure from the existing Act. Once the magistrates have jurisdiction to hear the case, it is considered that they should take into account the whole of the financial position of the husband, the wife, and the children, including the earnings of the wife, in deciding whether an order should be made, and, if so, what the amount should be. Many wives now go to work of their own volition, not because they are forced to do so. Some occupy extremely remunerative positions, and in a number of cases they earn more than the husband.

It was considered that if a break occurred between the husband and the wife, and jurisdiction was given to magistrates to make a maintenance order against the husband, it would be unfair at that stage to say that a husband receiving the basic wage, for example, should pay maintenance to a wife who was well off, had a very good position, and had been able to save from her own earnings a large sum of money. It was felt that this was a matter for the magistrates to consider in each case, and that the best course to adopt was to confer upon the magistrates the widest possible discretion. Thus, clause 4 of the Bill is designed to amend section 6 of the principal Act to provide that magistrates " may make an order " instead of " shall make an order " directing the husband to pay such reasonable amount " as they "—that is, the magistrates—" consider proper having regard to her or their accustomed position in life, to her or their financial position at the time of the hearing, including (without limiting the generality of the foregoing) any moneys which she is then earning and to his ability to pay."

If adopted, the proposed amendment will empower magistrates to take into account everything concerning the financial position of all the parties, and then to make such order as they think fit. If the Bill is passed into law, the party aggrieved will have the right to apply for a rehearing before a Court of General Sessions; either of the parties will not be left to the mercy of a particular magistrate.

The Chairman.—There will be a simple procedure to be adopted for the review of any case.

Judge Book.—Yes.

Mr. Brennan.—The aggrieved wife or husband would have a right, in the event of a change of circumstances occurring, for example, a change of employment, to make a further application.

Judge Book.—Such a provision is already included in the Act. In the event of changed circumstances occurring, an application can be made to a magistrate or a Court of General Sessions to have the order varied.

Mr. Randles.—Sub-paragraph (iii) of paragraph (*a*) of clause 4 of the Bill refers to the expression "as they consider proper, having regard to her or their accustomed condition." The word "or" is used. Yet sub-clause (1) of clause 2, which seeks to amend the interpretation of "means of support", states "having regard to the financial position of the husband or father and to the accustomed condition in life and the financial position of the wife or children." I emphasize the word "and" after the word "father." In many instances fathers are not in a very sound financial position. Is it considered that the definition of "means of support" should contain the word "or" instead of the word "and", so that if the husband is wealthy the court can say to him, in effect, "You must contribute substantially to the upkeep of the wife and children."?

Judge Book.—The wording in the Bill, as prepared by the Parliamentary Draftsman, is something to which consideration could be given. The committee's recommendations did not cover that particular point.

Mr. Randles.—I know of cases in which, although the husband has been in a sound financial position, he has not contributed adequately to the support of his wife and children. I have in mind an instance in which the husband, although he could have paid for the proper education of his children, sent those children to work at the age of fourteen years.

Judge Mulvany.—It seems to me that the word "or" is merely an alternative. The word "and" could have been included, but at any rate it is implied. The provision means: Having regard to the financial position of the wife and children and to the ability of the husband to pay.

Mr. Randles.—Clause 4 of the Bill provides for the amendment of section 6 of the principal Act in relation to the discretionary power of the court or of justices in relation to the making of maintenance orders. The court may take into account certain factors, including the financial position of the husband and "the accustomed condition in life" of the wife and children. It may be that, although the husband has plenty of money, the family has been "accustomed" to living in very poor conditions. Therefore, I think that the court would be given wider discretion if the word "or" were used in the appropriate place.

The Chairman.—His Honour has pointed out that sub-paragraph (iii) of paragraph (*a*) of clause 4 reads, in effect, in the way in which Mr. Randles desires it should operate.

Judge Book.—The meaning of it is, in effect, as if the word "and" were used. The word "or" only links "her or their." It could be read this way: Having regard to her or their accustomed condition in life and to her or their financial position at the time of the hearing.

Mr. Randles.—The court is required to take certain matters into consideration. In my opinion, if "or" were used instead of the word "and" in the definition, the court would have wider discretionary power.

Judge Mulvany.—Under section 6 of the principal Act, the definition of "means of support" is applied only to determine whether at the time of the complaint, those conditions are satisfied. Once the case comes up for hearing, the provisions as now contained in proposed sub-paragraph (iii) as set out in clause 4 of the Bill become the basis of the court's jurisdiction and of what is done on the exercise of that jurisdiction. If the proposed amendment of section 6 of the Act becomes law, the court would no longer consider the definition of "means of support", but it would then exercise its power to make an order, and in doing so it would consider the matters set out in sub-paragraph (iii).

Mr. Randles.—Would not the court have to consider what is embodied in clause 4?

Judge Mulvany.—Not in the exercise of jurisdiction. One of the doubts which was expressed before the Chief Justice's Committee made its recommendation was in relation to this point. The query was raised whether, even under the old Act, the person making an order should take into account a wife's earnings. It was argued that a wife's earnings should be considered, because "means of support" was merely a test of jurisdiction existing.

Mr. Randles.—I am not worrying about the wife's earnings. I have in mind two factors: The husband's ability to pay and the accustomed condition of life and the financial position of the wife and children. A husband may be wealthy, but that does not necessarily mean that he provides adequately for his family. Therefore, I think that the court should have discretionary power to order that maintenance shall be granted on the basis of a proper standard of living. If the wife's "accustomed" condition of life only is considered, it may be that the amount of maintenance ordered may be based on a low standard of living. It is for that reason that I think the word "or", instead of "and", would give the court wider discretion.

The Chairman.—Concerning the definition of "means of support", a number of factors have to be taken into account by the court in determining whether it has jurisdiction, but when deciding what sort of an order is to be made, another set of factors has to be considered. I do not think there need be any worry on that point.

Mr. Randles.—My suggestion is that the word "and" in the definition of "means of support" be altered to "or", so that the relevant part of the definition would include the following words:—

". . . . having regard to the financial position of the husband or father or to the accustomed condition in life or the financial position . . ."

Judge Mulvany.—That is likely to produce exactly the opposite result to the one Mr. Randles contemplates. Suppose the husband or father was a miserly gentleman, he might keep his family in a very bad condition of life, notwithstanding that he might have plenty of money.

Mr. Randles.—Then, the court would consider his financial position.

Judge Mulvany.—Both aspects are taken into consideration at present, but if they are separated the argument will be immediately used that the court should consider only the accustomed condition in life of the wife and children—that it should consider one or the other, but not both aspects.

Mr. Brennan.—Suppose the financial position of the husband is good, but that he lives a miserly life and, in consequence, that the accustomed condition of living of his wife and children is a very poor one. It might be considered that he was not supporting his family properly, and in those circumstances the court would make an order to ensure that his family was provided for adequately.

Mr. Randles.—If that is the way in which the amended law will operate, I shall be quite happy.

The Chairman.—We can accept His Honour's view at this stage that the law will operate in that way.

Judge Mulvany.—It seems to me that if the two aspects are made disjunctive, counsel will argue that one or the other of them, but not both, should be taken into account.

The Chairman.—I feel that the wording of sub-paragraph (iii) of paragraph (*a*) of clause 4 puts a wife in a dilemma.

Judge Mulvany.—The Chief Justice's Committee did not word that provision.

The Chairman.—Previously, a wife's earnings were not taken into account. In considering these matters, the court is entitled to give some weight to the intentions of Parliament in amending the law, and there has now been thrown into bold relief the fact that the wife's earnings are to be taken into consideration.

Mr. Ludbrook.—I think that is bad; I dislike it.

The Chairman.—Further, the court has to take into account only moneys which the wife is then earning. The position may arise that a wife, who has been deserted by her husband, is faced with the necessity either of going to work to maintain her children, and thereby running the risk of having those earnings taken into account when she appears before the Magistrate, or alternatively of refraining from working in the hope that her husband will be found quickly and brought before the court, in which case her earnings would not be a factor that would operate against her when the court was making its order. In previous discussion on this point, I suggested to the Draftsman that, perhaps, the difficulty could be overcome by the adoption of a provision along these lines—

"The court or justices shall disregard any moneys which the wife is earning by her own personal exertion unless in the circumstances of the case the court or justices think it proper to take these moneys into consideration."

Judge Book.—Have they not that discretion in the present Bill?

The Chairman.—I agree that the discretion exists under the prevailing law, but I have a feeling that counsel for the husband will very strenuously argue in court that, as the Act had been amended to bring into consideration the wife's earnings, Parliament intended that such earnings at the time of the hearing were definitely to be taken into account, notwithstanding that in special circumstances the court would have discretion to disregard the wife's earnings. My wish is that the position be reversed by providing that there must exist special circumstances before a court can take the wife's earnings into account.

Judge Book.—I would not object to a provision of that kind being included in the Act if it would add to the discretion of Magistrates. Personally, I think they have that discretion now. They would probably take the view that, if a wife had been forced to earn her living after she had been deserted by her husband, such earnings should not be taken into account. If, on the other hand, she had been earning all the time, the circumstances would be different, and in such a case the court might take her earnings into consideration. In other words, the whole idea was to give the court absolute discretion to enable it to deal with each case on its merits.

Judge Mulvany.—I think it would be desirable if the suggested words were added; otherwise, there might be a danger that justices would consider that they were impelled to take a wife's earnings into account, whereas that is not the intention. At present, provision does not exist to enable special circumstances to be considered. A wife who has young children to maintain may be forced to go back to work while she is waiting for the payment of maintenance.

Mr. Brennan.—It is not intended to force a woman to work.

Judge Mulvany.—No.

Mr. Ludbrook.—I agree with the Chairman's proposal. I have had experience of many cases in which a wife, who has been deserted by her husband, has been forced to go out to work to tide herself and her family over the period during which she is waiting for the payment of maintenance.

Judge Book.—I think words such as those suggested might be included in the Bill, because it was the view of the Chief Justice's Committee that wider discretion be given to justices to enable them to take into account all financial circumstances.

Mr. Pettiona.—Is there not a contradiction in subclause (1) of clause 2? Is it not mandatory that the court shall disregard any moneys which the wife is earning or is capable of earning?

The Chairman.—That is the provision which gives the court jurisdiction. Having got that jurisdiction, the court can then consider all factors.

Judge Mulvany.—Under section 6 of the Act, all that has to be decided is whether the wife is without means of support within the terms of the definition. That is done before the court embarks on its inquiry. If the court is satisfied that the wife is without proper means of support, it passes to consider all the factors set out in section 6, as proposed to be amended.

Mr. Brennan.—"Means of support" is taken primarily as proceeding from the husband, but if the wife is a career woman and is earning a substantial income, that is a factor to be considered.

Judge Book.—In these modern days, circumstances have changed.

Mr. Ludbrook.—A wife's earnings might be a factor contributing to her desertion.

Judge Book.—Quite.

Mr. Ludbrook.—I should like the Bill to incorporate a provision to cover the point raised by the Chairman.

The Chairman.—Two alternatives have been suggested by Mr. Lynch, the Assistant Parliamentary Draftsman. When they are drafted I should like to submit them for consideration, and perhaps Judge Book could prepare a short memorandum on them.

Judge Book.—Very well.

Mr. Thomas.—I assume it is intended that just penalties shall be imposed in cases in which desertion has been proved, and that it is proposed to enlarge the jurisdiction of the court in this regard?

Judge Book.—Yes. I should use the words "provision for the wife and children" rather than the word "penalty."

Mr. Ludbrook.—It is meant to confer wider discretionary powers so that a husband is not relieved of his obligations despite the fact that his wife may be working.

Judge Book.—The next recommendation of the sub-committee was—

4. To substitute for the words "the home of the defendant" wherever they appear in the Act the words "the matrimonial home."

In the present legislation, certain provisions apply in cases in which the wife leaves the home of the defendant—that is, of the husband. In modern times very often they do not live in the husband's home, but with his mother, or with his wife's mother.

Mr. Rylah.—Or they may live in the wife's home.

Judge Book.—Yes. It is considered wise to substitute the words "matrimonial home." This is a comparatively minor matter. I pass to a more important feature, the enlargement of sub-section 3 of section 6 of the Principal Act. This section relates to a case in which the wife leaves the husband, and it is provided that even if she does so and takes the children with her, in certain circumstances she may receive maintenance from him—if he had been guilty of cruelty; if he had knowingly or negligently infected his wife with venereal disease; if he had done any act or used any threat with a view to compelling or inducing her to submit to prostitution; or if he was an habitual drunkard.

There is a definition of cruelty which the courts have considered to be really very harsh. Under the present legislation "cruelty" means such conduct on the part of the husband, including actual violence or acts of a physical character, or grave insults or offensive conduct, although not amounting to actual physical violence, or drunkenness—

"as would make it in the opinion of the court or justices unsafe, having regard to the risk of life limb or bodily or mental health, for the wife or the child or children of the defendant to continue to live with him."

It is considered that the standard laid down should be reduced because in a number of cases the husband's conduct is such that it is felt the wife is justified in leaving him, but it does not amount to such cruelty as is liable to affect her mental or bodily health. So it is proposed to alter the legislation by putting in words well known to the law. The fifth recommendation of the sub-committee was—

5. To enlarge sub-section (3) of section 6 to make a defendant liable to pay maintenance where his wife has left the matrimonial home or taken the children from it because the defendant has been guilty of such conduct as would constitute just cause or excuse for so doing.

This recommendation has been given effect to in sub-paragraph (ii) of paragraph (*b*) of clause 4 of the Bill, which provides that at the end of paragraph (*d*) in sub-section 3 of section 6 of the Act there shall be inserted the following expression—

"; or

(*e*) had been guilty of any conduct constituting just cause or excuse for the wife's leaving the matrimonial home or taking the children from the matrimonial home."

Judge Mulvany.—I should like to add that this provision gives expression to principles which have been established both in England and in the High Court of Australia as to the type of conduct which justifies a wife in leaving her husband, conduct which is thought generally to be such that no self-respecting woman may be expected to tolerate it, but which falls far short of "cruelty" as defined in the Maintenance Act.

Judge Book.—In this provision action is being taken to help the wife. The next recommendation of the sub-committee was—

6. To alter the present rights under sub-section (17) of section 15 of a person aggrieved by refusal of the justices to make an order by giving such person a right to appeal to have a re-hearing before a Court of General Sessions as is at present given by sub-section (2) of section 15 to a person aggrieved by the making of an order.

As the Act is at present, if an order is made against a husband, he has the right to appeal to a Court of General Sessions, and the appeal takes the form of a re-hearing, no matter what evidence has been given before the magistrates. He has the opportunity to make a new case, and to call any further witnesses, and the whole thing is heard all over again. The Court of General Sessions has complete discretion in the matter and may make any order that the magistrate could have made.

If magistrates refuse to make an order in favour of the wife, she has a very limited right of appeal; she must file affidavits showing the evidence which was submitted to the magistrates, and the Court of General Sessions considers the application on that material. True, there is power, if the judge thinks fit, for fresh evidence to be called, but the principle followed is that the appeal is really to decide whether, on the material submitted to the magistrates, they were wrong in making the order; and it is fairly hard for that to be proved. In fact, the wife would have to show that the magistrates were wrong on a matter of law, or so incorrect in deciding questions of fact that their decisions should be varied.

It is proposed that the wife should have the same right as the husband; that she may, if the magistrates have not made an order, apply to a Court of General Sessions and, at the re-hearing, call any evidence she likes.

Judge Mulvany.—The old practice acted harshly on the wife because it practically excluded her from appealing against the refusal of a court to make an order.

Judge Book.—It also entailed a very cumbersome and expensive procedure.

Mr. Pettiona.—A suggestion was made at a recent meeting of the Committee that a period of fourteen days instead of seven should be allowed for the lodging of appeals.

Judge Book.—An extension to fourteen days should be satisfactory.

Judge Mulvany.—In my opinion, section 137 of the Justices Act should be amended to extend the time for the lodging of all appeals.

The Chairman.—Generally, is it agreed that a period of seven days is insufficient?

Judge Mulvany.—Yes.

Judge Book.—I agree.

The Committee adjourned.

WEDNESDAY, 29TH APRIL, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. Charles McLean, Chief Stipendiary Magistrate, was in attendance.

The Chairman.—I welcome Mr. McLean, and ask him if he will give the Committee his views concerning clause 7, which embodies a suggestion made by him in relation to the enforcement of maintenance orders, also with regard to clause 8 regarding the extended power of a stipendiary magistrate to discharge orders for the maintenance of children. We will also ask Mr. McLean to give us the benefit of his views concerning clause 6 which relates to the enforcement of orders in other States.

Mr. McLean.—Clause 7 embodies a suggestion of mine, in response to a clause which appeared in a previous maintenance Bill, and which provided for the transfer of orders from court to court for the purpose of the enforcement of those orders, as you well know is the practice, or is possible under the Justices Act, in regard to civil debts. I foresaw difficulties, particularly concerning the proof of arrears, and, as an alternative, I made a suggestion from which the present clause originated. To me it appears to be an improvement on the original clause.

The difficulty concerning the transferring of an order relates partly to the difficulty or almost the impossibility of proving arrears at a particular date, the moneys having been paid into another Court. The original clause also had the disadvantage, to my mind, of permitting a complainant who had obtained an order in, say, Melbourne, and who was temporarily living in, say, Mildura, to have the order transferred to the latter place for enforcement, to the great disadvantage of her husband merely because she happened to be temporarily residing in Mildura.

Mr. White.—Have you had experience of such cases?

Mr. McLean.—No. That is why the clause was never brought into effect. I saw the objection to the original suggestion, and it seemed to me that the alternative was a better one for all purposes.

The Chairman.—As the law is at present, a wife would have to come down from Mildura to Melbourne to prove her case.

Mr. McLean.—Yes, that is the object of the amendment generally, to avoid the necessity for a woman, who is presumably without means and who must receive support from her husband, to have to travel long distances to the original court in order to prove her case.

Mr. Brennan.—The principle is analogous to procedure for the enforcement of orders interstate. Suppose an order for maintenance is made against a person resident in Sydney, does not machinery exist to enforce that order through the Clerk of Courts in Sydney?

Mr. McLean.—Yes, those cases are analogous. Some years ago two cases were decided in the Supreme Court in Victoria, in which it was held that the original complainant was the only person who could enforce an order. Peculiarly enough, both cases were decided by the same judge—Mr. Justice Hood—although a period of thirteen or fifteen years had elapsed between the hearing of the cases. Contemporaneously with those cases there were decisions in the opposite direction by a Queensland court, and it was there held that the Clerk of Courts to whom the money was to be paid, as in Victoria, was the proper person to enforce the orders. Later, all those cases—the two in Victoria and the one in Queensland—were considered by the Full Court of New South Wales, and the decision of that Court was similar to the decision of the Queensland Court. Therefore, in New South Wales the position is that orders are enforced by the Clerk of Courts.

The decisions of the Victorian Courts are, of course, binding in this State, and it would be necessary to apply either to the Full Court or to the High Court in order to have them varied. The present procedure would entail considerable disadvantage and inconvenience to a woman who, as was mentioned, might have to travel a long distance to take action to enforce the order. Frequently also, she would have to call the Clerk of Courts as a witness in order to prove that arrears of maintenance were owing to her. Possibly, she would not keep a strict account of payments made to her, and, although she would know whether there were arrears, she might not know exactly what amount was outstanding. As was mentioned by Mr. Brennan, the proposal is analogous to the enforcement of orders from other States or from overseas. In both cases—I refer to Part IV. and Part V. of the Maintenance Act—the maintenance orders would be enforced by the officers of the court. It seems to me to be a desirable provision that the Clerk of Courts should be empowered to enforce an order for maintenance.

It is proposed to make rules providing for an application in writing, supported by an affidavit, to be made concerning arrears of payments, in somewhat similar manner as is now provided under the Imprisonment of Fraudulent Debtors Act, under which these orders are now enforceable.

Mr. Brennan.—Does the phrase "subject to the prescribed conditions" in sub-clause (1) of clause 7 refer to conditions in the Principal Act or to regulations to be made thereunder?

Mr. McLean.—To regulations.

The Chairman.—Would those regulations be made under your guidance or be approved by you?

Mr. McLean.—I feel sure that they would be referred to me—for comments, at least.

The Chairman.—I understand that clerks of courts keep accurate records of these matters and do a good job in assisting destitute wives, if I may use that expression, to recover arrears.

Mr. McLean.—Yes.

Mr. Brennan.—Sometimes a defendant may send money to his wife in addition to payments made to a Clerk of Courts.

Mr. McLean.—One of the reasons why it is proposed that an affidavit should be made by the wife is that the records of the clerks of courts shall be supported.

Mr. Brennan.—It would be open to the defendant to rebut a statement of account furnished by the Clerk of Courts by producing receipts or other proof that he had transmitted moneys.

Mr. McLean.—Yes. Sub-clause (3) of clause 7 provides that the books of a Court of Petty Sessions shall be evidence of maintenance payments. Under the

ordinary laws of evidence, those books cannot be produced in court as evidence, although they can be used as "memory refreshers" by the clerk who made the entries in them. Difficulty arises in cases in which clerks are moved from place to place; particular entries may have been made by a clerk stationed at a court in a locality remote from the court concerned. In my opinion, it is essential that these books of account should be admitted as evidence. It is proposed that they shall be *prima facie* evidence only, and, as Mr. Brennan suggested, their contents can be rebutted by evidence of the defendant.

Mr. Pettiona.—Does that mean that the defendant would have to submit proof that he had paid amounts other than those recorded in the books of account of a Court of Petty Sessions?

Mr. McLean.—Perhaps the provision is not as stringent as Mr. Pettiona suggests. In the absence of evidence from the defendant that the records were faulty, they would be accepted. If the defendant disputed their accuracy, the onus of proof would be thrown on the informant, and the court would have to decide, on the basis of reasonable probability, the actual amount of arrears.

The Chairman.—I should think that in cases in which there appeared to be a real dispute, the court would not proceed without hearing the complainant.

Mr. Brennan.—If the defendant produced money order receipts or cheque butts indicating that sums of money not shown in the books of account had been forwarded, there would be an obligation on the informant to disprove that money had been sent?

Mr. McLean.—Yes, or if the defendant swore that he kept a record of payments made, and that it differed from the contents of the court books of account, the court would have to decide which was accurate. In the face of sworn evidence by the defendant against entries in a book made perhaps by a person who was absent, the court would be more likely to believe the defendant than to accept the book entries.

Mr. Brennan.—Subject to the sworn evidence of the complainant.

Mr. McLean.—Yes; if the entries related to payments that the defendant stated he had sent to the Clerk of Courts, there would be, in addition to the ledger account, the suitors' cash book, in which all moneys received at the office are entered. It is possible for one of those entries not to be properly made in the ledger account.

Mr. Thomas.—Probably that would occur only in isolated cases.

Mr. McLean.—Yes. There are plenty of precedents in other cases of debt for the proposed new provision. In certain jurisdictions, the books of account kept by a tradesman are made *prima facie* evidence concerning goods supplied and delivered and as to payments made by the defendant.

The Chairman.—Without a provision such as subclause (3), clause 7 would be unworkable.

Mr. McLean.—That is so, because then the books could not be produced in evidence and it would be necessary to call from different parts of the State clerks who had made entries. In cases in which an order is enforced for years, hundreds of entries are made.

The Chairman.—Some former clerks might even have become stipendiary magistrates, who lived elsewhere.

Mr. McLean.—Such a circumstance could easily occur, and some might be deceased. Even if subclause (1) of clause 7 is not acceptable to the legislature, sub-clause (3) might well be retained for implementation under the present procedure that is followed.

Mr. Pettiona.—Will it be necessary for books of account to be transported all over Victoria, or even Australia; or, will certified copies of entries be acceptable?

Mr. McLean.—Proceedings will take place only where the books of account are located, and certified copies of entries will be valueless.

The Chairman.—Have you any comment to make regarding clause 6?

Mr. McLean.—This provision originated from the fact that each territory of the Commonwealth has its own laws and ordinances. Although there is reciprocity between the States concerning the enforcement of maintenance orders, there is no provision for such reciprocity between Victoria and the territories of the Commonwealth.

Mr. Brennan.—The purpose of the Bill could be defeated?

Mr. McLean.—If an order is made in Victoria and a defendant goes to New South Wales, the order is merely transferred for enforcement in Sydney.

Mr. Pettiona.—I take it that a person could evade his responsibilities by going to the Australian Capital Territory.

Mr. McLean.—There is provision for issuing a summons in Victoria for service in the Australian Capital Territory, but that involves the expenditure of a sum of money. Frequently, the complainant would have to guarantee extradition expenses to bring the defendant back to Victoria. Moreover, hardship might be imposed upon the defendant if he were summarily arrested for non-payment of arrears of maintenance, because he might be able to make arrangements locally for their payment.

The Chairman.—We understand that the provisions contained in proposed clause 8 are necessary to permit magistrates from time to time to vary, suspend or revive any maintenance order.

Mr. McLean.—In the past, when an order has been made for the maintenance of a child, there has been no period stipulated for the termination of that order; consequently, real difficulties have arisen. For example, a child may reach the age of sixteen years and the mother may feel that the husband, if he were living with the family, would still be helping to support that child, even though it were earning a certain sum of money, and, in those circumstances, the order should be continued. On the other hand, the child might be earning sufficient to keep itself. Under the existing legislation, there is no provision under which a husband can say, at any particular time, "I have finished paying under the old maintenance order", except by applying to the Court of General Sessions to have the order upset or discharged. That is a cumbersome and inappropriate procedure. It seems to me that, as the courts were given power to make orders and to vary them from time to time according to the circumstances of the husband and wife, it is appropriate that, subject to certain restrictions which appear in the clause, magistrates should have power to deal with such cases.

Mr. Brennan.—Let us assume that a child sixteen years of age was earning £6 a week. Would a magistrate have power to lessen the amount of maintenance payable in respect of that child?

Mr. McLean.—That is an aspect upon which I would prefer not to comment, particularly. In other States there is a provision which relates to such a situation. In New South Wales and Tasmania, I think, there is a proviso in the order that it shall cease when the child attains the age of sixteen years. In England and in certain other Australian States a definition of "child" is contained in the Act. A child may be a person under the age of sixteen years, or under the age of eighteen years. In Victoria, however, there has never been any such provision. The only reference to age which is contained in the Victorian Act is one relating to legal custody. It is to the effect that legal custody of a child, while under the age of sixteen years, may be given to the complainant. That is the only reference to age, which appears in the Victorian Act. It was to avoid the cumbersome and inappropriate procedure of an appeal to the Court of General Sessions to upset an order which was perfectly good in the first place that I made this proposal.

Mr. Ludbrook.—Does the termination of an order for maintenance necessitate the making of an application for that purpose when a child reaches the age of sixteen years?

Mr. McLean.—Yes.

The Chairman.—I suppose that in most cases it is discontinued as a matter of practice?

Mr. McLean.—Yes.

Mr. Ludbrook.—To me, the proposal appears to be very reasonable, as it leaves discretionary power in the hands of the magistrate who knows the case.

Mr. Thomas.—A child over the age of sixteen may be sub-normal.

Mr. McLean.—Yes, or an invalid.

Mr. Thomas.—A child who was either sub-normal or an invalid would probably not be employable, yet the case might not be one which would entitle the parent or the guardian to claim any payment under Commonwealth social service.

Mr. McLean.—All those factors would be considered by the magistrate. The present wording of the clause provides that the magistrate shall not discharge an order at any time before the child reaches the age of sixteen years.

Mr. Randles.—A child might be mentally retarded, even beyond the age of sixteen years, and would be a charge on the mother. That liability might have to be carried by the parent even after the child had reached adult age. Although an invalid pension might be payable such pension is rarely sufficient to cover the full cost in a case of invalidity. The extra burden would be thrown back on to the complainant, but the father could walk out and escape any responsibility in respect of maintenance.

Mr. McLean.—That may be so, but under the present Act, the maintenance payments would definitely cease when the child attained adult age. The provision is for the maintenance of children only, and at the very latest period the maintenance would be terminated when the child reached 21 years of age.

The Chairman.—I was going to suggest, in a kindly way, that the question raised by Mr. Randles is rather beyond the scope of this Committee; it is a matter of policy that he might bring to the notice of the Government.

Mr. Randles.—That is true.

The Chairman.—As Mr. McLean said, it would be for the magistrate to consider all the circumstances. All that is contained in the new proposal is the giving of power to the magistrate to discharge an order without the cumbersome procedure of an appeal to General Sessions.

Mr. Brennan.—As Mr. McLean has mentioned, no age is mentioned when maintenance shall cease.

Mr. McLean.—That is so.

Mr. Randles.—It gives the magistrate power to discharge an order but only if the child is over the age of sixteen years. Discretion may be exercised only in regard to the payment of maintenance for the child between sixteen and 21 years of age.

Mr. Ludbrook.—While the child is a minor.

Mr. Pettiona.—Can this discretion be exercised in cases in which evidence is given that a child over the age of sixteen years is still receiving education or is not earning money?

Mr. McLean.—Yes.

The Chairman.—Sub-clause (2) of clause 5 provides that in a case in which a Court of Petty Sessions refuses to make an order and an appeal is made to a Court of General Sessions, which upholds the decision, the applicant is prohibited, without leave of the court being granted, from taking further proceedings for a period of six months. I ask Mr. McLean to state his view of this provision.

Mr. McLean.—Probably, the sub-clause is a sufficient safeguard. There is another provision that an appeal shall be made within seven days or within such further time as a Court of General Sessions, in its discretion, allows. In the past, leave has been granted by a Court of General Sessions for appeals to be made months or even years after an order has been made.

The Chairman.—Why should an applicant apply to a Court of General Sessions for leave to appeal? Does Mr. McLean see any objection to the sub-clause being amended to provide "without leave of a Court of General Sessions or of a Court of Petty Sessions"?

Mr. McLean.—If the complainant applied to a Court of Petty Sessions, she would be applying to the court whose order was being attacked. Moreover, the Court of General Sessions which heard the first appeal would be in a better position to decide whether she had fresh grounds for making the appeal. There would be basis for the waiving of the period of six months if the complainant were able to show that there existed some evidence which she had not available when the first appeal was made. It may so happen that, in a Court of General Sessions, an appeal is dismissed on technical grounds and, in response to an application, leave to lodge a further appeal is granted.

The Chairman.—That is not necessarily a further appeal; it is further proceedings for maintenance.

Mr. McLean.—Yes. It would still be a matter within the particular knowledge of the court that had heard the appeal.

The Chairman.—It is permissible for a magistrate or a Court of General Sessions to decide that a wife had no valid grounds for leaving her husband, and to dismiss her appeal?

Mr. McLean.—Yes.

The Chairman.—If the wife returns to her husband and he commits a violent act of cruelty, she will be prevented by this provision from taking maintenance proceedings for a period of six months?

Mr. McLean.—That is an aspect to which I have not given consideration. I do not think there was any provision in that regard in the Bill which was considered by the previous Government. There is, however, a real possibility of a wife who has had her appeal dismissed returning to her husband and then having fresh grounds for claiming that he has deserted her constructively.

The Chairman.—I should like you, Mr. McLean, to consider the matter and then to comment upon it.

Mr. McLean.—Having considered it, I can say that there are distinct objections to the proposed provision. I think the advantages to be derived from it would not be commensurate with the disadvantages that would accrue.

Mr. Randles.—Would the difficulty be surmounted by omitting from sub-clause (2) of clause 5 the words "without leave of a court of general sessions," and substituting "without fresh grounds for maintenance"?

Mr. McLean.—If the words relating to leave were deleted from the clause, a wife could take proceedings within six months, and the chances are that the case would be heard by the same court as originally, although it could be heard by another court. If she were unsuccessful she would run the risk of having costs given against her. Under ordinary circumstances costs are not granted against a wife who is unsuccessful in a maintenance case, but if it appeared to the court that her fresh proceedings were taken out of sheer malice, the court would have a tendency to award costs against her. I would not altogether favour that clause.

Mr. Brennan.—Although I do not suggest it, consideration might be given to the addition of some words, such as, "and unless fresh grounds for such application have arisen."

Mr. McLean.—Then there could be a dispute as to what happened at the original hearing.

The Chairman.—The magistrate would have to hear a long legal argument before he reached the real business of the hearing of the complaint.

Mr. McLean.—I do not think that the clause is worth while.

Mr. Randles.—There would not be many cases where a woman who had been refused a maintenance order would apply again.

Mr. McLean.—It would be very rare indeed for such a case to arise.

Concerning clause 10 there was a case in which it was held that arrears of maintenance could be enforced by garnishee proceedings. Then there was another case in the High Court, in about 1951, in which the decision of the State Court was overruled. I think that, in fairness, this means of enforcing an order should be available to a complainant, and that is the reason for the inclusion of clause 10 in the Bill.

The only other provision to which I might refer—but which does not come within my specific jurisdiction—is the last paragraph in clause 4, which reads—

> "had been guilty of any conduct constituting just cause or excuse for the wife's leaving the matrimonial home or taking the children from the matrimonial home."

That provision will now appear at the end of sub-section (3) of section 6 of the Principal Act. If it is adopted, I have difficulty in understanding the necessity for the retention of paragraphs (*a*), (*b*), (*c*) and (*d*) of sub-section (3).

Mr. Randles.—His Honour Judge Mulvany informed the Committee that sub-paragraph (ii) of paragraph (*b*) of clause 4 gave expression to principles established in England concerning conduct which no self-respecting woman should be expected to tolerate.

Mr. McLean.—I cannot conceive of a court finding that conduct within the terms of paragraphs (*a*), (*b*), (*c*) or (*d*) of sub-section (3) of section 6 of the principal Act does not also come under proposed new paragraph (*e*). If the new paragraph is inserted, there is no need to retain the four existing paragraphs or the definition of cruelty in the following sub-section. The new paragraph to a degree enlarges the grounds upon which a wife may justifiably leave her husband. Retention of the four existing paragraphs would tend to make that enlargement still greater, because if the Act is amended as suggested, the courts must look for some conduct coming under proposed new paragraph (*e*) which does not come under the other four paragraphs, and probably they will be inclined to say that the legistlature must have meant something by adding this new provision. Thus, courts might find that the legislature intended to cover incompatibility or unhappiness caused by the husband, but not amounting to cruelty.

Mr. Randles.—I direct attention to the statements of Judge Book from the words "There is a definition of cruelty which the courts have considered to be really very harsh," on page 12 of the transcript of evidence given before the Committee on the 23rd of April, and the statements of Judge Mulvany down to the words "as defined in the Maintenance Act" on page 13.

Mr. McLean.—This section was enacted in the year 1928, when the Honorable William Slater was Attorney-General, as he is now. Previously, the Act referred merely to "any husband who unlawfully deserts his wife or leaves her without means of support" and desertion was not defined. The courts built up a long list of cases as to what constituted desertion, either by the wife or by the husband, and acted on what is clear public policy, namely, the upholding of family life and responsibilities, wherever possible.

There is no greater menace to the community than "broken" homes, particularly where children are concerned. It was about as far as the courts would go to say that cruelty must involve some injury or prospective injury to the health of the wife, and the definition of cruelty contained in the Bill was based on that decision. The relevant provision in the Principal Act, to which Mr. Randles referred, is contained in paragraph (*a*) of sub-section (4) of section 6, which reads, *inter alia*—

> "(ii) grave insults or offensive conduct, although not amounting to actual physical violence . . . as would make it in the opinion of the court or justices unsafe, having regard to the risk of life limb or bodily or mental health, for the wife or the child or children of the defendant to continue to live with him."

That provision gives scope for elasticity and discretion on the part of the courts. It must be realized that the proposed clause in the Bill will be wider in its ambit than the earlier decision made by the courts.

The Committee adjourned.

THURSDAY, 30TH APRIL, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

His Honour Judge Book and His Honour Judge Mulvany were in attendance.

The Chairman.—I shall ask His Honour Judge Book to proceed with his comments.

Judge Book.—At the meeting of the Committee on the 23rd April, I submitted certain recommendations that had been made by the Chief Justice's Committee on Law Reform for the amendment of certain proposals contained in the Bill. It may be of interest to the Committee to learn of the other suggested amendments. They are as follows:—

To substitute for the words "the home of the defendant" wherever they appear in the Act the words "the matrimonial home."

To enlarge section 6 (3) to make a defendant liable to pay maintenance where his wife has left the matrimonial home or taken the children from it because the defendant has been guilty of such conduct as would constitute just cause or excuse for so doing.

To alter the present rights under section 15 (17) of a person aggrieved by refusal of the Justices to make an order by giving such a person a right to appeal to have a re-hearing before a Court of General Sessions as is at present given by section 15 (2) to a person aggrieved by the making of an order.

To delete the words "etc." and "destitute or" from the heading of Part I. and the preamble of the Act. (See *Woods* v. *Woods* 1925, V.L.R. 264.)

To provide that arrears of maintenance up to a period of twelve months prior to a defendant's death should be recoverable from his estate.

The Chairman.—Before proceeding further, there is one matter which is relatively urgent. Mr. Lynch, Parliamentary Draftsman, will be taking three months' leave as from 1st May, and I should like His Honour Judge Book, if he will do so, to discuss with Mr. Lynch the aspect which I raised last week of the court or justices disregarding any money which a wife is earning by her own personal exertion unless the court or justices may think it proper to take those matters into consideration. I have in my possession a letter from Mr. Lynch in which he suggested alternative amendments. I have marked the suggested amendment which I prefer.

Judge Book.—I shall be glad to do so.

The Chairman.—There is another matter that arises from the question of what constitutes reasonable cause for a wife leaving the matrimonial home. This aspect was adverted to by Mr. McLean yesterday. In sub-paragraph (ii) of paragraph (*b*) of clause 4 of the Bill, it is proposed to insert in the principal Act, at the end of paragraph (*d*) of sub-section (3) of section 6 the following expression:—

"or

(*e*) had been guilty of any conduct constituting just cause or excuse for the wife's leaving the matrimonial home or taking the children from the matrimonial home."

The question arises whether there is any necessity to retain in section 6 of the principal Act provisions (*a*), (*b*), (*c*), and (*d*) that are now contained in sub-section (3).

Judge Book.—In my view, there is no harm in retaining those provisions. Possibly they may cover some matters which are not included under the description "just cause or excuse."

Judge Mulvany.—I agree that it is desirable to retain those provisions.

The Chairman.—There seems to be some doubt whether, by inserting the new provision and retaining the old ones as well, a magistrate may feel obliged to look for a type of conduct which the courts have not yet recognized as valid grounds for maintenance proceedings. A suggestion was made to Mr. McLean by the Committee that possibly the answer lay in the fact that a provision similar to that proposed in the Bill is already contained in the Marriage Act.

Judge Book.—That is the reason why the words "just cause or excuse" have been used. They are clearly defined by the authorities that are referred to by the Supreme Court in dealing with divorce suits.

I refer now to amendment No. 8 suggested by the sub-committee of the Chief Justice's Committee on Law Reform. It states—

> "To provide that arrears of maintenance up to a period of twelve months prior to a defendant's death should be recoverable from his estate."

That aspect was brought to the notice of the sub-committee by Mr. Justice Dean of the Supreme Court. He discovered that there was no power for a wife to recover arrears of maintenance from her husband's estate when he died, and it was considered that that situation was unjust. At the same time, it was felt that some time limit should be imposed, and Mr. Justice Dean suggested, and we adopted his suggestion, which was approved by the full Committee, that the period should be twelve months. The effect of this provision, if it is enacted, will be that if a husband who is in arrears with his maintenance dies, the wife can recover from his estate the arrears of maintenance to the extent of twelve months prior to his death.

Mr. Randles.—I take it that if an order had been granted for the payment of maintenance at the rate of £2 a week, the widow could recover £104 from her husband's estate.

Judge Book.—Yes.

The Chairman.—There is no limit to the sum of money that can be recovered by garnishee proceedings?

Judge Book.—That is so.

The Chairman.—Yesterday the Committee discussed with Mr. McLean sub-clause (2) of clause 5. That is a provision to the effect that if a wife applies in a court of petty sessions for an order, which is refused, and she appeals to a Court of General Sessions and is again refused, she will be precluded for six months from taking further proceedings unless leave is granted. Members of this Committee are of the opinion that there are some difficulties associated with the provision because of changing circumstances that frequently occur. A wife may leave her husband, apply for maintenance, be refused, and be told by the court that she had insufficient grounds for leaving him. The wife may return to her husband and, within a few days, acts of cruelty may become such that she has a valid claim for maintenance. By the proposed provision, however, she will be precluded from taking any proceedings for a period of six months, unless she appeals to a Court of General Sessions and is granted leave to institute such proceedings.

Judge Book.—I think the situation at which this provision is aimed is that which arises when a wife fails to get a maintenance order, and that failure is confirmed by a Court of General Sessions. Sometimes there is a tendency for a wife to change her place of residence so as to bring herself within the jurisdiction of another magistrate with the view of making another attempt to secure a maintenance order.

Our experience has been that where magistrates refuse to make an order in favour of a wife, in a great many cases it is because the husband has made a bona fide offer of a home, but the wife says, "I am not going back to him." Technically, she could apply again within a short period of the original hearing because she is, allegedly, without means of support on some other day, and therefore the rule of *res judicata* would not apply. However, the issue would, in fact, be the same as had been determined by the magistrates who heard the original application and which in this case had been confirmed by the Court of General Sessions. I think that is the reason for the inclusion of the clause.

There is the safeguard that if new circumstances arise and if it is considered that the wife has a proper claim to have the matter reconsidered, then leave can be given by the Court of General Sessions to permit of further proceedings being taken. I should think that whoever proposed this sub-clause had in mind that it would be better to have the question decided by the Court of General Sessions than to leave it to the discretion of a magistrate, because what it is desired to avoid is an appeal to a magistrate who, perhaps, is a little more sympathetic than the person who heard the previous case. Therefore it is wise that the question of leave should be determind by the Court of General Sessions. That is how I view it.

The Chairman.—Another aspect is that if the husband is dissatisfied with an order he can appeal. If his appeal fails, he can the next day apply to the same magistrate, or to another magistrate, and ask for the order to be varied.

Judge Book.—But he must show that there are new circumstances.

Judge Mulvany.—He has also the privilege of paying all costs if he is unsuccessful.

Mr. White.—Is any inconvenience involved in obtaining leave for a re-hearing?

Judge Book.—This is something new. I do not think there are any other provisions concerning leave being obtained from the Court of General Sessions. I do not know how it would work out in practice. There would be no great inconvenience in asking the court for leave.

The Chairman.—A situation could arise such as occurs in relation to cases coming within the scope of the Landlord and Tenant Act. Where an application is refused, the applicant there and then applies to the magistrate for the service of another notice.

Judge Book.—As Judge Mulvany mentioned, the husband has the privilege of paying his own costs and also usually his wife's costs, irrespective of whether he wins or loses the case. If he is to be brought to the court every month or so on what is really the same issue, it might become a hardship.

Mr. Brennan.—A point raised in the previous discussion on this aspect was the possibility of delay before leave could be obtained from the court to re-open the case. That objection might be overcome if there were some means of expediting the hearing in cases where new grounds for proceedings had arisen.

Judge Book.—A Court of General Sessions is sitting in the appeal jurisdiction all the time, so I do not think there would be any practical difficulty in the chairman of the court hearing such applications as urgent matters.

Judge Mulvany.—We would have to mould a new procedure to cover them.

Judge Book.—Yes, appropriate rules would have to be laid down.

Judge Mulvany.—The Court of General Sessions which deals with appeals sits every month. It deals with Crown appeals first. The list is called over at the beginning of the sitting and if there was any urgent application of this character the Judge could deal with it fairly smartly. The procedure to be prescribed could be made as simple as possible, although it might not be quite as easy as it might appear to be. Possibly, an investigation would be required of the circumstances of the previous application and of the facts relied upon entitling the applicant to a re-hearing.

The Chairman.—Mr. McLean expressed the view that he did not think it was necessary to include the provision concerning the compulsory lapse of a period of six months before an appellant could take further proceedings. In his experience there had been very few cases of wives becoming vexatious litigants. He did not think any great harm would be done if the sub-clause were omitted.

Judge Mulvany.—His anticipations might prove to be correct, but if the reverse position developed and many applications were made frivolously, that could have a definite effect on the business of the Court of General Sessions. That court is kept very busy with Crown and maintenance appeals.

The Chairman.—It is difficult to weight the scales of justice between wife and husband.

Mr. Thomas.—Sub-clause (2) of clause 2 provides for the deletion of the words "destitute or deserted" which appear in the title to the principal Act. Apparently it has been discovered that, as a result of the retention and interpretation of those words, some undue hardship has been suffered by wives who seek maintenance from their husbands.

Judge Mulvany.—The proposal for the deletion of that expression arises from the decision in the case of *Woods* v. *Woods* which was decided in 1925. In that case the Full Court of Victoria held, looking at the whole of the terms of the existing Act, that a woman had to be practically destitute before she could be said to be without means of support, which is quite contrary to the more liberal view now held. The deletion of the words "destitute and deserted" was suggested in order to remove the ground on which that decision was based, namely, that the Act was concerned only with "destitute" or "deserted" wives, and to give the right of maintenance to wives who do not come strictly within that class. The old idea was that it was only wives deemed to be absolutely destitute who could be granted any relief. It was sought to enlarge the scope of the provision in that respect and to give extended rights to wives who had been left without means of support by their husbands.

The Chairman.—Your Honour might be able to help the Committee on the question of the enforcement of orders, which is dealt with in clause 6.

Judge Book.—Does the clause do anything more than include the Commonwealth territories in the interpretation of "State other than Victoria"?

The Chairman.—Actually it does not. The point was mentioned by Mr. Lynch when he was explaining the purpose of the amendment. The matter has also been raised from time to time by Mr. Byrnes and other members of Parliament who represent electorates along the border of Victoria. The problem arises in connection with cases affecting persons resident near the borders of Victoria and New South Wales, and Victoria and South Australia. Proceedings might be commenced in Victoria against a husband in this State. As soon as he hears about them he skips into New South Wales. Proceedings may be transferred to New South Wales, but to avoid the consequences the husband then returns to Victoria. I do not know whether you can assist us in solving the problem.

Judge Book.—Is it not a matter for the Commonwealth Parliament? I do not know that the State Parliaments would have any jurisdiction under which they could help one another.

The Chairman.—That might be the only answer to the problem. If no further action can be taken in the matter in Victoria, that is the end of it.

Mr. Randles.—Could not the State Parliaments suitably amend the maintenance Acts?

Judge Book.—Many other problems arise in the administration of the criminal and other laws because of the existence of the State borders.

The Chairman.—From your experience, do you consider that the present provisions for enforcement of maintenance orders are as complete as they can be made by the Victorian Parliament in that regard?

Judge Book.—Yes.

Judge Mulvany.—I should think so.

Mr. Pettiona.—Should the Justices Act 1928 be amended so that a wife in whose favour a maintenance order has been made shall receive preference over other creditors if the husband's wages are garnisheed?

Judge Book.—That is a question of policy. If the Bill is passed into law, the same provisions will apply to maintenance orders as to any other orders when garnishee proceedings are taken.

The Chairman.—The Committee has asked Their Honours to consider sub-paragraph (iii) of paragraph (*a*) of clause 4, which refers to a wife's earnings.

Judge Book.—Can the Committee express a view on this matter, about which I was asked to confer with Mr. Lynch, the Assistant Parliamentary Draftsman?

The Chairman.—The following amendment has been suggested:—

> "The court or justices shall disregard any moneys which the wife is earning by her own personal exertion unless in the special circumstances of the case the court or justices think it proper to take those moneys into consideration."

Judge Book.—Judge Mulvany and I, at the last meeting, agreed with the principle of the suggested alteration.

Mr. Ludbrook.—I am in accord with it.

Mr. Randles.—Discussion of this subject again raises the question of the view the courts will take of moneys a wife may have saved, either from those given to her by her husband or from other sources. I understand that the general opinion of the members of the Committee is that personal savings should not be taken into consideration.

The Chairman.—Yes. Mr. Lynch considers that if an amendment along the lines of that suggestion is adopted, definition of the "means of support" should also be altered. Do the members of the Committee agree that a magistrate should disregard a wife's earnings unless he considers that in special circumstances he should take them into account—a question that is opposite to the provision contained in the Bill?

Mr. Ludbrook.—In many cases the fact that a wife has been employed has contributed towards the breaking-up of a home.

Judge Book.—If the suggested amendment is agreed to, the magistrate concerned would have to decide whether the case referred to by Mr. Ludbrook constituted a special circumstance.

Mr. Ludbrook.—Does Judge Book consider that magistrates should be vested with such discretionary power?

Judge Book.—If the Bill, in its present form, is adopted, the magistrate will have complete discretion in the matter, but it is proposed to add for his guidance a provision that he should not exercise his discretion by taking into account the wife's earnings unless there are special circumstances.

Mr. Ludbrook.—In my opinion, that would cover the position admirably.

Mr. Brennan.—Mr. Randles raised the question that a woman might save money from earnings during her marriage.

Mr. Randles.—Or from the housekeeping allowance.

Mr. Brennan.—Income from property is a different matter. The fact that a woman occupied a remunerative executive position in a big firm might be material if a magistrate had to decide whether she had been left without means of support.

Judge Book.—In law, money saved by a woman from her housekeeping allowance is deemed to belong to the husband. That would not be a saving from her earnings. If this matter is to be considered properly, it seems to be desirable to determine whether or not a wife's savings from her earnings are to be taken into account.

Judge Mulvany.—I agree. For the sake of consistency, there should be included in the definition of means of support a provision to the effect that any savings from a wife's earnings shall be disregarded. Sub-paragraph (iii) of paragraph (*a*) of clause 4 should be worded so as to have that effect.

Judge Book.—I foreshadow some lively legal argument whether certain sums of money constitute savings from a wife's earnings.

The Chairman.—If an amendment which I have suggested is adopted, a magistrate will have the opportunity to avail himself of an easy way out of the difficulty. He will be enabled to say, "I shall disregard the sum of money which is disputed and take into consideration only that which I am certain belongs to the wife."

Judge Book.—I direct attention to the fact that money which is in a wife's name does not necessarily belong to her.

Mr. Randles.—A husband and wife may have a joint bank account.

Judge Book.—The latest decision of a court of appeal concerning that aspect was to the effect that, irrespective of the manner in which the funds in a joint banking account were contributed, they belonged to both parties in equal shares.

Mr. Pettiona.—Could the words " as they consider proper having regard to her or their accustomed condition in life, to her or their financial position . . ." be interpreted arbitrarily?

Judge Book.—A magistrate may take those aspects into account, but he need not do so. Nevertheless, he must advert to them. The tribunals that have been constituted to deal with such problems should be trusted to make fair decisions. Little comfort can be derived from laying down rules for the exercise of a magistrate's discretion. There is an adequate reason for making special reference to a wife's earnings, but whether it is desirable to go further and refer to savings from a wife's earnings is a matter for this Committee to decide.

The Chairman.—I think we, as a Committee, agree first that a wife's savings from her earnings should be disregarded and, secondly, that it is desirable to include the proposed provision in the Bill so as to cater for exceptional circumstances.

Judge Mulvany.—My view also is to the effect that such savings should be taken into consideration only in special circumstances.

The Committee adjourned.

WEDNESDAY, 13TH MAY, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. H. A. Winneke, Q.C., Solicitor-General, was in attendance.

The Chairman.—Mr. Winneke has attended to discuss sub-clause (2) of clause 5, the side note to which is:—

> Prohibition of further maintenance proceedings (except by leave) after dismissal of appeal against refusal to make order.

Mr. Winneke.—This provision originated in this way: Last year, at a conference convened by the then Attorney-General, Mr. T. W. Mitchell, M.L.A., between himself and legal members of the Legislative Assembly, the general principles underlying this amendment were discussed. The proposal to the general effect of that now appearing in sub-clause (2) of clause 5 was brought forward and it was agreed that the idea was sound. As I understand it, the purpose of the sub-clause is to prevent a woman whose case has been twice considered and rejected—once by a court of petty sessions and once on appeal to a Judge in general sessions—from harassing a defendant by taking him from court to court in different suburbs, and instituting further proceedings against him. It was thought that the power of a court to award costs against a woman who acted in this way was not a sufficient deterrent, because (*a*) courts are loath to award costs against a woman and (*b*) in the rare cases where costs are awarded against a woman it is found that generally she has no money, and one cannot get blood out of a stone.

It was realized that exceptional cases might occur, in which notwithstanding the fact that a woman's claim had been properly dismissed, shortly afterwards a new cause of complaint might arise. For instance, her husband might have been guilty of a new act of cruelty, or if the case had been dismissed previously because she had means of support, she may have lost those means of support shortly afterwards. Therefore it was thought that there should not be a hard and fast provision and that a woman should be able to explain changes of circumstances and obtain leave to institute fresh proceedings before the period of six months had expired.

Mr. Brennan.—What is your view in regard to simplifying procedure in respect of such an appeal? It has been felt by members of this Committee that procedure of applying to a court in general sessions might militate against a speedy decision where the wife had new grounds of appeal.

Mr. Winneke.—I am not advocating the sub-clause, but there is something to be said in favour of such a provision.

Mr. Brennan.—Is there any way of expediting an appeal to a court in general sessions?

Mr. Winneke.—I do not know why there should be any delay because the court is continually in session. I should not think it beyond the province of the judges to ensure that urgent claims could be made immediately. Personally, I would be inclined to allow the application for leave to be made to a court of petty sessions or general sessions.

Mr. White.—Do you recommend that procedure?

Mr. Winneke.—Yes, if the principle of the sub-clause is to remain in the Bill.

The Chairman.—Mr. McLean said that in his experience the occasions on which a wife would immediately commence new proceedings after her claim for an order had been refused were very rare. So far, the courts have been able to deal with such cases, and consequently it might be advisable to omit the sub-clause.

Mr. Winneke.—Yes.

The Chairman.—The Committee discussed with the County Court Judges the question of simplifying applications, and they agreed that such applications might be expedited. Judge Mulvany, however, pointed out that it would be necessary for the court which was hearing the application for leave to know something of the circumstances of the previous hearing, and for that reason there could not be anything in the nature of a quick and formal hearing. It could happen that the application for leave could develop into an argument as to what evidence was given at the previous hearing.

Mr. Winneke.—That would defeat the whole object of the new proposal.

The Chairman.—Yes.

Mr. Winneke.—I would have thought that the view as expressed by the Judge would represent a somewhat gloomy view of what might happen. If I were a judge dealing with an application of this sort, I think all I would be concerned with would be whether the appellant legitimately had some new ground, which she did not previously have, on which to base her claim for an order. If she genuinely had new grounds on which to apply for an order, she would be granted leave for another hearing.

The Chairman.—I think Judge Mulvany thought that the court would be involved in a long argument as to what happened at the previous hearing.

Mr. White.—Do members of the Committee who are legal practitioners, know of cases which would come within this category that we are now discussing?

Mr. Winneke.—It is many years since I have been concerned in the maintenance jurisdiction, but in the old days there were cases in which it was thought that some wives were a bit hard on their husbands and were chasing them around. "Hell has no fury like a woman scorned".

Mr. Brennan.—Furens quid femina non possit.

Mr. Winneke.—In the Landlord and Tenant Act of 1948, No. 5264, there is a provision similar to sub-clause (2) of this Bill. I refer to section 43 which provides that in cases where a lessor has brought proceedings for eviction and his application has been refused, he cannot again institute proceedings within six months, without the leave of the court. That section is simpler than the provision in the Bill. It is simpler in two respects, because it provides that the Court of Petty Sessions may grant leave for a further application, and it also stipulates that the Court can grant leave at the same time as it refuses to make an order in favour of the lessor. It may be that the application had to be refused on technical grounds. If it is desired to retain this sub-clause in the Bill, I would suggest two things: one is to include the Court of Petty Sessions as well as the Court of General Sessions as being competent to grant leave.

Mr. White.—That is for the purpose of expediting the application?

Mr. Winneke.—Yes. It seems to me that either court would provide a sufficient safeguard against the danger which the sub-clause is apparently designed to avoid. My second suggestion is that there should be included a provision to this effect: "without the leave of a Court of Petty Sessions or a Court of General Sessions first obtained on an *ex parte* application."

Mr. White.—Would Mr. Winneke be good enough to amplify that suggestion?

Mr. Winneke.—There are two sorts of applications; one is the application which can be heard only in the presence of both parties. That is the ordinary type of application. The other type of application is that which is known as an *ex parte* application, which can be heard without it being necessary for the other party to be present. I think it would be quite sufficient if a provision were included in the Bill to provide that, if an applicant's case was heard and dismissed and if later on appeal to General Sessions it was again dismissed, it would be quite sufficient for the applicant to be heard *ex parte,* without the husband being called up again. Then, the wife could state to the Court of Petty Sessions or to the Court of General Sessions that she had some new ground on which she desired to base a new claim. If that procedure were adopted it would obviate a case being turned into a legal fight between lawyers.

Mr. Brennan.—It would be necessary that it be made a show-cause affidavit application.

Mr. Winneke.—All that the wife would then require to do would be to make an affidavit to prove, for instance, that since her case had been dismissed she had found it necessary to spend the £100 that she had in the bank, and because of which her claim had been dismissed, to meet medical expenses in connection with the illness of her children.

Mr. Pettiona.—If that were done, would it not be complicating the procedure? This sub-clause relates to an appeal from a refusal by the Court of Petty Sessions to grant an order. The appeal is then made to a Court of General Sessions. Is the suggestion that there should be put back into the Bill a provision that an application for leave must be made to the Court of Petty Sessions or to the Court of General Sessions?

Mr. Winneke.—I do not think that the difficulty that Mr. Pettiona has in mind would arise. In the first place, a woman would bring her case for maintenance before a magistrate. The magistrate might consider that she has not a good case and would dismiss her application. The woman then appeals to the Court of General Sessions against the magistrate's refusal to make an order. After hearing her case, the Court of General Sessions also dismisses her claim.

The Chairman.—It is a re-hearing.

Mr. Winneke.—It is a complete re-hearing. Unless an appropriate provision is included in the Bill she could, the day after her case was dismissed, go to the Clerk of Courts in the next suburb and issue a new maintenance summons and thus start all over again. For instance, she might start the original proceedings in the Court of Petty Sessions at Richmond. Her case might be dismissed by the magistrate. She might then appeal to the Court of General Sessions in Melbourne. The judge might agree with the magistrate's decision and tell her that she has no claim. The next week she could shift to Caulfield, or any other suburb, and issue a new maintenance summons.

Mr. Pettiona.—Your suggestion is that there should be included in the appropriate place the words "without leave of a Court of Petty Sessions or a Court of General Sessions first granted"?

Mr. Winneke.—Yes. It might happen that a month after a woman's appeal had been dismissed she might have new grounds on which to apply for a maintenance order. All that the new provision would mean is that before she could issue her next maintenance summons, she would have to appear before a magistrate—or, if she preferred, a judge in general sessions —and prove that since her last appeal had been dismissed new circumstances had arisen, which justified her in issuing a new maintenance summons.

The Chairman.—The aspect which worries me is that there should be any restriction imposed on a wife in taking proceedings when her husband has an absolute right to apply for a variation of an order in the same court the day after his appeal has been dismissed.

Mr. Winneke.—I would say that the awarding of costs against the husband is a real deterrent in his case. That is a deterrent that does not apply in respect of the wife. Generally, a wife does not apply for maintenance if she has means, and therefore the law places no sanction on her for vexing her husband from place to place; but a man is restrained, because if he chooses to take legal action without having a proper foundation for the case, costs will be awarded against him and they can be recovered. That is the only reason for the difference.

Mr. Brennan.—The penalty for perjury being such as it is, the fact that a woman is required to testify on oath by affidavit or in person is a deterrent against her fabricating or trumping up a new ground for action.

Mr. Randles.—So far we have discussed this matter on the basis that if the wife is ill-treated again by her husband, a fresh cause exists, and she may apply to a court, which will probably grant leave to proceed. Under the proposed amendment, could she be granted the right to appeal on the ground that the case had been badly presented in the lower court?

Mr. Winneke.—If a woman applies to a court of petty sessions and the solicitor representing her bungles the case, with the result that the application is dismissed, she can appeal to a Court or General Sessions and have a complete re-hearing.

The Chairman.—If a court, on an *ex parte* application, considered that vital evidence in favour of the wife had not been submitted, it would grant leave to appeal.

Mr. Winneke.—In my opinion, there is justification for including in the Act such a provision as that now being discussed. Whether it is really necessary is a matter of policy upon which doubtless the Committee will make a decision. If such a clause is included, I suggest that it should provide for an application to be made either to a court of petty sessions or to a court of general sessions, and that leave must first be obtained on an *ex parte* application before new proceedings can be commenced. It is desirable to prevent the proceedings from developing into a real legal fight.

Mr. Brennan.—There should be an expeditious hearing of the case.

Mr. Pettiona.—Does Mr. Winneke also suggest that a similar amendment should be made to sub-clause (3) of clause 5, to permit application to be made to a court of petty sessions?

Mr. Winneke.—No. Sub-clause (3) is directed to an entirely different subject matter. Its purpose is to enable an applicant to make a second application—on this occasion to a higher court. It is an appeal provision in itself.

The Chairman.—Having heard all the evidence on this matter, the Committee must make a decision on it. I shall ask Mr. Winneke whether he would like to comment on Judge Book's memorandum regarding the proposed alteration of the law on the question of taking into account the wife's earnings in the making of a maintenance order.

Mr. Winneke.—I consider that the amendments outlined in Judge Book's last memorandum will be valuable. I was not unduly favourable to this aspect of the Bill, as originally drafted. It seemed to me that to grant a court unfettered discretion to disregard the woman's earnings was to make a fundamental change in the policy of the maintenance legislation. Hitherto, in determining whether an order should be made, and, if so, the amount of it, the legislation has proceeded on the basis that the wife's personal earnings are to be disregarded. I thought that the proposed alteration was too big a step to take at one time. I was always more favourably disposed towards the inclusion of a provision such as is now proposed in the amendments suggested by Judge Book. In my opinion, if they are adopted, it will be clear that, when considering whether an order should be made, or how much it should be, ordinarily a court will disregard the wife's personal earnings. If there are special reasons, the court will take those earnings into account. The suggestion will overcome the tendency to place undue emphasis upon the earnings of the wife. I recommend the adoption of this proposal in lieu of the provision in the Bill.

The Chairman.—In clause 5, provision is made for an appeal to general sessions within seven days, or such further time as the court may allow. The Committee has been concerned about limiting the time of such actions, particularly as holidays appear to be occurring more frequently now, and also because only a few offices are open on Saturday mornings. It has been suggested that the limit should be increased to fourteen days.

Mr. Winneke.—I think that is an excellent suggestion. I have taken a deep interest in the Bill, and when it is studied in the light of the Committee's recommendations, it will be a welcome measure of law reform in Victoria.

The Committee adjourned.

THURSDAY, 14TH MAY, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. J. M. Rodd (President) and Mr. T. A. Pearce (Member of the Council) of the Law Institute of Victoria were in attendance.

The Chairman.—This Committee has under serious consideration the proposals contained in clauses 2 and 4 of the Maintenance (Amendment) Bill. I shall be pleased to hear any comment which Mr. Rodd may care to offer.

Mr. Rodd.—I have attended this morning for the purpose of meeting members of the Statute Law Revision Committee and I should prefer to hand over detailed comment on the Bill to Mr. Pearce.

The Chairman.—Would you please proceed, Mr. Pearce?

Mr. Pearce.—I have before me a copy of the memorandum prepared by His Honour Judge Book, which I have perused carefully. I direct attention first to the interpretation of "means of support" contained in sub-clause (1) of clause 2 of the Bill. It states—

> "Means of support", in respect of a wife or children, means lawful and adequate means of support, having regard to the financial position of the husband or father and to the accustomed condition in life and the financial position of the wife or children, but disregarding any moneys which the wife is earning or is capable of earning by her own personal exertion.

Accordingly, if a wife is found to be without means of support apart from her earnings, a court can make an order for such a sum—

> "as they consider proper, having regard to her or their accustomed condition in life, to her or their financial position at the time of the hearing including (without limiting the generality of the foregoing) any moneys which she is then earning, and to his ability to pay".

I take it that if a wife who had been deserted was earning, say, £15 a week, and her husband was earning, say, £10 a week, a court, when making an order, would take those factors into consideration. In my view, one of the most important aspects is that where a wife, who, by her own industry, has accumulated a substantial sum of money and has become unemployed, may be called upon by a court to use her accumulated earnings for the support of herself and her children, should she be deserted by her husband. In other words, a court may decide that the wife is not without means of support until all her accumulated earnings have been dissipated. I consider that the proposal submitted by His Honour Judge Book to omit from clause 2, in the interpretation of "means of support" the words "is earning or is capable of earning by her own personal exertion" and inserting the words "has earned is earning or is capable of earning by her own personal exertion and any savings arising from such earnings" will meet the position. As a result of that amendment, a wife may accumulate earnings, which a court in deciding what sum of money shall be paid to her as maintenance may disregard.

The Chairman.—In other words, there will be no penalty upon the thrift of the wife.

Mr. Pearce.—That is so. This morning I discussed with Mr. Rodd the position that could arise if a wife, before her marriage, had a legacy left to her, or, after her marriage had saved a sum of, say, £300. In the past, the situation has been that such a wife would

not be awarded an order for maintenance because she would be considered to have means of support. Mr. Rodd has authorized me to submit a proposition in respect of that aspect and, with the permission of the Committee, I shall read an extract from the book *Maintenance of Deserted Wives and Children* by J. C. Litherland, a member of the Bar of New South Wales. I shall commence at page 188, under a section which is headed "A wife, although working and earning, may be left, in fact, without means of support."—

> Even though a wife has a separate estate in the nature of property, her husband may still be liable for necessaries supplied to her. She may refuse to contribute any part of her independent private means towards the common expenses of the house, and she is entitled to accumulate her means for her own personal benefit. It follows, therefore, that the possession of a private income by the wife does not exonerate the husband from the discharge by him of his common law duty to support and to provide for her. He still remains liable for any necessaries supplied to her and he cannot escape his duty by saying "my wife has ample private means". For example, a man is not at liberty to say: "Although I am an habitual drunkard, and although I have not discharged my duty and provided for you and my family, yet as you have private means, I am exonerated from the discharge of that duty and I am at liberty to leave you to struggle on with such means as you possess, and to maintain the home at your expense, leaving me free to squander all my means in drunkenness and dissipation." If this contention was a valid one, it would mean that a husband would be free to throw his wife and child upon the charity of others, and to assert that because she is supported by private or public charity, *ipso facto*, he has not left her without means of support; or it would mean that a capable woman, who is able to and does earn her own living, cannot be left by her husband without means of support, or that a poor woman, who earns a small wage in some poorly paid occupation, has private means of her own, and is not left by her husband without means of support. Merely to cite such examples provides an adequate answer to such a fallacious argument.

That extract should be taken into consideration when determining whether or not the possession of private property should deprive a wife entirely of the right to be granted a maintenance order if her husband deserts her.

Mr. White.—What is the position in New South Wales?

Mr. Pearce.—I think it is the same as that in Victoria.

The Chairman.—Have you any suggestion to offer as to how the difficulty can be overcome? This Committee is in a dilemma. It is agreed generally that a court should be enabled to have some regard to the financial position of the wife. A strong recommendation in that regard has been made by Judges and by Mr. McLean, Senior Stipendiary Magistrate.

Mr. Pearce.—I can see no way out of the difficulty other than to extend the ambit of the provisions in paragraph (*a*) of clause 4. I find it difficult offhand to draft a provision that would meet the position but I would say that perhaps, in general terms, if the court was given discretion to consider such matters, and it was not bound by legislation to refuse a maintenance order if a wife had means of support apart from her own earnings, the position would be assisted.

Mr. Brennan.—Would not the situation be met by the following words contained in the amendment to sub-paragraph (iii) of paragraph (*a*) of clause 4 proposed by His Honour Judge Book:—

> unless in the special circumstances of the case the court or justices think it proper to take those moneys and savings into consideration.

The Chairman.—That provision relates to personal earnings only, whereas Mr. Pearce has in mind a legacy. On behalf of the Committee, I suggest that Mr. Pearce and Mr. Rodd review this aspect in the light of the amendment suggested by His Honour Judge Book, and then make a suggestion.

Mr. Rodd.—The position seems to pose a rather difficult drafting problem, which might need some thought and consideration.

The Chairman.—The court still has discretionary power.

Mr. Pearce.—That is so as regards earnings but not as to accumulated savings of a wife apart from her earnings.

Mr. Pettiona.—The court is not bound to take into consideration any other assets at all.

Mr. Pearce.—It does not follow that the court will necessarily make an order.

Mr. Brennan.—The court may reject the application of a wife if she has independent means, such as rents obtained from the letting of flats.

Mr. Pearce.—That is so. I am presenting the proposal that where a wife has a small legacy of say £200 or £300, the court would not necessarily make a maintenance order in her favour because it could not be held that she was without means of support.

Mr. Ludbrook.—I should like adequate consideration to be given to this aspect because I do not desire that deserting husbands should be given any opportunity to disregard their responsibilities.

The Chairman.—The definition of "means of support" contained in clause 2 of the Bill is to the effect that "means of support," in respect of a wife or children, means lawful and adequate means of support, having regard to the financial position of the husband or father and to the accustomed condition in life and the financial position of the wife or children, but disregarding any moneys which the wife is earning or is capable of earning by her own personal exertion. Would it not follow that the wealthy husband who deserts his wife, who has a legacy, would probably be liable to pay maintenance? Such a wife would be without means of support, having regard to the financial position of the husband, the financial position of herself, and her accustomed condition in life?

Mr. Pearce.—That appears to be a sound argument.

The Chairman.—A poor husband may be in a different position. For instance, a husband who is earning from £12 to £15 a week may desert his wife who has a legacy of, say, £300. The court may decide that, having regard to the position of the husband and that of the wife, as well as the accustomed position in life of the wife, she could maintain herself and her family out of her legacy.

Mr. Pearce.—That is a matter that has yet to be decided judicially, although the argument seems to be sound. In the past, however, magistrates have tended to the view that if a wife had money or property of any kind, the ability of the husband to pay need not be considered. Within the last two or three years there was an extension of the law by the decision given by Mr. Justice O'Bryan in the case of *Ploog* v. *Ploog*. In that case, the wife had an interest in a house in which she lived, and she also owned the furniture. A Judge in the Court of General Sessions decided that the wife had means of support because of her interest in the house and the furniture in it.

Mr. Randles.—Did the wife own a house other than that in which she was living?

Mr. Pearce.—No, it was the house in which she was living.

Mr. Randles.—In other words, the wife owned the matrimonial home.

Mr. Pearce.—The home was that where she was living with the children. It was not an income producing house; nevertheless the Judge decided that the wife had means of support. On a case stated, which was heard, I think, by Mr. Justice O'Bryan, His Honour decided that the house was used by the wife and children and that it and the furniture were not means of support within the meaning of the law. He made an order accordingly. The position that now obtains is that if a wife has a house and furniture which she is using for her own purposes the court will make an order, provided that she has no other means of support.

The Chairman.—His Honour, Judge Book, said that the object of the definition clause is to make it clear that the Supreme Court decision in the case of *Ploog* v. *Ploog* is the law.

Mr. Pearce.—That is quite so, but that case did not go as far as my proposal.

Mr. Thomas.—In your opinion, is the interpretation of "means of support" sufficiently wide, or should it be widened?

Mr. Pearce.—My personal opinion in regard to the proposition I have advanced is that the interpretation would not be wide enough to enable the court to disregard the wife's private means.

The Chairman.—The Committee is most anxious to ensure that as a result of the amendments proposed in the Bill no hardship will be caused to a wife by a deserting husband. Perhaps Mr. Pearce and Mr. Rodd would like to consider this matter further and submit a memorandum to the Committee in the light of the points that have been raised this morning.

Mr. Pearce.—The amendments meet entirely the matters about which we were originally concerned. The other proposition I have advanced, as to a wife's personal means, is a private one, which I mentioned to Mr. Rodd this morning.

The Chairman.—Would you be prepared to submit a memorandum to the Committee on that aspect?

Mr. Pearce.—Yes.

Mr. Randles.—If a husband deserted a wife, the court would not take the home that they were buying, and which was in her name, into consideration in deciding the question of the means of support?

Mr. Pearce.—If she was living in the house, no.

Mr. Pettiona.—Would not there be some difficulty in arriving at a line of demarcation? You are concerned with a person who has received a small legacy, but what would be the position of a millionairess?

Mr. Pearce.—The court would have discretion in the matter. I would say that the court should not be bound to refuse an order if the wife had some means of support which it considered to be inadequate.

The Chairman.—Have you considered the possibility of extending the amendment that has been suggested by Judge Book to provide that the court shall disregard the financial position of the wife and the children, as well as the earnings, unless in special circumstances it is considered necessary to take them into account?

Mr. Pearce.—That would leave it wide open.

The Chairman.—As far as discretion is concerned, but it does get over the problem of the definition of "means of support", which is the basis of jurisdiction.

Mr. Pearce.—That is so.

Mr. Thomas.—The court investigates the means of support and makes a determination according to the information at its disposal. Different factors arise in every case.

Mr. Rodd.—Apparently the legislature will have to decide a rather fascinating question of principle. If the wife has some unexpected windfall—for instance, if she wins Tattersalls—on the eve of the hearing, is that to be taken into consideration? It seems to me that the legislation has to give some guidance to magistrates one way or the other.

Mr. White.—Is not one of the main features to preserve the interests of the wife and family?

Mr. Pearce.—That is my view.

The Chairman.—That is so, yet probably the underlying policy of the Bill is to ensure that the court can take into account all the factors which enter into the financial economy of the home, including the financial position of the wife.

Mr. Pearce.—The Act provides that the court must take into consideration any means that the wife has, apart from earnings. Implicitly, if the wife has means of support apart from her earnings, the court has no jurisdiction to make an order.

Mr. Thomas.—She is not destitute.

Mr. Pearce.—That is so.

Mr. Randles.—At present, a wife must be practically destitute before the court will make an order.

Mr. Pearce.—That is so. If a wife has £200 or £300 she has to dissipate that money before she can approach the court.

The Chairman.—Do you wish to mention any other matters?

Mr. Pearce.—Yes, there are two other aspects. Clause 7, as suggested originally by the Law Institute, is designed to overcome inconvenience and financial responsibility being placed upon a wife. For instance, a couple may be living at Mildura when the husband deserts the wife, who secures an order in the Court of Petty Sessions at Mildura. Force of circumstances may then take her to Melbourne and her husband to Sale. If he neglects to comply with the order of the Court, the only means by which the wife can enforce the order is to take proceedings under the Imprisonment of Fraudulent Debtors Act in the Court of Petty Sessions at Mildura. For that purpose she must first make an affidavit stating the amount due under the order, and then apply to the Clerk of Petty Sessions at Mildura, who issues a summons returnable at that court. Normally, it is necessary for the wife to go to Mildura to obtain relief or to get a direction from the court that unless the husband complies with the terms of the order he shall be imprisoned. The Law Institute considers that procedure should be unnecessary if the parties can find a court mutually more convenient. It has been suggested that if the parties, by some means, consent to some court mutually convenient, the Clerk of Petty Sessions at Mildura should then forward to the agreed-upon court a certificate of his record, which would become the record of that court, and the issues between the parties could then be decided. Of course, that is all right if agreement can be obtained, but if that is not possible perhaps some stipulation may be made that a magistrate can nominate some other court nearer to the wife and of reasonable convenience to the husband where the matter can be dealt with.

The Chairman.—You do not think clause 7 covers the position?

Mr. Pearce.—No, it is inadequate. My reason for saying that is that although the order directing payment of maintenance always provides that the money due to the wife shall be paid by the husband to the Clerk of Petty Sessions, in actual practice husbands very frequently make payments directly to their wives. In such an event the record of the Clerk of Pety Sessions is no guide as to the amount due to the wife, and it is not competent for the Clerk of Petty Sessions to give evidence that the amount of arreas is the amount appearing in the suitors cash book. Again, the matter could be dealt with only by the wife giving evidence as to how much was due.

Mr. Brennan.—That could be made on affidavit, could it not?

Mr. Pearce.—If the court would accept the affidavit.

Mr. Brennan.—As a preliminary to the hearing?

Mr. Pearce.—Yes.

Mr. Pettiona.—Could the difficulty be overcome by a receipt being sent by the wife to the Clerk of Petty Sessions each time she received a payment?

Mr. Pearce.—I fear that, in actual practice, the wife would not do it.

The Chairman.—A problem has been raised for which no solution has been offered.

Mr. Pearce.—The solution I offer is somewhat along the lines of a similar provision contained in the Justices Act. Under that Act, if an order for the payment of a civil debt is secured in a Court of Petty Sessions at, say, Mildura, and the defendant and plaintiff are in Melbourne, application may be made to the Clerk of Petty Sessions at Mildura to forward his record to the Clerk of Petty Sessions in Melbourne, who in turn would make that a record of his court, and the further proceedings could be issued out of his court.

Mr. Thomas.—Would that proceeding be safer than a garnishee order?

Mr. Pearce.—Frequently a garnishee order is useless. For instance, a man may be working on the wharves and it may be possible to garnishee only one or two days' earnings. In my view, garnishee proceedings are not of much use unless a husband is in permanent employment.

The Chairman.—A problem of some magnitude arises. If provision is made that an order shall be transferred to a court convenient to the wife, considerable hardship may be imposed upon her husband.

Mr. Pearce.—I appreciate that aspect.

The Chairman.—Assuming that the husband remained at Mildura and that the wife came to Melbourne instead of proceeding to Sale, the husband would have to come to Melbourne if the order were transferred to that city.

Mr. Pearce.—That is so. A similar situation arises when a wife obtains a maintenance order in Mildura and subsequently comes to Melbourne. Under the conditions that obtain now, if either party desires to apply to the court for a variation of that order, it is necessary to proceed to Mildura to make application to the court. In the book *Maintenance of Deserted Wives and Children* by J. C. Litherland, to which I referred previously, there is a reference to a similar situation in other jurisdictions. I quote now from page 447, under the heading "Variation, Suspension, or Discharge of an Order—Jurisdiction of Magistrates":—

In each jurisdiction magistrates have the power to alter, or to vary, or to suspend, or to discharge a maintenance order. Such proceedings are commenced by an application made for that purpose, and usually the application is heard and determined by the magistrate who exercises his jurisdiction at the place where the original order was made. In some jurisdictions, however, the application may be heard and determined at some other court more convenient to the parties.

The authority for that is—

See *Deserted Wives and Children Act* 1901-1939 (N.S.W.), s. 21(2). If the parties agree upon a place for the hearing, or if the magistrate considers another place more suitable for the hearing, it can be heard at that place. See also *Child Welfare Act* 1939, as amended to 1941 (N.S.W.), s. 116(3).

I had in mind something broadly along the lines suggested by that text.

The Chairman.—Is there any provision whereby maintenance orders may be transferred from one court to another?

Mr. Pearce.—Not within the State, but the Interstate Destitute Persons Relief provisions of the Maintenance Act apply interstate. There, the procedure is for a wife to make her complaint in the State where the order was made, and the officer of the court can transmit the record to the officer of the court in another State, and a person, who is called "The Collector", then undertakes the collection of arrears by calling upon the husband to pay. He has very wide powers in enforcing that order; he can himself bring the husband before the court to explain why he did not comply with the order.

The Chairman.—The difficulty would be overcome entirely if all payments were made to the Clerks of Petty Sessions.

Mr. Pearce.—That is so.

Mr. White.—If a man shifted from Mildura to Sale, that would be very awkward for him.

The Chairman.—Yes, but provision is made in clause 7 for the Clerk of Petty Sessions to enforce the order. If the husband wanted to enter a defence, he would have to go from Sale to Mildura, but that would be his responsibility.

Mr. Rodd.—That is not an unreasonable obligation to place on a man who has defaulted in his payments.

The Chairman.—If the suggestion made by Mr. Pearce is adopted a wife would be given the right of bringing her husband from his job in Sale to Mildura to defend the order.

Mr. Pearce.—That is true.

The Chairman.—It may well be that by removing one evil a greater one will be created.

Mr. Rodd.—Again, is that too great an obligation to place upon a man who has not made his ordered payments?

Mr. Pearce.—The position may well be, of course, that if a man residing in Melbourne was in fact unable to comply with a maintenance order made in Mildura and proceedings were taken against him under the Imprisonment of Fraudulent Debtors Act, he might not have the means of getting to Mildura to explain to the court that he was not able to comply with the terms of the order, and would find himself commited to prison.

Mr. Brennan.—Would the position be met by the Clerk of Courts in the district in which the husband was actually working or residing being given the power to garnishee the wages of the husband without any necessity on the part of the wife to take out garnishee proceedings?

Mr. Pearce.—Great administrative difficulties would be created. Members of the Police Force are no longer charged with the obligation of effecting service of

summonses, and it is difficult to know how Clerks of Petty Sessions could be given the responsibility of providing for the service of the necessary documents. I think that would be imposing too much on Clerks of Petty Sessions. I have discussed aspects of this matter with Mr. Goss, the Clerk of Petty Sessions at Melbourne, and he sees very great difficulty in some of my propositions. For instance, clause 7 states, *inter alia*—

> the Clerk of the Court of Petty Sessions by which the order was made or in which it is recorded may . . . . take all steps necessary or expedient to enforce the order on behalf of that person.

The Chairman.—Mr. McLean, S.M., has pointed out that that provision does not exclude a wife's ordinary right to take proceedings.

Mr. Pearce.—That is so. I have discussed this matter with members of the legal profession who are frequently in police courts conducting cases relating to maintenance. I have had the experience also, on on or two occasions, of persons who had been living in a country district when an order was made and who had come to Melbourne subsequently, being compelled to return to the country town in which the order was made to make application for its enforcement. It should be possible to overcome that difficulty.

Mr. Chairman.—I am attracted to the suggestion that provision should be made for transfer of the order to a court which is more convenient to both parties.

Mr. Pearce.—Perhaps that could be done by application to the magistrate and by submission of the proper material. An order could then be made accordingly.

The Chairman.—Do you favour the retention of clause 7?

Mr. Pearce.—Yes, but I should prefer to have an additional provision to the effect that upon application to the magistrate at the court where the order was made—by affidavit if need be—on notification to the other party, the magistrate shall have power to transfer the judgment of that court to some other court.

Mr. Rodd.—I shall read now a paragraph from a letter that was sent to the Attorney-General by the Law Institute of Victoria on 27th of September, 1949:—

> My Council recommends that an appropriate amendment be made either to the Maintenance Act or the Justices Act to permit of a Maintenance Order being transferred from the original court to the Court of Petty Sessions at Melbourne or to the Court of Petty Sessions nearest to the residence of the complainant whichever is more easy of access to the defendant. It is suggested, however, that as in practice a Warrant of Distress is rarely issued for the enforcement of a Maintenance Order the pre-requisite of an unsatisfied Warrant of Distress as provided in the *Justices Act* 1935 should not be necessary in the case of a Maintenance Order.

I think that meets the position as I desired to put it to the Committee.

Mr. Pettiona.—Has the Law Institute of Victoria considered sub-clause (2) of clause 5, relating to appeals?

Mr. Pearce.—Yes. If a Court of Petty Sessions refused to make an order in favour of a wife, or dismissed her application for maintenance, the previous position was that before she had a right to appeal, she must make an affidavit and seek leave to appeal.

Mr. Pettiona.—Is the Law Institute of Victoria in favour of the proposals contained in sub-clause (2) of clause 5?

Mr. Pearce.—Yes, very much so.

The Committee adjourned.

APPENDIX A.

MEMORANDUM BY HIS HONOUR JUDGE BOOK.

I have conferred with Judge Mulvany regarding the two matters raised by the Statute Law Revision Committee when we were giving evidence before it on the Maintenance (Amendment) Bill.

The first matter was the question of the reference to the earnings of the wife in the definition of "means of support" in clause 2 of the Bill and in clause 4 (*a*) (iii).

The second matter was the general form of sub-paragraph 4 (*a*) (iii) with regard to the direction to the Court that it could take into account the financial position of the wife when considering the making of a maintenance order.

In this regard we considered particularly the proposal made by the Committee that it should be made clear that the Court could disregard her earnings and savings from earnings unless the Court thought in the special circumstances of the case that they should be taken into account. We conferred with Mr. Lynch, Assistant Parliamentary Draftsman, and now put forward for the consideration of the Committee the amendments of the Bill which, in our opinion, will meet the suggestions of the Committee. These amendments are as follows:—

Clause 2, sub-clause (1), lines 10 and 11, omit "is earning or is capable of earning by her own personal exertion" and insert "has earned is earning or is capable of earning by her own personal exertion and any savings arising from such earnings."

Clause 4, paragraph (*a*), sub-paragraph (iii), lines 40 to 43, omit words beginning "including" and ending at the end of the paragraph and insert "and to his ability to pay, and in ascertaining the financial position of the wife or children for the purposes of this paragraph the court or justices shall disregard any moneys which the wife has earned is earning or is capable of earning by her own personal exertion and any savings arising from such earnings unless in the special circumstances of the case the court or justices think it proper to take those moneys and savings into consideration."

APPENDIX B.

MEMORANDUM BY MR. C. McLEAN, CHIEF STIPENDIARY MAGISTRATE.

I desire to advise the Statute Law Revision Committee of two matters in connexion with clause 7 of the Maintenance (Amendment) Bill which I feel were not sufficiently stressed in my evidence given to the Committee.

The provisions of clause 7 will not mean that the Clerk of Petty Sessions will be the only person to enforce maintenance orders. I anticipate that in ordinary cases the complainant will exercise her rights to enforce the order as now but that in cases where the complainant has moved away from the district in which the order was made the new procedure will be invoked.

Further, the provision will remove existing difficulties in regard to the enforcement of an order for the maintenance of children after the death or disappearance of the complainant. Though the Act makes provision for a "reputable person on behalf of a wife or mother" to obtain the order in the first instance, none is made for enforcement where the complainant is no longer available. For example, cases occur where the mother of an illegitimate child marries, and the child is left in the care of the grandmother.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1952-53

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

PROPOSALS CONTAINED IN THE

TRUSTEE BILL

TOGETHER WITH

MINUTES OF EVIDENCE AND APPENDICES

Ordered by the Legislative Council to be printed, 20th October, 1953.

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2916/53.—D.—No. 3.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

MONDAY, 22ND DECEMBER, 1952.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

TUESDAY, 10TH MARCH, 1953.

14. TRUSTEE BILL.—The Honorable W. Slater moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

MONDAY, 22ND DECEMBER, 1952.

38. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Mitchell, Mr. Oldham*, Mr. Pettiona, Mr. Randles, Mr. Rylah, and Mr. White (*Allendale*), be appointed members of the Statute Law Revision Committee (*Mr. Cain*)—put and agreed to.

* Died 2nd May, 1953.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of the *Statute Law Revision Committee Act* 1948, have the honour to report as follows :—

1. The Statute Law Revision Committee have considered the Trustee Bill—a Bill to consolidate and amend the Law relating to Trustees—which was initiated and read a first time in the Legislative Council on the 10th March, 1953. The same day the debate on the second reading was adjourned and the Legislative Council referred the proposals contained in the Bill to the Statute Law Revision Committee for examination and report. The Bill, together with a Comparative Table showing how existing enactments have been dealt with and indicating the extent to which the existing law was proposed to be amended, was circulated to all Members of Parliament.

2. The Bill was prepared as the result of reports by a special sub-committee of the Chief Justice's Committee on Law Reform, and incorporates the *Trustee Act* 1928 with amendments and modifications made by eleven Acts which have been passed since 1928, as well as amendments and suggestions recommended by the Chief Justices' sub-committee.

The existing law in Victoria follows the English Trustee Act of 1925, and most of the alterations now suggested by the Chief Justice's sub-committee involve the introduction into Victoria of a number of provisions from New South Wales legislation, which has been found in practice more suitable for the administration of trusts in this country.

3. Appended to this Report is the evidence given by the following witnesses who appeared before the Committee :—

Mr. R. C. Normand, Parliamentary Draftsman.
The Honorable Mr. Justice Dean, Chairman of the special sub-committee of the Chief Justice's Committee on Law Reform.
Mr. A. D. G. Adam, Q.C.
Mr. J. M. Rodd, President
Mr. R. N. Vroland, Chairman of the Legislation Committee
Mr. R. J. McArthur, Member of the Legislation Committee
Mr. A. H. B. Heymanson, Secretary
Mr. A. A. Stewart
} Members of the Law Institute of Victoria.
Mr. C. J. Gardner, Public Trustee.
Mr. W. Sydney Jones, General Manager of the Trustees Executors and Agency Company Limited.

The Committee conferred on several occasions with Mr. H. A. Winneke, Q.C., Solicitor-General, who tendered valuable advice.

A report of the Council of the Law Institute of Victoria on the Bill and memoranda by Mr. Justice Dean, Mr. W. J. Taylor, Registrar of Titles, Mr. R. C. Normand, and Mr. A. A. Stewart appear as appendices to this report.

4. The Committee have examined the proposals in the Bill and, subject to the amendments hereinafter recommended, approve of the consolidation and proposed changes in the law. They are of the opinion that the Bill is a most desirable measure of law reform which will simplify the existing law and facilitate the administration of trusts in this State.

5. The Committee in their examination and study of the Bill gave particular attention to the new proposals. Substantive changes proposed in the existing trustee law, along with the amendments recommended by the Committee, are referred to in the following survey.

PART I.—INVESTMENTS.

CLAUSES 4–12.

6. *Clause* 4.—For clarity and ease of reference it is recommended that sub-clause (1), paragraph (*k*), line 16, be amended by the addition of the words " or in debentures or debenture stock issued by the Gas and Fuel Corporation of Victoria ". In addition, a special reference to preference shares of the Corporation should be inserted in a footnote, so that trustees will be put on inquiry into the qualifying and restricting provisions relating to these preference shares, e.g., restrictions on transfer, and limitations on the liability of the State in respect of the payment of preference dividends.

After this Bill was introduced the *Trustee (Amendment) Act*, No. 5670, which authorized additional trustee investments, was passed, and as a result the following amendments are necessary :—

In sub-clause (1), page 7, after paragraph (*l*) there shall be inserted the following paragraph :—

" (*m*) in debentures issued by the Metropolitan Fire Brigades Board or the Country Fire Authority ; ".

In sub-clause (1), page 7, line 19, omit " (*m*) " and insert " (*n*) ".

In sub-clause (1), page 8, line 1, omit " (*n*) " and insert " (*o*) ".

In sub-clause (2), page 8, line 11, omit " (*m*) " and insert " (*n*) ".

First Schedule, at the end of the Schedule insert—

" 5670 | *Trustee (Amendment) Act* 1953 | The whole."

One of the most important alterations of the existing law is found in sub-clauses (3) and (4) which include, as authorized trustee investments, the use of any trust funds in the hands of a trustee for the purchase of a dwelling-house for any beneficiary under the trust to reside in, and the retention of an existing dwelling-house for a similar purpose. The absence of these powers has been known in practice to cause serious inconvenience and even hardship, and subject to the following comments and recommendations the Committee strongly approve of their adoption.

Two amendments are recommended to sub-clause (3) :—

Paragraph (*a*), page 8, line 19, after " land " insert " in fee simple ".

Paragraph (*b*), page 8, lines 32–33, omit the words " person whom he reasonably believed to be a competent valuer " and insert " valuer, being a sworn valuator appointed under section fourteen of the *Transfer of Land Act* 1928, ".

The first amendment will ensure that the purchase is confined to freehold land and the second gives " valuer " a more definite meaning.

It was suggested to the Committee that a trustee should only be empowered to purchase a dwelling house in a good state of repair, but the Committee after deliberation rejected the proposal on the grounds that the state of repair of the house would be reflected in the price, and such restriction would be an unnecessary limitation on the field of purchase. Moreover, such a condition could operate to debar the purchase of premises which, after repair, would be particularly suitable for the purposes of the trust estate. If such a condition is attached to sub-clause (3) it would be logical to attach it also to sub-clause (4), but in the latter case it could well lead to the loss of an estate residence, the retention of which in appropriate circumstances is one of the main objects sought to be achieved.

The Committee rejected a proposal that a trustee should be allowed to pay 10 to 15 per cent. in excess of the valuation, if deemed desirable, for such a house, on the grounds that the proposition appears to be fundamentally unsound and that the present discrepancy between values and prices may disappear within a few years.

The Committee also considered a suggestion that a dwelling house so purchased should not be sold during the life of the beneficiary without his consent. The Committee decided that such an amendment is not desirable, as it would unnecessarily hamper the administration of the trust and could, for example, cause difficulty where the dwelling house has deteriorated and no funds are available for its repair. In addition, it would involve the retention of the dwelling house where the beneficiary had voluntarily abandoned it but had refused to consent to its sale.

It was also suggested to the Committee that the provisions relating to the power of a trustee to invest moneys on mortgage of real estate should explicitly ensure that such investment should be limited to registered first mortgages. The Committee, however, accept the view that such a provision is unnecessary, as a trustee who invested trust funds in an unregistered mortgage of land under the Transfer of Land Act would be clearly in breach of trust, and consider that it would be anomalous to limit the power of investment to registered mortgages under that Act and yet permit unregistered first mortgages of land under the general law.

A further suggestion which emanated from the report of the Law Institute proposed, with certain safeguards and restrictions, the extension of the field of authorized investment under clause 4 to cover industrial shares and investment in the purchase of land in use as residential, trade, and industrial or business premises.

Limited evidence of a conflicting nature was given on these questions and the Committee consider the proposals, opening up as they do a very wide field of enquiry, should be the subject of separate investigation and report. Such enquiry should not be permitted to delay the presentation of this report and the passage of the Bill into law.

In their consideration of the range of trustee investments, the Committee had before them the report of the Charitable Trusts Committee, commonly known as the "Nathan Report", which was presented to the British Parliament in December, 1952. The observations in Chapter 8 thereof were particularly pertinent to the above matters.

7. *Clause* 7.—The Committee recommend that in sub-clause 2, page 10, lines 7 and 8, the words " paid out of " be deleted and the words " charged against " substituted therefor. This amendment will ensure that fees payable to the bank on bearer securities lodged for safe custody are charged as they should be against income and yet can be paid immediately out of any of the funds of the trust. It will not alter the ultimate incidence of the charge but will assist in appropriate cases to facilitate payments and the administration of the trust.

8. *Clause* 10 is a new provision and covers cases where, provided the trustee has sufficient security, he may release part of the property subject to a charge or mortgage.

The Committee recommend in sub-clause (1), paragraph (*b*), lines 22–24, the omission of the words " and the net moneys so received shall be credited as a part payment of the mortgage debt ".

General principles of law would require moneys so received in part payment to be applied in the manner directed by these words. Where a mortgage debt consisted both of principal sum and arrears of interest, the law would require as between tenant for life and remainderman, moneys received in part payment to be apportioned as between principal and interest. The words in question do not appear in the corresponding section of the New South Wales Act, and as they neither add to nor detract from the provisions of the general law, their omission is recommended in order to prevent possible confusion arising from their retention.

9. *Clause* 11.—The Committee are of the opinion that sub-clause (3), should be amended as hereunder to widen the clause and enable trustees to concur in schemes or arrangements of companies, in which they hold securities, for the vesting in shareholders of bonus shares or specific assets either in continuance of the company, or in a winding up of the company, or in a reduction of the capital of the company.

Sub-clause (3), paragraph (*a*), page 12, line 12, omit this paragraph and insert :—

" (*a*) for or arising out of the reconstruction reduction of capital or liquidation of, or the issue of shares by, the company ; ".

Sub-clause (3), page 12, lines 22–24, omit " of any denomination or description of the reconstructed or purchasing or new company " and insert " or other property of any denomination or description in addition to or ".

Sub-clause (3), page 12, line 28, after " securities " insert " or other property ".

10. *Clause* 12.—The Committee considered a recommendation that a limit of two years should be placed on the time within which trust moneys may be deposited pending the seeking or negotiation of an investment. If the clause were so amended there would be consistency with the time limit placed on trust money held pending distribution, but the Committee feel that such an amendment might involve the assumption that a trustee was entitled to allow moneys to remain idle for such a period, and therefore do not recommend its adoption.

PART II.—GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES.

Clauses 13–39.

11. *Clause* 14.—This clause is new in that it applies to a trust or power for sale where all the beneficiaries are of full age and under no disability. In such a case the existing law requires the consent of every beneficiary to be obtained, so that even one beneficiary with a comparatively small interest can prevent an obviously desirable sale. This can give and has given rise to serious conveyancing difficulties which it is the object of the new provision to remove. During the Committee's deliberations it was suggested in evidence that there was objection to this clause but such objection was withdrawn after investigation of its operation in New South Wales and the Committee believe that the proposal contained in the clause is desirable.

12. *Clause* 17 contains a new and important provision which allows land subject to a trust to be sold on deferred payment terms. Under ordinary circumstances land sold on long terms commands a better price and at the same time provides a sound investment. Conflicting court decisions have been given as to whether trustees could sell land on deferred terms, and this clause clarifies the position with appropriate protection to the beneficiaries.

A suggestion to extend the clause to cover all property was rejected, as property other than land as a security is often of a hazardous nature, and in general practice shares in companies are not sold on terms.

13. *Clause* 19.—The Committee are of the opinion that sub-clause (1), paragraph (*g*), page 19, lines 19–22, should be omitted and the following paragraph inserted :—

> " (*g*) by writing waive or vary any right exercisable by him or them which arises from a failure to comply at or within the proper time with any term of any agreement for sale mortgage lease or other contract ; or ".

In its present form the sub-clause is considered too restrictive and the power given to a trustee to waive any right arising from failure to comply with any term of a contract of sale or mortgage should be extended to apply to any agreement for sale, mortgage, lease, or other contract.

14. *Clause* 23. The following amendment of sub-clause (3) is recommended :—

> Sub-clause (3), line 10, omit " the income of the property concerned or out of " and insert " any moneys subject to the trust but in the accounts of the trustee shall be charged first against the income of the property concerned and secondly against ".

In its amended form provision is made for the payment of insurance premiums from the trust assets if necessary and the same comments apply to this provision as to sub-clause (2) of clause 7, in paragraph 7 of this report.

15. *Clause* 25.—The Committee recommend that the following amendment be made in this clause :—

> Sub-clause (1), page 23, line 2, omit " paid out of " and insert " charged against ".

This amendment applies the reasoning given to the amendment of sub-clause (2) of clause 7, to cover charges for safe custody of documents.

16. *Clause* 27.—An amendment similar to the foregoing amendment in clause 25 is recommended in sub-clause (2), line 31, omit " paid out of " and insert " charged against ", and the same reasoning applies to cover, in this case, audit fees.

17. *Clause* 30.—The Committee rejected a proposal to extend the clause to enable a trustee to delegate his trust wherever he may be residing. They consider that to widen the power of delegation in the manner proposed would be inconsistent with the notions of trust and confidence involved in the selection of a trustee, and could well give rise to abuses, with consequent loss of confidence by beneficiaries. Moreover a trustee who finds himself for some reason unable to act can retire.

In sub-clause (4), page 29, line 13, the Committee consider it desirable that the word " thirty " should be substituted for " ten " as it would appear that a period of ten days in which to register a power of attorney for the delegation of a trust is not sufficient.

A further suggestion was considered in this clause in relation to sub-clause (9) to substitute the word " securities " for " stock " in order that, where such a power of attorney operates, a wider application may be given to the provisions protecting any person in whose books the securities are registered. After consideration, the Committee deemed it inadvisable to make such a change as " Stock " as defined in the Bill includes inscribed stock, ordinary stock units, and fully paid up shares all of which are inscribed or registered. The substitution of the word " securities " could prove to be too wide and could be interpreted to include " real securities " thus bringing in land.

The extension to land was considered by the Committee but was rejected after receiving a memorandum on the matter from Mr. W. J. Taylor, Registrar of Titles.

18. *Clause* 31.—This clause is a new provision and defines the power of trustees to make an appropriation of assets to answer the share to which a particular beneficiary is entitled under the deed or will creating the trust.

Under the Administration and Probate Acts power is given to a personal representative to appropriate in such circumstances and this clause extends those provisions to trusts with certain additional rules and safeguards. It is a desirable provision designed, subject to proper safeguards, to facilitate the practical administration of trust estates.

19. *Clause* 33 deals with the power of a trustee to distribute trust funds after giving notice for claims by advertisement. By virtue of this clause a trustee is in certain cases relieved from liability if he distributes after the time specified in the clause has elapsed following the publication of the prescribed advertisement. Although compliance with the clause relieves the trustee of personal liability the claimant is entitled to follow the trust assets into the hands of the beneficiaries.

The Committee examined fully a proposal that certain provisions of the Administration and Probate Acts and Trustee Companies Acts should be imported into the Bill thereby extending to all trustees, where claims are or may be outstanding, the powers which are at present given to personal representatives and trustee companies to distribute funds after giving prescribed notices and after making an application or a report to the Court.

The Committee are indebted to Mr. A. A. Stewart who submitted to the Committee a draft of the proposed new provisions. This draft and the comments of the Parliamentary Draftsman and Mr. Justice Dean on Mr. Stewart's proposals are contained in appendices to this report.

After very careful consideration the Committee accept the view of Mr. Justice Dean that it would be unwise to extend the provisions of section 26 of the *Administration and Probate Act* 1928.

The Committee reject the suggestion that section 4 of the *Trustee Companies Act* 1928 be extended to all trustees on the ground that it contains insufficient safeguards for the protection of claimants who perhaps through ignorance of their rights have failed to prosecute their claims. This view of section 4 is in accordance with opinions expressed by Mr. Justice Dean and Mr. Stewart.

Section 6 of the *Trustee Companies Act* 1944 enables trustee companies in certain circumstances to distribute an estate three years after the date of death without regard to possible claims which may be made by or on behalf of some person who may have survived the deceased. Before making such a distribution advertising is necessary and the circumstances must be reported to the court. The Committee see no reason why such a provision could not be extended to apply to all trustees particularly as provision is made for a claimant who subsequently establishes his right to share in the estate to claim against assets in the hands of beneficiaries.

The Committee, however, considers that it would not be desirable to include such a provision in the Trustee Bill and suggest that further consideration be given to the proposals and particularly to the matter contained in the memorandum of Mr. Stewart when the Administration and Probate Act is next under review. The Committee agree with the Law Institute that all provisions dealing with the rights of trustees (whether they be private trustees or trustee companies) to distribute after notice to claimants should be readily accessible in one Act, and that a uniform type of notice should be prescribed where possible, but consider that such provisions should first appear in the Administration and Probate Act. If it is thought desirable to extend such proposals to trustees generally appropriate action can then be taken to amend the Trustee Act.

In order to extend the application of this clause to permit advertisement in certain country newspapers, which are published neither weekly nor daily, the Committee recommend the following amendment :—

Sub-clause (1), line 16, omit " daily or weekly newspaper published " and insert " newspaper published at least once a week ".

The Second Schedule to the Bill contains a new and simplified form of notice devised by the former Chief Justice, Sir Frederick Mann, for use in connection with this clause.

20. *Clause* 37.—This clause provides for the case where property is held upon trust for a person, whether for a vested or contingent interest, but without express disposition of the intermediate income. It empowers the trustee subject to any prior charges affecting the property to apply the income for the benefit of such person.

The Committee have given very careful consideration to the effect of the decision in *Re Spencer* (1935 Ch. 533) in so far as it affects the powers conferred by this clause, and recommend the following amendment :—

Sub-clause (3), page 41, line 20, at the end of the sub-clause insert :—

" Where in the case of a contingent interest the limitation or trust would, but for the operation of a protective trust (whether created or statutory) carry the intermediate income of the property that limitation or trust shall for the purposes of this sub-section be deemed notwithstanding the protective trust to carry the intermediate income."

This amendment will ensure that where the trust property is held subject to a contingency and a protective trust the intermediate income can be applied for the benefit of the person entitled to the contingent interest. The Committee consider that if this amendment is made it will be unnecessary to alter clause 39 to overcome the decision in *Re Spencer* as it is clear, from the advice tendered to the Committee by the Solicitor-General and the Parliamentary Draftsman, that the difficulty arising from Spencer's case applies with regard to the type of trust referred to in clause 37 and not to a trust of income which is covered by clause 39.

21. *Clause* 39.—This clause deals with the case where an annuity or other periodical income payment is expressly directed to be held on a protective trust and requires a trustee, upon the protective trust becoming operative, to apply the income in the manner set out in the clause. Various suggestions were made to the Committee to extend the provisions of this clause to include the more complicated protective trusts which are often inserted in well drawn deeds. The Committee consider that such amendments would conflict with the basic purpose of this clause which is to provide for simple protective trusts and are not desirable as the present clause is a re-enactment of section 34 of the *Trustee Act* 1928 and is in accordance with English legislation. It does not prevent a person creating a protective trust from introducing into the trust instrument a more complicated set of provisions if he so wishes.

PART III.—APPOINTMENT AND DISCHARGE OF TRUSTEES.

Clauses 40–47.

22. *Clause* 40.—This clause limits the number of trustees of a settlement of land in certain cases to four. The Committee considered the suggestion that, with a view to achieving uniformity, the clause should be amended to extend the limitation on the number of trustees to cover all property. Having regard to the historical background of this provision and to the reasons which led to the introduction of the corresponding English section (which reasons are not applicable in Victoria) the Committee consider that insufficient grounds have been advanced to justify any further limitation being placed upon the right of a person to appoint as many trustees as he may consider necessary or desirable.

23. *Clause* 44.—The substitution of the word " conveyed " for " transferred " in sub-clause (3), line 31, is recommended as " convey " is defined in the Bill to include " transfer " and the wider expression is thought desirable.

24. *Clause* 45.—An amendment for the same reasoning is required in sub-clause (4), page 50, line 33, by the substitution of the word " conveyance " for " transfer ".

25. *Clause* 46 is new and provides that if a person who is by will appointed both executor and trustee thereof renounces probate, or after being duly cited or summoned fails to apply for probate, the renunciation or failure shall be deemed to be a disclaimer of the trust contained in the will, and the person to whom probate or letters of administration is granted will then be deemed to be appointed trustee in his place.

26. *Clause* 47 is likewise new and provides that where a person who is by will appointed both executor and trustee authorizes the Public Trustee or a trustee company to obtain probate or letters of administration, the Public Trustee or trustee company shall be deemed by virtue of the grant of probate or letters of administration to be appointed trustee and the person so authorizing the Public Trustee or trustee company to act is relieved of liability for any breach of trust which may occur.

PART IV.—POWERS OF THE COURT.

CLAUSES 48–70.

27. Under Division 2 of this Part (clauses 51 to 63) considerable re-arrangement of the sections of the 1928 Act has been carried out. These clauses deal with the power of the Court to vest the legal title of property subject to a trust in a person other than the person in whom the title lies at the time of the application to the Court in the cases set out in clause 51. Opportunity has been taken to model the clauses on the New South Wales legislation resulting in a more modern and clearer statement of the law and permitting the elimination of much unnecessary overlapping of the sections of the Act.

28. *Clause* 56.—The Committee recommend that this clause which confers on the Court powers to make a vesting order when a mortgagee has died, be deleted as this is provided for in sub-clause (3) of clause 51. It appeared from the evidence that this clause is unnecessary and was included in the Bill through an oversight.

PART V.—GENERAL PROVISIONS.

CLAUSES 71–78.

29. *Clause* 72.—This clause incorporates in the Trustee Act the provisions of the *Custodian Trustee Act* 1947 which empowers certain charitable organizations to hold trust securities while the conduct of the trust remains in the trustee appointed pursuant to the trust. It was suggested to the Committee that these provisions should be extended to include certain banking and insurance companies as in England, but it was also pointed out to the Committee that in England there are no trustee companies and trustee work is usually undertaken by banking and insurance companies. In the circumstances, the Committee consider that such an extension is not warranted.

30. *Clause* 74.—This clause replaces the *Superannuation and Other Trust Funds Validation Act* 1932 in a new and much wider form and declares that the rule of law known as the rule against perpetuities, which is directed to preventing trusts from continuing for an indefinite period, shall not apply and shall be deemed never to have applied to certain trust funds including superannuation funds. The provision with regard to superannuation funds is limited to cases where the funds are held for widows, children, or dependents of employees.

The Committee are of the opinion that the clause should be amended to extend to superannuation funds where provision is made for other persons nominated by employees. The Committee accordingly recommend the following amendment :—

Sub-clause (1), paragraph (*d*), page 65, line 13, omit the words " of any such persons " and substitute the following words :—

" of any such directors officers servants or employees or for any persons duly selected or nominated for that purpose by any such directors officers servants or employees pursuant to the provisions of such trust or fund ".

31. *Clause* 75.—This clause is a new provision the object of which is to abolish the rule of equity known as the Rule in *Allhusen* v. *Whittell*. Where residuary property is settled upon a tenant for life and remainderman this Rule requires that income arising after the death of the testator shall contribute towards payment of debts and legacies, so that the life tenant receives no more income than the net value of the estate would produce. In practice the Rule requires the application of complicated mathematical formulae in the administration of estates merely to ensure to the remainderman a portion of the income earned by the estate

owing to delay in the payment of debts and legacies. If, as the Committee recommend, the New South Wales precedent is followed and this clause is passed into law, the tenant for life will receive the full net income of the estate pending payment of the debts and legacies, and complex problems of administration will be avoided without any real injustice being done to remaindermen.

In order to make it clear that for the purpose of sub-clause (4) of the clause that " administration expenses " include all death and similar duties payable in connection with the estate the Committee recommend that on page 66, line 11, the words " of a like nature " be omitted and in line 12, after " Victoria " be inserted the words " on or consequent on or arising out of the death of the deceased ".

32. *Clause* 76 is a new and desirable provision and provides that payments received under an insurance policy known as the family protection policy, which provides that upon the death of the person insured the insurance company undertakes to pay income or an annuity to the estate for a stipulated length of time, shall be treated as income.

Courts have held that these payment are part of the capital of the estate and the purpose for which such policies were taken out has been defeated.

In its present form the clause is restricted to policies purchased by a deceased person and the Committee recommend that the clause be amended to cover all policies on the life of a deceased person which provide for annuities, by the following amendments :—

Sub-clause (1), paragraph (*a*), line 23, omit " purchased by " and insert " contributed for or purchased by for or on behalf of ".

Sub-clause (1), paragraph (*b*), lines 28–29, omit " taken out with respect to his life by " and insert " of insurance on the life of ".

Sub-clause (1), paragraph (*b*), line 33, after the word " years " insert " or until a specified date or on the occurrence of a specified event ".

33. *Clause* 77.—This clause extends to private trustees powers already possessed by the Public Trustee and trustee companies to pay money held on behalf of beneficiaries living in another country to a representative official of the country concerned in Victoria.

PART VI.—LIMITATION OF ACTIONS AGAINST TRUSTEES.

Clause 79.

34. *Clause* 79.—This clause relating to limitations of actions against trustees is a reproduction of section 67 of the existing Act.

Mr. Justice Dean drew attention to the unsatisfactory operation of this section and the desire of the Chief Justice's sub-committee to adopt the new English provisions which were incorporated as clauses 22 and 23 in the Limitation of Actions Bill introduced into the Legislative Assembly in 1949 but not passed into law. That Bill was the subject of report by the Statute Law Revision Committee in March, 1949 (D. No. 1—Victorian Parliamentary Papers of 1949), and October, 1950 (D. No. 1—Victorian Parliamentary Papers of 1950–51).

The Committee examined clauses 22 and 23 of the Limitation of Actions Bill and decided that as these clauses are portion of a complete code and operate by reference to other provisions of the Bill they could not be satisfactorily included in the Trustee Bill.

The Committee, therefore, reluctantly recommend the adoption of clause 79 in its present unsatisfactory form and are strongly of the opinion that the long-delayed proposed revision of the law dealing with limitation of actions should be undertaken. When this is done clause 79 will no doubt be repealed.

PROPOSED NEW CLAUSE.

35. *New Clause* AA.—This clause originated from the report of the Law Institute and the Committee have considered and approved it. It assimilates, in respect of payment of commission for his work and trouble, the position of a trustee under a settlement to that of a trustee under a will. The *Administration and Probate (Amendment) Act* 1948, section 5, makes provision for the payment of commission to the latter, and this clause will make similar provision for the former.

New clause to follow clause 77 :—

AA. It shall be lawful for the Court or the Master of the Court to allow out of the trust funds to the trustee of a settlement such commission or percentage not exceeding Five pounds per centum for his pains and trouble as is just and reasonable.

GENERAL.

36. The Committee gave long and serious consideration to a proposal that the rule of equity known as the Rule in *Howe* v. *Lord Dartmouth* should be abolished. The object of this Rule is to ensure equality between tenant for life and remainderman where residuary personalty, comprising wasting or future or reversionary assets or unauthorized securities, is settled for the benefit of persons in succession.

The Committee carefully weighed the arguments advanced in favour of abolition against those put forward in favour of retention, and concluded that the latter outweighed the former. A testator can always exclude the application of the Rule, if he so desires, by appropriate provision in his will, and as the Rule undoubtedly works abstract justice between tenant for life and remainderman, and cannot justifiably be criticized in principle, the Committee are of opinion that it should be retained.

37. In accordance with a suggestion of the Law Institute the Committee agree that section 3 of the *Administration and Probate (Amendment) Act* 1948 should be amended to increase from £100 to £500 the amount of an intestate estate where the distributive shares of children may be paid to the widow or other person having custody of the children.

From the evidence given to the Committee it would appear that many cases of hardship arise where comparatively small amounts are payable to children as their share of an estate. These amounts under the present law must be held in trust until the beneficiaries become of age instead of being handed over to the widow or other person having custody of the children to be used for their benefit during infancy.

While this amendment cannot be effected in this Bill the Committee recommend that the Administration and Probate Act be amended accordingly.

CONCLUSION.

38. It was with profound grief that the Committee learned of the death of their Chairman, the late Honorable Trevor Donald Oldham, M.L.A., together with his wife, Mrs. Kathleen Oldham, in a tragic aviation disaster near Calcutta, on the 2nd May last. Mr. and Mrs. Oldham were travelling to London to attend the Coronation of Her Majesty, where Mr. Oldham, in his capacity as Leader of the Opposition, was to be an official representative of Victoria.

Mr. Oldham had been a member of the Statute Law Revision Committee since 1937, and his wise counsel is in no small measure reflected in the Reports of the Committee over the years. The sincere sorrow of the Committee was expressed in a special resolution and adjournment of the Committee, and the heartfelt sympathy of the members was conveyed to the bereaved family.

The last meetings over which he presided, prior to his departure overseas, were devoted to formulating the inquiry into the Trustee Bill, and the constructive thoughts, keen interest, and analytic force which he brought to the deliberations of the Committee are sadly missed.

39. The Committee are indebted to the successive personnel of the special sub-committee of the Chief Justice's Committee on Law Reform for their valuable work in connection with this Bill, and wish to pay especial tribute to the late Mr. N. L. Piesse, under whose chairmanship the sub-committee first met, and the present Chairman, the Honorable Mr. Justice Dean.

In addition, the Committee warmly commend the Law Institute of Victoria for their detailed and painstaking study of the Bill, and express their sincere thanks to the witnesses who appeared before the Committee for their valuable evidence, and fully appreciate the time and care devoted by them to its preparation and presentation.

40. The Committee desire to express their appreciation to those who assisted the Committee in their deliberations and in the preparation of this Report.

Committee Room,
7th October, 1953.

TRUSTEE BILL

MINUTES OF EVIDENCE

TUESDAY, 24TH MARCH, 1953.

Members Present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. H. C. Ludbrook,	Mr. Rylah,
The Hon. G. S. McArthur,	Mr. R. T. White.
The Hon. I. A. Swinburne,	
The Hon. F. M. Thomas.	

Mr. R. C. Normand, Parliamentary Draftsman, was in attendance.

The Chairman.—At this stage, it will be of assistance if Mr. Normand will outline the scope of the Bill.

Mr. Normand.—I have prepared the following memorandum for the information of the Committee:—

This Bill originated in a report in 1945 to the Chief Justice's Committee on Law Reform by a sub-committee on the administration of estates.

The sub-committee's report contained numerous recommendations for the alteration of the law relating to trustees. Some of the recommendations could have been met by direct amendment of the Trustee Act 1928 but a number of them took the form of substantive provisions.

The Chief Justice's Committee considered the recommendations and in 1946 approved them with certain modifications.

In 1947 the Attorney-General instructed the Parliamentary Draftsman to prepare the necessary legislation, but on the Draftsman pointing out that the result would be a Bill almost as long as the Trustee Act 1928 and it would be much more convenient for the legal profession and the public if the proposals were incorporated in a complete consolidation of the Trustee Act, the Attorney-General directed that an amending and consolidating Bill should be prepared.

Accordingly, the Draftsman prepared a Bill incorporating the existing legislation, the recommendations of the sub-committee and the modifications thereof suggested by the Chief Justice's Committee. This draft Bill and the covering memorandum by the Draftsman was submitted to the sub-committee which also had before it recommendations made by the Public Trustee. In 1948 the sub-committee recommended alterations to the draft and subsequently, after considering the altered draft and a memorandum of the Trustees Company Association, recommended further alterations. A further draft Bill was prepared by the Draftsman but (probably owing to the death of Mr. E. L. Piesse who was chairman of the sub-committee) nothing further was done.

In 1952 the sub-committee was reconstituted with Mr. Justice Dean as Chairman. The reconstituted Committee examined the latest draft of the Bill, together with various recommendations and presented a report embodying various alterations to the draft Bill.

The Bill was accordingly re-drafted by the Parliamentary Draftsman and that Bill, with an accompanying memorandum by the Draftsman, was considered at a conference between the sub-committee and the Draftsman. The final draft was adopted and introduced into the Assembly by the Attorney-General in 1952.

No substantial progress was made before Parliament was dissolved, and the present Bill represents the 1952 Bill brought up to date.

The Bill before this Committee incorporates therefore the Trustee Act 1928 with amendments and modifications made by eleven Victorian Acts which have been passed since 1928, as well as amendments and modifications recommended by the Chief Justice's sub-committee over a period of seven years.

The task of the Draftsman has been to try to bring all this matter together into a consistent harmonious whole. The Bill cannot, of course, be said to be in any sense a pure consolidating Bill. The proposals put forward by the sub-committee were in the nature of law reform proposals and they make substantial alterations in the existing Trustee law. Many of these alterations were adopted from New South Wales, though it was often necessary, in reproducing them in the Bill, to put them in a form designed to make them consistent with other Victorian provisions.

The comparative table annexed to the Bill is the work of the Draftsman. It is designed to show how far and where existing Victorian legislation relating to trustees is reproduced in the Bill.

The sub-committee, of which Mr. Justice Dean is the present Chairman, is responsible for the proposed alterations to existing law—and their present proposals are made only after consideration of suggestions and comments from many quarters.

On the general scope of the alterations, therefore, Mr. Justice Dean could appropriately tender authoritative evidence. On particular aspects of some of the proposals, evidence could be obtained from members of the sub-committee who have made a special study of them in relation to the Bill.

No doubt the Statute Law Revision Committee will consider the advisability of recommending amendments to the draft Bill. Two matters have already come up since the Bill was printed. The first arises out of the fact that there is a small Trustee (Amending) Bill is course of passage through Parliament. When passed it will be desirable to incorporate the effect of that Bill in this one.

The second matter was raised by the Law Institute and suggests the desirability of extending clause 74 of the Bill so as to cover more effectually existing superannuation schemes to which the Rule of Perpetuities is not to apply.

Amendments have been drawn to cover these two matters and if the Committee so desires, I shall leave a copy with the Clerk.

Mr. Byrnes.—As Mr. Normand has explained, the Bill is more than a consolidation of the trustee law. When discussing the Bill, will the Committee be able to distinguish the consolidation of the present law from proposed amendments?

Mr. Normand.—Yes, by consulting the comparative table in the forefront of the Bill. I would point out that Mr. Justice Dean has acted as general supervisor of each proposal, and His Honour can inform the Committee of the main objects of the Bill. Other members of the sub-committee could be asked to explain special aspects of the measure.

Mr. Rylah.—Have you a copy of a report known as the "Lord Nathan Report," which was presented in England in December of last year, on the scope and responsibility of trustees in relation to investments?

Mr. Normand.—No. So far as I know that report is not in the library of the Law Department although there may be a copy in the Supreme Court Library.

The Committee adjourned.

WEDNESDAY, 25TH MARCH, 1953.

Members Present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. H. C. Ludbrook,	Mr. Rylah.
The Hon. I. A. Swinburne,	
The Hon. F. M. Thomas.	

Mr. R. C. Normand, Parliamentary Draftsman, was in attendance.

The Chairman.—I think it was intended that Mr. Normand should go through the clauses of the Bill to indicate where new provisions have been introduced.

Mr. Normand.—That is so. I think the most useful thing I can do is to point out where there have been substantial amendments of the existing law, but I shall omit minor drafting alterations. The first provision to be noted is sub-clause (2) of clause 3. Although it is new, it is merely a drafting device to embody a number of proposals. In the absence of sub-clause (2), it would be necessary to include a similar provision in a number of places, but sub-clause (2) achieves the same purpose.

A difficulty arises where a security is transferred. The law applies, apparently clearly, in a case where a new security is taken by a trustee, but there was some doubt concerning cases where a trustee takes a transfer of security.

Sub-clauses (3) and (4) of clause 4, on pages 8 and 9, are completely new.

At the bottom of clause 8, on page 10, a note might be made that existing sub-sections (4) and (5) have been omitted.

Mr. Rylah.—As they are unnecessary?

Mr. Normand.—Yes. Clause 10, page 11, is entirely new. Against clause 11, starting on page 11 and extending to page 13, it would be wise to note that this clause represents section 10 of the 1928 Act redrafted, but that sub-section (2) of section 10 of the 1928 Act has been moved to form clause 16 of this Bill. In fact, the old sub-section (2) of section 10 appears as a new proposition in clause 16.

The Chairman.—Apart from the redrafting of that sub-section does the new provision contain any substantial alteration of the existing law?

Mr. Normand.—There are many minor alterations, which have been put in a different way, and some of the provisions of the New South Wales legislation have been incorporated in the Bill. In the marginal notes to the clauses there are references to the corresponding sections of the existing Victorian Act. If provisions from the New South Wales Act have been imported, there will also be found a reference to that Act.

On page 13, paragraph (*b*) of sub-clause (1) of clause 12—lines 26 to 29—is new.

Sub-clauses (4) to (7) inclusive—from line 28 on page 14 to line 19 on page 15—are all new. The marginal note indicates that they have been imported from the New South Wales legislation.

The whole of clause 14 is new. There is no reference in the marginal note to any comparable existing Victorian provision, but only to the New South Wales Act.

Clause 16 represents sub-section (2) of section 10 of the 1928 Act, but this provision is now shown in three sub-clauses.

Clause 17, pages 17 and 18, is entirely new.

On page 19, paragraphs (*g*) and (*h*) of sub-clause (1) of clause 19 are new.

Another new provision is sub-clause (2) of clause 19, beginning at line 36 on page 19 and continuing to line 5 on the next page.

It might be noted that clause 23, page 21, represents section 19 of the 1928 Act, but it has been redrafted and extended.

Mr. Brennan.—The whole of clause 23?

Mr. Normand.—Yes. Clause 27, starting on page 25, represents sub-section (4) of section 22 of the 1928 Act. That sub-section has been taken separately, redrafted and extended, and now appears as new clause 27.

Mr. Pettiona.—Is that comparable with the New South Wales Act, or has there been any alteration of that legislation since 1925?

Mr. Normand.—It will be seen from the marginal notes that in some cases the principal Act in New South Wales (which is the 1925 Act) is referred to, but if it has been amended, the amending Act is also noted.

Clause 30, which commences at page 28 and continues to page 30, represents section 25 of the 1928 Act, but it has been completely redrafted, with alterations throughout, to make it more workable. The clause now follows the New South Wales form.

Clause 31, commencing on page 30 and ending on page 34, is entirely new, although there is, I think, a somewhat similar provision in the Administration and Probate Act.

Clause 33, which covers pages 36 and 37 and a portion of page 38, represents section 27 of the 1928 Act, with substantial alterations. The idea underlying this provision is to simplify procedure and to make it less costly by the use of a simple form of advertisement in respect of more estates than are covered by the present legislation.

Mr. Rylah.—Would it be fair to say that the amendments to the Trustee Act, since it was passed in 1928, have been of a minor character?

Mr. Normand.—That is so. Although eleven substantive Acts have been included in this Bill, they are not really of much substance.

Clause 38, on page 42, represents the substance of sections 32 and 33 of the 1928 Act, but the New South Wales form has been adopted substantially.

On page 47, sub-clause (10) of clause 41 is new.

The material for clause 43, on page 48 of the Bill, is contained in section 38 of the 1928 Act, but it has been presented in an altered form.

Similarly, clause 44, on page 49, is intended to replace section 39 of the 1928 Act, but with alterations.

Clause 45, commencing on page 49 and continuing to page 51, is, in substance, section 40 of the 1928 Act, which has been presented in a completely new and redrafted form.

Clause 46 on page 51 is entirely new.

Clause 47, beginning on page 51 and ending at the foot of page 52, is also entirely new.

Mr. Byrnes.—Has that clause been approved by the Chief Justice's Committee on Law Reform?

Mr. Normand.—Yes. All the new proposals in this Bill have been recommended by that committee.

On page 53, there is a cross heading which states —"Division 2.—Vesting Orders." I should like members of the Committee to note that clauses 51 to 63 represent the substance of Division 2 of Part IV. of the 1928 Act, but those provisions have been completely redrafted and rearranged throughout.

It is hardly necessary for me to mention that clause 72, on page 64, represents the Custodian Trustee Act 1947, which is consolidated in this Bill.

Clause 74 replaces the Superannuation and Other Trust Funds Validation Act 1932. It is not in the same form as, and it is much wider than, the Act which it replaces. The Act is repealed in the schedule, and clause 74 will be the new law on the subject; it is not a mere consolidation of the existing Act.

Clause 75 is entirely new; it deals with the rule in *Allhusen* v. *Whittell,* concerning the distribution between a remainder man and the life tenant.

Clause 76 also is entirely new.

Clause 77 represents a general extension of particular provisions. There are particular provisions in the Public Trustee Act and the Trustee Companies Act, and clause 77 makes those provisions applicable to all trustees. The existing particular provisions should, of course, be repealed, and they are repealed in the First Schedule. Clause 77 is in a new form, because it has been put in a general form.

Part VI.—Limitation of Actions against Trustees —simply repeats the existing law on the subject, but if the Limitation of Actions Bill is passed, a consequential amendment will be necessary in this Part.

Mr. Rylah.—This Part preserves the existing archaic law?

Mr. Normand.—As a matter of fact, it says very little. It is fairly innocuous, but if the Limitation of Actions Bill were passed, it would contain an amendment of this clause. However, the Chief Justice's committee thought it undesirable to raise the policy of the Limitation of Actions Bill straight out.

On page 69, the Second Schedule is a new, simplified form of notice. It was devised by the late Chief Justice, Sir Frederick Mann.

The Chairman.—The information that you have given will be extremely helpful to the Committee, when it is discussing the Bill at later meetings.

The Committee adjourned.

WEDNESDAY, 1ST APRIL, 1953.

Members Present:

Mr. Oldham in the Chair,

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Mitchell,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. G. S. McArthur,	Mr. Randles,
The Hon. I. A. Swinburne,	Mr. Rylah,
The Hon. F. M. Thomas.	Mr. R. T. White.

The Honorable Mr. Justice Dean was in attendance.

The Chairman.—I welcome His Honour Mr. Justice Dean to this meeting, and I shall ask him to address the Committee on those aspects proposing alterations to the existing law.

Mr. Justice Dean.—The Trustee Act is, in the main, a copy of the English Trustee Act of 1893, which we adopted in 1896. The law relating to the administration of trust assets in England was developed principally in the administration of large estates which exist in that country. One difficulty experienced in Victoria, as a result of the adoption of the English law, has been that principles developed in relation to large English properties have been applied to the relatively small estates which constitute the majority of estates held on trust in Victoria. The result has been, of course, that a great deal of technicality has been introduced which has not entirely been necessary. In this respect I can cite the Settled Land Act, which was copied from the English legislation, except in one or two respects. It has not been availed of greatly in Victoria, mainly because it has been designed to meet circumstances operating elsewhere.

When the somewhat technical provisions of the Trustee Act are applied to the estate of the average man who leaves a house and perhaps a few thousand pounds to his wife and children, provisions copied from the English law are not applicable with complete facility. Accordingly, an endeavour has been made in this Bill to simplify the law and to deal with anomalies, but in the main we have retained the structure and principles of the existing Act. I would be happy to reply to any point which members of the Committee might take, or to go through the amendments proposed in the Bill.

The Chairman.—I think the Committee would prefer you to go through the amendments that have been indicated as being substantial alterations of the law, and you could perhaps mention the person who fathered the amendments and whether his evidence might be of value to the Committee.

Mr. Justice Dean.—Unfortunately, the man who fathered this Bill, Mr. Piesse, is no longer with us. After his death I, as a member of the sub-committee, succeeded him as chairman. The bulk of the work on the Bill was carried out by Mr. Piesse. In the main, he took the provisions of the New South Wales Act, in which a number of new ideas have been incorporated from time to time, and examined them to see how far they could be applied in Victoria. A number of those provisions have been adopted.

Sub-clause (2) of clause 3 is merely a drafting device, for which Mr. Normand is responsible; it saves including in the Bill in three or four places that the provisions that apply to the case of a loan on mortgage as a new loan will apply equally to the case of a trustee taking over a new security. It has no particular importance except as a drafting expedient.

Mr. Rylah.—There is nothing special about the new definition of " execute " contained in sub-clause (1) of clause 3?

Mr. Justice Dean.—It covers the case of execution by companies as distinct from signatures, and also the case of transfers and other documents under the Transfer of Land Act which are not under seal.

Mr. Rylah.—The definition of " convey " has also been altered slightly; there is nothing significant in that?

Mr. Justice Dean.—No, I do not think so. It is to cover all kinds of transactions by which property is taken from one person and vested in another, such as under the Transfer of Land Act, instruments and assignments and dealings with shares and companies.

Mr. Rylah.—The definition of " court " has been amplified to include " a judge thereof." I take it that relates to a similar point raised in connection with the Transfer of Land Bill, where previously some applications had to go to the Full Court and could not be dealt with by a judge in chambers?

Mr. Justice Dean.—Yes. Sub-clause (3) of clause 4 contains a new provision. Where a testator leaves his estate on trust to his widow for life and thereafter to his family, although trustees have desired to provide the widow with a house in which to live, as part of her interest in the property, there has been no power to do that. It has been thought desirable, again copying what has been done in New South Wales,

to make provision whereby a trustee can purchase a house and allow the life tenant—the widow, the daughter or whoever it may be—to reside in it. It is obvious that it allows elasticity in the administration of trusts and is a provision of some practical importance. Various safeguards are provdied in paragraphs (*b*), (*c*), and (*d*) relating to the amount that might be paid for a property, and so on. Sub-clause (4) gives power to the trustee to retain a house which forms part of an estate so that the beneficiary may dwell in it notwithstanding that the instrument creating the trust imposes on the trustee a duty to sell that house. Again, that is a modern, practical and useful provision.

I have been told informally that the Law Institute desires to make further recommendations regarding that provision. It is desired, I believe, that some minor alterations should be made to it. I do not know what the proposed amendments are, but I do not think they will affect the principle of the provision.

Mr. Rylah.—As paragraph (*a*) of sub-clause (3) of clause 4 is framed, a trustee would be limited to the purchase of land to be used for the purpose of erecting a dwelling house. I think the question arises as to whether a new or nearly completed house could be purchased. I take it that that matter can be left in abeyance until the Law Institute communicates with the Committee.

Mr. Justice Dean.—Yes. Such an amendment could be incorporated quite readily, if it was thought desirable.

Mr. Brennan.—Would you say that such a power should be limited to the life tenant?

Mr. Justice Dean.—Normally it would be the widow entitled to the income from the property who would be the life tenant, as part of her interest in the property, but it would not necessarily be restricted to such a case.

Mr. Rylah.—From your experience, would you say that it is desirable that a trustee should have this power?

Mr. Justice Dean.—Yes. A person may have a lot of money left in trust for him but is not in a position to buy a home, and under the present law a trustee is not permitted to invest trust money in that way, consequently the person with the life interest has to rent a flat. If there was a provision whereby some of the money could be used to buy a home it would be a great advantage. I think that is perhaps the most important and useful change proposed in the Bill.

Mr. Rylah.—Would you say that it would meet the problem that arises frequently where a husband dies without leaving a will, and although there is sufficient money in the estate to purchase a house that course is not possible?

Mr. Justice Dean.—It would cover the case where money was held in trust for a beneficiary, but if it were a case of administration, where there had to be an immediate division, it would not be appropriate.

Mr. Rylah.—The problem usually arises where there is no need for an immediate division, because the children are of tender years and their share of the money has to be kept until they reach the age of 21, although it could be more usefully employed in buying a house.

Mr. Justice Dean.—Yes. In my opinion, this provision does not cover such a case, which is subject to the law relating to the administration of estates. The clause relates to definite trusts constituted by trust instruments.

Mr. Brennan.—In view of the wide fluctuations in the values of real estate in recent years, is there need to include a provision defining assets which may be of a speculative or wasting nature? A house property may be held for a term of ten to fifteen years, in which time its value may increase or decline tremendously.

Mr. Justice Dean.—That is one of the risks that have to be taken. The only protection afforded is that contained in paragraph (*b*) of sub-clause (3) of clause 4 concerning the sum to be paid for a house. A valuation must be made and the trustee is not entitled to pay more than that amount. A similar question may arise in relation to a mortgage, except that in this instance there is a margin.

Mr. Randles.—In any event, a valuation can be made only according to currently ruling prices.

Mr. Justice Dean.—Yes.

Mr. Brennan.—Action may be taken on behalf of children when they are minors, and upon becoming of age they may challenge the valuation.

Mr. Justice Dean.—If the trustee acted pursuant to paragraph (*b*) of sub-clause (3), the valuation could not be challenged.

Mr. Byrnes.—As long as the property is purchased at a proper valuation, the trustee is protected.

Mr. Justice Dean.—Generally, it is desirable that the legislation should contain such a power as that discussed, even though in particular cases a loss of asset may be incurred.

Mr. Byrnes.—The asset may appreciate in value.

Mr. Justice Dean.—Yes.

Mr. Randles.—Probably the only circumstance requiring consideration on this question at present would be the purchasing of a property with vacant possession, for which a higher sum must be paid than for a tenanted house.

Mr. Justice Dean.—Yes. The trustee has a duty to observe the provisions of the Act, otherwise he is personally liable.

Mr. Byrnes.—Could there be a form of "spotted title" to afford protection in cases of altering values?

Mr. Justice Dean.—It is necessary to follow the market.

Mr. Rylah.—The benefit of owning a house may more than outweigh any loss incurred in capital value.

Mr. Justice Dean.—That is the important consideration.

Mr. Pettiona.—By paragraph (*k*) of sub-clause (1) of clause 4 of the Bill, debentures issued by the Metropolitan Gas Company are authorized investments. Is there any reason why the words "Gas and Fuel Corporation of Victoria" have not been substituted for the words "Metropolitan Gas Company?"

Mr. Justice Dean.—Two or three times I suggested to the Parliamentary Draftsman, Mr. Normand, that the wording should be changed, but he advised me that the alteration was unnecessary, since stocks of the Gas and Fuel Corporation are authorized trustee investments and persons who hold debentures issued by the Metropolitan Gas Company are adequately covered by the Gas and Fuel Corporation Act. I regarded this matter as a drafting problem, and although I would have preferred the Trustee Act to be amended accordingly, I left the matter to Mr. Normand.

Mr. Rylah.—As a lawyer, perhaps you would prefer the Act to contain the name of the Gas and Fuel Corporation.

Mr. Justice Dean.—Yes.

The Chairman.—The point is well taken, and the matter will be reviewed later, because the Legislative Assembly has passed the Trustee (Amendment) Bill,

which amends section 4 of the Trustee Act 1928 to include among the list of authorized investments debentures issued by the Metropolitan Fire Brigades Board and by the Country Fire Authority.

Mr. Justice Dean.—I have been informed that the Law Institute of Victoria intends to raise again the question of whether the investment power of trustees should be extended to enable them to invest in shares of companies. Pressure is being exerted by trustees and their solicitors to have such a provision included in the Act. It is argued, in support of the contention, that trustees should not be confined to investment in authorized securities when any sensible person purchases sound industrial stock and thus gains capital appreciation and a good return. Figures have been produced indicating that if this course had been open over the years, investments would have yielded much higher returns than would be derived by adhering to Commonwealth bonds and other similar securities. From the point of view of trustees, the argument is good.

Mr. Randles.—Many investors have suffered losses by making investments which were apparently safe but which actually were unsound.

Mr. Justice Dean.—Yes. From sociological and political viewpoints, great problems arise. There could be withdrawal from the support of government securities of large sums of money and their diversion into the industrial investment field. In my opinion, this is a political and economic issue, for which a policy must be decided.

Mr. Randles.—Amendment of the Act in the manner indicated could be extremely risky.

Mr. Justice Dean.—It could be, but an amendment could be formulated in such a way that investments could be made only in securities of a certain type and on the certificate of an authorized member of the Stock Exchange. One difficulty is that most investable trustee funds are held by trustee companies. By withdrawing from investment in Government loans, they might create financial difficulties. Moreover, if industrial securities in which those companies invested began to depreciate, it would be their duty to consider if they should sell, and if they all decided to dispose of their shares simultaneously, chaos would result. To cite a fantastic hypothetical case, if the shares of the Broken Hill Proprietary Company Limited depreciated rapidly and became not worth holding, and all trustee companies which had invested funds in them began to sell, much money could be lost. The problem requires careful examination. However, it does not arise now and will have to be considered separately. Most of the provisions of the Act as originally drawn represent clauses commonly inserted by good conveyancers. Solicitors now insert a clause in legal documents giving trustees wide power of investment, and argue that this practice should be made general by having the Trustee Act amended.

Mr. McArthur.—I do not agree with it.

Mr. Rylah.—Probably there is a strong difference of opinion on this subject among solicitors, and there is certainly a divergence of thought among members of the Law Institute. The Committee would be assisted if His Honour addressed it further on clause 4 Although the problem is purely political, if the Committee has to tackle the question it would be helped by knowing the principles on which the clause had been designed.

Mr. Justice Dean.—If and when the Committee has before it any such proposal, it might refer the matter to the sub-committee of the Chief Justice's Law Reform Committee again for consideration of purely legal aspects.

Mr. Rylah.—There has been conflict regarding clause 4. On the one hand, there is a desire to ensure that a trustee invests only in gilt-edged securities readily negotiable. On the other hand, there has been an inclination by successive Governments to make sure that public funds are diverted into forms of investment that will assist in the administration of estates. It will be necessary for the Committee to face the problem if the Law Institute of Victoria or some other body submits the question again for further consideration.

Mr. Justice Dean.—There has been a controversy in the courts about the question. Some judges have taken the view that under section 57 of the Act, the court can authorize trustees to make an investment in the shares of a company on special grounds and subject to certain restrictions. I made such an order some years ago. In New South Wales, one judge held that that action could be taken, but another took the opposite view. Subsequently, the High Court of Australia, by a majority of three to two, in the case of *In re Riddell,* in 1952, held that it could be done. In certain cases this provides a means by which in individual estates such power can be exercised.

The Chairman.—The most practical way in which to approach this question is to receive a submission by the Law Institute of Victoria concerning the extension of the field of trustee investment, and then to refer the matter to the sub-committee of the Chief Justice's Law Reform Committee for comment.

Mr. Justice Dean.—In my opinion, it would be desirable to take that course so that the Chief Justice's sub-committee could examine the legal problems involved. In clause 8 of the Bill, the only change made is the omission of two sub-sections relating to investments made before or after the commencement of the Act. Since the provision has been in force since 1896, it is pointless to retain the sub-sections referred to. The same comment applies to clause 9. A transitory provision applicable in 1896 has been deleted, as it is no longer necessary.

Clause 10 is primarily designed to cover the circumstances of a case in which a trustee holds land, including perhaps a sub-divisional estate, and desires to sell parts of the land to purchasers who pay in full and release the property from mortgage. That is one type of case. The general intention is that provided that the trustee has sufficient security, he may release part of the property the subject of the charge or mortgage upon being paid by the person entitled to it. This is largely a machinery provision.

Mr. Rylah.—At this stage the numbering of the sections of the proposed new Act deviates from the numbering in the existing Act. Will that fact create any difficulty regarding the interpretation of wills? For instance, it is usual in these days to state that section 32 of the Trustee Act shall be varied by including maintenance and education.

Mr. Justice Dean.—In my opinion, it would be sufficient to state "The Trustee Act 1928."

Mr. Rylah.—Not necessarily, in my view. An alternative wording could be "The Trustee Act for the time being of the State of Victoria."

Mr. Justice Dean.—I would have thought that there would not be much difficulty of interpretation, and that it would be restricted to section 32 only at the date of the will. For that reason, there cannot be adherence to the existing numbering of the sections. They must alter from time to time, as amendments are made

Mr. Rylah.—I agree with that statement, but the problem is of sufficient importance to warrant its being brought to the attention of the Parliamentary Draftsman to make sure that wills drawn in the form indicated are not upset.

Mr. Justice Dean.—Clause 11 embodies some provisions contained in section 10 of the Trustee Act, which provides that a trustee may lend money for a period not exceeding seven years. In practice, there is a common form of mortgage whereby money is lent for an indefinite period, and it is provided that the money shall not be called in until the expiration of the stated period, so long as the interest is paid. Clause 11 has been designed to cover both types of mortgage.

Mr. Thomas.—Would that provision also cover the activities of friendly societies?

Mr. Justice Dean.—I suggest that that question be directed to Mr. Normand, because I am not familiar with the Act under which friendly societies operate. I now come to clause 12. It often happens that trustees are in possession of sums of money that they cannot immediately invest, and while they are waiting for an opportunity to invest it they may put it into a trust account in the bank. Paragraph (*b*) of sub-clause (1) makes provision for the same rule to apply while a trustee is waiting to make a distribution of money.

Sub-clause (4) of clause 13 is not of great importance; it merely provides that where a trustee sells trust property and joins with another person in selling property—that is to say, the trustee and somebody else join as vendors because very often they can get a better price if two properties can be sold—there is power in the contract to apportion the purchase money and for a separate receipt to be given by the trustee for his share. In that way it will be known from the beginning how much is trust money and how much belongs to the other vendor. Sub-clause (5) provides that a power to postpone sale shall be implied in the case of every trust for sale of property. That is an obvious provision. It is often not possible to sell property at once and it is desirable to have power to postpone a sale until a proper one can be arranged. Clause 14 merely provides that a purchaser shall not be entitled to query the duration of the period of time for which the power of sale lasts. I consider that is more a conveyancing than a practical point.

Clause 16 represents sub-section (2) of section 10. It covers circumstances in which a trustee sells land but does not receive all the purchase money and is entitled to allow three-fifths of it to remain on mortgage.

Clause 17 is new and important. Land is commonly sold in Australia on deferred payment terms—much more so than in England. The average ordinary vendor who is not a trustee frequently sells land on long terms and thus secures a better price and at the same time an investment. There has for long been a controversy whether trustees could do likewise. On occasions the courts have ruled that they could, and in other cases opposite decisions have been given. This has been considered desirable in New South Wales, and in Victoria an attempt has been made to give power to sell on deferred terms and to provide some security against extravagant use of these powers, because the trustees, by adopting that means, frequently obtain a higher price than they would otherwise secure, and provisions have been formulated which are considered to be appropriate for the protection of the beneficiaries. Sub-clause (1) of clause 17 states—

> A trustee for sale or a trustee having a power of sale may sell land on terms of deferred payment.

Sub-clause (2) states—

> The terms of deferred payment may provide that the purchase money shall be paid by instalments.

The terms are to include the matters stipulated. It has been difficult to frame this provision satisfactorily.

Mr. Byrnes.—Paragraph (*a*) of sub-clause (3) of clause 17 is somewhat vague.

Mr. Justice Dean.—Yes, it is difficult to word it otherwise. In the general administration of a trust, the primary duty of a trustee is to be as careful of the trust property as he would be of his own. If he fails to exercise such care, he is liable for a breach of trust. It was considered desirable to bring the same provisions in and apply them to this case. The sub-committee of the Chief Justice's Law Reform Committee decided to put the trustee in these cases in the same position as he would be in carrying out other acts. He is liable only if he fails to exercise the same degree of competence that he would have exercised if he were dealing with his own land. The new provision puts the matter on the same footing as any other exercise of power by a trustee. Although the provision remains vague, the decision of the Committee seemed to be fair.

Mr. Byrnes.—Much depends on particular circumstances. Land may be difficult to sell and prices low, and the trustee may decide to accept a low deposit and allow the balance to remain on terms, only to have the land back on his hands in a short time.

Mr. Justice Dean.—Yes. There is a certain elasticity about the provision.

Mr. Brennan.—A payment of one-tenth of the selling price of the land should be an acceptable deposit.

Mr. Byrnes.—Does Mr. Brennan consider that it would be prudent to sell the average farm on a deposit of 10 per cent.?

Mr. Brennan.—Mr. Byrnes is an authority on farms; I should not like to offer an opinion on the subject.

Mr. Rylah.—Probably it would not be imprudent to sell the average house on payment of a deposit of 10 per cent., provided that its condition was not deteriorating too rapidly.

Mr. Justice Dean.—The last few statements illustrate the difficulty of making a rule. Ultimately, each case must depend on circumstances. If a trustee exercises reasonable care, as he must in any other act he performs he will not be liable. The difficulty always is to define "reasonable care." A trustee may consider that he has behaved carefully and a court may hold otherwise. That is a risk trustees run in everything they do.

Mr. Byrnes.—Damage may be caused to beneficiaries through carelessness of a trustee.

Mr. Rylah.—One court might hold that a man was careless, while another court might hold that he was not.

Mr. Randles.—A deposit of 10 per cent. on land is reasonable, but it may not be if buildings are erected on it. The Savings Bank of Victoria stipulates that for houses purchased under the Crédit Foncier scheme the mortgage is for ten years. It can be renewed if the conditions of the loan have been complied with.

Mr. Justice Dean.—The trustee has power, after the purchaser has sufficient equity, to take a mortgage on the properties. At any rate, it does represent an attempt for the first time to deal with a difficult problem.

Mr. Rylah.—That provision is substantially the same as that operating in New South Wales?

Mr. Justice Dean.—Yes.

Mr. Pettiona.—Would that also apply to an ordinary dwelling house on land?

Mr. Justice Dean.—Yes, it applies to all types of property.

Mr. Byrnes.—I think that is one provision that should be considered very carefully by the Committee.

Mr. Justice Dean.—I agree. I consider that it is a matter of some practical importance. However, I think any solicitor will inform the Committee that there is a need for some provision to enable a trustee to sell on terms.

Mr. Randles.—Paragraph (*c*) of sub-clause (3) of clause 17 provides that if any instalment or interest is unpaid for six months the whole of the purchase money shall become due.

Mr. Justice Dean.—Of course, it is not provided that a trustee shall not grant more time but only that the term of contract has to contain such a clause.

Mr. Rylah.—If a trustee required a 10 per cent. deposit on a farm property, the court could say that a man of prudence would not have entered into such an arrangement, and he could be liable.

Mr. Justice Dean.—Quite so.

The Committee adjourned.

THURSDAY, 2ND APRIL, 1953.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. H. C. Ludbrook,	Mr. Rylah,
The Hon. G. S. McArthur.	Mr. R. T. White.

The Honorable Mr. Justice Dean was in attendance.

The Chairman.—At yesterday's sitting, I think our discussion of clause 17 was completed.

Mr. Randles.—When we were discussing paragraph (*c*) of sub-clause (3), it was said that six months' grace would be allowed for the payment of interest, but the paragraph provides that the whole of the purchase money "shall become due and payable."

Mr. Justice Dean.—The clause specifies the terms that must appear in a contract, and it follows ordinary conveyancing practice. Clause 19 gives the trustees discretion as to enforcing the terms of a contract. This provision has always appeared in the legislation, and discretion is extended to trust property of all classes.

Clause 23 gave the Committee much trouble. All sensible people insure property, but the clause does not make it mandatory for a trustee to do so. The difficulty was that the income might not permit the trustee to insure the property, or it might not be insurable. The general equity principle would apply—that a trustee must act with proper care and caution. A trustee who could but did not insure would be liable.

Mr. Brennan.—An arrangement exists between insurance companies to prevent the over insurance of properties.

Mr. Justice Dean.—Yes, and a limit is placed upon insurances to be effected by trustees. Sub-clause (3) relates to the source from which premiums are payable.

Clause 27 takes in former section 22 but extends its provisions. It gives power for audits and the payment of them.

The Chairman.—Who was responsible for these provisions?

Mr. Justice Dean.—They were taken from the New South Wales Act. Clause 30 relates to trustees absent from Victoria. In sub-clause (1), the words "has never resided in Victoria" have been added.

Mr. Byrnes.—The clause enables a trustee to give power of attorney.

Mr. Justice Dean.—Yes. The former provision applied to a trustee intending to remain out of Victoria for one month. The clause will cover any trustee who, in fact, is out of Victoria. The Public Trustee or a trustee company may be given power of attorney.

The provisions of clause 31 are new. There was much controversy about legal problems, with which I need not trouble the Committee. Assume that an estate is to be divided among *A, B,* and *C* on their attaining 21 years of age. *A* becomes 21 and wants his third share. If the trustees give him one-third of the then value of the estate, five years later, when *B* becomes 21, or ten years later, when *C* attains 21 years, the estate may have appreciated or depreciated in value. In the latter event, the question is whether the accounts should be reopened to take from *A* the amount necessary to give the three legatees equal shares, or, if the estate has appreciated in value, whether *A* is entitled to receive a further sum? A rule has been laid down applying to wills, and now it applies to trusts created by wills and settlements. It provides that at the date *A* becomes entitled, the trustees can appropriate his share to him, and that is the end of the transaction. He will not share in any increase or contribute to any decrease, in value. The others will gain or lose, according to the condition of balance of the estate.

Mr. Byrnes.—The sale of assets might be involved.

Mr. Justice Dean.—That would be necessary to make a division between the three legatees. Land would probably require a sale, as would bonds or stock. There is power to make an appropriation of specific assets—a block of land or certain shares. If the estate appreciates or depreciates the transaction cannot be reopened. Distribution can be made without the trustees fearing that they may be "shot" at. There is general power of appropriation under the rules of equity, apart from this section, but it was thought desirable to define precisely the rights and powers of trustees.

Mr. Rylah.—This clause follows, generally, the principles enunciated in section 41 of the Administration and Probate Act?

Mr. Justice Dean.—Yes, but it goes somewhat further than that.

Mr. Rylah.—It should eliminate a fruitful source of litigation.

Mr. Justice Dean.—I think it will do that. It will provide a code to which reference may be made to ascertain the rights of various persons. As to the sub-clauses, I can supply the Committee with a memorandum.

I pass now to clause 33, which is not a long provision. It is vastly different from the old section 27. Trustees of a settlement or will must ensure that they make distribution to the people who are entitled to receive it. If, for example, a gift is made to certain nephews and nieces of a testator, a trustee may not know who they are, nor may he know what claims there might be against the estate. Accordingly, a trustee is empowered to advertise, before distribution is made, inviting those who have claims against the estate to present them within a certain time. In the absence of any claim, a trustee is entitled to distribute on the assumption that there are no further claims. Provision is made expressly, however, that if a person submits a claim against the estate later, he cannot sue the trustee—if he has advertised—but he can sue the beneficiaries who received more than they ought. In other words, this clause is designed to protect trustees so that beneficiaries may have the benefit of distribution as early as possible. The only

change of any importance which has been made is that the form of the advertisement has been shortened. During the war period, when difficulty was experienced in obtaining advertising space in newspapers, Mr. Justice Mann approved of a short form of advertisement. That form has now been made compulsory, and it is contained in the Second Schedule to the Bill.

The drafting of clause 38 caused some difficulty. In the main, it represents sections 32 and 33 of the existing Act, but there have been some formal changes. The provision relates to cases where persons are entitled to the capital of the trust property, or any share thereof. It provides that the trustees, in such manner as they in their absolute discretion think fit, may from time to time out of that capital—that is the important point; it is capital and not income—pay or apply for the maintenance, education, advancement or benefit of that person, an amount not exceeding in all £1,000 or half that capital (whichever is the greater) or with the consent of the Court an amount greater than that amount. Sub-clause (2) provides that the power conferred by this section may be exercised whether the person is entitled absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and notwithstanding that the interest of the person so entitled is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs. The important point is that capital may be advanced to a person, even though he is under the specified age and may never receive the principal. The underlying purpose of the provision is to ensure that a minor who is to participate in a large estate at, say, the age of 21 years, will be maintained and educated out of it to the extent of half the capital, as an advance against his share. Any person who receives a "windfall," so to speak, as a result of the premature death of the minor, will take it subject to the fact that it has been depleted because of payments on behalf of the minor for his maintenance and education during his lifetime. That is not a new principle. It is really the old section. All that has been done has been to make some formal changes in it.

Mr. Rylah.—The limitation of £1,000 is new, is it not?

Mr. Justice Dean.—That is so. Previously, under sections 32 and 33, it was common to make application to the court if it was desired to break into the corpus of an estate valued at less than £2,000, for the maintenance or advancement of the child. The situation under clause 38 will be that, without approaching the court, the trustees may advance any amount not exceeding £1,000, or half that capital (whichever is the greater) or, with the consent of the court, a greater amount. Accordingly, it will be necessary to approach the court only when more than half of the capital is desired, or in the case of a small estate more than £1,000.

Mr. Rylah.—Clause 38 has been extended to include maintenance and education as well as advancement and benefit?

Mr. Justice Dean.—That is so. The old provision covered advancement and benefit, but it was not clear what was meant by "benefit." Advancement means setting up a child in life by buying him a business, a farm or something of that kind. Provision has now been made for maintenance and education.

Mr. Brennan.—Similar provision is usual in wills where the beneficiaries are under age.

Mr. Justice Dean.—That is so. The changes that have been made revolve around the concluding words of sub-clause (1), namely, "..... an amount not exceeding in all £1,000 or half that capital (whichever is the greater) or with the consent of the court an amount greater than that amount." Previously, provision was made up to one-half of the capital but there was no power to ask the court for more.

Mr. Rylah.—Sub-section (2) of section 32 of the principal Act applies only where the trust property consists of money or securities or of property held upon trust for sale, calling in, and conversion. That provision will now become of a general character?

Mr. Justice Dean.—That is so. Clause 41 relates to the power of appointing new or additional trustees, and sub-clauses (1) and (9) contain provisions that are similar to those contained in the principal Act. Sub-clause (10) is of a technical character; it is intended to provide that where a new trustee is appointed by the persons nominated in the trust instrument to appoint new trustees, any such appointment must conform to the conditions stipulated in the trust instrument for that appointment. For example, if *A* and *B* are trustees and *C* is given power to appoint new trustees on certain conditions, any appointment by *C* must be on those conditions.

The provisions of clause 43 have been altered but not in any important aspects. When a trustee is appointed in place of an original trustee, persons dealing with the trustees desire to know that they are dealing with trustees who have been duly appointed. Such persons cannot be expected to examine documents to ascertain if facts have arisen justifying new appointments. Therefore, it is provided that a statement in any instrument that a trustee is dead or from whatever cause an appointment arises shall be conclusive in favour of the new trustee.

Clause 43 has been altered to bring its provisions into line with the powers of appointing new trustees so that there will be no case that is not covered.

In clause 44, a similar problem arises. It provides for the appointment of a new trustee in place of one who retires. I direct attention to the wording of sub-clause (2). That is intended to simplify proof of the discharge of a trustee.

Clause 46 is intended to deal with the situation that arises when probate is renounced. It is relatively common to have the same person acting as trustee of a will and also a trustee of the trusts created by that will. The functions of the executor and the trustee are different. The executor is concerned with collecting the assets, paying the debts and distributing the property. That is a simple, straightforward procedure, which is completed in a year or so. Often, however, the will provides for settlements of property on trust for life tenants, remaindermen, widows, children and so on. The question arises, in the event of the executor disclaiming probate—as he is entitled to do—does he remain the trustee? The property is not vested in him. The clause provides that if a person who is appointed by will both executor and trustee thereof renounces probate, or after being duly cited or summoned fails to apply for probate, the renunciation or failure shall be deemed to be disclaimer of the trust contained in the will. Under the old law, that was not so.

Mr. Pettiona.—Who would cite the executor and trustee?

Mr. Justice Dean.—The beneficiaries or the creditors. In small estates, it frequently happens that probate is not taken out. The estate is administered and the family is happy. But, if a beneficiary or a creditor calls upon the executor to apply for probate and he fails to do so in accordance with the requirements of the Administration and Probate Act, he is deemed to have renounced probate.

I pass now to clause 47. It is a common procedure for a person who is appointed executor or a person who is one of the next of kin to appoint the Public Trustee or a trustee company to take out probate if he does not desire to do so himself. If the person who makes the appointment is a trustee as well as an executor, it is provided that the Public Trustee or the trustee company that takes the grant shall be deemed to be not only executor of the deceased but also trustee. This is another provision which is designed to ensure that whoever gets the property will undertake the trust of the property and prevent the possibility of the person who appoints a trustee company as trustee being said to be the trustee and liable for any breach that may occur. That provision has the same effect as clause 46, which is designed to ensure that liability for the trust rests upon the person who takes the property.

Sub-clause (2) of clause 47 has a similar purpose—to provide that the Public Trustee or a trustee company appointed by a will to be executor and to obtain grant of probate also becomes liable as the trustee and undertakes the duties of the trustee. The Public Trustee Act and the Trustee Companies Act do not specifically state that the Public Trustee or a trustee company will necessarily assume the obligations of trustee.

In clause 51, we come to a group of provisions that I could not explain in detail in the time at my disposal this morning. In Division 2 are clauses dealing with vesting orders. These provisions were rearranged by Mr. A. D. G. Adam, Q.C., who will be able to give the Committee information on these matters. He will be able to state whether there have been any significant alterations in the substantive law.

Clause 72 is a re-enactment and consolidation of the Custodian Trustee Act 1947. I have never understood completely the purpose of that Act, but probably it was thought to be desirable to retain this provision.

Mr. Randles.—Has it served a useful purpose?

Mr. Justice Dean.—It might have done. It is really an extension of section 22 of the Public Trustee Act, but it is not of much importance.

Clause 74 relates to the rule against perpetuities. This provision was considered by a Select Committee of the Legislative Assembly some years ago. Its effect is that a man cannot tie up his property indefinitely. The rule against perpetuities has reacted harshly in certain instances, inasmuch as a gift which may become effective at a period of time more than that of a life in being shall be void. Clause 74 is designed to ensure that the rule will not apply to a trust or power to sell property in any case where a trust of the proceeds of sale is valid.

Questions have arisen as to whether the power of sale exercised beyond that time is void. The clause declares that it is not to be void, and that is a desirable provision.

I direct attention to paragraph (*d*). In recent years, industrial firms have set up superannuation funds for their employees. Many deeds of trust governing these funds could be declared invalid because they do not contain any limit of time. John Danks and Son Proprietary Limited had a fund of this kind, and the company desired to make it a better one, and it was suggested, "Why not have it declared invalid?" It was so declared because it offended the rule against perpetuities, and the company introduced a new scheme. In 1932, the Superannuation and Other Trust Funds Act provided that funds of this type could be registered under the Friendly Societies Act and so be subject to investigation by the Registrar of Friendly Societies. Industrial concerns were not prepared to submit to the supervision of the Registrar. Action has now been taken to provide that the rule against perpetuities does not apply against funds of this nature. The provisions of clause 74 are to be given retrospective effect.

The Committee adjourned.

WEDNESDAY, 8TH APRIL, 1953.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Mitchell,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. Rylah,
	Mr. R. T. White.

The Honorable Mr. Justice Dean was in attendance.

The Chairman.—I think it was intended at this meeting to discuss clause 31.

Mr. Justice Dean.—Yes. This clause deals exhaustively with the power of trustees to make an appropriation of assets to answer the share to which a particular beneficiary is entitled under the deed or will creating the trust.

In the case of a will which does not create trusts—that is, one which provides legacies to particular people, and does not appoint trustees to hold the property for a period of time—but which provides for a distribution of the estate by the executors as such, the power of appropriation is given by section 41 of the Administration and Probate Act 1928. In the case of trustees of estates settled upon trusts, there never has been any statutory power of appropriation, but the courts have laid down principles governing appropriation. So, the position is that in the case of a will which creates no trusts, but provides legacies, the trustees have a statutory power to appropriate under the Administration and Probate Act. In the case of trusts created by deed, there is no power of appropriation given by statute, but there is one given by the court, which has laid down certain principles.

Appropriation means simply the setting aside of part of the estate in specie towards the share of a beneficiary. It may arise in either of two ways—

(*a*) It may happen that one person is entitled to be paid his share, while the shares of others are not yet payable, and possibly may never be payable. Thus, if the estate be divisible amongst *A*, *B*, and *C* upon their respectively attaining the age of 21 years, and if *A* attains that age while *B* and *C* are minors, *A* is entitled to be paid his one-third share. But it may happen, by reason of the appreciation or depreciation of the estate retained by the trustees, that when *B* or *C* get their shares, they may receive more or less than *A*. The rule of equity was that, provided the trustees acted impartially and honestly, *A* cannot recover any more if the assets have appreciated, nor is he liable to make any refund if the assets have depreciated in value.

(*b*) The second way in which appropriation may arise is where the trustees have to divide an estate between several who are immediately entitled to receive their shares. In such a case, the trustees are not bound to sell the assets in the estate in order to pay the beneficiaries an equal amount in cash. They may

set aside certain assets; for example, shares in a company as *A*'s share, and certain other assets as *B*'s share, and so on. Provided that they act impartially and honestly in valuing the assets, the beneficiaries cannot object. They may sometimes wish to do the same thing even when there is no need for immediate distribution, so that they will thereafter hold certain assets in trust for *A*, certain other assets in trust for *B*, and so on. Similar principles apply here also.

I turn now to the case of executors under a will which does not create trusts. If under a will the residuary estate is divisible between *A*, *B*, and *C*, a similar need for appropriation arises. Here, the matter is dealt with under section 41 of the Administration and Probate Act 1928, which lays down the conditions on which such a power of appropriation may be exercised.

Clause 31 now lays down the statutory requirement of an appropriation where the deed or will creates trusts as distinct from legacies. It adopts the general scheme and much of the detailed provisions of section 41 of the Administration and Probate Act, with such changes as are necessary when it has to be applied to the more involved provisions of a trust. But sub-clause (1) of clause 31, the main provision, is nearly identical in terms with section 41 of the Administration and Probate Act.

Paragraph (*a*) of sub-clause (1) provides that—

> " the appropriation shall not be made so as to affect prejudicially any specific gift."

Obviously that means that, if a particular set of shares, or a particular asset, is given to a named person, then that has to take effect and no appropriation can interfere with that person's right to the particular asset, and the property cannot be appropriated to another person by the trustees. I shall pass over paragraphs (*b*) and (*c*).

Sub-clause (2) of clause 31 provides that the power of appropriation is to extend to the three classes of property there referred to. That provision merely extends the power beyond what the courts would ordinarily apply it to, but in respect of the other classes of assets it is merely a declaratory provision rather than anything else.

Sub-clause (3) sets out how the trustee is to make his appropriation of assets—by valuing the respective parts of the estate subject to the trust, and it requires the trustee to employ a person who is " reasonably believed by the trustee to be a competent valuer." That procedure has to be followed in any case where such employment may be necessary, for example, where it is essential to ascertain the value of a piece of land.

Sub-clause (4) contains provisions making appropriations under this clause binding on the beneficiaries, otherwise, of course, there would not be much point in it, if the trustees were not to be protected.

Sub-clause (5) provides for consents of various people. Summarized these consents are as follows:—(*a*) If the beneficiary concerned is of full age and capacity, he must consent in writing to the appropriation; (*b*) if he is not of full age and capacity, or if he cannot be found, or if it is uncertain whether he is living or not, it is necessary to have recourse to sub-clause (7) to see what will happen. I shall pass over sub-clause (6), which is not of much importance; it extends the provision to the special case of a settled legacy.

Sub-clause (7) provides:—

If the person absolutely and beneficially entitled in possession or in the case of any settled legacy share or interest the person for the time being entitled to the income—

(*a*) is an infant—the consent may be given by his parents or parent with whom he resides or in whose custody he is (as the case may be) or by his testamentary or other guardian, or by the Court;

(*b*) is incompetent to manage his own affairs or incapable of managing his own affairs—the consent may be given by any person having power by law to give the consent, or by the Court;

(*c*) is a person whom the trustee has been unable at the time of the appropriation to find or who cannot be ascertained, or as to whom it is uncertain at that time whether he is living or dead—the consent may be given by the Court.

Sub-clause (8) provides that if the appropriation is of an authorized investment, then no consent is required, except in the case of an infant having a parent or guardian. In the case of an authorized investment there cannot be much doubt about the value of such investment, and in that case consent is less important and perhaps unnecessary.

Mr. Brennan.—I take it that the provisions of this sub-clause would apply in respect of a sum of money deposited in a specific bank account, a person having, perhaps, by a power of settlement, a restrictive control over that money?

Mr. Justice Dean.—It applies more generally. It is intended to apply in thousands of cases where, for instance, a legacy is not given to *A* direct but to a trustee upon trust for *A*, or perhaps thereafter for his children. In such a case, the trustee has to give his consent to an appropriation, because he is the trustee on behalf of that beneficiary or those beneficiaries.

Mr. Rylah.—In paragraph (*b*) of sub-clause (7) there is the expression, " is incompetent to manage his own affairs or incapable of managing his own affairs." Is that a new type of expression? Does it refer to specific cases, such as lunatic patients or to cases where an estate has been assigned for the benefit of creditors, or is it more general?

Mr. Justice Dean.—I could not say the source from which the expression arose. I think it was put in that form in order that it would be completely comprehensive and so that no question would arise as to incapacity.

Mr. Brennan.—It would include the Public Trustee?

Mr. Justice Dean.—That is so. A person having the power by law to give consent would be the Public Trustee in a case where he had taken over the affairs of an infirm person. Cases frequently arise where people are not capable of looking after their own affairs. If necessary, the court would have to give consent unless sub-clause (8) applied.

Mr. Rylah.—Under paragraph (*b*), the only person who would by law have power to give consent would be the Public Trustee?

Mr. Justice Dean.—Yes.

Mr. Rylah.—Or a trustee.

Mr. Brennan.—The significance of that provision is that, often, persons who may be incapable of managing their own affairs may be only temporarily of unsound mind, and on recovery they may wish to change something that has been done by the trustee during the period of their incapacity.

Mr. Justice Dean.—Yes.

Mr. Pettiona.—The final deciding authority can be the court?

Mr. Justice Dean.—Yes. If there is any difficulty about it, the court will decide whether the appropriation is a proper one or not. Sub-clause (9) deals with a special case of a fund set apart to answer an annuity, and in that case the same principle is applied.

Sub-clauses (10) and (11) are merely machinery provisions, and I do not think that they call for any comment.

Sub-clause (12) is designed to protect any persons who deal with a beneficiary after he has had the asset transferred to him, and it extends also to protect the Registrar of Titles. They are not required to inquire whether the appropriation has been properly made or not. Sub-clause (13) is merely a definition provision.

Mr. Rylah.—Throughout the Bill, it appears that the principle has been followed that the Registrar of Titles and trustees are protected in that they are not bound to make inquiries as to whether certain things have been properly done?

Mr. Justice Dean.—Yes, and to make titles as free as possible. Sub-clause (14) preserves all other powers of appropriation that now exist, and is intended to be a wider power than that which exists.

It is complicated and does not accomplish a great deal, but a provision of this nature must be worked out in some detail. Although it appears to be formidable, it is designed to apply to trustees the same principle as that contained in the Administration and Probate Act regarding specified gifts.

Mr. Randles.—If trustees act in good faith under the proposed provisions, they will be protected?

Mr. Justice Dean.—Yes. The main requirement is that a person of age must consent to a particular appropriation.

Mr. Byrnes.—The suggested new provisions will empower trustees to take action that has been effected under other statutes?

Mr. Justice Dean.—Yes, but new conditions have been formulated into a code, instead of the matter being left to the rather arbitrary rules of equity, which have not been fully worked out to cover all cases. It is intended to provide a uniform method of dealing with all problems likely to arise.

Mr. Byrnes.—The Committee must be satisfied that the clause conforms with existing legal practice or the law in equity, as it is one of the most important provisions in the Bill. I take it that any future action in this matter will be limited to the contents of this clause.

Mr. Justice Dean.—That is not quite so. Sub-clause (14) states that " this section shall not prejudice any other power of appropriation conferred by law or by the instrument (if any) creating the trust." I should think the equitable power will still be preserved, although probably it will not be worth much because no trustee will wish to depart from the provisions of the clause.

Mr. Byrnes.—The clause will bind trustees?

Mr. Rylah.—At the same time, it will guide them in their actions.

Mr. Justice Dean.—Yes; it establishes a code.

Mr. Randles.—His Honour stated that a similar provision was embodied in the Administration and Probate Act.

Mr. Justice Dean.—The proposed new clause applies the principle given effect in the Administration and Probate Act to the much more complicated situation arising from the establishment of trusts.

Mr. Byrnes.—Members of the Committee must be certain that the phraseology of this clause is correct. The Bill will be returned to Parliament with our blessing, and we rely on legal gentlemen to advise us on the matter.

Mr. Justice Dean.—I do not think that I can say more about the clause. I propose to return to clause 64, consideration of which was deferred at an earlier meeting of the Committee. First, the new clause omits sub-section (4) of the former section 57, but otherwise the old section is reproduced. Sub-section (4) provided that the section should not apply to trustees for the purpose of the Settled Land Act 1928 —an enactment which everybody dodges and nobody understands, and which is not very applicable in Australia. By polite convention, judges and lawyers have consistently ignored sub-section (4). There is a somewhat similar section in the Settled Land Act. It is deemed desirable to exclude the existing sub-section (4) and to provide that in all cases of trustees, whether under the Settled Land Act or not, the clause as now drafted shall apply.

Secondly, there is a matter which may concern the Committee later. Clause 64 will empower the court to confer on trustees power to take action, which they are not otherwise authorized to take, in any case where it is convenient or expedient. The provision has been used for all manner of purposes and has been most useful because frequently trustees, in the course of administration, desire to effect a particular transaction which will have advantageous results. As there is no such power under the law, and if none exists under the trust instrument, an application may be made to the court for the necessary power. In one instance, in which it was desired to convert a large business undertaking into a company, this course was pursued.

In the near future the Committee may be asked to examine the question of applications made to the court to confer on trustees power to invest in shares of companies in cases in which the trust instrument has not given such power. On one occasion I authorized trustees, subject to certain very stringent conditions, to invest portion of a trust fund in public companies. Mr. Justice Williams, in the Supreme Court of New South Wales, has acted similarly. The power was queried, and recently the High Court, by a majority of three to two, held that the court could confer such a power. The Committee may be asked to recommend generally that in all cases trustees may invest in shares of companies, subject to certain restrictions as to the type of company, and so on. Clause 64 empowers a court, in special cases, to give such authority. However the Committee is not immediately concerned with this question.

Clause 75 is a teaser. Any lawyer will understand what is meant when told that clause 75 abolishes the rule in the case of *Allhusen* v. *Whittell*. The matter arises in this way: In a case in which there is residuary property settled on a widow for life, and after her death to the children, the widow taking the income of the estate during her lifetime, questions arise as to what is income and what is capital. In the early part of the administration, debts usually and not paid, and a year may elapse before they are all settled. Consequently, until the debts have been paid, the capital of the estate is larger than it will be later, and so, therefore, is the income. As time passes and the debts are paid, it may become necessary to realize some of the estate investments which, in the meantime, have earned income. Is the widow, as the life tenant, entitled to the income from a sum in excess of the net capital, as it will

ultimately work out to be, or is she entitled only to the income on the net capital, and does the surplus belong to capital?

The rule of equity has always been that she is entitled only to the lower amount—that is, the income on the net value of the estate after provision for the payment of the debts, and complicated mathematical formulae have been evolved in order to make sure that the life tenant does not get any more than the income of the net estate. There has for long been a feeling among members of the legal profession that there is no reason why the life tenant should not receive a little more income in the first year; it would not be at anybody's expense, and if there was to be any windfall arising from the delay in payment of debts, the life tenant might as well have it instead of its going into the corpus. Many wills have excluded the application of the rule.

The rule has been a nightmare to solicitors and trustees in many cases, because the matter has entailed complicated mathematical calculations the purpose of which is to ensure that the life tenant does not receive more than the income of the net estate for the first year. The general feeling of members of the legal profession now is that, if there is a little more income in the first year, no harm is occasioned in giving the life tenant the benefit of it. The net capital is the same as it always has been. Accordingly, it is proposed, following action taken in New South Wales, to abolish the rule in the case of *Allhusen* v. *Whittel* altogether, and give the life tenant the whole of the actual income in the first year. The provision appears to be just and wise, and its adoption will obviate much trouble and save time.

The only qualification is provided by sub-clause (2), which states that when any of the debts which are not paid bear interest, which must be paid in the period, it shall be paid by the life tenant from income. In my opinion, that provision is reasonable. The clause is technical.

Mr. Thomas.—Will the provision operate after the first year of administration?

Mr. Justice Dean.—Debts should be paid in the first year, but if in fact all of them are not settled until later, the same principle will continue to apply.

Mr. Brennan.—In the first year the executors have power to wind-up the estate.

Mr. Justice Dean.—Yes. Frequently, all debts will be paid in less than a year. There is no reason why capital should get the extra money rather than income, and it is thought desirable that it should go to income.

Mr. Rylah.—Some members of the Committee may wonder why it takes such a long period for the payment of debts. Most of the delay occurs through the assessment of duty. In Victoria assessment is reasonably rapid, and it is possible in most cases to finalize all matters in a year.

Mr. Justice Dean.—Clause 76 deals with a curious little point. Its need arises from the introduction of a type of insurance policy best known as the family income protection policy, which provides that upon the death of the person insured the insurance company undertakes to pay income or an annuity to the estate for the length of time stipulated. It is a common policy, and a wise one in many instances. A difficulty has arisen. When a man who has created such a policy dies and leaves his estate to his widow as life tenant and to the children in remainder, one would suppose that the payments accruing from the policy would become part of the income available to the widow. Courts have held that that is not so, but that the payments are part of the capital of the estate, and the widow receives the income, if any, upon such payments. It is most likely that the testator intended that the payments should go to the widow as income, but that has not been the effect.

Accordingly, clause 76 provides that in the case of an estate settled upon somebody for life and then to persons in remainder, payments of the kind referred to shall be treated as income. It seems to be a wise and sensible provision, because the basic purpose of the insurance policy is to provide an income for the widow after the death of the husband, and if the payments are added to capital and she receives only the income from them, the purpose for which the policy was taken out is defeated.

Mr. Pettiona.—Has that always been the practice?

Mr. Justice Dean.—The practice has been invariably that, unless the will specially dealt with it, money derived from policies of this kind periodically after the death of the testator becomes part of the capital of the estate and not income of the widow. That practice seemed to us to be unjust. It is plainly not what the testator intended, as he thought he was providing an income for his widow, not capital for his estate. Accordingly, it was thought desirable to amend the relevant provision.

Within the last few days I received a letter forwarded to me by the Attorney-General, from the chairman of the Life Offices Association, in relation to this clause, proposing certain amendments. Paragraph (*a*) of sub-clause (1) of clause 76 begins with the words—

> " every payment of an annuity purchased by a deceased person . . . ."

It is suggested that the words " purchased by a deceased person " be deleted and that in place thereof there should be inserted the words " on the life of a deceased person." In other words, it is considered that the expression is too narrow—to require that it shall apply only where the testator himself purchased the annuity. It may be that a father purchased a policy of this kind on the life of his son for the benefit of his son's widow. In other words, it does not matter who provided the annuity. If the father had purchased the policy, it may not be one " purchased by a deceased person." Accordingly, it seems desirable to extend the provision in the way suggested by the Life Offices Association to cover every policy on the life of a deceased person.

The Association proposes a similar amendment ir paragraph (*b*) which contains the words—

> ". . . . pursuant to a policy taken out with respect to his life by a deceased person."

The Association suggests the substitution of the words, " policy of insurance on the life of a deceased person." For the same reason, the proposed amendment seems to be desirable. Finally, the Association proposed the addition of the words " or until a specified date " after the words " for a period of years," near the end of paragraph (*b*). Apparently, policies of this kind do not always take the form of policies " for a number of years," but sometimes appoint a fixed date on which the payments are to terminate. It would appear to be desirable to cover that point also.

Mr. Brennan.—After " date " the words " or occurrence " might also be added, to cover some particular event, such as the death of a person.

Mr. Justice Dean.—Yes.

Sub-clause (2) states that every payment to which the section applies shall be paid as if it were income, but sub-clause (1) is the important provision because it defines what the section shall apply to. I agree with Mr. Brennan's suggestion that the words " or on the occurrence of a specified event " be added.

Mr. Rylah.—Paragraph (*a*) of sub-clause (1) contains the words "every payment of an annuity purchased by a deceased person who dies," and paragraph (*b*) states, *inter alia,* "a policy taken out with respect to his life by a deceased person who dies." A court may be asked to state what is an annuity purchased on the life of a deceased person. It appears that the word "deceased" before the word "person" is superfluous.

Mr. Justice Dean.—If the word "deceased" is omitted, difficulties may be created when later words of the clause are considered. Sub-clause (2) contains the expression "deceased person." The meaning would not be readily clear if the word "person" were used.

Mr. Rylah.—It may be worth checking the wording with the Parliamentary Draftsman.

Mr. Justice Dean.—I agree.

Mr. Pettiona.—Is clause 76 intended specifically to cover annuities purchased from insurance companies?

Mr. Justice Dean.—Yes, a particular type of life insurance.

Mr. Pettiona.—Should not the section refer to life insurance policies as such? Does "annuity" mean a life insurance policy, or can the expression mean some other method of providing income?

Mr. Justice Dean.—I do not think there is any substance in the suggestion. I have no objection to the clause as drafted.

Mr. Thomas.—Does Mr. Justice Dean agree with the statements contained in the letter to which he has referred?

Mr. Justice Dean.—I entirely agree with them. Mr. Brennan has made another proposal, with which I also concur, that the words "or on the occurrence of some specified event" be added. The draftsman might be asked to examine the suggested amendments.

I pass to clause 77, which presents no real difficulty. It relates to the type of case in which there are beneficiaries living in another country who are hard to locate, and consequently it is difficult to pay money to them and to get a receipt. In the cases of the Public Trustee and of trustee companies, there are already provisions in the relevant Acts empowering them to pay money to a specified official of the country concerned who represents it in Victoria. After publication of a notice in the *Government Gazette,* the money may be paid to the Consul or other person for transmission to the person affected. This is a convenient practice. The new clause will give to private trustees powers which already are possessed by the Public Trustee and by trustee companies.

Mr. Rylah.—Apparently the clause follows the general form of the provisions referred to by Mr. Justice Dean, because those clauses in the Trustee Act and the Trustee Companies Act were repealed. I take it that clause 77 of the Bill is intended to be wide enough to cover all cases?

Mr. Justice Dean.—Yes. It is meant to have general application.

I now come to clause 79 under Part VI.—Limitation of Actions against Trustees. This is perhaps the worst section in the Bill. It is intended to provide a period of limitations for bringing actions against trustees. I do not wish to trouble the Committee with a recital of the technicalities of this clause if I can avoid that. It is a provision that has given a great deal of difficulty to the courts. The clause begins with these words—

> "In any action or other proceeding against a trustee or any person claiming through him."

Then follow certain exceptions. Those exceptions are cases to which the provision does not apply, one of which is a case where the claim is "founded on fraud or fraudulent breach of trust to which the trustee was a party or privy." The second exception relates to claims "to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his use." Generally speaking, this provision applies only in cases known as "innocent breaches of trust," that is, cases in which the trustee has acted honestly, but mistakenly or carelessly. In such instances the trustee is entitled to the provision contained in paragraph (*a*) of the clause, which reads as follows—

> "All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him."

If a person had not been a trustee he would not have been liable, accordingly, he would not want the protection of the provision. It seems to have been based on a misconception somewhere that a trustee was to be given the same protection as if he had not been a trustee. It has created a problem for the court.

Mr. Thomas.—It refers to a person such as an executor of a will?

Mr. Justice Dean.—It applies to executors as well as to trustees. It has been suggested that paragraphs (*a*) and (*b*) were alternative drafts which the British Parliament intended to consider, and, apparently being unable to decide which one to adopt, they included both in the legislation. That is one theory advanced to explain their existence. However, paragraph (*b*) begins with the words—

> "If the action or other proceeding is brought to recover money or other property and is one to which no existing statute of limitations applies,"

That is a limitation which is not contained in paragraph (*a*). It applies in this way. If it is an action to recover a legacy then there is an existing limiting statute; the period is fifteen years. So paragraph (*b*) would not be applicable in such cases, and litigants try to apply the provisions of paragraph (*a*).

Mr. Brennan.—Suppose somebody sued a trustee for a debt after a lapse of six years?

Mr. Justice Dean.—Then an existing statute would be applicable.

If a claim against a life tenant is barred, it may be so barred for twenty years until the death of the life tenant, whereupon the remainder become entitled, and they have a new right to bring an action. Only the life tenant is barred. A question has arisen whether the words beginning "but so nevertheless" do not apply to paragraph (*a*) also, and in one case it was held that they did and that the Act was wrongly printed in this form, which was used in England.

Part VI. is a confused and difficult set of provisions to apply. The Parliament of England, in an Act of 1937, which overhauled the provisions dealing with limitation of actions, included a new section dealing with limitations in the case of action against trustees. The sub-committee of the Chief Justice's Law Reform Committee, of which I was chairman, favours the adoption of the new English provision. A difficulty arises because there has been drafted a Limitation of Actions Bill which embodies all limitations provisions and includes a clause which the sub-committee wishes to be inserted in place of clause 79 of the Trustee Bill.

Mr. Rylah.—That would be clause 22 of the Limitation of Actions Bill approved by the Statute Law Revision Committee.

Mr. Justice Dean.—It follows closely the English provision and is shorter and simpler than clause 79 of this measure. Members of the sub-committee do not know quite what to do in the matter. One alternative is to incorporate clause 22 of the Limitation of Actions Bill in the Trustee Bill in place of clause 79. Another is to allow the present clause to remain in the belief that the Limitation of Actions Bill will some day become law and will repeal the last section of the Trustee Act. If it is not considered likely that Parliament will pass the Limitation of Actions Bill in the near future, the sub-committee favours adoption of the first alternative I have mentioned.

The Chairman.—It will be desirable to inquire whether or not the Government intends to proceed with the Limitation of Actions Bill. In the light of what is learned, the matter can be considered further.

Mr. Rylah.—I take it that Mr. Justice Dean regards clause 79 of the Bill as entirely unsatisfactory?

Mr. Justice Dean.—Yes. The sub-committee of the Chief Justice's Law Reform Committee desires to get rid of it.

Mr. Pettiona.—Paragraph (*b*) appears to be contingent upon paragraph (*a*).

Mr. Justice Dean.—Paragraph (*b*) is narrower than paragraph (*a*) for various reasons. If paragraph (*a*) can be given a meaning, it is wider than paragraph (*b*).

Mr. Pettiona.—Is it regarded as impossible to find the true meaning of paragraph (*a*)?

Mr. Justice Dean.—Yes. It seems to cancel itself out. It states, in effect, "If you are a trustee, you have the same protection as if you are not a trustee. But if you are not a trustee, you are not liable at all." Cases have been dealt with in which a trustee, as such, is liable and also in which the person concerned is liable independently of the trust. For example, persons have obtained money on terms requiring them to account for it, and it was said, in effect, "You are liable at law to an accounting apart from being a trustee." Paragraph (*a*) has a limited and artificial application.

Mr. Rylah.—Clause 79 replaces section 67 of the existing Act.

Mr. Justice Dean.—Yes.

The Committee adjourned.

WEDNESDAY, 22ND APRIL, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. A. D. G. Adam, Q.C., was in attendance.

The Chairman.—Mr. Adam, Q.C., has attended this morning to discuss Division 2, of Part IV., of the Trustee Bill relating to the provisions covering vesting orders.

Mr. Adam.—When the Principal Act was being revised, advantage was taken of the opportunity to revise the sections dealing with vesting orders, with the view of presenting the statutory provisions in a more compact and easily-understood form. Under the principal Act, vesting orders are divided into two sections, according to whether the subject is land or stocks and shares, or other chose in action. There is one set of provisions relating to land, and a similar set for shares or chose in action. To see the overlapping, one need only compare sections 44 and 51. The court had the power to make vesting orders substantially upon the same grounds whether the property affected was land or stocks and shares or chose in action, yet sections 44 and 51 state the grounds in full and they are substantially the same.

The Chairman.—For the information of lay members of the Committee, I ask Mr. Adam to explain the purpose of vesting orders.

Mr. Adam.—The court is authorized to make vesting orders to facilitate the administration of trusts. A vesting order facilitates the administration of trusts, and transfers the legal title of property from one person to another, in whose favour the order is made. In the case of land, its legal title can apart from a vesting order be transferred only by some form of instrument to which the legal owner is a party. Under the Transfer of Land Act, a transfer is executed by the registered proprietor in favour of a transferee. In the ordinary course, the instrument must be executed by the legal owner to pass the title to another. Likewise with shares in a company; normally a transfer by the owner is requisite before another person can become the legal owner.

In the case of trusts, it often happens that the trustee in whom a legal title is vested is unable or unwilling to convey the legal estate to new trustees. To cite a simple case, perhaps the old trustee has disappeared, and the legal title is still in his name. The court appoints a new trustee, because the court will not allow a trust to fail through there being no trustee. The problem is how to get the legal title to the new trustee, who cannot funcion as a trustee unless he has legal title to the property. I have mentioned a typical case in which the court has power to make a vesting order to vest in the new trustee the legal title, and so facilitate the administration of the trust. There are many cases in which the court should exercise this power. The occasions on which the court under the principal Act may make vesting orders are set out in section 44 in relation to land. Those provisions appear in sub-clause (2) of clause 51 of the Bill. The provisions have been extended but, substantially, the changes are in the drafting of the clauses, providing a more convenient expression of the law.

I have instanced the case of a trustee disappearing, when it is necessary to have the title of the property put into the names of new trustees. Under the present Act, that power appears in paragraph (*b*) of section 44. In the Bill, it appears in paragraph (*g*) of sub-clause (2) of clause 51—"where a trustee cannot be found." Paragraph (*d*) refers to a trustee who is an infant. An infant can have legal title to property but the court can vest the property in other trustees. This Part of the Bill is intended to vest legal title to propery to permit the proper administration of trusts.

As I have pointed out, under the present Act, the power to make vesting orders is divided into the cases in which land or stocks and shares, and so on, are the subject matters of the order. There is overlapping because, substantially, the court has power to make orders in like circumstances in respect of both classes of property. In the New South Wales legislation, we find that a more convenient procedure has been adopted, which does not alter substantially the provisions applying in Victoria. Power is given to the New South Wales court to make vesting orders in respect of all property, and there is one set of

provisions stating the circumstances under which vesting orders may be made. That obviates duplication and overlapping, which characteristics are present in our Act. In the Bill, the change over to the New South Wales legislation streamlines the provisions relating to vesting orders.

Mr. White.—For how long has the New South Wales legislation been in operation?

Mr. Adam.—The New South Wales Act was passed in 1925, and in this connection I refer the Committee to the publication *Trustee Acts of New South Wales,* by Nicholas and Harrington, second edition, page 123.

Mr. White.—Do you favour the New South Wales Act?

Mr. Adam.—I do, because it improves the form of expression of the law, and it has worked well in that State. It was thought desirable that we should enact our provisions in an up-to-date form.

Mr. Brennan.—Would not that aspect have been taken into consideration when the 1929 consolidation was made?

Mr. Adam.—I should think not. The task of the consolidators, primarily, was to consolidate the law. Our Trustee Act 1915 was altered, in some respects, in 1929, but substantially it was left as it was. No inference can be drawn from the fact that the 1915 Act was continued. I might say that members of the Chief Justice's Committee on Law Reform do not feel very strongly upon this point. The Victorian provisions have worked all right, and it is perhaps more a matter of aesthetics. The proposals contained in the Bill represent a better and more modern re-statement of the law. It is offensive to find overlapping provisions which, obviously, are unnecessary. For instance, sections 44 and 51 of the present Act could have been amalgamated into one section without having the repetition that now exists.

Mr. Thomas.—I take it that the New South Wales Act lends itself more than does the Victorian Act to changed conditions that operate from day to day, such as those in relation to a trustee who may become mentally ill.

Mr. Adam.—I think Mr. Thomas has in mind instances where, both under the Victorian Act as it stands and under the New South Wales legislation the court may make an appropriate order with respect to property such as land or shares in a company. Under the present legislation, both States could deal with such a situation. I might mention that a layman can follow more readily the language of this Bill in regard to vesting orders than he can the present Trustee Act. He wonders why there is a provision in section 44 and a similar one in section 51. Now it will be sufficient for him to refer to the relevant provision in one section only. The Chief Justice's Committee has gone through the Bill and is satisfied that there is no substantial change from the existing Trustee Act of 1928 in the new measure. The changes are of a minor character. In the first place, under the present Victorian Act, the subject of vesting orders is land, stocks and things in action. Under the proposed measure, the power extends over property generally. In practice, vesting orders would be sought only in regard to land, or stock, or things in action, because it is difficult to imagine other classes of property in respect of which a vesting order could be required, but, in so far as it might be, it seems proper that the power should extend to any such property. For instance, it is conceivable, although not likely, that a vesting order might be required in respect of chattels. Under the Bill, a vesting order could be made, whereas, under the present law, that would not be so because it is not land, it is not stock, nor is it a thing in action.

Mr. Brennan.—Will you give an illustration of a thing in action?

Mr. Adam.—Yes. A thing in action might be a benefit under a contract, or something other than a chattel which is a valuable right. For instance, a valuable right might consist of the right to sue some one else for damages or for a debt; such a case might arise where a creditor had lent money to a debtor; he would have a thing or chose in action and would have a right to be paid the sum of money concerned. A thing in action is something distinct from, let us say, the packet of cigarettes that I now hold in my hand; that is something which I possess. Suppose it were desired that my title to the cigarettes should be vested in a new trustee so that he could deal with it as part of the trust property. It would be impossible to get a vesting order under the Act as it now stands, but that could be done under the new Bill because it extends the power to property generally. There seems to be no reason why the court should not have that power, if it chooses in a particular case to exercise it, although I concede that it must be very rarely that the necessity to exercise it will arise.

The Chairman.—I suppose that such a situation could arise regarding the value of a picture that had been lent to the National Gallery by a trustee who had disappeared; it might be necessary to get the picture back and have an order made, vesting the picture in a new trustee.

Mr. Adam.—He might want to sell the picture, yet not have a legal title to it.

Mr. Brennan.—A thing in action could be the right of an infant to sue in respect of an infringement of his father's patent, where he was not of age to do so. In such a case, could an order be made to vest in a trustee the right to keep that power alive until the infant became of age?

Mr. Adam.—I assume that Mr. Brennan refers to an infant trustee. In such circumstances, the court could cope with the situation as a thing in action. As I stated previously, New South Wales has extended the ambit of vesting order to include property generally. That may be regarded as a precedent, and it seems to be a desirable extension.

The Chairman.—I take it that there is no reason why the provision should be limited in any way.

Mr. Adam.—That is so.

Mr. White.—In reality, there will be but one function, instead of two separate functions?

Mr. Adam.—Yes. There are two advantages in extending the power to property generally. The first is the one I have mentioned. There is no reason why the court should not have the power over property generally instead of its being limited to two classes of property; and, secondly, by extending the power to property generally, it is possible to avoid the duplicating sets of provisions that occur under the existing Act—one relating to land, and the other relating to stock and things in action. Those provisions can be related to property generally.

Mr. Pettiona.—Clause 59 of the Bill refers to the effect of vesting orders.

Mr. Adam.—I shall discuss that aspect later. I am at present dealing with the changes that will be effected by the Bill. The first is an extension of the scope of vesting orders to property generally. The second point I make is that there are some minor changes which have been added to the specified circumstances in which the court may make a vesting order. The new circumstances are detailed in paragraph (*c*) of sub-clause (2) of clause 51, where a trustee retires or is retired. The other case is detailed in paragraph

(*n*), which provision is obviously a safeguard. It is intended in no way to limit the power of the court to make vesting orders. The effect of paragraph (*n*) will merely be to ensure that nothing in this Bill will deprive the court of power which it had under the former law. Consequently, the only real change is in paragraph (*c*). Obviously, that change is desirable. For instance, if there are three trustees, one of them may retire from the trust in accordance with the Trustee Act, and he may fail to divest himself of the legal interest in the trust property. It is desirable that the two continuing trustees alone should be legally entitled to the trust property. Should any difficulty arise in getting a legal title from the retiring trustee, the court will have power to vest the property in the continuing trustees. Such a provision has been adopted in New South Wales, and it is desirable that it be adopted in the new Victorian Bill. I should think that, even without such a provision, there would be power to make a vesting order in such an instance, but its specific enactment would place the matter beyond doubt.

At this stage, I should like to review quickly some of the provisions. Sub-clause (1) of clause 51 indicates what is meant to be the effect of a vesting order. That brings us immediately to clause 59. Then there are stated the circumstances in which vesting orders may be made. These are two cases where, in the view of the Chief Justice's Committee, it is proper for vesting orders to be made; they correspond to the circumstances in which vesting orders may now be made. I presume that the members of this Committee do not desire that I should justify those circumstances.

Mr. White.—Are the clauses of the Bill in keeping with the New South Wales Act?

Mr. Adam.—Yes, except where I comment to the contrary. Clause 51 reproduces sub-sections (1) to (3) of section 71 of the New South Wales Act; clause 52 conforms with sub-sections (4) to (9) of section 71—the provisions both of clauses 51 and 52 appear in section 71 of the New South Wales legislation, but it seemed better for them to be given in two clauses of the Bill. I have the note that the only change from the present Act introduced by clause 52 is in sub-clause (2), which is consequential upon including paragraph (*c*) of sub-clause (2) of clause 51.

Mr. Pettiona.—If there are three trustees, and two of them retire, the Bill will not prohibit the court from vesting title in other trustees?

Mr. Adam.—The court would have power to vest the property in the continuing trustee and the new trustees.

Mr. Thomas.—In sub-clause (4) of clause 52, the expression " in any court " appears. Does that include a Court of Petty Sessions?

Mr. Adam.—Yes " Court " as defined in the Act means the Supreme Court unless inconsistent with the context. " Any " court takes one beyond this definition. A vesting order cannot be impeached in any court. The safeguard appears in sub-clause (5) of clause 52.

Mr. Randles.—One cannot cast doubt upon a vesting order unless one is prepared to challenge it before the court making the order?

Mr. Adam.—In effect, that is so.

Mr. Chairman.—The question asked by Mr. Thomas has raised a matter of drafting, which will be referred to the Parliamentary Draftsman.

Mr. Adam.—Sub-clause (6) of clause 52 is new. It has been copied from the New South Wales Act, and is a desirable provision. It would cover a case such as a lease vested in a trustee as a corporation, which corporation was later dissolved. The leasehold interest would disappear altogether, and the property would revert to the landlord. In such a case as that, it should be clear that the court could vest the leasehold held in trust in a new trustee. To enable that to be done, it is necessary to have a provision to the effect that the court may, by order, create a corresponding estate and vest it in a new trustee.

Mr. White.—How has that aspect been covered in the past?

Mr. Adam.—I do not know that such a situation has actually arisen except in one case—*Albert-road, Norwood,* (1916) 1 Chancery 289—where the landlord consented to an order and the Court was prepared accordingly to treat the legislation, without the section, as covering the matter. The point is such a doubtful one however that it should be explicitly provided for. Views expressed by the Court of Chancery in England do not, technically, bind our Australian courts. In New South Wales, it has been found desirable to remove any doubt and there seems to be no reason why similar action should not be taken in Victoria. Obviously, the technicalities of the law relating to the dissolution of corporations should not affect beneficiaries in trusts, and it should be possible to vest in a new trustee the property concerned.

Mr. Thomas.—On the occasion of the bursting of the land boom, many corporations ceased to exist. Will this provision have the effect of protecting those persons who have entrusted money or property to corporations as trustees should there be a recurrence of the circumstances that obtained in 1892?

Mr. Adam.—That is a problem that could arise. It may be that, in regard to certain classes of property, dissolution of a corporation will not destroy the legal estate in the property, but in the case of a leasehold it certainly will. In the circumstances mentioned by Mr. Thomas, the assets of the corporations concerned may have included many leaseholds. In such cases this provision will apply.

The Committee adjourned.

WEDNESDAY, 20TH MAY, 1953.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles,
	Mr. R. T. White.

Mr. A. D. G. Adam, Q.C., was in attendance.

The Chairman.—Mr. Adam, when you last appeared before the Committee you had completed your remarks in regard to clause 52.

Mr. Adam.—That is so. Clause 53 effects no change; it follows the line of the English, New South Wales, and Victorian Acts. It would certainly be unwise to make any departure from this provision, even though it has not much practical operation. The same comment applies to clauses 54 and 55; they make no change in the existing legislation but they are desirable provisions to retain so that in a particular case the court can have recourse to them.

Clause 56 confers on the court power to make a vesting order when a mortgagee has died. It is copied from section 75 of the New South Wales Act. My own view is that it would be better to omit clause 56, because this provision was contained in the 1915 Act but was deleted from the 1928 consolidation. No doubt it was considered to be unnecessary. A similar provision was in the English Trustee Act of 1893, but

it has been omitted from the 1925 Trustee Act. It has been retained only in New South Wales, and it would not surprise me if that was not the result of an oversight. I am afraid that I am responsible for the inclusion of clause 56 in the Bill, because I took it from the New South Wales Act and did not look back at the history. Sub-clause (3) of clause 51 of the Bill extends the vesting order provisions, and it seems clear that a mortgagee, where the mortgage has been paid off, is in the position of a trustee, and that the court has power to make a vesting order in appropriate circumstances. For that reason, it is unnecessary to provide expressly for the case of a mortgagee who has died, as is done in clause 56. The position was that in the 1893 English Act and the 1915 Victorian legislation it was not expressly provided, as it is in sub-clause (3) of clause 51, that the vesting order provisions were to apply. In substance, that was introduced in England in 1925 and in Victoria in 1928, and I think it may be taken that the decision was deliberately made to omit the sections corresponding to clause 56 of this Bill. I suggest that has been overlooked in New South Wales.

Mr. Brennan.—Sub-clause (2) of clause 56 provides—

> The order may only be made if the mortgagee did not enter into possession, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last-mentioned person consents to any order for the reconveyance of the land.

Do you not think that provision should be included in clause 51?

Mr. Adam.—I do not think so, because it is only where the court considers it expedient that a vesting order may be made. I think that at times, even though the mortgagee had gone into possession, the court might consider it expedient that a vesting order should be made, the mortgage moneys having been paid off. The hands of the court should not be tied. I am somewhat puzzled by the inclusion in clause 56 of the qualification that an order can be made only if the mortgagee did not go into possession. That provision was contained in the English Act of 1893, and no doubt for that reason it was incorporated in the New South Wales legislation. Further, it appeared in that form in the 1915 Victorian Act. Be that as it may, in my opinion the case provided for in clause 56 is more than covered by clause 51; therefore, I consider that it would be better to omit clause 56.

Mr. Brennan.—What would be the position of takers for value without notice or lessees of land for, say, 99 years, if a mortgagee has gone into possession?

Mr. Adam.—No doubt if third parties have acquired interests that ought to be protected the court will not make a vesting order. The court is not bound to make a vesting order in every case; it has to be satisfied that in a particular case it is expedient that it should be made. It would be contrary to all principle for the court to defeat vested rights in others under this provision of the Bill.

The Chairman.—Under clause 56 it may be possible for a mortgagee to go into possession when practically all the principal money has been repaid, purely for the purpose of defeating the possibility of a vesting order.

Mr. Adam.—That could happen, but in any event I should think that to retain clause 56 would throw doubts on the question whether mortgagees in other circumstances than those indicated in clause 56 could become trustees and so come within the vesting order provisions. Take the case of a mortgagee who has received the full amount of the mortgage money, has gone abroad and cannot be contacted. The mortgagor desires a re-conveyance of the property, vesting the legal title in himself. Apart from clause 56, it is clear that the mortgagee has become a constructive trustee and the court can act under clause 51. However, if clause 56 remains, some of my colleagues may contend: "Clause 56 is a code where the land has become vested in the mortgagee, and only if the mortgagee has died has the court power to make a vesting order." In providing for a particular case, clause 56 suggests that in no other case can a vesting order be made against a mortgagee. That is undesirable.

The Chairman.—It might encourage mortgagees to enter into possession.

Mr. Adam.—That is true. In England, the vesting order provisions are satisfactory without the provisions in clause 56. In the Victorian 1928 consolidation, Sir Leo Cussen was content to omit clause 56. That might have been done for reasons similar to those that I have now indicated. I consider the Committee would not be ill-advised if it followed that lead.

Mr. R. T. White.—Has any difficulty arisen following that omission from the consolidation?

Mr. Adam.—No.

The Chairman.—There is reference in the Comparison Table to the old Act. Is anything in the old section 56 incorporated in the new clause?

Mr. Adam.—That refers to the provision in sub-clause (4) of clause 56. There was a corresponding provision in section 56 of the old Act applying to vesting orders generally.

The Chairman.—Your recommendation is that clause 56 is unnecessary.

Mr. Adam.—Yes. Possibly it may work mischievously.

Mr. Thomas.—Do you say that clause 51 goes as far as paragraphs (*a*) and (*b*) of sub-clause (3) of clause 56, in relation to how far vesting orders may be extended?

Mr. Adam.—Yes. Compare clause 51 (2) (*f*) and (*g*) with clause 56 (3) (*a*) and clause 51 (2) (*i*) with clause 56 (3) (*b*).

The Chairman.—I think Mr. Adam has shown conclusively that clause 56 need not be included in the Bill.

Mr. R. T. White.—I am quite happy about Mr. Adam's recommendation.

Mr. Randles.—What will be the position of a mortgagee who will not give possession?

Mr. Adam.—A mortgagee in possession is accountable for all profits derived from the land; in addition he must account for profits he might have derived if he had made full use of the property. He is chargeable on a strict footing and an account can be taken against him. For that reason, it may have been desired to keep him out of the picture, but the position now is that if the court considers it expedient and is satisfied that such a mortgagee has been paid off, the order will be made. If there was any doubt, accounts would be required to be taken.

I have discussed clause 56 with Mr. Justice Dean, and he holds no strong views on this matter, relying rather on my justifying the clause or not. No strong views are held by members of the sub-committee on the clause. In substance, the desire is not to alter the law as it now stands, but to have it in better form. By omiting clause 56, the existing law will not be altered.

I have no comment on clause 57, which reproduces section 47 of the present Act. A similar comment applies to clause 58, which is a reproduction of section 48 of the old Act.

Clause 59 has been copied from the New South Wales Act. It states the effect of a vesting order in regard to land and other property. In substance, it reproduces what now appears in more than one section of the Act. It reproduces section 49 and incorporates a portion of section 51. Apart from drafting amendments necessary in one section to state the effect of a vesting order, the law has not been altered.

Mr. White.—Is there a parallel section in the English Act?

Mr. Adam.—The provision in the English Act is along the lines of that in the present Victorian Act, dividing the subject of vesting orders into land, stock, and things in action, and, making that division, it necessarily follows the lines of the drafting of the provision in the Victorian Act. Once the subject of vesting orders covers property generally, some such change as is incorporated in clause 59 is essential from a drafting point of view. In substance, it has the same result, but in drafting we follow the New South Wales Act rather than the English legislation.

The Chairman.—I suppose that is mainly for simplicity?

Mr. Adam.—For brevity and simplicity.

Mr. Thomas.—What are things in action?

Mr. Adam.—A typical thing in action would be a share in a company, which confers rights against the company to receive dividends that are declared, to receive the appropriate share in the winding up of the capital of the company, and so on. Sub-clause (4) of clause 59 provides, *inter alia*—

> In the following cases the vesting order shall vest in the person named in the order the right to transfer or call for a transfer of the property or security, that is to say, in the case of—
>
> . . . . . .
>
> (*b*) any security that is only transferable in books kept by a corporation company or other body, or in manner directed by or under any Act whether of this State or otherwise.

In regard to land, a vesting order vests the legal title to the land immediately in the person in whose favour the order is made, except where the land is under the Transfer of Land Act, where registration is necessary to perfect the legal title. In such a case sub-clause (3) of clause 59 applies. When securities such as shares are the subject of vesting orders, the traditional mode of operation for a vesting order is to confer thereby on the person in whose favour it is made not the legal title to the property, but the legal right to transfer those shares. Further, under sub-clause (5) of clause 59, in the case of such security the vesting order vests in the person named the right to receive the dividends, although the shares do not stand in his name until something further is done. So in regard to securities—and the same is true of other things in action—the person named in the vesting order has the right to call for a transfer of the property. In regard to land, it is simply the legal title that vests. The different operation of vesting orders in regard to land on the one hand and in regard to these other species of property on the other provided by clause 50 follows the traditional lines that have been adopted ever since the vesting order legislation was introduced.

Mr. Pettiona.—Do you think sub-clause (7) of clause 59 goes far enough? If a bogus company was affected in some way and it was known that a case was before the court, it could set about transferring the property or the security until such time as notice in writing was received that a vesting order had been issued.

Mr. Adam.—It is difficult to see how such a company itself would benefit. Actually you have to weigh the position of the person entitled to the vesting order and the position of the company. Honest as well as dishonest companies have to be dealt with, and in the past it has been considered satisfactory that if a person entitled to a vesting order wants it to become effective against a company the onus should be on him to let that company know in writing that a vesting order has been made. The company has to have something on its file, otherwise it may be embarrassed. A company should not be left in a position of uncertainty, and in the absence of some formal notice of a vesting order decide whether or not to register a transfer of shares by a shareholder. The only satisfactory way to bring home to a company the fact of the making of a vesting order is by its receiving formal notice in writing. The notice must be in writing, otherwise there could be a dispute whether it was given or not. In adopting sub-clause (7) in its present form, we have simply adopted what was contained in sub-section (4) of section 51 of the existing Act. No hardship will be inflicted on any one, because there is nothing to prevent a person who gets a vesting order forthwith notifying any company that will be affected by it. By altering sub-clause (4) to meet the case of dishonest companies, harm may be done and little good purpose served. In the majority of cases, vesting orders would be in respect of shares in honest companies, which would be embarrassed. The provision covers shares of all trusts, and trustees generally hold shares in reputable companies.

Clause 60 follows section 52 of the old Act, and I do not think comment is necessary. As to clause 61, I have no comment other than to say that instead of making a vesting order the court can appoint some one to convey property to the person to whom it ought to be conveyed. That has been found to be a convenient alternative in some cases, and we have adopted what appears in the 1928 Act.

Clause 62 is a reproduction of section 53, and follows similar provisions in the English and New South Wales legislation. The same comment is true of clause 63, which contains a desirable power where a vesting order is sought on the ground that a trustee is of unsound mind. The court may direct the issue to be considered by the Master and act upon his report. The clause re-enacts section 55 of the present Act.

I have covered the clauses relating to vesting orders, and I trust that I have justified the changes in drafting. There are no startling innovations, only those of a minor and desirable character.

The Chairman.—Do you say that the proposed Division is simpler than the present legislation?

Mr. Adam.—Yes.

Mr. R. T. White.—Do these provisions follow fairly closely the provisions of the New South Wales Act?

Mr. Adam.—Insofar as this Division does not follow the New South Wales Act, it re-introduces what appears in the 1928 Act. The Bill does not go beyond our own Act and the New South Wales Act.

The Committee adjourned.

WEDNESDAY, 3RD JUNE, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles.
The Hon. F. M. Thomas.	

The following members of the Law Institute of Victoria were in attendance:—Messrs. J. M. Rodd (President), Mr. R. N. Vroland (Chairman of Legislation Committee), R. J. McArthur (Member of the Legislation Committee), A. H. B. Heymanson (Secretary); also Mr. A. A. Stewart (solicitor).

The Chairman.—We have with us this morning representatives of the Law Institute of Victoria, to whom we extend a warm welcome. Members of the Council of the Institute have given detailed consideration to the clauses of the Bill and, I understand, they have drawn up a report and recommendations which they decide to submit to the Committee. We very much appreciate the time and consideration which members of the Law Institute have given to this subject and we shall be pleased to hear their views.

Mr. Rodd.—The Law Institute of Victoria appreciates the opportunity afforded to it of giving evidence to this Committee on the Trustee Bill. When I was here last month, I pointed out that the Law Institute is constantly engaged in reviewing projected legislation and in itself initiating reforms in the law.

The law relating to trusts and trustees one way and another has its effect on all in the community. For the most part it is not to be found in the Trustee Act but from decided cases over a number of centuries. It is in no way desirable to attempt to codify this important side of the law, but from time to time the legislature has considered it desirable to legislate on certain aspects of a trustee's rights and duties. When further amendments are prepared, it is essential that they be closely examined, because they will inevitably affect a large number of family and business transactions.

It is therefore felt that the Trustee Bill is one of the most important measures that has come before the legislature for some time. Earlier there had been representations by the Institute for amendment of certain provisions of the 1928 Act, that is, the Institute first made representations for extension of the list of authorized trustee investments as early as 1945. The Institute has also been officiallly represented on the Chief Justice's committee on the 1928 Act. Following the first reading of the Bill, the Institute's own Legislation Committee has met on six occasions and formulated a report, copies of which were last week sent to the Honorable the Attorney-General and to this Committee.

Mr. Vroland, who is at present chairman of the Legislation Committee of the Institute, and who is a former president of the Law Institute of Victoria, has undertaken the task of presenting our report and carrying on any explanation of the Institute's suggestions and any further comments on the Bill which your Committee would like to have. Mr. Vroland will be assisted by Mr. R. J. McArthur, a member of the Legislation Committee and also a former president of the Institute, and by Mr. A. A. Stewart, a solicitor with extensive experience in this branch of the law and who was co-opted by the Legislation Committee during its examination of the Bill. Mr. Heymanson, the Secretary of the Institute, is also present to assist Mr. Vroland in his presentation of our report.

Mr. Vroland.—As our President has told you, Mr. Chairman, we are here this morning to present to the Committee a report prepared by the Council of the Law Institute of Victoria on the Trustee Bill. The report contains proposals for the amendment of that Bill. In preparing this report, we referred the Bill for detailed consideration by members of our Legislation Committee, which consists of ten members of the Institute. To facilitate the proper and detailed consideration of the Bill, each member was assigned particular clauses for special study. Those members, in turn, submitted their reports on their particular section. After a detailed consideration by the Committee of the individual reports of its members, the report of the Council on this Bill was completed, and copies of that report have already been circulated to members of this Committee. The report was considered by the Council of the Law Institute and it was adopted unanimously as its considered view on this Bill.

The Chairman.—Are all members of your Legislation Committee members of the Council of the Institute?

Mr. Vroland.—The permanent members of the Legislation Committee are members of the Council. To assist the Committee in its deliberations on this Bill, we co-opted the assistance of Mr. Stewart, who has had a long experience in the practical application of the law relating to trustees and of Mr. Hambleton, another practising solicitor, who is a member of the Law Institute Council. Mr. Hambleton, together with Mr. P. M. Fox, represented the Council of the Law Institute on the Chief Justice's Committee which gave detailed consideration to the Trustee Bill. Mr. Fox is also a member of our Council. He has had a long experience in this class of work.

I wish to make clear, and to emphasize, that the report deals specifically with certain sections of the Bill; it relates to matters in respect of which we feel comments should be made and amendments proposed. In respect of any clauses of the Bill on which we are silent, it may be taken that the Council has approved of those clauses and supports the proposal that they should be incorporated in the Bill now before us. Many of those provisions have for many years appeared in previous Trustee Acts. I now, Mr. Chairman, formally tender this document which is headed "Report of the Council of the Law Institute of Victoria on Trustee Bill." (Report submitted.)

Mr. Brennan.—The aim of the Law Institute is to make the law relating to trustees absolutely fool proof?

Mr. Vroland.—That is so. I should emphasize that the most important factors which must be taken into account in dealing with the law relating to trustees are the due administration of the trust in accordance with the terms of the trust itself and the preservation of the trust assets and the procurement of income according to the respective rights and interests of the beneficiaries. A trustee has a very burdensome duty to perform. He must at the one time protect the interests of those interested in the capital of the trust and ensure that those interested in the income of the estate shall receive the proper return from the trust assets to which they are entitled.

The first comments that I shall make will be in relation to the question of the investment of trust funds by trustees. I should first, however, make a few preliminary remarks. On the 27th of May, 1948, the Law Institute of Victoria made representations to the then Attorney-General concerning proposals for the extension of the field of investment for trust funds. I thought you might like to have on record some reference to that matter. I should point out that the representations that we now make are in line with the recommendations which we made on that occasion, and which were subsequently adopted by the then Attorney-General, the late Mr. Trevor Oldham.

Those recommendations were incorproated in a Bill for submission to Parliament. If the Committee so desires, a copy of that letter to the Attorney-General could be made available.

The Chairman.—I think we will first ask the Attorney-General's Department if it will make a copy of that letter available to this Committee; we would then have it officially.

Mr. Vroland.—To facilitate your inquiry the reference to the Attorney-General's file is 48/4260. As I said before, the recommendations of the Law Institute Council were adopted in full and incorporated in a draft Bill, but the Bill was not actually submitted to Parliament.

Mr. Randles.—Paragraph (*b*) of sub-clause (1) of clause 4 provides that a trustee may invest trust funds in the Dominion of New Zealand. Can money that accrues by way of interest be forwarded to Australia, because at one time that was not possible?

Mr. Vroland.—I am not able to state the exact legal position, but in practice moneys can be transmitted either way to beneficiaries under a trust estate. Of course, representations have to be made to exchange control to enable that to be done. Another aspect is that a deceased person might have held Government securities in New Zealand, and this provision will make it competent for the trustee to continue to hold them.

The first comment of the Council of the Law Institute refers to paragraph (*c*) of sub-clause (1) of clause 4. We think that a mortgage should be registered at the Office of Titles.

The Chairman.—That paragraph is merely a reproduction of a provision of the 1928 Act, and it is curious that it has never been questioned.

Mr. Vroland.—Yes. We consider that the trustee should be in possession of the fullest title to the security.

Mr. Brennan.—Was the idea to broaden the scope of the security by including securities under the Property Law Act?

Mr. Vroland.—No; that was not the intention.

The Chairman.—Perhaps it was felt by the original draftsman that the word "registered" referred to the mortgage and not the land.

Mr. Vroland.—That may be so. Even if that is so, as a matter of drafting we consider that if the paragraph contained the words "registered first mortgage" the matter would be placed beyond doubt. A similar amendment is suggested in two places in paragraph (*m*). We have not set out to redraft the whole of these provisions, but we envisage that if the proposals we make are adopted the matter will be referred to the Parliamentary Draftsman who will ensure that all consequential and necessary drafting amendments are made. The remainder of the proposals under sub-clause (1) of clause 4 relate to the widening of the field of investment.

The Chairman.—It might be convenient to deal with this matter last.

Mr. Vroland.—I agree, because it will call for the most detailed consideration and for submissions not only from myself but also from Mr. McArthur. Probably both of us would appreciate the opportunity of giving this question some consideration for comment at a given time.

The Chairman.—I feel that there are two good reasons for deferring this matter. First, probably it relates to a question of policy, as well as its being an addition to the law, and it may well be that we will have to consider to what extent this Committee is empowered to deal with it. The second aspect is that if evidence is given by the Law Institute on this particular matter several other people will also desire to tender evidence. Therefore, from the point of our own deliberations it might be more satisfactory if we hear the evidence from the Law Institute and the other submissions together. If that course is agreeable to the Committee, I suggest that Mr. Vroland should leave the question of investment and go on with what I might term the purely legal aspects of the Bill.

Mr. Vroland.—The question of extending the field of investment has given the Council of the Law Institute the gravest of concern for a number of years and a great deal of work on it has been done by individual members and by committees. It is the considered view of the Institute that the field of investment should be extended.

The Chairman.—This Committee have carried out some research on the subject. Have you seen what is known as the "Nathan Report," which is in the hands of members of the Committee?

Mr. Vroland.—I have not seen the whole of it, but I have perused those portions dealing with trustee investments. Members of the Committee will know that the report, in so far as it touches on the aspect of investment, strongly recommends the extension of the field of investment.

The Chairman.—I will now ask Mr. Vroland to proceed to sub-clause (3) of clause 4.

Mr. Vroland.—It is again recognized that a question of policy may be involved in regard to this matter. The Council of the Law Institute has previously made representations for a general power to invest moneys in the purchase of land in use as residential, trade, industrial or business premises. That proposal was incorporated in the Bill to which I referred previously and which, I think, was marked "rough draft." It is the recognized practice of the Law Institute to make representations to the Attorney-General of the day on proposed legislation, and in due course and at the proper time copies of Bills are submitted to the Law Institute for consideration.

The Chairman.—In rough draft form.

Mr. Vroland.—That is so. The Institute reaffirms its views that the power to invest in land should be extended as set out in our report, but if, as a matter of policy, the Government of the day should feel that it should not go so far as the Institute proposes, we consider that the clause as drawn should be amended to provide an extension of the proposal contained therein. The report of the Council of the Law Institute on this aspect reads—

Sub-clause (3) of clause 4 relates to the power to purchase a dwelling house for the residence of a beneficiary. The Council has previously made representations for a general power to invest trust moneys in the purchase of land in use as residential, trade, industrial or business premises. The Council desires to reaffirm the previous recommendation but, if the policy of the Government is to confine the power to land for a residence of a beneficiary, the Council considers that the sub-clause should be re-drafted for the following reasons:—

(*a*) The power should be confined to the purchase of freehold land;

(*b*) As at present drafted, paragraph (*a*) of sub-clause (3) confines the power to the purchase of land in use as a dwelling house at the time of purchase. It does not extend to a property which is vacant at that time or which, while not previously so used, would be suitable for use as a dwelling house;

(*c*) The property purchased should be in good repair.

Mr. Thomas.—Would a trustee have power to purchase an hotel?

Mr. Vroland.—I should say that the Law Institute would not favour a proposal that a trustee should have the power to purchase an hotel.

The Chairman.—One difficulty about this aspect is that a trustee may purchase a mansion, thus saddling the trust estate with considerable liability for repairs and so on in the future. It is rather difficult to see how to limit the power of a trustee in such way as to ensure that the dwelling house he purchased is suitable for the purpose of the trust.

Mr. Vroland.—In the proposals previously made by us we recognized that difficulty, and the draft Bill that we submitted provided as follows:—

(*b*) A trustee purchasing land in exercise of the power conferred by this sub-section shall not be chargeable with breach of trust by reason only of the relation borne by the purchase price to the value of the land at the time when the purchase was made if it appears to the Court—

This sets out the consideration that the trustee must take into account before making his purchase—

(i) that in making the purchase the trustee was acting upon a report as to the value of the land made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the land, whether such surveyor or valuer carried on business in the locality where the land is situate or elsewhere;

(ii) that the purchase price does not exceed the value of the land as stated in the report; and—

This is the important thing—

(iii) that the purchase was made under the advice of the surveyor or valuer expressed in the report.

The Chairman.—That does not quite answer the question which arose when Mr. Justice Dean was giving evidence, that is, how to provide some sort of brake on a trustee in purchasing property which may be large and expensive to maintain and which purchase would be to the detriment of the residuary legatee.

Mr. Vroland.—I will ask Mr. McArthur to deal with that point, as he drafted a suggestion concerning it for the consideration of the Institute. I think the definition proposed by him will provide the necessary protection.

Mr. McArthur.—This, of course, is not complete, but it was an attempt to overcome the difficulties which some members of the Committee had in mind. My feeble attempt was to define a dwelling house as follows:—

"Dwelling House" means land in fee simple wholly occupied by a single dwelling of a House, Maisonettes or Flats and its or their appurtenances whether or not persons are residing therein at the time of purchase."

I think it can be quite rightly said that a trustee would, of course, still be subject to the general law in exercising this power. The mere fact that the power to purchase a dwelling house is included in the statute would not justify any trustee in acting in the "blue." He would still be, or could be, liable for breach of trust if he bought property which was obviously unfitted for the purpose of the trust, having regard to the facts of that particular trust.

The Chairman.—Would you think that, Mr. McArthur, even although the trustee complied with all the provisions of paragraph (*b*) of sub-clause (3)?

Mr. McArthur.—Undoubtedly. At this stage I might refer the Committee to an extract from Underhill's *Law of Trusts and Trustees*—Ninth Edition. At page 309, the reference is as follows:—

Trustees Not Necessarily Protected by Investing in Authorized Securities—

"It is a mistake to suppose that a trustee is absolutely safeguarded if he invests trust funds in some of the securities authorized by the settlement or by statute. To invest in any other securities would, of itself, be a breach of trust; but, even with regard to those which are permissible, he must take such care as a reasonably cautious man would use, having regard not only to the interests of those who are entitled to the income, but to the interests of those who will take in future. All that the statute, or the express power, does is to shift the onus of proof; so that, instead of the trustee having to prove affirmatively that the investment was prudent, the beneficiary who attacks it has to prove that it was imprudent."

I do not think I need labour the point.

The Chairman.—That answers my question.

Mr. Randles.—The purpose of paragraph (*a*) of sub-clause (3) is to provide a home for use by the beneficiary under a trust, but I fail to see how maisonettes and flats could be regarded as a residence for the beneficiary.

Mr. McArthur.—I appreciate the point. I went further in my recommendation and redrafted paragraph (*a*) of sub-clause (3) as follows:—

"Where a trustee considers that a residence should be provided for a beneficiary under the Trust, the trustee may purchase a dwelling house and apply any of the trust funds in or towards paying the purchase price or in discharging any liability on the dwelling house and may from time to time permit any beneficiary to reside in the whole or any part or parts of the dwelling house upon such terms and conditions consistent with the trust and the interest of the resident beneficiary as the trustee thinks fit."

Flats, I would think, are clearly within the ordinary concept of a dwelling house, according to decided cases, and I admit the point is a headache for the Parliamentary Draftsman. All we have done is to try to assist the Parliamentary Draftsman.

Mr. Brennan.—There could be a case in which, for instance, a brick property might be bought by a trustee. The beneficiary might reside in a portion of the premises, while the other portion might be let for a rental of, say, 37s. 6d. a week. That would not be inconsistent with the terms of the trust.

The Chairman.—That is so.

Mr. Vroland.—It would be well to emphasize that we are dealing with something that is really a double-barrelled point. The Law Institute of Victoria believes that the power of investment in real estate should be extended beyond the power to purchase a dwelling house for a beneficiary. We recommend that there should be a general power to invest trust moneys in the purchase of land in use as "residential, trade, industrial or business premises." If the policy of the Government is not to so extend the power, then we feel that the proposed power to purchase for the purpose of a dwelling house should be amended so that the power would be to invest "in the purchase of land in fee simple in the State of Victoria which land is in use at the time of purchase or is intended by the trustee to be used as residential premises in good substantial and tenentable repair order and condition."

The problem of defining what are "residential premises" still arises. I repeat that if it is contrary to the policy of the Government to extend the field of investment to real estate, we still recommend that the

power of purchase for the purposes of a dwelling house should be extended as recommended in page 2 of the report.

Mr. Randles.—According to the report you have submitted, the Council of the Law Institute desires that trust funds shall be invested in the purchase of land which is "in use at the time of purchase" so that there will be a safeguard against any trustee going into the back blocks to buy land. Then they could not say that in ten or twenty years time it may prove to be a good investment. That is not intended?

Mr. Vroland.—A trustee cannot speculate.

Mr. Brennan.—Your recommendation is intended to relate to the power of obtaining land for residential purposes?

Mr. Vroland.—Yes, and at the same time to safeguard the trust's assets.

Mr. Thomas.—Does your recommendation apply to the purchase of shares?

Mr. Vroland.—There are safeguards that are proposed in regard to investments in shares to prevent speculation. Concerning the point raised by Mr. Randles, I think Mr. McArthur has made it clear that even though a trustee may be authorized to invest in trustee investments, he still has a very heavy duty to consider the matter very carefully from every angle. He dare not deal in investments that are of a speculative or dangerous nature, even although he may be acting technically within the field of trustee investment.

The Chairman.—I think Mr. McArthur and you, Mr. Vroland, have cleared up the questions in my mind. I do not know that you have given a final answer, but you have said sufficient to enable this Committee to seek the answers.

Mr. Brennan.—I think Mr. McArthur made this point. Suppose, in certain circumstances, particular securities are at a low ebb. In such a case it would be imprudent for a trustee to invest in those securities for the purpose of obtaining a permanent income. The trustee should make sure that the authorized investment is of a properly selected type?

Mr. Vroland.—Yes. I think I might now proceed to paragraph (*c*) of sub-clause (3)—"Land so purchased shall be held upon trust for sale." This clause presents certain technical difficulties. The effect of the paragraph, as drawn, is to constitute an immediate binding trust for sale. So, on the one hand, there is a proposal to give a trustee the power to purchase land as a dwelling house for the beneficiary, and on the other hand there is a condition which makes it imperative that the trustee shall have a continuous consideration of the desirability or otherwise of selling. The Committee recommends that for paragraph (*c*) the following paragraph should be substituted:—

> "(*c*) Land so purchased shall be held upon trust for sale but so that no sale thereof shall be made during the life of the beneficiary for whose use the land was purchased except at the written request or with the written consent of such beneficiary if he be *sui juris*."

In other words, the proposal to offer the property for sale is postponed to the wishes of the beneficiary, he being of legal capacity to consent.

The Chairman.—Would that overcome the problem where a trustee purchased a property for use by the beneficiary, and because it started to deteriorate for some reason not apparent at the time, the trustee wanted to sell it but the beneficiary refused?

Mr. Vroland.—That position occurred to me, but I do not know the answer. Mr. Stewart may be able to answer that question.

Mr. Stewart.—I suppose that would be a difficulty but lack of consent by the beneficiary would not necessarily stultify the trustees if they were convinced that a sale was necessary. If an obdurate beneficiary were encountered I suppose the court would give an order.

The Chairman.—Would it be possible to add to the clause the words "with the consent of the court"?

Mr. Vroland.—It is possible to redraft the clause to overcome the difficulty. I think the redrafting should be left to the Parliamentary Draftsman, but the principle should be for the Court to have jurisdiction.

The Committee adjourned.

THURSDAY, 4TH JUNE, 1953.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. H. C. Ludbrook,	Mr. R. T. White.
The Hon. F. M. Thomas.	

The following members of the Law Institute of Victoria were in attendance:—Messrs. J. M. Rodd (President), R. N. Vroland (Chairman of Legislation Committee), R. J. McArthur (Member of the Legislation Committee), A. H. B. Heymanson (Secretary); also Mr. A. A. Stewart (Solicitor).

Mr. Vroland.—Sub-clause (1) of clause 7 permits a trustee to invest in securities payable to bearer, provided they are deposited with a bank, and sub-clause (2) deals with the fee of the bank. As the sub-clause is drawn it is provided that the fee shall be paid out of the income of the trust property, but there is no provision to cover an insufficiency of income to pay the fee. Our proposal is to amend sub-clause (2) to provide that the fee shall be "charged against" income instead of being payable out of income. In a later clause in which a similar problem arises, we recommend that the trustee shall be empowered to make the payment out of the assets of the trust, and therefore we recommend that the terms of sub-clause (2) of clause 7 shall be amended to provide that the trustee shall have power to pay the fee out of the assets of the trust, and that the fee shall be a charge against income. In a period when there was not sufficient income to pay the fee, the trustee would be authorized to make the payment out of the trust assets, and at a later date to recoup the payment from income.

Mr. Brennan.—Should there not be an exact definition as to point of time?

Mr. Vroland.—The trustee would make the payment out of the capital of the trust until such time as the income could provide the payment. The word "charge" has a definite legal significance.

The Chairman.—Why were the words "paid out of income" used?

Mr. Vroland.—Possibly the question was not given the same degree of consideration as it is now receiving.

Mr. White.—What happens in New South Wales?

Mr. Vroland.—The provision in the New South Wales Act is on a similar line. The amendment will cover remote possibilities and our idea is to provide for uniform action to be taken in connection with this fee, insurance costs, and audit fees.

Mr. Randles.—Under the amendment, the security may have to be sold.

Mr. Vroland.—A trustee may decide that it is proper to dispose of the security.

Mr. Randles.—Under the proposed amendment, there would be no alternative course.

Mr. Vroland.—We recommend that the trustee be given power to make the payment out of the assets of the trust and, if necessary, he would resort to the capital of the trust. Even with that power, we say that the payment should be a charge against income. Presume that in the first year there is no income and the fee is £1. If, in the second year, the income was £10, the trustee would take out £2, and £8 would be available for distribution. Of course the charge exists irrespective of our recommendation, which will facilitate the work of a trustee.

Mr. Brennan.—The payment of the fee will be a debit against the trust?

Mr. Vroland.—It will be a debit against the income of the trust and it may be paid from capital, should the necessity arise. Our recommendation is that in regard to sub-clause (2) of clause 7, sub-clause (3) of clause 23, sub-clause (1) of clause 25 and sub-clause (2) of clause 27, the fee, premium or charge shall be payable out of the assets of the trust, and be a charge against the income.

Sub-clause (1) of clause 25 empowers a trustee to deposit documents with bankers for safe custody. Clause 7 deals with bearer securities, and there is an obligation on the trustee, if he holds such securities, to deposit them in a bank. Sub-clause (1) of clause 25 enables a trustee to deposit other documents and securities with a bank, and if he does so the fee must be paid out of the income of the trust. The same comments apply to this provision as to sub-clause (2) of clause 7. In our opinion, the trustee should be empowered to pay the amount entailed out of the assets of the estate, but the fee should be charged against the income of the estate.

The Chairman.—Let us turn now to sub-clause (3) of clause 23, which deals with insurance. This clause represents the old section 19 of the Act with alterations.

Mr. Vroland.—Sub-clause (3) only is relevant. The Law Institute considers that it would be more effective to provide that the premiums may be paid out of the assets of the estate, but are to be charged against the income, first, of the property in respect of which the insurance applies, and secondly, out of other income which may be available.

Mr. Pettiona.—Where do you suggest the words should be inserted?

The Chairman.—Page 3 of the report of the Law Institute contains a suggested amendment.

Mr. Vroland.—It is suggested that sub-clause (3) be redrafted as follows:—

> "(3) The premiums may be paid out of any moneys subject to the trust but shall, in the accounts of the trustee, be charged against the income of the trust without the necessity of obtaining the consent of any person who may be entitled wholly or partly to the income."

The Chairman.—Sub-clause (2) of clause 27 deals with the question of audit.

Mr. Vroland.—The Law Institute considers that the costs should be charged against the income.

The Chairman.—If the Committee accepts this recommendation, it will be necessary to consult the Parliamentary Draftsman about re-wording the sub-clause.

Mr. Vroland.—We deal here only with principles, but we submitted a suggested redraft of the clause dealing with insurance.

The Chairman.—I ask Mr. Vroland to pass to clause 10.

Mr. Vroland.—Clause 10 deals with the question of a release of part of a security from a mortgage. In particular, we are concerned with the last few words in paragraph (*b*) of sub-clause (1), which states: ". . . . the net moneys so received"—that is, on the release of part of the security—"shall be credited as a part payment of the mortgage debt." As between the trustee and the mortgagor, that would be the case.

The Chairman.—Will you explain the full purpose of the clause before you make the suggestion concerning the amendment?

Mr. Vroland.—Frequently a property which is the subject of a mortgage may be, for some reason or another, sub-divided into tenements and other parts. The owner or mortgagor may wish to sell part of his property, and to enable him to give a clear title to a purchaser he would have to arrange with the mortgagee to release his title from the mortgage. Normally, that is a matter of business or commercial arrangement. There are the contractual provisions of the mortgage which govern the rights of the parties, but in our experience it may be made a matter of arrangement. The usual procedure would be that the mortgagee would say that he would release part of the security upon payment of a specified sum of money, and that amount when paid would be applied in reduction of the mortgage debt, the mortgage debt being the sum total of the principal and interest owing, and the mortgagee would apply the money as he saw fit in payment of, first, arrears of interest; secondly, in payment of interest that had just fallen due; and, thirdly, in reduction of the principal sum. As between mortgagor and mortgagee, that is the law on the matter, and there is no need for definition of it in the Act. The question then arises: What is the position as between trustee mortgagee and his beneficiaries? It becomes particularly important if there is a life tenant entitled to income and remainder men entitled to capital, and even more so if there are arrears of interest. An interpretation of this clause is that even though there might be arrears of interest as between the trustee and his beneficiaries, he would be bound to apply the moneys received for release of the title in reduction of the capital liability of the mortgage, and would not be allowed to apply any of that money in payment of arrears of interest. Such a state of affairs would work a hardship on the life tenant, who most likely would be a widow, dependent upon income from this source for subsistence.

The object of our proposal is to leave the matter in the hands of the trustee, so that he should be able to apply it justly, and he would, in a normal case such as that which I have cited, apply the moneys received in payment of arrears of interest and in reduction of the capital liability. That is the purport of our proposed amendment.

Mr. Thomas.—To what penalty is a trustee liable if he fails to carry out provisions such as those referred to by Mr. Vroland?

Mr. Vroland.—If a trustee does not carry out his duty properly, he is chargeable with the loss which accrues to the trust of beneficiary by reason of his breach of trust. There are certain rules under which he may in certain circumstances be excused. The law is that if he ought fairly to be excused, he may be excused by a court for his breach of trust.

Mr. Randles.—I take it that such a provision could not be used so that the remainder might receive less than they expected to inherit?

Mr. Vroland.—It could, if the trustee were to commit a gross error of judgment. A trustee must always exercise a discretion in deciding whether or not he

will release a title. If application were made to him for release of a title, he would have to consider the various problems with which he might be faced should he decide to agree to the request. In certain circumstances, by releasing, he may feel that he faces a loss and perhaps the best course to adopt is to accept a certain amount of loss immediately and take the money available.

Mr. Byrnes.—Such a position might easily arise with benefit both to the beneficiaries and to the remainder.

Mr. Vroland.—Yes. He may have to consult the life tenant and the remainder and obtain their agreement to a proposal which otherwise might constitute a breach of trust, or might at least place him in jeopardy. In determining whether or not he will accede to a proposal of a mortgagor to release the title, he normally would have to have valuations made, and if the property were investable, the capital sum would have to be re-invested in the terms of the trust.

Mr. Brennan.—The sum does not perish; the corpus is still in existence in another form.

The Chairman.—I understand Mr. Vroland to say that it is unreasonable specifically to provide that a trustee should have to apply the whole of the moneys received to capital but may not apply any of it towards arrears of interest.

Mr. Randles.—There may be a complicated interest between the life tenant and the remainder. I cite, for example, a row of cottages which are falling to pieces. If some were sold, it would be possible to repair the others; otherwise, they would all fall to pieces and the remainder would receive virtually nothing.

Mr. Vroland.—The words to which we raise objection are not in the New South Wales Act.

The Chairman.—Do you know why they have been included in the Bill?

Mr. Vroland.—I do not, unless someone feels that it is more important to preserve the capital than to leave the trustee in a position in which he may apply some moneys to arrears of income.

Mr. Brynes.—It is a question of priority. Would Mr. Vroland favour empowering a trustee to decide which had the higher priority in maintaining the benefit or keeping the capital intact?

Mr. Vroland.—Broadly, I would. In view of the manner in which this discussion has developed, it might be helpful if further consideration of the matter were deferred and if the Law Institute submitted a draft of the amendment proposed. So far, we have dealt with the question of principle only. It is felt that the rights of a life tenant to receive arrears of income should not be completely defeated, and that by the application of this clause, as drawn, those rights would be nullified. Could the matter be deferred, to enable a draft amendment to be submitted?

The Chairman.—That would be appreciated.

Mr. Vroland.—The Law Institute has recommended that words be deleted, but further consideration could be given to the matter.

The Chairman.—I ask the Committee to pass to paragraph (*c*) of sub-clause (2) of clause 11.

Mr. Vroland.—This paragraph deals with the question of the duty of the trustee in the event of a default by a borrower under a mortgage in complying with the terms of his mortgage. The provision states categorically that in the event of the borrower failing to comply with any term of the mortgage, the whole of the moneys secured by the mortgage shall immediately become due and payable.

It is felt by the Law Institute that the paragraph, as drawn, is far too harsh, and it is suggested that the words "at the option of the trustee" should be inserted. If the suggestion is adopted, a trustee could be placed in the position that if a breach were minor or technical, or occurred through inadvertence, he would be in a position to say, in effect, "I overlook the matter." Such a thing could happen. The mortgagor must pay the interest on the specified date. If a holiday intervened and his cheque was received a day late he would be in breach, and under the subclause the mortgagee would be bound to call in the money. That is the reason for our proposal.

Clause 12.—In the case where a trustee has money available for investment, but has no immediate investment ready, he is empowered to deposit the money with a bank. The circumstances under which that can be done are (*a*) pending negotiation, and (*b*) pending distribution. In the latter case the money may be left on deposit for two years. There is no limit in the first case. We feel that the limit should apply in both cases.

Clause 14 was taken from the New South Wales Act, and we recommend its deletion, because the problem is covered adequately by section 222 of the Property Law Act. The clause provides for the sale by the trustee of trust property, if requested by any beneficiaries. It opens the way for a beneficiary and a trustee to get together in fraud of the other beneficiaries to force a sale. I repeat that in general interests in common in an estate are covered adequately by section 222 of the Property Law Act.

Mr. Randles.—Is there anything to compel a trustee to sell an estate on the open market?

Mr. Vroland.—I am not aware of any compulsion to sell by auction, but the law is that he must sell to the best advantage, which may be by means of a private sale.

Mr. Thomas.—Market prices do not always determine correct property values?

Mr. Vroland.—Many arguments arise over the value of land. The court regards the value as being the price one can get for land on the open market at the time in question. A trustee must exercise discretion in the same way as any other person managing his own affairs. As well as the interests and rights of beneficiaries, he must take commercial considerations into account and act as a prudent business man. As the clause has been drawn, it would permit a trustee at the request of a beneficiary with a minor interest lawfully to sell a property which the other beneficiaries did not wish to be sold.

The Chairman.—Have you any knowledge as to why the clause was included in the New South Wales Act, and how it has worked in that State?

Mr. Vroland.—No. Clause 17, which is taken from the New South Wales Act, empowers a trustee to sell land on time payment. The Law Institute considers that the power to sell assets on time payment should not be limited to land. Frequently, a trustee is in possession of personal assets such as shares in proprietary companies, which are not readily saleable, and if he is enabled to offer them on terms he can do better for the estate than by being forced to sell an unwanted asset for cash. In the experience of practising solicitors, it is a common occurrence to sell shares in proprietary companies on terms.

Mr. Brennan.—In the sale of land on terms, there is a contract of sale, and if there is failure by the purchaser to fulfil the terms of the contract, the property reverts to the vendor.

Mr. Vroland.—There is nothing to prevent that procedure from being followed in the case of other assets. Shares may be sold on terms whereby they

will either remain in the name of the trustees until paid for, or be transferred to the purchaser, and be legally charged, by a properly drawn document, with the payment of the moneys. Suitable documents, such as transfers in blank, can be prepared by the trustee to enable him, in the event of default, to get the shares back in his own name.

Mr. Brennan.—Would there not be risks involved in such dealings with shares of proprietary companies?

Mr. Vroland.—Those are matters which the trustee would have to consider before he decided to sell on terms. It is merely suggested that the power be given.

Mr. Brennan.—Protection is possible in the case of Government consolidated bonds, but I am worried about the question of passing shares of proprietary companies in the manner suggested.

Mr. Vroland.—Logically, there is no reason why a trustee should not be permitted to adopt the ordinary commercial practice of selling on time payment any assets, if suitable terms can be obtained.

Mr. Byrnes.—Would the transfer of shares need to be registered in the books of the company concerned?

Mr. Vroland.—Not necessarily. It would depend on the terms of the sale. It is possible for the trustee to retain title to the shares, and in all probability he would do so until they were paid for in full. If I were advising a trustee, I would not permit him to sell on terms if he disposed of the title to the shares. In practice, a trustee could give the purchaser a proxy to act for him and exercise all his rights in relation to the shares through the trustee until he either paid in full for them, when the shares would be transferred to him, or defaulted, when the sale would be cancelled.

Mr. Brennan.—Should not there be some statutory protection incorporated in the Bill to provide for what Mr. Vroland has suggested is a safeguard?

Mr. Vroland.—It might be wise, in the case of personal property, to provide that the purchaser should not have the title transferred to him until he had paid in full. If land were sold on terms, the title would not be transferred until the full amount of the purchase price had been paid. I offer no objection to including a provision that the trustee should not transfer until payment in full was made. My colleagues consider that in making that statement, I am going too far. They point out that after a certain amount of the balance of the purchase money is paid, it is competent for the trustee to give a transfer and take back a mortgage; that is, in the case of realty.

A further question arises concerning paragraph (*c*) of sub-clause (3) of clause 17. It is provided that if any instalment or interest or any part thereof is in arrear and unpaid for six months, or for such less period as may be specified, the whole of the purchase money shall become due and payable. It is considered by the Law Institute that the provision is too harsh and that the words "at the option of the trustee" ought to be inserted.

I pass to paragraph (*g*) of sub-clause (1) of clause 19, which gives the trustee power to waive any right arising from failure to comply with any term of a contract of sale or mortgage. It is felt that that right should apply to any agreement for sale, any mortgage, lease, or other contract. The documents and agreements into which trustees may enter are more than mere contracts of sale and mortgages. The Law Institute suggests that the paragraph should be redrafted to read, *inter alia,* "Any agreement for sale, mortgage, lease or other contract . . . ."

Concerning clause 23, a second point is raised about sub-clause (1), which begins, "A trustee may insure." On the face of it, that is an enabling power and leaves it to the trustee, in his discretion, to determine whether or not he will do so. In law, the word "may" has on occasion been interpreted to mean "shall" and it is felt such a circumstance could possibly arise in this instance. Therefore, it is suggested that the words "in his absolute discretion" be inserted. If this is done, it will be brought into line with clause 27 in relation to audit.

The Chairman.—Would there be any great risk by using the word "shall" instead of "may"?

Mr. Vroland.—Mr. McArthur has expressed the view that it would throw an impossible burden on a trustee to compel him to insure in every case.

Mr. McArthur.—The insurance covers fire or otherwise. The types of risks against which one can insure are legion. If the Bill is amended to provide that a trustee shall insure against loss or damage, whether by fire or otherwise, an impossible burden will be thrown on him.

Mr. White.—That is clear.

Mr. Vroland.—If the matter is left to the discretion of a trustee, his decision will be made on appropriate grounds.

Mr. Randles.—We must consider the types of insurances effected by a property owner.

Mr. Vroland.—That is true. Every householder may not insure against the breakage of windows. If a trustee is guilty of a culpable breach of trust, he must face the consequences, as the liability under the general rule of equity will remain.

Mr. Randles.—What is the test of prudence? Some trustees are only one step away from a receiving home.

Mr. Vroland.—Fortunately those cases are rare, and I suggest that the problem should be approached on the basis of what a normal trustee would do. Our proposal will overcome a drafting problem and leave this matter to the discretion of the trustee.

Mr. McArthur.—The history of the provision is important. It was inserted originally not to force a trustee to insure but to enable him to do so. We wish the clause to follow the established principle that it is proper for a trustee to insure. The clause goes further and will permit a trustee to insure not only against fire but also other risks, against which a prudent person would insure. This is an enabling clause, not one imposing a duty upon a trustee.

The Committee adjourned.

TUESDAY, 9TH JUNE, 1953.

Members Present:

Mr. Rylah in the Chair:

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles.
The Hon. H. C. Ludbrook,	
The Hon. F. M. Thomas.	

The following members of the Law Institute of Victoria were in attendance:—Messrs. J. M. Rodd (President), R. N. Vroland (Chairman of Legislation Committee), R. J. McArthur (Member of the Legislation Committee), A. H. B. Heymanson (Secretary); also Mr. A. A. Stewart (Solicitor).

The Chairman.—At the last meeting, Mr. Vroland said that he would reconsider the question of insurance.

Mr. Vroland.—I gave an undertaking that we would give it further consideration. Our proposal is that when we have dealt with the report we should adjourn to give further consideration to various points

to which reference has been made. We would then deal with those matters at some date to be arranged.

The Chairman.—Very well.

Mr. Vroland.—Before dealing with clause 30 I wish to elaborate on the statement made by our president in his opening remarks that this Bill was not a codification of the law relating to trusts; in other words, it was not a statement of the whole of the law, as the great body of the law relating to trusts was to be found in decided cases. The provisions of this Bill seek to achieve several things. In some cases, they modify the law as stated in the decided cases; in others they extend the law; and in others again they give to trustees power to do certain things. Those powers are generally referred to as "enabling powers." A good instance of such a power relates to the paying of insurance premiums. If a trustee were not given such a power he would be in the position of either not insuring at all, even though he felt that he should, or he would insure at his own expense.

Mr. Randles.—Would that be as a result of decided cases?

Mr. Vroland.—No. There is no law which gives a trustee power to insure. In a great many cases where a power is proposed to be given to a trustee under this Bill it is to be given to him because he is unable to do what is proposed at present. That is the purpose of the enabling clauses. Clause 30 deals with the power of trustees to delegate trusts during their absence from Victoria. Sub-clause (1) deals with the case of a trustee who has never resided in Victoria, or is absent from Victoria, or is about to depart from Victoria. It is proposed that in any of those cases the trustee shall be given power to appoint an attorney to carry on the trusts. The Law Institute considers that there is no logical reason why a trustee should not have a general power to delegate to an attorney the execution of trusts. There may be many reasons why a trustee may wish to delegate trusts to an attorney. For instance, he may be heavily engaged in some business undertaking or he may desire to be absent from the State for some long period, and he may wish the trusts to be adequately cared for during his absence from his normal place of business or residence. The Law Institute feels it logical that there should be no objection to a trustee being able to delegate trusts.

The Chairman.—What is the liability of the trustee if the attorney defaults?

Mr. Vroland.—Under sub-clause (2) the trustee shall be liable for the acts and defaults of the donee in the same manner as if they were the acts or defaults of the donor.

The Chairman.—You suggest that the power to delegate trusts could well be extended.

Mr. Vroland.—We consider that a general power should be given to a trustee to appoint an attorney to carry out trusts on his behalf.

Mr. Randles.—Would you think it proper that a trustee could delegate a trust only in the case of illness or some emergency.

Mr. Vroland.—No. In this modern commercial world it is a well recognized principle that a man can delegate the care of certain aspects of his affairs to an attorney, and that is frequently done. We see no reason why he should not do that in the case of a trust.

Mr. Brennan.—Using the phrase, *delegatus non potest delegare,* we have exceptions to that rule; but under clause 30 it is proposed that a special power shall be given to a man when he is departing from Victoria. Sub-clause (1) provides that no co-trustee shall be appointed as attorney. Is it wise to extend the facility of delegating trusts except in an extraordinary case; should it not be provided that if the power of delegation to attorneyship is to be wisely used, the class of persons receiving those powers shall be supervised in some way?

Mr. Vroland.—We consider that the person to make such a decision is the trustee himself. He must exercise prudence and sound judgment and must remember that he is liable for the acts of his attorney in the same way as if he did them himself. Our general feeling is that our proposal would facilitate the administration and care of estates. Frequently men are appointed as trustees without their consent or even their knowledge. On the death of an old family friend or business acquaintance, a man might find himself saddled with the responsibility of a trust. His own business affairs might take his whole time and attention, and after accepting the trust he might find it a burden. Such a trust could probably be better cared for if he delegated it to some person with the time and capacity to attend to the trust.

Mr. Pettiona.—Under existing legislation, cannot such a person delegate his power to the Public Trustee?

Mr. Vroland.—He can—but we feel the trustee's power of delegation should not be limited in this way. He should have a freedom of choice and I think we should remember that there are those who would not wish to place their affairs in the hands of the Public Trustee or for that matter of any trustee company. We feel it should be left to the individual trustee's choice to select a private person, a trustee company or the Public Trustee as he sees fit.

Mr. Pettiona.—If your suggestion was adopted do you not think that the administration of trust estates would be hampered?

Mr. Vroland.—No. Actually I consider that it would probably result in the main body of delegations being made to persons experienced in the carrying out of trusts. I can cite one instance in my own experience of a trustee who placed an estate in the hands of his solicitor who has been able to maintain a rate of income from that estate which the trustee says he could not possibly have obtained simply because the demands of his business on his own time are such that he is unable to give the refinement of attention to the affairs of the estate which the expert and qualified person has given.

Mr. Ludbrook.—What is the position of a trustee who finds his responsibilities too great and wants to retire?

Mr. Vroland.—There are provisions which enable a trustee to retire altogether, but he may not wish to do that, and it may not be desirable that he should do so.

Mr. Thomas.—How does this provision fit in with the Property Law Act?

Mr. Vroland.—I cannot answer that question without reference to the Property Law Act.

Mr. Randles.—In the interests of the beneficiary, if a trustee is to delegate a trust to some one else, do you not think the delegation should be to a competent person, otherwise it might be delegated from one fool to another?

Mr. Vroland.—I think the answer is that although that sort of thing can happen, in practice it does not. By and large, people exercise extraordinary care in selecting persons to look after their affairs. Of course, mistakes are made, but I am of the opinion that if an attempt were made to legislate for the exception it would inevitably result in bad and restrictive legislation. I suggest that it is better to legislate for the general rule, which is that a man in appointing a trustee and executor to carry on his affairs usually exercises considerable care.

The Chairman.—In reply to the question raised by Mr. Thomas, it is rather interesting to find that under section 36 of the *Property Law Act* 1928 there is a general power of delegation. Apparently it is not limited in any way other than the power shall be delegated to a person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the net rents and profits of the land. In other words, it appears to be a general power, limited only to people who are not interested in the trusts.

Mr. Brennan.—Clause 30 of the Bill is an extension of section 25 of the Principal Act.

Mr. Vroland.—That is so.

Mr. Brennan.—You propose that there should be a general power relating to the appointment of attorneys, which power may last indefinitely, even for the duration of the trusts.

Mr. Vroland.—Yes.

Mr. Brennan.—Whereas clause 30 relates to the absence of a trustee from Victoria.

Mr. Vroland.—I point out that there is a real difference between the meaning of "executor" and "trustee". It is not proposed that this recommendation should apply to executors, but to persons who are trustees.

Mr. Brennan.—An executor is merely a trustee for a limited period, whereas a trust goes on continuously.

Mr. Vroland.—I cannot take the matter any further, other than to say that in our experience it would facilitate the administration of trusts. We feel that by granting this general power to trustees and by extending the definition of "trustee" to include a personal representative, in sub-clause (10), that is, an executor or an administrator, the administration of trust estates and trusts generally would be facilitated.

Mr. Rodd.—I think it is important to point out that this power, as are all the other powers, is subject to any contrary intention expressed in the trust instrument; that is mentioned in sub-clause (3) of clause 2. Therefore, there is still nothing to prevent a person, if he so desires, when setting up a trust, from providing specifically that the trustee shall not delegate his powers. It may be that such a person would have in mind that a particular trust could be properly administered only by a specified person.

Mr. Brennan.—I think it is only fair to say that I appreciate the fact that members of the Law Institute, in the light of their experience as solicitors in assisting in the management and administration of trusts, are recommending this extension of the power of attorney to assist in the better administration of trusts.

The Chairman.—I think we all appreciate the motives behind the recommendations.

Mr. Vroland.—I felt that the point was worth emphasizing.

The Chairman.—The Committee will note the recommendation and if it subsequently decides in favour of it, members might wish to discuss the working of the machinery of it in more detail.

Mr. Vroland.—We also suggest that sub-clause (1) should be amended to make it clear that a trustee may delegate the power to two or more persons. At present it is not entirely clear on the point, and we feel that the provision should be amended to permit of delegation of power to two or more persons if that is desired.

Mr. Byrnes.—You recommend that the delegation may be to a person or persons?

Mr. Vroland.—Yes.

The Chairman.—Would that not possibly bring about an awkward position in cases in which there is a co-trustee? It may be that Jones and Brown are trustees of an estate. Jones intends to go abroad for a trip, and he decides to delegate his powers to Smith, White and Black. Then the unfortunate co-trustee may be swamped by three to one.

Mr. Vroland.—I do not think so. Smith, White and Black would be able to exercise only the powers of Jones.

The Chairman.—From a legal point of view that is so, but I envisaged some difficulty, perhaps, when the three persons may be arguing on one side, and only one on the other.

Mr. Vroland.—That is so; there might be some difficulty that could arise through weight of words and moral suasion. However, I think it was Macbeth who suggested that "present fears are less than horrible imaginings". In the practice of our profession I have concluded that the stressing of that point of view is much more consoling to clients than an exposition of the law. I feel that life must go on and that if we imagine what might happen, we may encounter more difficulties than by trying to deal with with the existing situation.

Sub-clause (4) relating to the power of attorney provides that—

> The power of attorney . . . . shall be filed under the *Instruments Act* 1928 within ten days after the execution thereof or where not executed in Victoria within ten days after its receipt in Victoria.

Any individual may give a power of attorney, and it is necessary to register that power only in certain cases. Those cases are the ones in which the attorney may deal with land under the Transfer of Land Act. In such cases the signature to the power of attorney must be witnessed by a qualified person and the power must be registered within 30 days. We see no reason why a power of attorney given by a trustee should be required to be registered within any earlier period for any other reason. This sub-clause provides a general requirement that all powers of attorney given by trustees shall be registered within ten days. We suggest, first, that the period should be extended to 30 days for the sake of uniformity, and, secondly, that the requirement of registration should apply only in cases where an individual, in order to make his power effective, is required to register it. If that were provided for, there would be complete uniformity, and the administration of the affairs of estates would be facilitated. It may be that owing to pressure of business a person might omit to register the power within ten days, but the main point is that a period of 30 days would provide uniformity in respect of the practice relating to powers of attorney in general, and if powers of attorney were registered only in cases where individuals must register them to make the power effective—which applies only in relation to land under the Transfer of Land Act—everything would be brought into line.

The object of sub-clause (9) is to enable persons or companies on whose register stock is recorded, to register dealings with the stock, notwithstanding the fact that they are aware that the attorney is acting as attorney for a trustee and that there is a trust. The general law on the matter is that, except in the case of a bona fide purchaser for valuable consideration, without actual or constructive notice of the trust, anybody dealing with a trustee and taking assets the subject of a trust, takes them into his hands subject to the trust. The object of this recommendation is to enable companies, for instance, to register dealings by a power of attorney given by a trustee, notwithstanding the fact that the person concerned has knowledge that there is a trust and will not in any way be affected by that knowledge. It will facilitate the general administration of a trust. A company secretary would be put in an intolerable position if he were required to investigate the propriety of a dealing.

We feel that the provision should not be limited to stock, but that it should extend to securities of all classes—to shares, funds, securities payable to bearer and also to land.

In our opinion, the Registrar of Titles should not be required to examine the propriety of a dealing by an attorney for the trustee simply because he has knowledge that there is a trust. Therefore, our recommendation is that, first, the word "securities" should be substituted for "stock", and that the provision should be extended to land, also that no person in whose books securities are registered, or, in the case of land, the Registrar of Titles would be affected by a notice of trust. We have drafted a new sub-clause (9), which includes the words, "any person being a purchaser lessee mortgagee or other person acquiring the land or stock or an interest in it or charge over it for valuable consideration". We may have jumped into that a little too quickly, and, if the Committee agrees, we would like to have it deferred for further consideration.

The Chairman.—At present your recommendation concerning sub-clause (9) is limited to two things: first, that it should be extended to securities; that the word "securities" should be substituted for "stock" —securities having a definite meaning under the Act and a wider one than stock—and, secondly, that it should extend to land and include the Registrar of Titles as a person who shall not be required to investigate the propriety of a dealing by an attorney for the trustee.

Mr. Vroland.—That is so.

Mr. Randles.—It will affect the Registrar of Titles?

Mr. Vroland.—Yes, and the company secretary. A transaction is recorded, but the Registrar of Titles accepts no responsibility for any breach of trust. Any such breach would be laid at the foot of the trustee and his attorney. The person who purchases may or may not take a clear title, depending on the circumstances under which he made the purchase. I point out that in our re-drafted sub-clause (9), the word "stock", wherever it appears, should be replaced with the word "securities".

I mentioned a proposal in relation to sub-clause (10) which, we recommend, should be amended to include a personal representative of the deceased person, who would be either an executor or an administrator.

The Chairman.—There is no objection to that.

Mr. Vroland.—It is in line with our present recommendations. However, if members of your Committee feel that this power of delegation should not be extended as suggested, they may wish to discuss the proposal further with us.

Clause 33 of the Bill repeats an existing section and provides machinery whereby an executor or a trustee who wishes to distribute an estate, may give notice of his intention to do so. Thereafter, he may, subject to any notice of claims that he receives, proceed to distribute the estate without reference to claims that have been made. That does not mean that a beneficiary who receives the assets of the trust may not find himself at a later date being chased by some claimant for the return of the assets. That, of course, leaves the matter somewhat in the air. Under the *Trustee Companies Act* 1944, trustee companies are given power to go further and to put themselves in a position in which they can, if they comply with the provisions of the Act, transfer the assets to the beneficiaries, without the beneficiaries incurring the risk of some belated claim. Our proposed amendment fills in the gaps.

A trustee may insert his advertisements in pursuance of the provisions of clause 33, and if a claimant gives notice of a claim, but does not pursue it, the trustee may within three months proceed to distribute the assets regardless of that claim. Then there is the case where a trustee knows of a claim, but in which no claim has actually been lodged. At the end of three years he may, if he inserts the proper advertisements, proceed to distribute the assets without reference to that claim. Our proposal is designed to place trustees in the same position as trustee companies, so that where they have notice of a claim and the claimant does not pursue it within three months, they may distribute the assets without regard to such claim. Also, where they have not had notice of a claim but know of the existence of a claim or possible claim, after the expiration of three years they may distribute without regard to that claim.

Mr. Randles.—It all revolves around the state of mind of the trustee?

Mr. Vroland.—Yes, but he is placed in a position where he may go ahead.

Mr. McArthur.—It happens that although a trustee may know of a claimant, that claimant will not prosecute. Under the relevant section of the Trustee Companies Act, the claimant can be made to prosecute, and that is what is proposed by the Law Institute.

Mr. Brennan.—At present if the trustee distributed the assets, the claimant could prosecute.

Mr. McArthur.—The trustee cannot distribute when he has notice of a claim. The trustee companies encountered this difficulty and sought and obtained legislation under which a claimant could be called upon to prosecute his claim.

Mr. Vroland.—When the claimant receives notice from a trustee company, requiring him to prosecute his claim, he must do so within three months; any failure to prosecute leaves the trustee in a position where he may distribute without regard to the claim. The second case is where no claim has been made, but the trustee knows of or suspects a claim. Under the Trustee Companies Act he can call upon the person to make a claim and if he does not do so at the expiration of three years, the assets may be distributed without regard to that claim.

Mr. Randles.—Three years seems a long time.

Mr. Vroland.—Our reason for suggesting three years is to bring this provision into conformity with the relevant section of the Trustee Companies Act. Our proposal in regard to clause 38 is purely a matter of drafting. As drawn the clause could mean that the money would have to be paid in one lump sum, but that is not what is intended. The intention is that the total payments are not to exceed £1,000. We suggest that the words "amounts not exceeding in the aggregate £1,000" should be inserted instead of the words "an amount not exceeding in all £1,000."

Clause 39 deals with what are known as protective trusts, and I shall ask Mr. McArthur to deal with this aspect.

Mr. McArthur.—Protective trusts are designed to protect a beneficiary so that he will always be in receipt of an income notwithstanding his acts or extraneous acts. For example, a father may wish to ensure that a daughter will always have a modest income of £100 a year and for that reason he will settle the income from £3,000 as a protective trust for the benefit of the daughter for her life. Even if the daughter goes bankrupt that income cannot be touched. If she attempts to assign it—for instance, if she gets into the hands of a money lender—she cannot do so.

It has been recognized by legislation that the statutory protective trusts, as lawyers know them, largely reflect the old forms used at great length in settlements, but they are deficient in three main things. They do not give the trustee a discretion in

the event of a forfeiture of accumulating some of the income. There may be, in the opinion of the trustee, more income than should be paid to the beneficiary, and we contend that the trustee should have power to pay an appropriate amount and accumulate the balance, and, of course, the ancillary power of resorting to the accumulation. In other words, we wish to extend the protective provisions. Secondly, we consider that where a trustee may be in complete ignorance of the fact that a forfeiture has been incurred and continues paying the beneficiary, he should not be liable. In all well-drawn protective trusts under the old conveyancing system, that protection to the trustee is inserted, and we suggest that it should be inserted in the statutory trusts.

The Chairman.—Would you give the Committee an example of such a case?

Mr. McArthur.—The most obvious one is where a beneficiary assigns the income.

Mr. Randles.—Would not the assignment of the income be illegal?

Mr. McArthur.—A trustee is bound to pay to the beneficiary in accordance with the terms of the trust until some act happens. In ignorance of the fact of such an act, he may continue to pay to the beneficiary.

Mr. Randles.—In what circumstances would that be brought about?

Mr. McArthur.—The most obvious case is that known as a technical exercise of a power, which causes a breach. At the time no one realizes that a forfeiture has been caused, and for years the trustee may in ignorance continue paying to the beneficiary. On the death of the beneficiary it might be found that a forfeiture occurred many years previously, and the trustee is required to pay into the trust the income paid to the beneficiary.

Mr. Byrnes.—If there are such cases the trustee should be protected, but the difficulty would be to define the word "ignorance."

Mr. McArthur.—I am reminded that I may not have made it clear that when a forfeiture takes place the income which until that event was to be paid to the beneficiary, is payable to some one else. That is one reason why we want the power of accumulation. We want to be able to accumulate, for example, during a minority for the ultimate benefit of the infant. I do not think I need labour that point. The third matter relating to protective trusts is purely a drafting amendment. We consider that the statutory power of maintenance, which is conferred by clause 37 of the Bill, and reflects section 31 of the 1928 Act, should be exercisable in the case of an interest of and subject to a protective trust.

Mr. Vroland.—In relation to clause 33, the Law Institute by a letter to the Attorney-General on the 31st October, 1949, the file number of which is 49/7453, made representations for an amendment to the Trustee Act to include those provisions.

Clause 40 limits the number of trustees of a settlement of land to four; it does not prevent a person appointing more than four trustees, but if any one retires a new trustee cannot be appointed to bring the number beyond four. We see no reason why that should not be extended to cover all classes of property. There seems to be no logical reason why there should be an unlimited number of trustees handling personal property, but that the number should be limited in the case of land. We consider that the limitation should apply to all property.

Mr. Stewart.—One reason behind the proposal is that the trustees must be unanimous, and there is great difficulty in securing agreement between large bodies. For that reason the limitation is essential.

Mr. Vroland.—The proposal in relation to sub-clause (3) of clause 44 is merely a drafting recommendation. We consider that as the word "convey" is defined to include "transfer" the word "conveyed" should be submitted for the word "transferred" where it appears in that sub-clause.

The Chairman.—There is a similar amendment in sub-clause (4) of clause 45.

Mr. Vroland.—Yes. Clause 72 deals with or reproduces the Custodian Trustee Act 1947, which extends to charitable corporations the powers contained in section 22 of the *Public Trustee Act* 1939. The position in relation to charitable trusts is that a trustee or trustees may hold many securities. One of the trustees might die, in which case it would become obligatory to appoint another trustee. Then the securities have to be transferred to the new trustee. In the case of a charitable trust, the trust would be likely to continue for many years. Over a period of time there may be many changes in the personnel of the trustees, involving the transfer of securities to new trustees. The Custodian Trustee Act was passed for the purpose of enabling trustees to have securities in those circumstances vested in a charitable corporation. The trustees would continue to administer the trust, but the trust securities would remain in the name of the one continuing corporation. It may be that a large number of securities may be involved in the case of a trust which would be running for many years. The vesting of the securities in the corporation would avoid a great deal of trouble and expense by making it unnecessary for the securities to be transferred to new trustees.

Our recommendation is that the power should not be limited to cases covered by the Public Trustee Act and the *Custodian Trustee Act* 1947, but that we should do as has been done in England where the power of being appointed a Custodian Trustee is extended to "any banking or insurance company entitled by rules made under this Act to act as custodian trustee." The English public trustee rule reads as follows:—

> Any corporation constituted under the law of the United Kingdom or of any part thereof, and having a place of business there and empowered by its constitution to undertake trust business, and being either—
>
> (*a*) a company incorporated by special Act or Royal Charter, or
>
> (*b*) a company registered (whether with or without limited liability) under the Companies (Consolidation) Act 1908 (now the Companies Act 1929 (c. 23)), having a capital (in stock or shares) for the time being issued of not less than £250,000, of which not less than £100,000 shall have been paid up in cash, or
>
> (*c*) a company registered without limited liability under the Companies (Consolidation) Act 1908 (now the Companies Act 1929 (c. 23)), whereof one of the members is a company within any of the classes hereinbefore defined,
>
> shall be entitled to act as a custodian trustee.

We propose that the English provisions should be followed here. If that were done, then the Public Trustee, a charitable corporation, or any class of company as defined in the quotation, could act as a custodian trustee. The class of companies defined consists of companies with a status which merits their being trustees with the power of holding trust securities.

Mr. Byrnes.—A custodian trustee is merely a nominal holder of the trust assets?

Mr. Vroland.—Yes, and the object of the proposal is to place the trust assets in the hands of a corporation which would not go out of existence while at the same time the trust would be administered by the trustees for the time being of the trust.

Mr. Byrnes.—That would avoid much expense.

Mr. Vroland.—Yes, the expense and trouble involved in the changing from time to time of the names of the trustees on the securities. Every time a trustee wishes to deal with a trust asset, he must establish his title to do so. If there has been any change in the trustees, the new trustees must be registered as proprietors of the asset before they can deal with it. All that procedure would be avoided if, as we recommend, the English provisions were adopted.

The Committee adjourned.

THURSDAY, 11TH JUNE, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. H. C. Ludbrook	Mr. R. T. White.
The Hon. F. M. Thomas.	

The following members of the Law Institute of Victoria were in attendance:—Messrs. J. M. Rodd (President), R. N. Vroland (Chairman of Legislation Committee), R. J. McArthur (Member of the Legislation Committee), A. H. B. Heymanson (Secretary), also Mr. A. A. Stewart (Solicitor).

Mr. Vroland.—Clause 74 of the Bill refers to the rule against perpetuities. This matter has been the subject of representations by the Law Institute of Victoria, particularly in relation to paragraph (*d*) of sub-clause (1). The rule against perpetuities is directed to preventing trusts from continuing for an undue period and, by virtue of the rule, if the trusts continued beyond a certain period they would be rendered invalid. The purpose of the clause is to preserve certain trusts.

Our only comment is related to trusts arising under superannuation funds. It is felt that the paragraph dealing with them should be extended to cover not only the widows, children, and dependants of employees but also nominees of employees. There may be a bachelor employee who has neither children nor other dependants but wishes to nominate some one else to take the benefit of his interest in a fund. The matter is fully covered by a letter dated the 24th of February, 1953, sent by the Law Institute of Victoria to the Attorney-General, stating—

Trustee Act.

"I am directed by my Council to refer to clause 74 (1) (*d*) of the Bill for the amendment of the *Trustee Act* 1928, which was introduced last year by the then Attorney-General. The object of that clause was to abolish the rule against perpetuities in its application to superannuation or pension funds but it would appear that by inadvertence the benefits which it was intended to confer will be considerably limited.

"The clause is expressed as applying to funds established for the purpose of making provision for employees "or the widows or children or dependants" of employees. Many such funds include all the employees of the particular employer and indeed membership of the fund is very frequently made a compulsory feature because of actuarial considerations. A large number of those employees especially those who are unmarried or widows without children are without "dependants." It is therefore commonly provided that on the death of the employee the benefits will be paid to his next of kin or some other person of his choice irrespective of any question of dependence.

"It is therefore recommended that at the end of the present paragraph (*d*) of the sub-clause there be added the words—

"or for any person duly specified selected or nominated for that purpose by any such director, officer, servant or employee pursuant to the provisions of such trust or fund."

The Attorney-General's file number is 53/1177.

The Chairman.—Was a reply received from the Attorney-General other than a formal acknowledgement?

Mr. Vroland.—No.

The Chairman.—Do you know any reason why this provision has been included in the Bill? Apparently it is a re-enactment of part of two old Acts, one of which is the *Superannuation* and *Other Trust Funds Validation Act,* 1932?

Mr. Vroland.—No. It appears that the point we now raise was not covered by inadvertence. Development of superannuation funds has been accelerated in post war years and possibly the draftsman who prepared the measure referred to did not have the experience which would enable him to provide for this matter.

The Chairman.—Could the underlying reason be that it was considered, as a matter of policy, that a trust fund of this sort should primarily provide for the widows, children or dependants of the employees, and that if the law was widened it might encourage employees to nominate perhaps their girl friends or other persons who did not need to be provided for in trust funds, other than widows and children who should be provided for?

Mr. Vroland.—I would think not. Probably the matter has developed. In earlier superannuation trust deeds the beneficiaries would be expected and contemplated to be widows, children and dependants. As superannuation schemes have developed, it has been realized that injustice is caused perhaps to unmarried employees or persons without dependants who have made extensive contributions to a fund, and that there is no reason why the beneficiaries of their choice should not participate.

The Chairman.—Difficulty arises in cases such as that of a man whose wife and children have left him and gone to live with another man, and he has not been supporting them during his lifetime but perhaps has been supporting a *de facto* wife and her children.

Mr. Rodd.—This matter is of special importance in the Commonwealth field because contributions to the type of fund now being discussed are deductible for the purposes of Commonwealth Income Tax. Although the wording of the exempting provisions in the relevant Commonwealth Act is confined to dependants, in practice the Federal Commissioner of Taxation will allow as deductions contributions to funds which have this necessary addition of passing benefits to persons other than dependants where the latter do not exist.

The Chairman.—Is it proposed that the suggested amendment should validate funds that allow nominees, or that nominees should be allowed as an alternative if there is not a widow or if there are no children to be provided for?

Mr. Rodd.—It is proposed that there should be an alternative, because that is the way in which modern superannuation trust funds are commonly drafted.

Mr. Pettiona.—There is no suggestion that the benefit could be split two ways—for example, portion to a girl friend and portion to the widow and dependent children?

Mr. Rodd.—That is entirely a matter for the individual fund concerned.

Mr. Pettiona.—Could the submission of the Law Institute be interpreted to mean that provision may be made for another person as well as for the widow or children or dependants of the employee?

The Chairman.—I had in mind a fund which provides for widows and children or dependants, or, in the event of there being no widow or children or other persons dependent upon the employee then provision might be made for some person nominated by the employee.

Mr. Vroland.—The object of this clause is to validate many trust funds already in existence. Most well drawn superannuation trust deeds provide not only for the widow or children or dependants of an employee, but for a nominee of an employee participating, and the purpose of the Bill is to validate any trust deeds which would otherwise be invalid by reason of the rule against perpetuities.

The Chairman.—Is Mr. Rodd able to state whether the Federal Commissioner of Taxation will approve of funds which provide straight out for a nominee?

Mr. Rodd.—My understanding of the position is that he will approve if it is part of a scheme to provide for dependants as well.

Mr. Vroland.—The amendment is not directed to Income Tax but to validating existing trusts. The allowance of a contribution as a taxation deduction depends upon a scheme coming within the Act. If the Commissioner feels that aspects of it do not do so, he may not allow certain deductions to individuals. Many superannuation trust deeds would be rendered invalid by the application of the rule against perpetuities. Before that rule was formulated, trusts could continue from generation to generation without limit. Then the rule was introduced, limiting a trust to the lives in being and 21 years afterwards. The purpose was to limit the duration of trusts but, at that time, funds of the description we are considering did not exist.

Mr. Rodd.—Just as a corporation now has perpetual succession so also is it right that a fund established for the benefits of its employees should have the same type of continuity.

Mr. Vroland.—Clause 75 proposes to abolish a rule of equity known as the rule of *Allhusen* v. *Whittell.*

Mr. McArthur.—This is a highly technical rule under which an executor in cases where residuary estate is settled in succession must make calculations, the effect of which is that the life tenant loses income on the amount that will ultimately have to be found to pay debts and death duties.

Mr. Vroland.—We have suggested drafting amendments. In sub-clause (2), we propose that the words "residuary estate" be substituted for "settled property" and "property" respectively, and also that the order of sub-clauses (2) and (3) be reversed. In sub-clause (4) the definition of "administration expenses" should be expanded to include "succession duties." I direct attention to the wording of the sub-clause. The words "of a like nature" appear to restrict the class of duty to "any other duty" which expression refers to probate and estate duties. Succession duties are not similar to those and should be included in the definition.

The Chairman.—What is the customary term used in wills to cover all the duties?

Mr. Stewart.—The general expression would be "the duties payable in connection with the estate."

Mr. Vroland.—Clause 76 is directed to preserving the character of certain classes of payments received after death as income, in particular annuities and life policies. These would be purchased not only by the deceased, but in the case of superannuation funds annuities would be purchased by the trustees, and life policies might be taken out by the trustees in respect of the life of the deceased person. Our proposal is that the section should be so amended as to make it clear that the provision will apply not only to annuities purchased by the deceased but also to those purchased on his behalf or for his benefit, and in the case of life policies the section will apply not only to those taken out by the deceased but also to those taken out for his benefit by other persons.

That concludes our recommendations relating to the clauses of the Bill but there are three other points to which I desire to refer. We suggest that clauses should be added to the Bill, and our first recommendation is that section (3) of Act number 5277 be amended by substituting the sum of £500 for the amount of £100, wherever it appears.

The next proposal is that the rule in *Howe* v. *Lord Dartmouth* should be abolished. In all well drawn wills it is abolished. The rule relates to residuary personal estate which is settled in succession; in other words personal estate held for the benefit of a life tenant and then for other persons. There may be successive life tenants and remainder men. In certain circumstances in which residuary personal estate consists of unauthorized trustee investments or investments which should be converted and have not been converted, the income of the estate should be treated in a certain way so that the life tenant shall not receive the actual income earned but shall get an amount equivalent only to 4 per cent. of the capital value of the asset.

Thus, unless the rule is abolished, a widow, whom a testator contemplated would be receiving that income from assets trustees are authorized to retain may find herself in the position of getting an amount equivalent only to 4 per cent. of the capital value of the estate.

The rule originated in England and was directed to cases in which it was thought just that something should be done to preserve the capital asset. The classic instance concerns a coal mine of a certain capital value. When coal is taken from it, income is derived but the capital value of the asset is depreciated. In the long run, if the beneficiary entitled to the income took all the coal from the mine, a worthless asset would be left for the remainder men.

The rule was devised to do justice between such a life tenant and remainder men by providing that the life tenant should take only 4 per cent. of the capital value, and the rest of the income should be capitalized and held for the benefit of the remainder.

A testator may own shares in a family company, and he may desire that his widow should receive the income from the shares for her life and that the shares should be retained and carried on. It would be unfair if anything should happen whereby she should not receive the whole of the income from the shares. The practice is to abolish the rule in wills, and we suggest that it should be abolished by Act of Parliament.

Mr. Byrnes.—Do you consider that protection is necessary in certain instances?

The Chairman.—Land on which valuable timber is growing may be willed to a widow for her life and then to the children, and the widow would receive the whole of the benefit if all the timber were cut during her lifetime.

Mr. Vroland.—Yes.

Mr. Randles.—Is a life tenant entitled to timber growing on land in such circumstances as those?

The Chairman.—My hypothesis is that an express provision to that effect is made in the will.

Mr. Brennan.—If the will so provided, it would be difficult to override it.

Mr. Randles.—If there was no express provision in the will, I should think the widow could not have the timber.

Mr. Vroland.—Probably, there would be adequate provision in a will to cover a case such as that outlined.

The Chairman.—Does Mr. Vroland consider that provision should be made in the Bill for the rule in *Howe* v. *Lord Dartmouth* to be abolished unless a testator expressly applies it?

Mr. Vroland.—Yes, unless a contrary intention is expressed in the will.

Mr. Brennan.—The rule was formulated when income for a life tenant was much greater in real value than it is at present.

Mr. Vroland.—We would concede that the right to make the rule apply should be preserved.

Mr Byrnes.—Protection may be necessary in certain instances. A number of vanishing assets can be imagined.

Mr. Vroland.—In a properly drawn trust instrument or will, the draftsman should provide protection if the asset to be retained is of a wasting nature. He should direct the attention of the testator or the settlor to the implications of his proposed draft to ensure that the wish of the testator or settlor was given effect.

Mr. Brennan.—In the case of *Howe* v. *Lord Dartmouth* the will was silent on the matter.

Mr. Vroland.—Yes. The rule was formulated by the courts of equity to meet the unjust situation which arose.

The next matter deals with the question of the right of an executor, administrator or trustee of a deceased person to receive commission. Section 59 of the *Administration and Probate Act* 1928, provides expressly that an executor, administrator or trustee shall be entitled to receive a certain commission for his pains and troubles in administering the estate and carrying out the trust. There is no provision which enables a trustee of a settlement made by a person in his lifetime to charge commission, and he is not enabled to charge it unless the deed so provides. Our proposal is that the trustee of the settlement should have the same right to claim commission for his work as an executor or trustee of a deceased person's estate. If a trustee is not to be entitled to the prescribed commission it will be a matter of bargaining. Section 59 of the Probate and Administration Act limits the commission, but the right to the commission arises after the amount has been assessed by the Master of the Supreme Court. The maximum sum appears in the Act, but the Master fixes the amount of the commission payable, having regard to the work that has been done.

The Chairman.—The Committee has considered the question of receiving evidence on clause 4 as to the widening of trustee investments, and it is prepared to hear such evidence. On Thursday of next week the Committee will hear the evidence to be submitted by the Institute on matters that have been postponed, and on Tuesday, the 23rd June, at 10.30 a.m., it will be prepared to hear evidence as to trustee investments.

The Committee adjourned.

THURSDAY, 18TH JUNE, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

The following members of the Law Institute of Victoria were in attendance:—Messrs. J. M. Rodd (President), R. N. Vroland (Chairman of Legislation Committee), R. J. McArthur (Member), and A. H. B. Heymanson (Secretary).

The Chairman.—Representatives of the Law Institute will clear up a number of matters, consideration of which was deferred, and in addition they desire to discuss some new points.

Mr. Vroland.—The provisions of the Bill to which we desire to refer at this meeting are paragraph (*b*) of sub-clause (1) of clause 10, sub-clause (3) of clause 11, which is a new point, sub-clause (1) of clause 17, and sub-clause (9) of clause 30.

The Chairman.—Did you not intend to say something further in reference to the question of a dwelling house and the power of a trustee to purchase. Mr. McArthur submitted a draft definition of "dwelling house." We were wondering whether you desired to discuss that point further.

Mr. Vroland.—If that point was left open for further discussion, I am afraid that we have overlooked it. I was under the impression that we had said all we desired to submit on the point. However, we shall have another look at it, and we will let the Committee know if we have anything further to submit.

The Chairman.—Very well.

Mr. Vroland.—Concerning paragraph (*b*) of sub-clause (1) of clause 10, the Institute's recommendation was that the words "and the net moneys so received shall be credited as part payment of the mortgage debt" should be excluded. This clause is taken from the New South Wales Act, but the words quoted do not appear in the New South Wales legislation. It was thought that, possibly, difficulties and confusion might arise by the specific requirement as to the application of the proceeds of the sale. We felt that, conceivably, the interpretation of "mortgage debt" might exclude interest and arrears of interest. We have given the matter further consideration and we are still of the opinion that it would be wise to exclude those words. Under the general law a trustee has an obligation to appropriate such proceeds fairly and properly in accordance with the law, between interest and capital. If the Committee is of the opinion that the words in question should be retained, I am afraid that we can take the matter no further.

The Chairman.—Can you give us any indication as to why the words were included in the paragraph?

Mr. Vroland.—We cannot.

Mr. Brennan.—Those words might operate as a stay of payment of interest against the life tenant, while at the same time reducing the corpus from which he would henceforth be receiving interest.

Mr. Vroland.—Not necessarily. The reducing of the corpus would depend on what sum of money was received from the sale. It is conceivable that this provision would be applied in cases where the security was in jeopardy, or where there was danger of loss, and in those circumstances the trustee would have a duty to look after the interests both of the remainderman entitled to the capital, and of the life tenant entitled to the income. We fear that the retention of the words, particularly in their reference to the application of the moneys in part payment of the mortgage debt, might put the trustee in the position in which he would have to do an injustice to the life tenant.

The Chairman.—You consider that if the words were omitted the trustee would be bound by the ordinary rule of law requiring him to appropriate the moneys between principal and interest in accordance with his duty as a trustee?

Mr. Vroland.—That is so, and then justice would surely be done. We repeat our recommendation that those words should be excluded from the paragraph. I now come to clause 11 of the Bill, which has not

been referred to earlier by us. This clause deals with the supplementing of powers of investment. The point in connection with this provision of the Bill has been raised by Mr. McArthur, and I shall ask him to speak on it, although I do not think he is in a position to submit a drafting recommendation at this stage.

Mr. McArthur.—The point is an interesting one, and doubtless we should have noticed it before. I wish to draw specific attention to sub-clause (3) of clause 11 which is designed to enable trustees to concur " in any scheme or arrangement " for the reconstruction of a company and for various things of that nature. The provision is designed to enable a trustee to accept securities of another company—a reconstructed, or purchasing, or new company—in lieu of or in exchange for securities held by the original company. I think we are all familiar with the position that obtains at the present time under which, in the original company, bonus shares are issued. There is no power held by trustees, by virtue of the Trustee Act, which enables them to concur in a scheme for the issue of bonus shares, but it seemed to me to be highly desirable that they should be given that power under this amending Bill.

The second point is that it is quite common to-day for companies to reduce their capital, and in the reduction of that capital not only to pay out cash but to transfer assets of the company to the shareholders. A trustee has no power to accept assets in such a case.

The third possibility arises on the liquidation of a company. The liquidator has power to hand over specific assets to the shareholders, instead of realizing those assets and handing over cash to the shareholders, but a trustee shareholder has no power to accept and retain the assets which the liquidator can so force on him, shall we say. Therefore it seemed to me to be desirable that consideration should be given to the insertion of further powers to be exercised by trustees, enabling them to concur in a scheme which had for its objects the vesting in shareholders of bonus shares or specific assets either in a continuance of the company, or in a winding up of the company, or in a reduction of the capital of the company. I have had delegated to me the task of drafting an appropriate amendment, but I have not finally settled my own mind in the matter.

The Chairman.—You might be good enough to let us have a memorandum on the point, which we can annex to your evidence. It would seem at first glance that where very wide powers are given to a trustee in this clause, in connection with a reconstructed company or the sale of property, or undertakings of the company to another company, the additional powers to which you have referred should be granted, as they would be merely supplementary to the existing powers.

Mr. McArthur.—I submit that the sub-clause as it now stands gives power only to take in another company, but there is no logical reason why there should not be power to take in the same company.

The Chairman.—You are not suggesting the granting of these powers to trustees at large, but the granting of supplementary powers. These additional powers would be supplementary to those already given in clause 3 in cases where trustees are holding securities in a company.

Mr. McArthur.—Yes.

Mr. Brennan.—Does not paragraph (*d*) of sub-clause (3) of clause 11 embrace such a scheme as the issue of bonus shares? It reads—

> for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them.

Mr. McArthur.—I do not think you could possibly rely on that paragraph for the issue of bonus shares, as it would not be a release, or a modification, or a variation of any rights, privileges or liabilities attached to the securities.

The Chairman.—I have an idea that there has been a decision on the point.

Mr. McArthur.—I would not be surprised if there has been.

Mr. Thomas.—Can you quote any specific case such as the token house being taken over by one of the trustee companies?

Mr. McArthur.—I do not know of that. This clause, as it stands, is capable of application in cases of the formation of a new company, but when one is dealing only with the original company, it is a different matter and in such a case this clause would not apply.

Mr. Randles.—There could be a sale, provided the sale was being made to another company.

Mr. McArthur.—In the case of a sale to another company the sub-clause, as it now exists, would apply.

Mr. Randles.—If the company is being wound up, nothing at all can be done with the assets?

Mr. McArthur.—That is the trouble; the assets could not be retained.

Mr. Vroland.—Nor if that same company is to issue bonus shares, and you cannot take those bonus shares.

The Chairman.—You could take them, but that would be in breach of trust.

Mr. Vroland.—As a matter of fact in every well-drawn will and trustee deed, this sort of thing is specifically provided for, that is, the powers that Mr. McArthur suggests should be included in the Bill.

Mr. Randles.—I think paragraph (*d*) covers the question of shares and the variation of rights.

Mr. Vroland.—The receipt of bonus shares is not a modification of rights.

The Chairman.—I think there is a decision on the matter; if not, I think there is an opinion that the paragraph is not wide enough at present to cover the point in question.

Mr. Vroland.—Mr. McArthur will submit some further comments in writing.

The next clause to which I desire to refer is clause 17, which deals with the sale of land on terms of deferred payment. Sub-clause (1) of this clause reads as follows:—

> A trustee for sale or a trustee having a power of sale may sell land on terms of deferred payment.

The proposal of the Institute was that this power should be extended to all classes of property—personal property as well as real property. It will be remembered that we landed ourselves into a very involved discussion on this matter, and the subject was deferred for further consideration. Actually, we feel that sub-clause (1) of this clause is declaratory of the power of a trustee anyway, and that this whole clause is designed to set out the circumstances under which a trustee may sell on terms which leaves the trustee's position beyond any doubt, provided he keeps within these powers.

We have considered the matter of extending this clause to personal property and have attempted to prepare a provision which will give the safeguards that this Committee thinks are necessary. I confess that the further we consider this matter the more we feel that an extension at large is desirable, but if that is not done, it would be better to leave the matter as

it now stands under general law. That is the recommendation of the Law Institute of Victoria in relation to personal property.

We come now to sub-clause (9) of clause 30. This clause deals with the power of trustees to delegate trusts during absence from Victoria. Our recommendation was to the effect that, wherever the word "stock" appeared, the word "securities" should be substituted, because the latter word has a wider application and includes stocks, shares, debentures and so on. The point to which we refer, however, is the extent to which persons dealing with the attorney of a trustee shall be affected by the notice of a trust. The sub-clause reads:—

"The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust."

Our recommendation is that not only should a person in whose books securities are inscribed or registered be unaffected by the notice of trust, but the Registrar of Titles should also be unaffected. We go further and suggest that persons who deal with the attorney as "purchasers for value"—that phrase has a definite and legal significance—shall not be affected by notice of trust.

My attention has been directed to the fact that our recommendation is to the effect that the provision should be extended to cover land or securities. We have submitted a re-drafting of sub-clause (9) in which the word "securities" has been substituted for "stock," and the word "land" has been added. Our recommendation is that neither the person in whose books the land or securities are registered or inscribed nor the Registrar of Titles shall be affected by the notice of trust, nor shall a purchaser for value be affected by notice of trust. We have used the words "purchaser lessee mortgagee or other person acquiring the land or stock or an interest in it or charge over it for valuable consideration." It is suggested that the provision should be amended to cover those points.

The Chairman.—Has consideration been given to the question of whether the Transfer of Land Act covers this matter insofar as dealings in land are concerned?

Mr. Vroland.—The Transfer of Land Act was designed to make the register the beginning and end of the matter and to exclude any reference to trusts. It did not succeed. We have not considered specifically the point raised by you, Mr. Chairman.

The Chairman.—Some difficulty may arise because of the re-numbering of sections of the Trustee Act. A customary practice is for some wills to contain a reference to section 32 of the Trustee Act. What would be the interpretation of a will if the relevant section has been re-numbered, as is proposed in the Bill now under consideration?

Mr. Vroland.—If the reference were precise, the will would be interpreted in the light of the section referred to.

The Chairman.—What would be the position if the reference were at large to the Trustee Act for the time being of the State of Victoria?

Mr. Vroland.—I suggest that the matter is one of interpretation. The will could only be interpreted by applying to it the provisions of the Trustee Act in operation at the time the will came into effect.

Mr. Rodd.—A well-drawn document would refer to the legislation operative at the time the instrument came into operation. It would refer to the Trustee Act or any statutory modification or re-enactment for the time being in force.

The Chairman.—I agree, but there are many wills in existence where a short cut has been taken by the draftsman. In view of the fact that the number of the Trustee Act has remained unaltered for so many years, there is a tendency to include in wills reference to the Trustee Act for the time being in the State of Victoria. If this Bill becomes law, the sections of this well-established Act will be re-numbered.

Mr. Heymanson.—If a will contains reference to section 32 of the Trustee Act and it is found that at the date of death section 32 of the Trustee Act then in force could not be the section to which the testator referred, there is an instance of patent ambiguity and in my view the court would hold that the testator obviously referred to section 32 of the Trustee Act in operation at the date of making his will because that would be the only section 32 that would give sense to his words.

The Chairman.—That may be so, but the difficulty would arise of the matter having to be referred to the court, which we desire to avoid.

Mr. Rodd.—Sub-section (1) of section 6 of the Acts Interpretation Act 1928 provides:—

"Where any Act passed on or after the first day of August One thousand eight hundred and ninety, whether before or after the commencement of this Act, repeals and re-enacts with or without modification any provisions of a former Act, references in any other Act or document to the provisions so repealed shall unless the contrary intention appears be construed as references to the provisions so re-enacted."

The Chairman.—In actual fact, clause 38 of the new Bill is not a re-enactment of section 32 of the 1928 Act.

Mr. Vroland.—It is a re-enactment with amendments.

Mr. Rodd.—Section 6 of the Acts Interpretation Act refers to re-enactments with or without modification.

The Chairman.—If this Bill becomes law, clause 38 will be a re-draft of sections 32 and 33 of the 1928 Act.

Mr. Rodd.—To that extent, it is a re-enactment of sections 32 and 33 with modifications.

The Chairman.—Although both Mr. Rodd and Mr. Heymanson may be right in their contentions, the fact remains that trustees will probably have to go to the court to satisfy themselves as to the position. A careful trustee will seek the advice of counsel and probably he will be told what is the situation according to law, but that it would be wise to refer the matter to the court to make sure.

Mr. Rodd.—Is that a substantial fear? The majority of the sections in the Trustee Act are enabling provisions which would apply to trusts operating after the new legislation came into operation.

Mr. McArthur.—In my view, the Chairman has placed his finger on a matter of great moment. I should like to refer to the old section 32 which is reflected in clause 38 of the Bill. Section 32 specifically did not apply to trusts constituted or created before the commencement of this Act, but that aspect is not reflected in clause 38 of the Bill. I am now somewhat doubtful whether clause 38 would apply generally to trusts constituted or created before 1953. That is a point which should be cleared up. It should be determined whethere there should not be a specific statement contained in clause 38 to the

effect that the new provision does or does not apply to trusts created before the commencement of the 1953 legislation.

Mr. Rodd.—That seems to be covered by sub-clause (3) of clause 2 of the Bill.

Mr. McArthur.—I have noted that fact.

The Chairman.—I think you have answered my question. As you consider that there may be some difficulty about this matter, I feel that the problem should be put specifically to the Parliamentary Draftsman.

Mr. Heymanson.—Mr. Chairman, your fear of a prudent trustee going to court is, I think, somewhat academic, because, as I understand the position, the only effect of the enabling provisions in the Bill is to shift the onus of proof. At present, a trustee is always in a position of having to justify his action, if attacked by a beneficiary. A trustee acting under the statutory power will still have to justify his action, but it will be for the beneficiary to show that the action of the trustee was unjustified. I should have thought, quite apart from the question of statutory power, that if an application were made to the court because of the patent ambiguity to which I previously referred, the ruling would be that the provision in the will referred to the Act in force at the drawing of the document. I think a trustee would reasonably be entitled to rely upon that view, and wait for a beneficiary to attack him.

Mr. Vroland.—I feel that your suggestion, Mr. Chairman, that the matter be directed to the attention of the Parliamentary Draftsman is sound, and I adopt it.

The Committee adjourned.

TUESDAY, 23RD JUNE, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan, The Hon. F. M. Thomas.	Mr. Pettiona, Mr. Randles, Mr. R. T. White.

The following members of the Law Institute of Victoria were in attendance:—Mr. R. N. Vroland (Chairman of Legislation Committee), and Mr. R. J. McArthur (Member of the Legislation Committee).

Mr. Vroland.—Mr. McArthur will discuss sub-clause (1) of clause 4 of the Bill, the first item referred to in the Report of the Institute.

Mr. McArthur.—The Law Institute of Victoria recommends that the range of authorized trustee investments should be widened to enable trustees to invest in industrial securities. This recommendation is one which was made by the Institute several years ago and has been repeated on several occasions, notably in 1949, when the subject was under consideration by the Government of the day.

In 1950, the then Prime Minister of England, Mr. Attlee, appointed the Charitable Trusts Committee, and paragraph 296 of the Committee's report states—

> The range of investment should be extended to comprise, subject to certain safeguards, the debentures and stock and shares (including equity stock and shares) of financial, industrial, and commercial companies quoted on the Stock Exchange of London. Trustees should be permitted to invest up to, say, 50 per cent. of their funds in securities within the extended range suggested.

The Law Institute of Victoria has always considered that the power of investing in industrial securities is one which should only be granted subject to some safeguards, and has made certain suggestions as to appropriate safeguards. It does seem that differences of opinion exist not so much as regards the principle of investment in such an enlarged range of securities but as regards appropriate safeguards.

If this is correct it is not necessary that I should do more than comment briefly upon the principle especially as I have the high authority of the Nathan Committee report (paragraph 289)—

> While we are of opinion that the principle of trustee investments should be preserved, the evidence before us indicates that the range of such investments might properly be extended to comprise, with certain safeguards, debentures, and the stocks and shares (including equity (ordinary) stocks and shares) of financial, industrial, and commercial companies quoted on the Stock Exchange, London. The inclusion of equity stocks and shares is regarded as essential to the safety of the trust fund for the following reasons:—
>
> (i) they represent the right not to a fixed money income and a fixed capital sum but to a share in the companies' profits and assets and are thus ultimately associated with real values and not with money values;
>
> (ii) they contain the possibility of growth, owing to the practice adopted by most companies of retaining in the business a considerable part of the profits and so adding to the value of the equity.

But I should at least make some comments on the principle of bringing industrial securities into the range of authorized trustee investments.

Premising that there are some popular misconceptions, both legal and commercial, regarding the extent of a trustee's powers of investment, which I think are—

(1) That a trustee is absolutely protected if he invests in authorized investments.

This is not so, Underhill on *Trusts, 9th Edition,* at page 309 states:—" it is the duty of a trustee to confine himself not only to the class of investments which are permitted by the settlement or by statute, but to avoid all such investments of that class as are attended by hazard."

With all respect to the learned author, this is an over-statement which will serve to illustrate my next point, for if a trustee's duty is so high that he must avoid all investments (even of the authorized class) which are attended with hazard, that presupposes that there are some investments which are not attended with any hazard, and it would necessarily follow that if a trustee incurred loss in any investment (even though an authorized investment) he must make good the loss. For the event would then have shown that the investment was attended with hazard.

(2) That there are " safe " investments.

To answer this misconception fully would necessitate an inquiry into the nature of money, but it is sufficient to point out that while Government stocks can be regarded as " safe " in the sense that eventually a Government will pay the nominal or face value of its stock, there are Government stocks which are interminable (except at the option of the Government) and that there has been a great fall in the value of money between the date of issue and the date of repayment. Moreover the value of Government stocks fluctuates on the market mainly in sympathy with interest rates, and a trustee who has (quite properly) bought £100 of stock at £103 is to-day facing the fact that the value of that stock on to-day's market is only £93.

As the Nathan Committee reports (paragraphs 286 and 287)—

> If a long view is taken, inflation appears to be a natural trend of currencies and the trend of the last fifty years may be regarded as merely an

acceleration of this natural tendency. The acceleration has, however, become a matter of grave anxiety; the real value of even the soundest currency has been greatly reduced.

There is no indication that the inflationary tendency of currencies is likely to be reversed and this forms the major problem of the trustee, whose range of investment is confined to fixed interest money stocks. The restrictions intended as a safeguard, have become a source of danger.

All investments fall into two categories, namely, fixed interest bearing securities and equities, and it is noteworthy that in Victoria authorized trustee investments are wholly restricted to fixed interest bearing securities.

Faced with the necessity of investing trust funds in authorized securities, a trustee is forced (unless the range of authorized securities is extended by the trust instrument) into investing the whole fund in such fixed interest bearing securities although as a prudent man of business he would not do this with his own moneys either for the preservation of capital or to obtain a proper income return.

To extend the range of authorized securities to include "equities" would only reflect in the statute what is already inserted in nearly every trust instrument which covers any large fund.

No doubt sociological and political problems do arise, but it can fairly be said that trustees holding large funds are to-day enabled by the trust instrument itself to invest outside "gilt edge" investments. The proposed amendment is more likely to affect the investment powers of trustees holding relatively small funds created by trust instruments upon which the poorer settlor or testator could not afford to lavish the care and obtain the skilled professional advice and draftsmanship which can be and are afforded by the wealthier settlor or testator. The proposed extension would come rather to the aid of the poor than the wealthy, and therefore such an extension of the range of authorized investment should in itself have little effect on the volume of trust money available for investment in gilt edge stocks.

The experience of the past eighteen months in Australia has shown that the availability of fixed interest bearing investment money diminishes in sympathy with a fall in equity values, and that on any such fall the natural reaction of all investors (and in particular of trustees) is to hold investments rather than to sacrifice them at a loss.

Although the Institute's recommendation is to extend the range of authorized investments to include equity shares, the Institute's recommendation also covers fixed interest bearing securities of industrial companies specifically debentures. The criticisms which have been levelled at investment in equities cannot be maintained in relation to many types of debentures, some of which are at least as well secured, both for capital and income, as would an authorized investment on first mortgage of real estate.

The Institute's recommendation also extends to investment in preference shares, which are, of course, another type of fixed interest bearing security with the defect that they are never redeemable (except in the case of redeemable preference shares which even then are only redeemable at the option of the company). The value of preference shares is therefore peculiarly at the mercy of the current market, and an investment at par in a perfectly sound 5 per cent. £1 cumulative preference share is to-day worth approximately 17s.—a loss of 15 per cent. of the capital.

I direct attention to paragraph 291 of the Nathan Committee's report—

The market of equity stocks is, however, liable to long periods of depression ("bear markets") and it is therefore desirable that any trust which may require to realize investments at short notice should hold part of its funds invested in "gilt-edged" fixed interest stocks, preferably bearing a not very distant redemption date, by which we mean not a date on which redemption may be effected, but a date on which redemption is obligatory.

The true answer is of course that there is and cannot be any absolute safety in investment. If a trustee is concerned only to preserve the number of money units entrusted to him he invests that number in relatively short-dated gilt edged stocks at not more than par and awaits their maturity, by which time he has probably lost some of the value of the money units which he invested.

If a trustee is concerned to preserve the value of the trust fund, and has authority under the trust instrument (or if the Institute's recommendation is accepted—under the Statute) he will seek to invest a portion of the trust fund in equities which have a prospect of maintaining value. The prudent investor, realizing that there are risks associated with any particular investment, will endeavour to spread those risks by investing in a selection of equity shares.

The Institute's suggestions for safeguards are an attempt to reflect rules of prudence. The safeguards suggested may thus be summarized—

1. Not less than 50 per cent. of the trust fund is to be invested in present types of authorized investments.
2. Not more than 10 per cent. of the trust fund is to be invested in the securities of any one company.
3. The securities must be quoted on the Stock Exchange of Melbourne.
4. The securities must be of a company incorporated or carrying on business in Victoria.
5. The company must have a paid up capital of not less than £200,000.
6. Investment must be made as part of a scheme of investment of the trust fund.
7. The scheme of investment must be such that in the opinion of an independent consultant (a member of the Stock Exchange of Melbourne) there should be reasonable safety for the capital and a reasonable income return having regard to the total amount of the trust fund and the probable duration of the trust.

In these safeguards the Institute has followed the Nathan report in regard to the proportion (50 per cent.) which may be invested outside gilt edged stocks, and (having regard to the difference in capital structure between leading English companies and Victorian companies) its principle in relation to the importance of the company.

The Institute would not see any objection in principle to the introduction of the other safeguards suggested by the Nathan report, namely—

(*a*) a limitation to companies which have paid a dividend on their equity capital of not less than 4 per cent. in each of the past, say, ten years—

although the Institute believes that this might unduly restrict choice of the securities of, e.g., reconstructed and holding companies—

(*b*) a limitation regarding debentures that they should be in the nature of prior lien debentures with a prohibition on any charge ranking in priority; and as regards preference shares that no debenture or other preference shares should be issued with priority—

although the Institute believes that it is more important to insist that debentures should be redeemable within a reasonably short period, and does not understand the reference to issueing debentures in priority to preference shares, as all debentures necessarily have such priority.

As a corollary of a limitation on investment in debentures redeemable within a reasonably short period, consideration should be given to a prohibition again investing in debentures at a premium.

Of all the suggested safeguards, the Institute believes that the necessity for investment pursuant to a scheme of investment is the most constructive. It is designed to ensure that the independent consultant must have regard to the total amount of the trust fund and to the duration of the trust, as what would be suitable in one case would be most unsuitable in another. For example, if an independent consultant were approached regarding the investment of a trust fund of £1,000 which would fall into possession within a few years, it is inconceivable that he would do other than recommend investment in fixed interest bearing securities (probably Government stocks) maturing at the time when the fund would fall into possesion. But if the same consultant were approached regarding the investment of a trust fund of £10,000 unlikely to fall into possession for many years, he would in all likelihood recommend investment of perhaps 40 per cent. of the trust fund in equity shares spread over a number of companies and balance this by investment of the remainder in Government stocks and other fixed interest bearing securities.

Mr. Vroland.—There are two aspects of the Law Institute's representations on this matter to which I should like to refer. First, I shall give specific references to the representations which it has made. Secondly, I shall point out the period over which the Institute has held the view which it is now submitting to this Committee to indicate that it is not a view which has been forced upon it by the inflationary experiences merely of the past year or two. On the 27th of May, 1948, representations along the lines of those made at present were submitted to the then Attorney-General, whose file reference is 48/4260.

The problem of the field of investment of trust funds has exercised the minds of members of the Council of the Law Institute for many years, and on the 1st of May, 1945, there appeared in the journal of the Institute a report on the recommendations of the Institute concerning the enlargement of the field of investment of trust funds. At that stage we had not entered upon the great inflationary period which came in the years 1950 and 1951, but our experience in what might be referred to as the normal years preceding that time had convinced us that the field of investment should be widened along the lines we now suggest.

We persisted in our views, and in the year 1948 we made specific representations to the then Attorney-General. Having regard to the experiences of the great inflationary period, to which I have referred, we feel that our views have been confirmed and that they have been underlined, indicating that we are on a sound basis in making these representations.

In the course of a great deal of work which has been carried out by the Council and individual members of the Institute, a report was prepared by Mr. McArthur, who has been the spearhead of this attack, largely because of the great personal experience he has had in the problem of the investment of trust funds. In that report, he cited an example of what probably would have occurred in the investment of fixed securities and ordinary shares over a period between the year 1912 and the year 1927. I do not quote any authority for this schedule, but we consider that it indicates clearly the problem which arises in the investment of trust funds and underlies the importance of trustees being enabled to invest in the ordinary shares of some of the stronger industrial concerns. I quote the following passage from the report:—

> Equity insists that the first positive duty of a trustee is to preserve the trust property (*vide* Strachan and Kenrick *Digest of Equity*, 3rd Edition, at p. 113) and his second positive duty is to pay the income and corpus to the persons entitled. That presupposes that the trustee must invest the trust property so as to obtain an income, and it is trite law that a trustee will be charged with interest if he omits to do so.
>
> If a trustee merely had to preserve the trust property he could convert it into money and place it in a strong box, but if he did so he would at least be charged interest.
>
> Faced with the necessity of investing the trust funds in his hands, a prudent trustee (assuming there is no restriction or extension of the statutory powers of investment by the trust instrument) is now limited in Victoria to fixed interest bearing securities which he, as a prudent and well-informed business man, regards as suffering from inherent defects and as involving risks of loss of both capital and income. He must elect whether he will in fact or in law "preserve" the trust property and the lawyer, despite his convictions, is forced to comply with the legal view of "preservation."
>
> No better analogy could be obtained than by considering the position of the management of a life assurance company receiving large sums which it must invest with the object of preserving the capital and obtaining an income. The problem of "safety" has necessarily been closely studied in this connexion, and the conclusion has been reached that both in times of appreciation and depreciation of monetary values greater safety is afforded by the non fixed interest bearing security.
>
> Raynes assumed a notional investment of £1,000 in 1912 in each of the six largest British companies in nine main groups—a total investment of £54,000—on the one hand in fixed interest bearing securities (preference capital or debentures), and on the other hand in ordinary shares or stock, and traces the result over a fifteen-year period to 1927 as follows:—

Sum invested in 1912.	*Fixed Securities,* £54,000.	*Ordinary Shares,* £54,000.
Value in 1927 ..	£42,588	£80,073
Original yield ..	3·95%	5·49%
Average annual return	3·3%	6%

I wish to make it clear that this table is not quoted as being authorative, but it sets out a probable result and one which, from our experience on the face of it, is probably accurate.

Mr. White.—In which year was this report written?

Mr. Vroland.—In 1948.

Mr. Randles.—Is not the result quoted problematical?

Mr. Vroland.—No. It has been prepared from information of Stock Exchange investments.

Mr. Randles.—Doubtless, it would have been possible to invest in companies which to-day are bankrupt, although at one time they may have been listed on the Stock Exchange, so there could be a different result from that quoted?

Mr. Vroland.—There could be a different result, but by wise investment and selection within a restricted group of companies, as we recommend, it is possible to achieve this result.

Mr. Randles.—Have you a list of the companies in which investments would have been made?

Mr. Vroland.—They are the six largest British companies in each of nine main groups.

Mr. McArthur.—We have assumed a notional investment of £1,000 in each of 54 British companies.

Mr. White.—Can you quote a parallel case in Australia?

Mr. Vroland.—No, but I have not the slightest doubt that a similar result could have been obtained by investment in named Australian companies. I have clients who had modest holdings of shares, in companies which are known as the "leaders," in the depression years and who to-day are wealthy by reason of the accretion to capital.

Mr. Thomas.—Were those investments made at the latter end of the depression?

Mr. Vroland.—No, I refer to the period throughout the depression. I commenced practising as a solicitor in the year 1930, and I could, if I were permitted, quote specific instances since then of persons who had made what could only be called modest investments in the "leaders," and who to-day are wealthy because they retained their investments in those "leaders" and took advantage of opportunities from time to time offered to them of improving their position.

Mr. Thomas.—Were the industries concerned directly or indirectly engaged in war production?

Mr. Vroland.—Yes.

Mr. White.—Would it be much trouble to supply a table of later date than the one referred to, which relates to the period from the year 1912 to the year 1927?

Mr. Vroland.—No doubt it could be prepared, but it would involve a good deal of work.

Mr. Randles.—In the next few years, probably a number of companies which will have made a fortune will fail. It is easy to invest in a company which seems sound, but in the future it may collapse.

Mr. Vroland.—The importance of the table submitted is that it covers three periods of significance—a period of war, one of inflation, and a period of depression. My quotation concludes—

> The startling result shown is an actual monetary loss of over 20 per cent. of the capital "safely" invested, while an actual monetary gain of nearly 50 per cent. of the capital not so "safely" invested is shown.
>
> This covers a period when the buying power of money was falling (i.e. currency was depreciating), but an investigation made by E. L. Smith in the United States of America over the period 1866–1896, when the buying power of money was rising, showed, contrary to the theory previously held, that common shares proved to be better investments both as to constancy of income and safety of capital than high-grade bonds.

Mr. Pettiona.—Can you name a company with a paid-up capital of £200,000 whose shares are not a profitable investment?

Mr. McArthur.—Many such companies are not sound. The sum of £200,000 was taken because of the provision that a bank must have paid-up capital of £200,000.

Mr. Randles.—Government policy could ruin a company over night. For instance, transport companies were regarded as being stable.

Mr. McArthur.—The idea is that trustees should be restricted to investing in a company of some stability. One must pay attention to more than the amount of paid-up capital.

Mr. Vroland.—Our recommendations presupposes that only 50 per cent. of funds shall be invested, and that the investments shall be spread. In addition, an investment must be recommended by an independent consultant who will take many factors into consideration, such as the assets of a company, the personal reputation of the members of its board of directors, and so on. Assuming honesty on the part of the persons concerned, there cannot be a better safeguard.

Mr. Pettiona.—If the proposal is adopted, what will be the effect upon Government loans.

Mr. McArthur.—In my view, it will have a beneficial effect upon the availability of money for investment in Government and semi-governmental stocks. An extension of investment in equities automatically improves the stock market and makes further money available for investment. Most money is in the form of confidence, and loss of confidence on the Stock Exchange causes an immediate tightening up. That is at the root of shortage of money for investment in Government securities. Greater facilities for investment in equities will provide more money for investment in Government loans.

Mr. Pettiona.—Would not advice to investors to resist investing in Government loans have the effect of forcing up the interest rate?

Mr. McArthur.—That is a possibility.

Mr. Brennan.—It can happen at any time.

Mr. McArthur.—Yes.

Mr. Pettiona.—If 50 per cent. of trust funds were permitted to be invested as suggested, and a result similar to that quoted were obtained, would it not exert pressure on Governments to increase the interest rates?

Mr. McArthur.—I sincerely hope not. I cannot speak with any authority, but I cannot help feeling that there is available for investment a large reservoir of money which people are nervously "sitting on," so to speak, by placing it in fixed deposits with banks and in deposits with savings banks. To stimulate investment of those funds in equities would cause a down turn in relative earning rates. At present investors are looking for industrial shares on the stock market to return better than 6 per cent., and that fact is throwing Government stocks out of line. Governments are resisting the trend of the call of the investors for a further return on their money, but not very successfully and only by reason of imposing the strictest limitations on the amount of loans. I do not think they have yet stabilized interest rates.

Mr. White.—Mr. McArthur suggested seven different safeguards. Are they all part of the Nathan report?

Mr. McArthur.—No. Number 1 is from the Nathan report; number 2 is our own suggestion; numbers 3 and 4 follow the Nathan report; number 5 follows it in principle—that report suggests a company with a capital of £1,000,000, whereas we suggest one with a capital of £200,000; numbers 6 and 7 are entirely our own, and we consider that they are the crux of the recommendations. In our opinion, there is no safety in any investment, every one of which has its own risks, and a prudent investor will always spread his risks. Therefore, we propose that so far as possible trustees should spread their risks. On average, inevitably an investment in one of the selected companies will sustain loss. Equally inevitably, the investor will win on one or more. That is the crux of the situation.

Mr. White.—Of whom is the Law Institute of Victoria comprised?

Mr. Vroland.—The Law Institute is constituted by membership of almost all practising solicitors in Victoria. There are very few exceptions.

Mr. Thomas.—Are barristers included?

Mr. Vroland.—No. Membership is limited to practising solicitors as distinct from barristers. The Council of the Law Institute is elected annually by members of the Institute. In representing the Institute here, we represent for all practical purposes all the practising solicitors in Victoria.

Mr. White.—How many members are there of the Council?

Mr. Vroland.—About 22.

Mr. White.—Are there country representatives?

Mr. Vroland.—Yes. The Council is representative of all the practising solicitors throughout Victoria. Each country law association has the right to send its representative—usually its president—to attend meetings of the Council as a member of the Council.

Mr. White.—Can the names of the members of the Council of the Institute be supplied?

Mr. Vroland.—Yes; that information is public property.

Mr. Randles.—Is it not a fact that if an individual depositor with a savings bank withdraws his money and invests it in Government loans, the Government will be no better off than if the bank itself invests in those loans?

Mr. McArthur.—The drop which has occurred in Market values of equities in the Melbourne Stock Exchange in the last eighteen months has caused a loss on paper of an amount at which I am reluctant to guess—certainly of many millions of pounds. Where has that money gone? What is money? Money is confidence, and to-day there is the spectacle on the Stock Exchange of which I would regard as very sound companies with assets disclosed in their balance-sheets of perhaps a total value of £1,000,000, but the book figures are far below their true worth. Yet the value of their shares, as quoted on the Stock Exchange, is to-day much less than the book value of their total assets. In my opinion, money is absolutely intangible —it is confidence—and anything which will restore the confidence of the community in investment is for the benefit of the community and will cause further moneys to be available for investment in Government loans.

Mr. Brennan.—Industrial shares are subject to heavy fluctuations in value, the same as Government securities.

Mr. McArthur.—Industrial shares are as liable to fluctuate in value as Government securities, if not more so.

Mr. Brennan.—The Institute considers that its proposed safeguards numbers 6 and 7 will be adequate for the protection and guidance of trustees?

Mr. McArthur.—We consider that they are reasonable safeguards.

Mr. Thomas.—Have you knowledge of the number of applications for investments for purposes other than those prescribed by the Act.

Mr. McArthur.—No.

Mr. Thomas.—What is the percentage of profit on assets held to-day under settlements and trusts.

Mr. McArthur.—I cannot say.

Mr. Thomas.—Have you knowledge of the amount of capital held by trustee companies in share investments?

Mr. McArthur.—No.

Mr. Thomas.—What is the average charge made by a Stock Exchange broker?

Mr. McArthur.—I cannot say.

The Chairman.—Perhaps it would be better if Mr. Thomas withheld further questions on this aspect until other witnesses appear before the Committee.

Mr. McArthur.—As requested, I have drafted a new paragraph which it is suggested should be included in sub-clause (3) of clause 11 of the Bill. This clause deals with the powers of trustees to concur in schemes or arrangements for the reconstruction of companies in which they hold securities. The sub-clause does not extend to enable trustees to concur in a scheme or arrangement which involves the allocation, distribution or transfer to the members or to classes of members of securities or assets of the original company except upon the reconstruction of that company. It is suggested that the following new paragraph be included in sub-clause (3):—

> (*e*) For the allocation distribution or transfer of any securities property or assets of the company to the members or any class of members by way of dividend return of capital distribution of surplus assets or otherwise

and that the following words in the sub-clause be redrafted to read—

> in like manner as if they were entitled to such first mentioned securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first mentioned securities or any securities property or assets of the company in lieu of in exchange for or in addition to all or any of the first mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith and may retain any securities property or assets so accepted as aforesaid for any period for which they could have properly retained the original securities.

The Committee adjourned.

TUESDAY, 14TH JULY, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. C. J. Gardner, Public Trustee, was in attendance.

The Chairman.—I have much pleasure in welcoming Mr. Gardner, who has undertaken to assist the Committee in its deliberations with regard to the Trustee Bill. I understand that Mr. Gardner wishes to refer particularly to clause 4 of the Bill and also to some suggestions by the Law Institute of Victoria for the amendment of that clause.

Mr. Gardner.—I think I might confine my remarks, firstly to the provisions of the Bill in relation to investments and, with your permission, Mr. Chairman, I shall at a later stage discuss one or two other points. In paragraph (*b*) of sub-clause (1) of clause 4 there is a reference to investment in Government securities of the Dominion of New Zealand. I very much doubt whether trustees generally would be inclined to invest in those securities, but I feel that there would be an advantage in having that provision in the Bill, from the point of view of these investments which are held when Trusts arise and which at present would not be authorized. In those circumstances a trustee might experience difficulty in the way of realizing. At present I am not aware of what restrictions are in force in relation to the transfer of funds between New Zealand and Australia. Restrictions were in operation some time ago and if they are still in force they might result in a trustee being placed in a difficult position.

The Chairman.—I think restrictions still operate, but I am not sure from which end they apply. However, that does not matter in this case, but if restrictions are in force, it is desirable that New Zealand securities be included as trustee investments.

Mr. Gardner.—That is so. I have no comments to make concerning the other provisions of the Bill. I see no objection to any of them, except as to the proposed extension of the field of investment. It has been suggested that the field of investment should be widened to include investments in certain public companies. The Committee will be aware that at present authorized securities consist of loans having a fixed rate of interest and/or a fixed date for the return of the capital. Once a departure is made from investments of that type, I feel that one would be entering a field which must involve some degree of speculation. It would involve speculation not only so far as the

investment is concerned but also speculation on the part of the trustee as to what would occur at some future time in relation to the investment.

Figures have been quoted in relation to this matter covering the period from 1912 to 1927. Those figures tended to show that in the case of equities, an increase in capital would occur, and that there were advantages from the point of view of the beneficiary being entitled to income. With your permission, Mr. Chairman, I propose to tender to the Committee copies of a graph taken from the Stock Exchange Journal, published in January, 1932, showing the effect on ordinary shares, preference shares, bank shares and authorized investments during the period 1926 to 1931.

Exhibit submitted. (Extract from Stock Exchange of Melbourne Official Record, January, 1932.)

Mr. Randles.—When you speak of preference shares, will you be good enough to give the Committee a resume of the types of shares affected?

Mr. Gardner.—Preference shares may be preferential only as to dividends, and not cumulative. In that case, if there were arrears owing on preference shares, the shareholder would not be entitled to recover those arrears. Then there are shares that are preferential and also cumulative in their preference as to dividends, and the holder of those shares may be entitled to receive arrears of dividends out of future profits. Again, some, but not all, preference shares carry a preference as to capital in the event of the company going into liquidation. So, there are, roughly, those three types of shares.

Concerning the graph, I admit that it does not present an over-all picture of the position in relation to shares. It was taken over a period when the market was particularly buoyant and it extended into the earlier part of the depression. It does give an indication of the effect of a depressed market on various types of investments.

Mr. Thomas.—Also of the dangers in relation thereto?

Mr. Gardner.—The risk is there. Taken in conjunction with the figures previously submitted in respect of the period 1912 to 1927, this might give the Committee a clearer view of the position concerning investments in what might be termed a period of depression and also in a more normal period. It is not for me to suggest whether there is any likelihood of a recurrence of a period similar to that from 1929 to 1932.

The Chairman.—What feature of this graph do you feel assists the Committee in its deliberations? It seems to me that bonds have been affected in the same way as shares, but not quite as quickly?

Mr. Gardner.—That is so and, coupled with that fact, shares fell and their fall was due to a large extent to the fact that they were not paying dividends. While the capital value of bonds obviously fell, those bonds, even at a time when they were at their lowest value, were at least returning some income. The market, as the Committee is aware, is particularly sensitive in relation to shares. I quote an instance that was brought to my notice in the course of conversation this morning. The manager of a company was asked by one of his directors why the shares in that company had fallen quite considerably, seeing that during the year in question the company had paid its interim dividend and that it had maintained its sales. In view of those facts there did not appear to be any obvious reason why the market should have depreciated. The manager's explanation was that one of the principal shareholders had died and the shares held by him had been placed on the market. At about the same time shares held in two other deceased estates had also come on to the market. The effect was a temporary depressing of the market for those particular shares.

In my view, the position in reference to the expanding of the field of investment in shares generally was summed up very accurately in a judgment given recently by Mr. Justice Kitto in the High Court case of *Riddel* v. *Riddel.* His Honour put the position that arguments in favour of extending the field of authorized investments in shares would be cogent where the trust had a long period to run and also where the beneficiaries who would ultimately take were prepared to retain the shares until a favourable opportunity occurred to dispose of them.

The Chairman.—Have you looked at the suggestions made by the Law Institute of Victoria concerning safeguards in connection with this field of investment?

Mr. Gardner.—Yes.

The Chairman.—Have you any comment to make on the proposed safeguards?

Mr. Gardner.—I agree that in the case of long-term trusts, the suggested safeguards would probably be quite satisfactory, but in the case of short-term trusts —for instance, a trust to be terminated on the death of a life tenant—it would be very difficult to ascertain what the position might be concerning any particular shares. An effect on the share market can arise for various reasons. For instance, it might be caused by the sudden announcement of a Government policy in respect of a particular activity. Fairly recently, when restrictions were placed on credit, the share market was affected immediately. To quote another case of the effect of Government policy on the market: Bank shares, generally speaking, are fairly stable, but the suggestion to nationalize the banks had a depreciating effect for a time on the market for those securities. If a trust were to be terminated in any one of those periods in which the market had receded, obviously the beneficiary then entitled to the capital would not receive, in all probability, even the money value of the original investment.

The Chairman.—That would apply in regard to bonds?

Mr. Gardner.—Admittedly.

The Chairman.—Have you looked at the report of Lord Nathan?

Mr. Gardner.—I have seen only extracts from it.

The Chairman.—That report contained a recommendation relating to extension of the field of trustee investment, but the safeguards suggested were of a character somewhat different to those proposed in Victoria.

Mr. Gardner.—That is so. I find it difficult to form a definite opinion as to the effect of the proposed amendment. It is hard to estimate how much capital is involved in the form of trust investments, purely as trust investments. Assume that the amendment were to operate to-morrow. I ask the Committee: How many trustees would propose to dispose of present authorized investments and enter the new field? What effect would that have on the market for authorized investments?

The Chairman.—Can you supply the Committee with any figures that will be of assistance?

Mr. Gardner.—I doubt whether any figures that I might cite would give members of the Committee a clear conception of the position. There are two other considerations. It is still open to the testator or the creator of a trust to provide for the investment of money in any form of security. It is also open to trustees—I admit that this would have application

only to large trust funds—to apply to the court for authority to invest outside of the present range of authorized investments.

The Chairman.—At this stage, I doubt whether it would be desirable or advisable to recommend any extension of the field of authorized investments, first, perhaps, for a good legal reason that we are not satisfied that there are adequate safeguards as far as beneficiaries are concerned, and, secondly, perhaps, for a policy reason that it may be undesirable, at our present stage of development, to divert moneys from the field of Government securities which are so essential to the development of Australia as a whole. I am wondering whether the greatest hardship is not caused when the trustee of an estate is forced to realize what are virtually gilt-edge company securities —" share leaders "—I think they are called on the stock exchange—by reason of the fact that he is empowered by law to retain only authorized investments. I am undecided as to whether it would be worth considering to extend the field of authorized investments by giving power to a trustee to retain certain types of shares in private companies, with adequate safeguards, which would probably yield to the beneficiary as good a return—probably a better return—than would authorized securities, and at the same time involve beneficiaries in very little risk.

Mr. Gardner.—That may be a possible solution to the problem. There are still one or two aspects, however, that merit consideration. Trustees may be either competent or incompetent. If a trustee is not mindful of his responsibilities, it may well be that he will retain investments to the detriment of an estate. Conversely, the discretion given to trustees might lead to the advantage of many estates.

The Chairman.—If the Trustee Bill were viewed from the standpoint of incompetent trustees involving beneficiaries in losses, the whole of the measure would have to be discarded.

Mr. Randles.—The loss of income from an investment, because of its retention by a trustee, might indicate that the person who made the original investment was incompetent.

Mr. Gardner.—Not necessarily. The values of investments vary with changing times. However, an incompetent trustee could detrimentally affect the financial return of an estate in any circumstances.

Mr. Randles.—The stage might be reached of considering the desirability of allowing a trustee to invest in securities of any kind. Unless he is thoroughly conversant with trends on the stock exchange there is danger of financial loss to an estate because of the bottom falling out of the market, so to speak.

Mr. Gardner.—There is now a safeguard in that trustees are restricted to authorized investments that provide a fixed return, which is not necessarily the case where shares are concerned.

Mr. Thomas.—Mention was made that investments might be considered safe if they were for a long-term period. What would constitute a long-term period?

Mr. Gardner.—That is a matter of speculation on my part, but I should say, " Somewhere in the region of twenty years."

Mr. Pettiona.—What effect would the acceptance of the amendment proposed by the Law Institute of Victoria have on the market for authorized investments?

Mr. Gardner.—Temporarily, I think the market for Government securities might be depressed. Assume that certain funds which are at present invested in Government securities are diverted to the new authorized securities. That would have a tendency to increase the sales of authorized securities, which would depress the market. Purchases in the new field of investments would harden the market. That would occur if there were a substantial move from one body of investments to another. With the depressing of Government securities, it may may happen that, as a result of the improvement of the interest rate in relation to the market value, there will be a tendency for funds to flow back to Government securities. Accordingly, I find it difficult to conjecture what might be the overall effect.

Mr. Brennan.—What do you consider would be the effect if authorized securities were confined to Government debentures?

Mr. Gardner.—The demand for Government securities would harden the market and thus reduce the income return from such investments.

Mr. Brennan.—Would there be danger ultimately of reaching a " stalemate "?

Mr. Gardner.—In my opinion, there would be a levelling off as between the two classes of securities. However, I am not competent to give any definite opinion because I do not know what funds there are in trustee securities.

Mr. Randles.—In times of buoyancy, when most shares in companies show good returns, it might be necessary for the rates of interest on Government securities to be increased?

Mr. Gardner.—That is so.

Mr. Randles.—Conversely, in times of depression, it might be necessary for those interest rates to be reduced?

Mr. Gardner.—Yes.

Mr. Pettiona.—If the suggested amendment were adopted by the Committee, could trust moneys be used for the purpose of advancing interest rates on present authorized investments?

Mr. Gardner.—My view is that the obvious tendency —subject to capital being safely secured—will be to invest so as to obtain the best return by way of income. As I pointed out previously, if the flow of capital is from Government loans to equities, then the return from equities in relation to their market price will be reduced, and there may be a reversion to Government securities.

Mr. Thomas.—Have you any knowledge of the sum of money likely to be held by trustees for the purpose of investment?

Mr. Gardner.—No. I could submit particulars of the funds held in my own office.

Mr. Thomas.—Would the funds held by you be comparable with those administered by trustee companies?

Mr. Gardner.—The funds under my control would be smaller. Perhaps, the position would be more clearly indicated if I stated the various investments in the Public Trustee's Common Fund. In round figures, that fund consists of the following:—Inscribed stock at par, £1,480,000; mortgages, £198,000; municipal advances, £407,000; Co-operative Housing Societies, £200,000; and cash on hand, £52,000. At 30th June last, the Common Fund amounted to £2,340,000.

Mr. Randles.—Mortgages on property would be secured by a first mortgage?

Mr. Gardner.—That is so. Outside the Common Fund, I hold £370,000 worth of shares. That sum is included in assets amounting to £4,000,000. That £4,000,000 is apart from the £2,340,000 in the Common Fund.

The Chairman.—Would you say that those moneys would be less than the sums handled by the average trustee?

Mr. Gardner.—Yes, particularly in relation to what I might term pure trust estates, many of which would be estates simply in the course of administration.

Mr. Thomas.—You hold £370,000 for the purpose of investment?

Mr. Gardner.—Yes.

Mr. Randles.—Would you say that 75 per cent. or 80 per cent. of the investments would be those embracing Government investments covered by a guarantee or an indemnity?

Mr. Gardner.—Approximately 70 per cent.

The Chairman.—Approximately 70 per cent. of the investments would be authorized security investments?

Mr. Gardner.—Yes.

Mr. Randles.—Do you think that would be a general line-up with the moneys handled by other trustee companies?

Mr. Gardner.—I would have no idea.

The Chairman.—I think we might now pass on from this aspect concerning authorized security investments, so that Mr. Gardner may comment on the other aspects of the Bill to which he desires to refer.

Mr. Gardner.—I wish to refer to paragraph (*b*) of sub-clause (3) of clause 4 with regard to the purchasing of freehold properties. The Bill provides that land so purchased shall be held on trust for sale. I understand it has been suggested to the Committee that land so purchased should be retained by the trustee and not realized, except with the consent of the beneficiary. I feel that, in the first place, the trustee is given a discretion and that if the proposed amendment were made it would have the effect of restricting, if not abolishing, that discretion in respect of the type of investment concerned. I can visualize circumstances in which it might be very desirable to realize the investment and in circumstances in which the consent of the beneficiary would probably not be forthcoming. For instance, if the tenant failed to pay rates and taxes, ordinarily it would be the duty of the trustee to realize the security. However, the amendment, as I understand it, provides that the trustee could realize only with the consent of the beneficiary, but the beneficiary might be the one who would refrain from giving his consent.

The Chairman.—You have in mind a situation arising in which the beneficiary would be the occupant of the property. In such a case it would be his obligation to pay the rates, but he might have failed to do so?

Mr. Gardner.—Yes. There is another fairly obvious case—that in which there might be deterioration of the improvements on the land, which would make it very desirable that the property should be sold. I see nothing to prevent a trustee from re-investing funds in another property.

The Chairman.—You consider that he should not lose his discretion to dispose of property if he considers it to be in the interests of the beneficiary to follow that course?

Mr. Gardner.—That is so.

Mr. Brennan.—If a property were deteriorating seriously it may become imperative for the trustee to realize the security.

Mr. Gardner.—That position could arise in many cases.

The Chairman.—One can visualize a case in which even a most careful trustee might have purchased a house which appeared to be sound. However, it might have been affected with borer, or the foundations might have started to move, and the obvious commonsense course for the trustee to follow would be to quit the asset as quickly as possible. However, a beneficiary may be reluctant to consent to the sale.

Mr. Gardner.—That is so, particularly if the beneficiary is unable to meet the relevant charges. Regarding the suggestion that trustees be given an unlimited power to delegate, at present statutory authority to this effect is confined to the position where a trustee intends to remain outside the State for more than a month, or to where the attorney is what might be termed a professional trustee; a trustee company or the Public Trustee. While temporary delegation could be justified in certain circumstances, such as in the case of illness, the proposal, if adopted, could result in trustees functioning through any nominee for the term of their trusts, which I consider would not accord with the spirit of trusteeship.

The Chairman.—I desire to thank Mr. Gardner for the assistance he has rendered to this Committee. The matter of extending the field of authorized investments will receive particularly careful consideration before a report is submitted to Parliament.

The Committee adjourned.

FRIDAY, 24TH JULY, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. William Sydney Jones, General Manager of the Trustees Executors and Agency Co. Ltd., was in attendance.

The Chairman.—This Committee has much pleasure in welcoming Mr. Jones. I understand that he will discuss in particular the matter of extending the field of investments, which subject was opened up by the Law Institute of Victoria.

Mr. Jones.—I have not had an opportunity to discuss the matter of extending the field of investments with my colleagues in the other trustee companies; consequently, any views that I might express will be my own.

The Chairman.—The only evidence before the Committee is that which has been tended by the Law Institute of Victoria. The question of extending the field of trustee investments was not initiated by this Committee but by the Law Institute of Victoria. The matter was referred to also by Mr. Justice Dean. So far as I know, there is nothing in particular underlying the proposal. This Committee will consider the matter in the light of the evidence placed before it.

Mr. Jones.—This matter has been highlighted, perhaps, by the case of *Riddell* v. *Riddell,* which was referred to by Mr. Justice Dean, in which an application was made to the court for permission to invest in shares. I understand that it was intended to endeavour to obtain permission to invest in such shares to obtain higher income and possibly as a hedge against inflation. It seems to me that one of the main objects of such a proposal which is being made by many people that investments should be made in an estate of shares in companies to acquire a direct interest in real assets such as stocks, buildings, and so on. I would view the proposals to extend the present field of investments, as authorized by the statutes, with a considerable degree of hesitation and caution.

Up to the present time Victoria has been a very conservative and particularly sound State so far as its trustee legislation is concerned, particularly that which relates to the investing authority of trustees. I have read the Nathan report and there is one aspect of it which has impressed me forcibly, namely, the competency of trustees in relation to the investment of trust funds. I contend, with due respect to the many trustees that are operating, that they are dealing with the affairs of other people that are very personal and vital to them, and certain considerations must be borne in mind. The trust instrument under which an executor operates is a will, in which definite directions are given by the testator as to the manner in which trust funds are to be invested. I suggest that any departure from the directions laid down in that particular instrument may be assumed to be contrary to the wishes of the testator. There should be no argument about that contention because, practically in every case, a will is drawn up by a solicitor, and the question of the authority to be given to the executor is discussed with a solicitor who is privileged to advise the testator. I always accept the position that the directions laid down in a will are to be regarded as definite instructions by the testator to his executor with regard to investments. For that reason, I consider that a considerable degree of caution should be exercised before considering the extension of those directions and the statutory powers that at present exist.

At this stage, I might refer to the case of *Riddell* v. *Riddell,* in which the Supreme Court of New South Wales was asked to give authority to the trustees, who were trustees with executorial powers, not only to retain shares in an estate where they did not have power to retain them but to have those shares sold and the proceeds invested in sixteen selected companies. There are special provisions in the New South Wales legislation providing for an application to be made to the court and in Victoria there is also a certain procedure by which such application can be made, but I cannot perceive that any advantage can be gained from investing trust funds in shares in public companies as a hedge against inflation. Trustees are charged with the particular duty of ensuring that the interest of life tenants and remaindermen are maintained. Trustees must see that there will be a retention of equity so that life tenants will receive a reasonable and steady income while, at the same time, the capital of the estate will be conserved as far as possible for the remaindermen.

If shares in public companies are purchased, they are subject to fluctuations in price. Moreover, nearly every estate has an estimated life and when the time for realization of assets arrives one must accept the market values at that time. My experience over many years has been that there are too many fluctuations in the market prices of what are known as "market leaders" to warrant any departure from the present statutory authority so as to permit trustees to purchase shares with trust funds, unless the extended authority is hedged around by particularly stringent and strict conditions. In my view, a trustee should not be permitted in any circumstances to invest trust funds in a company that did not have an established background and had been paying a steady rate of dividend not less than 8 per cent. per annum for 15 years. There has been an extraordinary change in the economic position during that period, due in part to the second world war. Some of the industries that are now operating will probably feel the blast in the years ahead because of a variation in consumers' appetites. Many lines that are being manufactured to-day because they are popular may not be so popular in two or three years time. I shall illustrate the point I am attempting to make. I have before me the share prices of four leading public companies. I contend that those shares can be regarded as being among the leaders in the gilt-edge investment market so far as company shares are concerned. In 1948 shares in Australian Consolidated Industries Limited were selling at 67s. 6d. whereas the price to-day is 45s. In 1948 the price for £20 Colonial Sugar Refining Company Limited shares was £60, as compared with the present day price of £44. In 1948 shares in the British Tobacco Company (Australia) Limited were sold at 50s. 6d. but the present rate is 36s. Moreover, in 1948, the price of shares in Tooth and Company Limited, the Sydney brewers, was 82s. 6d., whereas the present price is 71s.

I emphasize that it is the particular responsibility of a trustee to conserve the capital of an estate. There are other aspects also that must be considered. For instance, dividends vary and the matter of income for a life tenant is vital.

In the average estate where widows and children have to be provided for, it is vital that there should be a regular and ascertainable income. I suggest that such an income can be ensured only by investing in the securities that are at present included in the list of authorized trustee investments. A variation of even £5, £6, £7, or £8 a year is vital to a mother who has to bear the cost of educating her children. I can assure you that a great deal of hardship is suffered at present by persons who have to live on fixed incomes. Those who might have been left with an annuity of, say, £200 ten years ago are at present below the bread line. I emphasize these points on the question of security and risk and the utmost desirability of investing in such a way as to obtain a safe and steady income.

I refer to the return per cent. on market price for shares which are leaders on the market. Australian Consolidated Industries Limited, for example, return 3.9 per cent.—I think my figures are correct. Could I, as a trustee with the responsibility of providing an income for children of a deceased person, justify the purchase of shares giving a return of 3.9 per cent. if I could purchase an authorized trustee security at par at £4 15s. per cent. I could only justify the purchase of such shares on one ground, and that is, that I am a firm believer in a good spread of investments. In my humble opinion, an ideal portfolio for an estate of, say, £10,000 would be to invest £5,000 in Government stock or semi-Government stock and mortgages, a few thousand pounds in real estate and then, if I had the authority under a trustee instrument, I would purchase first grade shares—and first grade shares only—with the balance of the money.

I do suggest an amendment of the statute in one respect. I agree entirely with the proposals to purchase homes for members of a family that has to be maintained out of an estate. That, I think, is a sound proposition, and I submitted a proposal to that effect when I appeared before the banking Commission in 1934. However, nothing has been done to give effect to that proposal. I have come to the conclusion, as a result of my experience in the administration of estates, that it is essential that a widow and children should be housed. We all know the difficulty in reference to housing. I would suggest the granting of fuller authority than is proposed in the Bill with regard to the purchase of homes. It is all very well to say that a trustee may purchase a home at a valuation given by a sworn valuer, but I suggest that trustees be granted a margin of 10 per cent. or 15 per cent. above the figure of the sworn valuation. If we all made a valuation of the same property, all our estimates would probably vary. Therefore, I do not think that any trustee who desires to purchase a home should be bound to the actual amount of the valuation. That is my suggestion.

The Chairman.—It might be of interest to mention that this matter was recently discussed by the Committee. Attention was drawn to the difficulty that would arise in the purchase of a home from another trustee company. An example was given of a trustee who might want to purchase a home under the proposed legislation. If another trustee company wanted to sell an asset that company would probably not do so unless it obtained some margin above the sworn valuation.

Mr. Jones.—A trustee company would probably not want to sell a home without first endeavouring to obtain a price which was something above the valuation.

Mr. Randles.—I have personal knowledge of that. I have in mind an accredited valuer, whose integrity is undoubted, and who is rated as the number one man in his district. He submitted a valuation of a property to be sold by a trustee company. That valuation was, let us say, £2,000, but the vacant possession value of the house on the market was, say, £2,500, and consequently that was the reserve stipulated to the estate agent for the sale of the house.

The Chairman.—I think that sort of thing often happens. A trustee is naturally anxious to get the highest price he can obtain. If he can sell a house at a figure above that of the sworn valuation, he will do so.

Mr. Jones.—It is a responsibility of a trustee in disposing of assets to get the highest price possible. There are cases where a trustee company would be the trustee of an estate, the beneficiaries are entitled absolutely, and it would be wrong not to consult the owners of an asset with regard to certain proposals. If a trustee proposed realizing an asset of an estate owned by, say, four people of age, the fair and proper thing to do would be to endeavour to call them into conference and to say to them, "It is proposed to place each of you in possession of your share of the estate and it is our recommendation that this property should be submitted to auction. We have obtained a valuation of so much in respect of the property, and we suggest that, in view of the state of the market, we might add 10 per cent. to that valuation, as the reserve figure for the sale." The beneficiaries might say, "No, we consider that you should get 30 per cent. more than the valuation." In a case such as that, the trustees may be acting under definite directions from the actual owners.

Mr. Randles.—I do not quibble at that. My point was that, even although a man has a sworn valuation of a property, he could not acquire a property at its real value because the market value would be so much higher.

The Chairman.—That possibility gives weight to Mr. Jones's point that the trustee should be permitted to work within a margin above the sworn valuation.

Mr. Jones.—Yes. I have had a good deal of experience in buying properties for different families. Of course, we obtain valuations and we have the properties inspected by an architect to ascertain whether they are in proper condition. I repeat that it is terribly difficult to purchase a home at the valuation.

Mr. Randles.—I agree.

The Chairman.—In regard to the proposed new powers to be given to trustees, it must be remembered that they would almost certainly be buying on the vacant-possession market.

Mr. Jones.—If they were purchasing a home, yes. I also suggest an extension of the powers of a trustee to give him authority to purchase real estate. I have cited illustrations of the fluctuations in the market value of shares. For the maintenance of widows and children of a deceased person, a constant and steady income is desirable and necessary to enable that family to be maintained. I suggest that part of such an income can be obtained by the acquisition of real estate as an investment more so than by the purchase of shares, because it is vital for many people to have a monthly payment to meet their living expenses. Whereas dividends are received only twice a year, rentals from properties are paid every week or month and that money is readily available for use by the family concerned. So many people live from hand to mouth that they cannot afford to wait six months for their income.

Mr. Randles.—Do you think that the granting of power to a trustee to invest in any type of real estate would be desirable considering that, at present, rental from an average home would not exactly amount to a good income? The return from an average house occupied by tenants would not be very great.

Mr. Jones.—The purchase of properties could be separated into two classes—vacant possession properties to be occupied as living accommodation for families, and other properties that might be acquired as investments. The variation between the sale prices of the two classes of property is extraordinary. It is possible to buy real estate at present—properties that are occupied and subject to tenancies—that will provide a reasonable return. I have made a few notes with regard to this aspect, which are as follows:—

"Values must have a close relationship to building costs, and experience this century has proved that real estate has increased in value; it is difficult to foresee any material decrease in costs, having regard to the accepted limitation of working hours and the increase in the basic wage over the last 50 years." It is my recommendation that trustees be given authority to purchase certain real estate as investments, with the object of obtaining a good monthly income. I am opposed to the purchase of shares on account of the fluctuations in the market price, unless such purchases are subject to stringent regulations. My note continues: "The purchase of real estate should possibly be confined to certain types of properties within a radius of, say, 25 miles from cities, and should show an estimated return per cent. on the purchase price at the time of purchase of at least the return per cent. from Government or semi-Government stock, after allowing, say, 15 per cent. of the annual gross rental value for repairs, painting, &c., in the case of brick structures and 17½ per cent. on buildings of other construction."

"I would except from these conditions the purchase, for example, of a property as a home in a country town where families have their roots and interests." It is not possible to dig out a family the members of which have their associations in a country town and where the children are being educated, and move them to a city.

I suggest that statutory authority to purchase real estate should require the trustee to more or less apply the same principle as those attaching to the lending of trust funds on mortgage, and that any property proposed to be purchased should first be limited in price to a figure of a valuation by a sworn valuer; further, that its purchase be recommended by the valuer as a suitable investment for trust funds; also, that in the event of the necessity arising later for a sale of the property, it might reasonably be expected to be saleable. I would think it desirable to confine a purchase of property to a figure not higher than the value placed on it by a sworn valuer but in the case of a purchase of a home for beneficiaries, I would give a trustee a margin of, say, 10 per cent.

Certain types of property should be excluded from purchase. Three examples which occur to me are:

Properties in a bad state of repair; lock-up shops (that is, shops without living quarters); and properties of a type that may prove difficult to sell.

The Chairman.—This recommendation excludes vacant land?

Mr. Jones.—Yes, it must be revenue producing. Of course, the acquisition of land with the object of building a home for a family is a different matter. But, as an investment, I regard them necessarily as revenue producing.

Might I make another point with regard to the suggestion that has been made that it is necessary to invest in shares in public companies as a hedge against inflation, by acquiring an interest in real goods such as stock in trade, properties, plant and machinery, by reason of that shareholding. I ask: What good will that interest be to a shareholder? My view is that it will be of good only if the company winds up and hands its assets to the shareholders. Then they would no doubt receive the benefit of the enhanced values.

I realize that there has been an extraordinary change in the value of plant and machinery over the last ten years. Plant and machinery that cost £100,000 from eight to ten years ago would probably cost from £300,000 to £400,000 to-day to replace. Moreover, some persons maintain that the purchasing power of the £1 has depreciated over the last eight years to 6s. 8d. If any purchase of shares is to offset the decline in purchasing power of the £1, is it not natural that the shares purchased with that objective in view should increase in market value by a sum that is equivalent to the drop in purchasing power of the £1? If the purchasing power of the £1 is now 6s. 8d. those shares which were valued at £2 eight years ago should have appreciated in market value to-day to the extent of 26s. 8d., but they have not done so.

Mr. Brennan.—Do you consider that the continual flow of trust moneys into Government or semi-Government stock is a good thing from all points of view? The point I am trying to make is that there are tremendous fluctuations in authorized securities. The prices of Government bonds vary as well as those of stocks and shares. Is a trustee justified, therefore, in saying, "I will invest a large sum of money in Government or semi-Government securities because I know I will get a fixed income from them," when, all the time, the capital values are fluctuating?

Mr. Jones.—I should say "Yes", but I think I might submit another aspect to clarify my answer. Of course, the war period during which many people subscribed to Government loans must be excluded, but I have always been opposed to an investment, except in specific cases, for periods longer than seven years.

Mr. Brennan.—It is impossible to avoid some degree of fluctuation in Government authorized securities, just as it is similarly impossible to avoid fluctuations in ordinary industrial investments.

Mr. Jones.—There is one difference. There is a fixed date for the repayment of the money invested in Government stock, but in the case of shares it is a question of (*a*) accepting the market price at time of sale, (*b*) the liquidation of the company, (*c*) the winding up of an organization, or (*d*) the repayment of capital.

Mr. Brennan.—That is a vital point.

Mr. Jones.—It has the same application to the purchase of preference shares; they must fluctuate with varying interest rates.

Mr. Thomas.—You referred to the proposal that, for the purpose of investment, a trustee company should be permitted to purchase a property at a price up to 10 per cent. or 15 per cent. above the actual valuation.

Mr. Jones.—For the purchase of a home, yes.

The Chairman.—That is, the purchase of a home for a beneficiary, but not as a general investment.

Mr. Thomas.—That is so. You mentioned that during the last 50 years the basic wage had increased, but that increase, I suggest, has not an equal relationship to the increase in the prices of properties.

Mr. Jones.—With respect, I suggest that it has. I am not referring particularly to the basic wage but to general costs.

The Chairman.—Perhaps Mr. Jones's point might be put this way: Basic costs which bear a definite relation to the basic wage.

Mr. Jones.—I repeat what I said previously, namely, that real estate values must have a close relationship to building costs, and that experience this century has proved that real estate has increased in value. I think we must all agree with that statement, because a home which could formerly have been purchased for £1,200 or £1,400 would to-day cost about £3,000. I also said, "It is difficult to foresee any material decrease in costs, having regard to the accepted limitation of working hours and the increase in the basic wage over the last 50 years."

Mr. Thomas.—In that argument we cannot go back 50 years, because there was then no basic wage.

Mr. Jones.—There was an eight-hour working day, 8s. a day, and an eight-hour period for leisure.

Mr. Thomas.—That was the slogan of the workers, but it was not effected.

Mr. Jones.—However, it was an accepted basis of employment.

Mr. Thomas.—In 1907 the basic wage was £2 2s. That wage was established by Mr. Justice Higgins in the Harvester case, but no increase took place during the next six years because there was no provision for such an increase.

Mr. Jones.—I emphasize that I am not criticizing the increase in the basic wage. My point relates entirely to costs. We must realize that, on account of the accepted working hours now in force and the accepted basic wage, it is not possible to acquire real estate at the same price as was possible years ago. That being so, the present cost of building must have some relationship to the present value of properties that were erected in past years.

Mr. Thomas.—I would not say that.

The Chairman.—What Mr. Jones has said represents his view, and we must leave the matter at that point.

Mr. Thomas.—I was trying only to present a correct perspective. Fifteen years ago the cost of a six-roomed house was, say, £1,500, but at present the cost of building a similar property would be £2,000. The market price of a property of that type would at the present time be in the vicinity of £4,000.

Mr. Jones.—That is about the position.

Mr. Thomas.—In my opinion, those facts indicate that values are not determined by costs at all.

Mr. Pettiona.—Demand is a factor.

The Chairman.—Mr. Jones has pointed out that there are two types of property values; one is based on income return in cases in which the property is not sold vacant-possession, and the other is in respect of those properties on which there exists a premium in consideration of the buyer obtaining vacant possession.

Mr. Thomas.—That amounts to supply and demand, but it has nothing to do with the cost of construction.

Mr. Brennan.—The cost of replacement is a consideration.

Mr. Jones.—Yes. I suggest that the cost of construction of any property must have a definite bearing on the value of a property erected 10 or 15 years ago.

Mr. Pettiona.—The representatives of the Law Institute of Victoria submitted to this Committee a memorandum in which it was stated that if the proposed extension of the field of trustee investments were granted, it would assist the poor more than it would the wealthy. Have you read the memorandum to which I refer?

Mr. Jones.—No.

The Chairman.—I am sorry that you did not receive a copy. The point made by the Law Institute of Victoria was that the majority of persons with large estates have their wills drawn in such a way that power is given to the trustee to retain investments in trading companies and to invest certain funds in shares in those companies, whereas the will of a poor man is not usually drawn with such a degree of skill and the power to make those investments is not contained in such a will. Consequently, it might be desirable to provide in the Act for the trustee to have power to make certain investments, subject to adequate safeguards.

Mr. Jones.—To yield a greater return by way of interest?

The Chairman.—To give greater flexibility to the administration of the estate of a man who has not had his will drawn carefully by a solicitor.

I desire to express the appreciation of the Committee to Mr. Jones for the evidence he has tendered and for the clearness of the answers he has given to the questions that have been addressed to him. I am sure that what he has said will assist the Committee considerably in its deliberations.

The Committee adjourned.

APPENDICES

APPENDIX A.

REPORT OF THE COUNCIL OF THE LAW INSTITUTE OF VICTORIA.

The Council has given detailed consideration to all the clauses of the Trustee Bill and approves of the Bill subject to the following comments:—

Clause 4 (1)—Authorized Investments—

(*c*) As drawn this could include power to invest trust moneys on an equitable mortgage of a legal interest by deposit of the Certificate of Title. The sub-clause should read "a registered legal first mortgage of freehold land in Victoria."

(*m*) The word "registered" should be inserted before the words "first mortgage."

A new paragraph (*o*) should be inserted to cover investment in industrial shares—

(*o*) in or upon the fully paid preference or ordinary stock or shares or debentures, debenture stock or securities quoted on the Stock Exchange of Melbourne of any company incorporated or carrying on business in Victoria having a paid up capital of not less than £200,000.

Provided that such investment is made as part of a Scheme of Investment of the Trust Fund which in the opinion of an independent consultant should provide reasonable safety for the capital and a reasonable income return having regard to the total amount of the Trust Fund and the probable duration of the trust and that the Scheme of Investment is such that—

(i) not less than 50 per centum of the Trust Fund is invested or is to be invested in authorized investments other than investment authorized by this paragraph;

(ii) not more than 10 per centum of the Trust Fund is invested or is to be invested in the securities of any one company.

In this Section "Independent consultant" means a member of the Stock Exchange of Melbourne employed and remunerated by the trustee to advise upon a Scheme of Investment and not being interested as director of, or vendor, broker or underwriter of shares in, any company the securities of which are included in the Scheme of Investment.

Clause 4 (3). This sub-clause relates to the power to purchase a dwelling house for the residence of a beneficiary. The Council has previously made representations for a general power to invest trust moneys in the purchase of land in use as residential, trade, industrial or business premises. The Council desires to reaffirm the previous recommendation but, if the policy of the Government is to confine the power to land for a residence of a beneficiary, the Council considers that the sub-clause should be re-drafted for the following reasons—

(*a*) the power should be confined to the purchase of freehold land;

(*b*) as at present drafted, sub-clause (3) (*a*) confines the power to the purchase of land in use as a dwelling house at the time of purchase. It does not extend to a property which is vacant at that time or which, while not previously so used, would be suitable for use as a dwelling house;

(*c*) the property purchased should be in good repair;

(*d*) paragraph (*c*) provides that land so purchased shall be held upon trust for sale. Although there is a statutory power of postponement, a trust for sale by definition (clause 3) means an immediate binding trust for sale and it would appear—

(i) the trustees will be obliged to keep the property constantly under review to decide whether, in the interests of all concerned in the trust, the property should not be sold forthwith; and

(ii) in the event of a difference of opinion between the trustees as to selling or holding the property, the trust for sale will prevail over the power to postpone (*Re Hilton* (1909) 2 Ch. 548). The emphasis should be on the provision of a residence for the beneficiary, permanent if he so desires whilst his interest continues.

It is therefore recommended that sub-clause (3) should be amended—

(*a*) by deleting in paragraph (*a*) the words "in the purchase of land in the State of Victoria used for the purpose of a dwelling house only," and substituting the words "in the purchase of land in fee simple in the State of Victoria which land is in use at the time of purchase or is intended by the trustee to be used as residential premises in good substantial and tenantable repair order and condition"; and

(*b*) by substituting for paragraph (*c*) the following paragraph:—

(*c*) Land so purchased shall be held upon trust for sale but so that no sale thereof shall be made during the life of the beneficiary for whose use the land was purchased except at the written request or with the written consent of such beneficiary if he be *sui juris*.

Clause 7 (2). This sub-clause permits a trustee to retain or invest in securities payable to bearer, if they would otherwise be authorized investments provided that the securities are deposited for safe custody and collection of income with a banker and provides that any sum payable in respect of such deposit and collection of interest shall be paid out of the income of the trust property. It makes no provision if there is no, or insufficient, income. Sub-clause (2) should be amended so that the sum payable shall be "charged against" instead of "paid out of" the income. The same comments apply also to clauses 25 (1) re payment of insurance premiums and 27 (2) re payment of cost of audit.

Clause 10 (1) (*b*). This sub-clause provides that if a mortgagor sells part of the security and pays the whole of the net proceeds to the trustee, the trustee may release the part sold "and the net moneys so received shall be credited as part payment of the mortgage debt." This clause is copied from the New South Wales Act but the words quoted are not in that Act. If they are intended to apply as between mortgagor and trustee as mortgagee they are redundant. If they apply as between the trustee and beneficiaries they give the impression that the proceeds of the sale are to be taken as part payment of the principal debt. But what of arrears of interest? These words should be deleted so that the proceeds of the sale may be applied as may be proper in accordance with the general law, which may involve apportionment of the proceeds between life tenant and remaindermen in a case where there are arrears of interest.

Clause 11 (2) (*c*). This prescribes conditions on which trustees may lend money, one of which is that if the borrower fails to comply with any term of the mortgage the whole of the moneys secured by the mortgage shall immediately become due and payable. The words "at the option of the trustee" should be inserted.

Clause 12. This clause empowers a trustee to deposit money with a bank pending—

(*a*) negotiation and preparation of a mortgage or whilst an investment is being sought; or

(*b*) distribution or other application in accordance with the trust.

The power in the case of (*b*) is limited to a period not exceeding two years except with the leave of the Court. The clause should be re-drafted so that the limitation applies to all cases.

Clause 14. This clause empowers a trustee under a power of sale to sell the property at any time at the request of any beneficiary notwithstanding any lapse of time or that all the beneficiaries are absolutely entitled and under no disability. It would be possible for one beneficiary in collusion with the trustee to defeat the wishes of all the other beneficiaries. Section 222 of the *Property Law Act* 1928, which empowers the Court to order a sale instead of a partition is sufficient and this clause should be deleted.

Clause 17. This clause empowers a trustee to sell land on terms. The clause should be extended to cover all property, e.g., shares in a proprietary company. In sub-clause (3) (*c*) which prescribes that one of the conditions of sale shall be that if any instalment of purchase money or interest is in arrears and unpaid for a specified period the whole of the purchase money shall become due and payable, the words "at the option of the trustee" should be inserted.

Clause 19. (1) (*g*) This should be re-drafted so as to provide that the trustee may, "by writing waive or vary any right exercisable by the trustee arising from failure to comply with any term of any agreement for sale, mortgage, lease or other contract at or within the proper time." The paragraph as at present drafted restricts the power to failure to comply with any term of a contract of sale entered into, or mortgage held by, the trustee.

Clause 23. "A trustee *may* insure." Could this mean *shall?* It is suggested that the words "in his absolute discretion" be inserted, as in clause 27 in relation to audit.

Sub-clause (3) which relates to payment of premiums is subject to the same objection as clause 7. It is suggested that this sub-clause might be re-drafted:—

(3) The premiums may be paid out of any moneys subject to the trust but shall, in the accounts of the trustee, be charged against the income of the trust without the necessity of obtaining the consent of any person who may be entitled wholly or partly to the income.

Clause 30. This clause empowers a trustee to delegate whilst absent or about to be absent from Victoria. There is no logical reason why it should not extend to all trustees wherever residing.

Sub-clause (1) requires amendment to make it clear that the delegation may be to two or more agents, if desired.

Sub-clause (4) provides for registration of the power of attorney within 10 days. There is no reason why registration should be required except in the cases where it would be necessary if given by a non-trustee but, if registration is insisted upon, the period should be extended to 30 days.

Sub-clause (9) should be extended to cover purchasers of land and the Registrar of Titles as follows:—

(9) The fact that it appears from any power of attorney given under this section or from any evidence required for the purposes of any such power of attorney or otherwise that in dealing with any land or securities the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect with any notice of the trust any person being a purchaser lessee mortgagee or other person acquiring the land or stock or an interest in it or charge over it for valuable consideration or any person (including the Registrar of Titles) in whose books the land or securities is or are registered or inscribed.

Sub-clause (10) should be amended to include a personal representative within the meaning of "trustee" for the purposes of the section.

Clause 33. Protection by means of advertisements before distribution of assets. The Council has already made representations for the extension to provide trustees of the powers conferred on trustee companies by the *Trustee Companies Act* 1944, section 4, in relation to distribution of assets where the claimant does not pursue his claim within a certain period and section 6 where the trustee believes that there may be a possible claimant but the claimant does not lodge a claim within three years. It recommends that these provisions should be included in this clause.

Clause 38. This clause refers to the power of advancement out of capital. To make it clear that varying sums may be advanced from time to time "an amount not exceeding in all £1,000" should read "amounts not exceeding in the aggregate £1,000."

Clause 39. Protective trusts—As drafted this clause—

(*a*) provides no protection to a trustee who pays income to the principal beneficiary in ignorance of the termination of his interest;

(*b*) makes no provision for a trustee, in the circumstances set out in paragraph (*b*) of sub-clause (1), applying only portion of the income and accumulating the balance; and

(*c*) does not make it clear that the power of maintenance conferred by clause 37 applies also where the interest of the infant is subject to a protective trust—(see *In re Spencer* 1935 Ch. 533).

The provisions referred to in the first two paragraphs above are normally inserted in any well drawn deed. (cf. *Key and Elphinstone* 14 ed. Vol. 2, pp. 578—80 and 883).

It is recommended that this clause be re-drafted as follows:—

39. (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called "the principal beneficiary") for the period of his life or for any less period, then, during that period (in this section called "the trust period") the said income shall, without prejudice to any prior interest, be held on the following trusts, namely:—

(*a*) Upon trust during the infancy of the principal beneficiary if his interest so long continues to pay to his parent or guardian (if any) or otherwise apply for or towards his maintenance education advancement or benefit the whole or such part (if any) of such income as the trustees in their discretion from time to time think proper whether or not there is—

(i) any other fund applicable to the same purposes; or

(ii) any person bound by law to provide for his maintenance or education;

(*b*) After the attainment by the principal beneficiary of his majority upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;

(c) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period the trustees in their absolute discretion may apply the said income or any part thereof for the maintenance education advancement or benefit of all or any one or more exclusively of the other or others of the following persons (that is to say):—

(i) the principal beneficiary and his or her wife or husband (if any) and his or her children or more remote issue (if any); or

(ii) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund (if any) or arrears of annuity as the case may be;

(d) During such part or parts if any of the trust period as the accumulation of such income would be lawful the trustees shall accumulate all or any part of such income which is not paid or applied under the preceding provisions of this section as an addition to the capital of the original trust fund and so that such accumulations and the income thereof shall be held upon the trusts affecting the original Trust Fund and the income thereof but so that the trustees shall nevertheless have power in their discretion to apply such accumulations or any part thereof at any time afterwards during the trust period as if the same had been income of the then current year;

(e) Notwithstanding the protective trusts the trustees at any time or times if in their absolute discretion they deem it beneficial or proper so to do may by deed wholly or partially and by anticipation dispense with the forfeiture of the life or any less interest of the principal beneficiary;

(f) If and so often as on any day occurring after the failure or determination of the trust of the said income in favour of the principal beneficiary the whole of the said income if it had been payable absolutely to the principal beneficiary during the whole of the trust period would again belong to and be payable to the principal beneficiary alone during the residue of the trust period for his own absolute use and benefit free from encumbrances then the trustees shall hold the said income accruing after such day upon the trusts (including the provision determining the trusts in his favour of the same income) upon which the same would for the time being be held if the trusts of such income had not failed or determined;

(g) The trustees shall not be liable for paying the income subject to the protective trusts to or permitting the principal beneficiary to receive such income after the failure or determination during the trust period of the life or lesser interest of the principal beneficiary unless and until the trustees have received express notice of the act or event causing such failure or determination;

(h) The trustees in the exercise of any discretion vested in them shall have an absolute and uncontrolled discretion without being liable to account for the exercise of such discretion or to render any reason therefor.

Clause 40. This clause limits the number of trustees of a settlement of land or a trust for sale of land. There is no logical reason why it should not be extended to cover all property.

Clause 44 (3) As "convey" is defined to include "transfer" and not vice versa "transferred" should read "conveyed."

Clause 45 (4). For the same reason "transfer" should read "conveyance."

Clause 72. Reproduces the *Custodian Trustee Act* 1947, in extending to certain approved "charitable" corporations the power of being a "custodian trustee" conferred upon the Public Trustee by the *Public Trustee Act* 1939, section 22. In England the power of being appointed a custodian trustee is extended to "any banking or insurance company entitled by rules made under this Act to act as custodian trustee." The rules require that such a company shall *inter alia* be incorporated by special Act or Royal Charter or have an issued capital of not less than £250,000 of which not less than £100,000 shall have been paid up in cash. The Council recommends a similar extension in Victoria.

Clause 74. This clause declares that the rule against perpetuities shall be deemed never to have applied in certain cases including superannuation funds. Representations have already been made by the Council for the amendment of this clause so as to extend to trust funds where the payment is to be made to some person nominated by the employee as well as the widow or children or dependants of the employee.

Clause 75. This clause abolishes the rule in *Allhusen* v. *Whittell*. It would be more intelligible if it was re-drafted so that in sub-clause (2) "residuary estate" were substituted for "settled property" and "property" respectively and the order of sub-clauses (2) and (3) were reversed.

In sub-clause (4) "administration expenses" is defined as including "duty payable under the Administration and Probate Acts and estate duty payable under any Commonwealth Act and any other duty *of a like nature* payable in any State or country outside Victoria to the extent to which such duties are payable out of residue." The words "of a like nature" are unduly restrictive and would apparently exclude "succession duty." They should therefore be omitted.

Clause 76. This clause provides that payments received after death under an annuity purchased by the deceased or a life policy taken out by the deceased shall be treated as income in the administration of the estate. There are many superannuation funds in which policies are taken out by the trustees on the life of the employee and this clause should be amended to provide for an annuity "purchased by or for the benefit of a deceased person" and a policy "taken out with respect to his life by or for the benefit of a deceased person."

Additional clauses should be inserted in the Bill to cover the following:—

1. The Council has already made representations for the extension to private trustees of the provisions of section 3 of the *Trustee Companies Act* 1944. That section empowers a trustee company on an intestacy, where the net estate does not exceed £100, to pay the children's share to the widow or other person having the care or custody of the children. It is desired to renew those representations but the net value of the estate should be increased to £500.

2. The rule in *Howe* v. *Lord Dartmouth* should be abolished.

3. The provisions of the *Administration and Probate Act* 1928, section 59, with reference to the allowance of commission to an executor, administrator or trustee of a deceased person should be extended to trustees of a settlement.

APPENDIX B.

MEMORANDUM BY MR. JUSTICE DEAN ON THE REPORT OF THE COUNCIL OF THE LAW INSTITUTE OF VICTORIA.

I have perused the comments made by members of the Law Institute and, as invited to do, I offer some comments thereon.

I would like to premise these comments by observing that the original Committee included two representatives of the Law Institute, Messrs. Piesse and Wollaston, and that the Committee over which I presided included also two solicitors nominated by the Institute, Messrs. Hambledon and Fox. The views

of the Institute have thus been fully presented to the Committee which put forward the Draft Bill. I would like also to add that it is virtually impossible to achieve complete unanimity in respect of every detail, and it would be unfortunate if a legislative proposal which commands universal support in all major respects should be delayed by discussion on details of quite secondary importance. I do not think it necessary to discuss all the suggestions of the Institute but to leave it to your Committee, which includes a number of lawyers, to adopt those which it thinks worth while. I confine myself to those proposals which appear to me to be important. However, I do not want to be lacking in appreciation of the trouble and care which the third group of solicitors have bestowed upon the Bill. I am fully appreciative of their efforts to make the Bill as perfect as possible.

Clause 4.—I am strongly opposed to the suggested extension of the power to invest trust monies in industrial undertakings. I understand consideration of this far-reaching proposal is to be postponed and I do not now express any views. My Committee was unanimous in rejecting the proposal. I suggest that the enactment of the Bill might proceed and that this question should be considered as a separate measure after it has been fully discussed.

I do not favour a general power to invest in land. Such an investment would be particularly hazardous if extended, as is proposed, to "trade industrial or business premises", where the fate of the investment depends so much on general trading conditions and also on the prosperity or otherwise of the particular business.

Clause 4 (3).—I agree that the power should be confined to the purchase of freehold land. I do not agree with the contention that the sub-clause as drafted does not extend to a vacant house, if it is built as a dwelling-house. The suggestion that the property should be in good repair is not desirable, as the state of repair is reflected in the price. I do not agree with the suggestion that there should be no sale during the life time of the beneficiary without his consent. This could gravely hamper administration and work hardship to other beneficiaries, as where a house has deteriorated and no funds are available for its repair. Further the beneficiary to reside therein may have less than a life interest. Again, he may cease to reside therein but may refuse consent to a sale.

Clause 10 (1) (*b*).—I should have thought "mortgage debt" included whatever was owing by the mortgagor, whether for principal or interest.

Clause 11 (2) (*c*).—The proposal appears misconceived. The clause does not require the trustee to call up the principal whenever any default occurs, it simply says that the mortgage shall give power to do so—a very desirable provision. The words "at the option of the trustee", as proposed, add nothing. The trustee has ample powers of waiving strict enforcement of such a provision under clause 19. Surely every well drawn mortgage contains a similar provision.

Clause 14.—The clause was intended to remove a conveyancing difficulty which arose when all beneficiaries were *sui juris*. In such a case it has been held that the consent of all must be obtained. One beneficiary, with a small interest, can block a desirable sale. I do not think any criticism based on collusive action by a trustee is permissable. Such a trustee can be made answerable. I fail to see why the estate should be committed to the expense and delay of a partition action. This seems most oppressive.

Clause 17.—The difficulty of extending the power to sell on terms to personal property is the hazardous nature of such property as a security. Whereas the sale of land on terms is a general practice I would be surprised to learn that a similar practice exists as to shares in a proprietary or public company. I do not agree with the proposal.

Clause 19 (1) (*g*).—I see no objection to the proposal made.

Clause 23.—There is no room for any argument that "may" means "shall". The word "may" is used in many places to confer a power as distinct from imposing a duty, and if the words "in his absolute discretion" are inserted here, why not elsewhere? To insert them in some places and not in others would create some uncertainty. Further, the obligation to insure is one which it is generally agreed is one imposed by the general law as a thing which a prudent man would do. To use the words "in his absolute discretion" would seem to cut across the general legal principle applicable.

Sub-clause (3).—The proposal is unnecessary, but is otherwise unobjectionable.

Clause 30.—I heartily disapprove the proposal to allow a trustee to accept a trust and receive commission and delegate the whole responsibility to some one else. The beneficiary is, in general, entitled to have the trust performed by the trustee, not by some stranger; and he may be unable to discover whose decisions are really effective. If a trustee is too busy or too lazy to act, why should he not retire? He should not be permitted to remain the trustee and do nothing whatever.

The Law Institute has not adverted to clause 28, first introduced in 1928, following the English Act of 1925, which is open to the construction that it does allow a general power of delegation. Despite the decision in *Re Vickery* (1931) 1, Ch. 572 the general view is that it does not give unlimited power. Clause 28 was retained in order to keep in conformity with English Legislation. I do not think sub-clause (1) requires amendment to make it clear that the delegation may be to two or more agents—See *Acts Interpretation Act* 1928 Sec. 16.

In view of the definition of "Trust" in clause 3 I see no reason to refer to personal representatives.

Clause 38.—The proposal is unnecessary. It can hardly be said to be a proper exercise of the power to advance £1,000 for a trustee to make two advances of £900. Once the amount specified has been advanced the power is clearly exhausted.

Clause 39.—Three proposals are advanced by the Law Institute.

(*a*) To make provision for a trustee who pays income to the principal beneficiary in ignorance of the termination of his interest.

I do not agree with this proposal. There has always been an absolute duty upon a trustee to see that he pays money to the proper persons, but the Court may excuse him under clause 68. The case of a protective trust is only one instance where this liability may arise, and I can see no justification for making a special case of this particular situation. The same problem, for example, arises where there is a forfeiture without a protective trust. It seems to me much better to leave all such cases upon the same footing rather than to make a special exception in one

case having no special features not existing in other cases. In any event sub-clause (1) (*g*) as proposed goes much too far in requiring express notice in writing before there is liability. Who is to give the notice?

(*b*) I see no objection to allowing the trustee to pay part only of the income and to accumulate the balance as proposed.

(*c*) Where the persons to whom it is proposed to pay maintenance pursuant to clause 37 have a contingent interest only, then the clause does not apply so as to permit the payment of maintenance out of income unless the ultimate gift of the corpus "carries the intermediate income"—sub-clause (3). Ordinarily this is the case, but it is suggested by the Law Institute that if the will contains a protective trust (clause 39) then, as there may be a forfeiture of the interest the income is not necessarily carried by the shares in corpus and clause 37 does not apply, and *Re Spencer* is cited for this view. Apart from *Re Spencer* I do not think there is any substance in this point. Clause 39 is concerned with forfeiture of a right to income only, not with a forfeiture of corpus. If the person whose interest is subject to a protective trust has a right to the income, no question of maintenance under clause 37 out of that income can arise. If a forfeiture of such income occurs, clause 39 contains provisions for maintenance of such person and his family. If, however, the person concerned has no right to the income unless he satisfies the contingency entitling him to corpus, he will not be affected by clause 39 which applies only to a person who is actually entitled to income as earned by the corpus. Accordingly, clause 39 would appear to have no operation upon clause 37.

The will in *Re Spencer* was of an unusual kind. Testator gave his residuary estate upon trust for his son John and his daughter Margaret in the proportions of two-thirds to John and one-third to Margaret, but directed that these shares should not be paid to them but should be retained by his trustees upon trust. The income was to be accumulated until the child was 35 and should follow the destination of the capital. In the case of John if he attained 35 without the occurrence of any event whereby the share had become vested in or charged in favour of any other person (e.g. by bankruptcy, mortgage or alienation) half of his share was to be paid to him. The rest of his share was held as to income on protective trusts. John was over 21 but under 35. An application was made for maintenance out of the half share which was to be paid to him at 35. It appears doubtful whether the protective trust did apply to this half, but if it did its importance was that it brought into operation the forfeiture clause contained in the will. The case depended on the combined effect of the protective trust and the forfeiture clause in the will.

That case also had the peculiarity that there could be a forfeiture of income without a forfeiture of corpus.

In these circumstances the point made by the Law Institute has no general importance; and it is worthwhile to retain the same provisions as the English Act and obtain the benefit of English decisions upon them.

Clause 40.—No comment.

Clause 44.—No comment.

Clause 45.—No comment.

Clause 74.—No comment.

Clause 72.—In England there are no trustee companies, and Banks, &c., are commonly appointed trustees. Local practice differs and section 72 would seem to agree with local practice.

Clause 75.—No comment, but I do not see how the proposed amendment makes the clause more intelligible.

Clause 76.—The amendments proposed by the Life Offices Association deal with this point. I have already indicated my concurrence.

PROPOSED ADDITIONAL CLAUSES.

1. I see no objection to giving to private trustees the power given to trustee companies by section 3 of the *Trustee Companies Act* 1944.

2. I am strongly opposed to the view that the rule in *Howe* v. *Lord Dartmouth* should be abolished. Mr. Piesse was in favour of its abolition but the majority of the Committee disagreed. The competing contentions are summarized in the report dated the 17th August, 1945 (18/4, 8. 1947-7561), at pages 16 and 17 which I do not repeat. I believe leading equity lawyers are unanimous in opposing its abolition. No reason has been given for not adopting the reports of the Committee.

3. As to payment of commission to the trustees of a settlement. This is normally provided for by the trust deed, or in the case of trustee companies by the *Trustee Companies Act* 1928. I would not oppose giving such power.

29th June, 1953.

APPENDIX C.

MEMORANDUM BY MR. JUSTICE DEAN *re* VALUATION OF HOUSE PURCHASED FOR A BENEFICIARY.

As requested I offer the following comment upon the suggestion put before the Committee that a trustee proposing to purchase a house for a beneficiary should be allowed to lay out a sum in excess of the valuation of a valuer. He gave reasons based on practical experience for this proposal.

I think this would be an undesirable provision. The trouble is apparently that valuers are not prepared to value house properties at current market prices, probably because they think such prices not sufficiently stable. A trustee who invests trust property in the purchase of an asset above its value runs a risk of loss if and when current values decline. It must be borne in mind that the proposed legislation would be to all intents and purposes permanent, whereas the present discrepancy between values and prices may disappear within a very few years. It would be a mistake, I think, to legislate for a temporary state of affairs. It seems to me fundamentally unsound to allow a trustee to pay more for property than on a valuation it appears to be worth. Even purchasing at valuation involves some degree of risk; to purchase at a price in excess of the valuation enhances that risk.

4th August, 1953.

APPENDIX D.

MEMORANDUM BY MR. W. J. TAYLOR, REGISTRAR OF TITLES, *re* CLAUSE 30 (9).

As requested, I have considered the question of the Registrar of Titles not being affected by any notice of the trust in terms of the amendment of sub-clause (9) of clause 30 of the Trustee Bill, which has been recommended by the Council of the Law Institute.

The proposed amendment will afford little or no relief to Solicitors in respect of dealings lodged for registration and executed by an attorney under power on behalf of a "trustee." The statutory declaration required by sub-clause (6) must always be lodged and, for example, with respect to a mortgage *to* a trustee (signed by his attorney) an extra paragraph in this declaration would suffice proving that the moneys lent formed part of the relevant trust estate. No requisitions apart from this statutory declaration are raised in connection with transfers on sale or mortgages by executors, transmission applications or survivorship applications. I take it that the reason for the amendment is tied up with the opposition to the policing of trusts by the Titles Office.

Powers of attorney are construed strictly and I think it is only proper that the Titles Office should be satisfied that the donee is acting within the scope of his authority; hence a requisition would be made in case of a discharge of mortgage signed on behalf of the mortgagee by a donee under a trustee power calling for proof that the mortgage moneys formed part of the estate referred to in the power. The mortgage document would never disclose any trust.

Having dealt with powers of this nature for many years as an Examiner of Titles, I can assure the Committee that no onerous requisitions are raised on trustee powers.

The delegation of authority under a trustee power must be limited to all or any trusts powers and discretions vested in the donor as trustee pursuant to a particular trust. The donee may therefore possess the like powers as the trustee but the amendment in question could widen those powers and leave the way open for fraud.

If a trustee wished to commit some breach of trust in regard to land or mortgage securities, the amendment would certainly assist him. The trustee could appoint an attorney and then absent himself from Victoria. The attorney would be in a much more favourable position than the trustee as the amendment would absolve the person dealing with the attorney from inquiring into the trust and the legality of the transaction. Registration of the dealing would be assured as the Registrar of Titles would be exonerated also from asking any questions.

In effect, the subject amendment appears to be aimed at over-ruling the decision in *Templeton* v. *Leviathan* as applying to dealings by attorneys under trustee powers.

I am of opinion that sub-clause (9) should not be extended to cover land or securities registered in the Office of Titles.

12th August, 1953.

APPENDIX E.

MEMORANDUM BY MR. R. C. NORMAND, PARLIAMENTARY DRAFTSMAN, *re* CLAUSE 33.

Clause 33: The Law Institute's proposal is that certain ideas from the *Trustee Companies Act* 1944 should be imported into this clause which relates to the protection of a trustee on the distribution of assets after advertisement seeking claims. No specific amendments are submitted by the Institute.

Clause 33 protects not only trustees of a settlement or of a disposition on trust for sale, but also executors and administrators, who distribute property if they have given a prescribed notice of distribution by advertisement.

Sections 4-6 of the *Trustee Companies Act* 1944 give a similar, though wider and more definite protection to trustee companies but in their capacity not as trustees, but as executors or administrators of a deceased estate. Section 26 of the *Administration and Probate Act* 1928 also provides some protection (narrower than that afforded to trustee companies) for ordinary executors and administrators.

Substantially, the proposal seems to be one to reproduce in the Trustee Bill some administration and probate provisions, and insert them in a clause dealing with trustees generally as well as with executors and administrators.

It is difficult to appreciate the effect of three sets of provisions all operating in the same field. Consequently, the Law Institute might be asked to submit this proposal in the form of some definite amendment with an indication of whether the proposal carries the implication that ss. 4-6 of the *Trustee Companies Act* 1944 and s. 26 of the *Administration and Probate Act* 1928 are to be consequentially repealed. Pending such a submission, it is difficult to draft amendments with any confidence that they will effect what is intended.

21st August, 1953.

APPENDIX F.

MEMORANDUM BY MR. A. A. STEWART, LAW INSTITUTE OF VICTORIA, *re* CLAUSE 33.

I have given further thought to the matter of section 33 (Notices to Claimants) in the light of the comments of the draftsman but have been somewhat handicapped through not knowing exactly what course the discussions of the Law Institute Committee on the section took.

I have therefore had to apply my own mind to the matter in the light of the draftsman's comments. He commented that section 33 of the Trustee Bill, section 26 of the Administration and Probate Act and sections 4-6 of the *Trustee Companies Act* 1944, all operate in the same field. That is true, but I do not think they overlap to any extent except as between section 26 of the Administration and Probate Act and section 4 of the *Trustee Companies Act* 1944.

My views are:—

(1) Section 33 is the ordinary provision for notices to creditors and should be retained subject to some simplification of language.

(2) Section 26 of the Administration and Probate Act is a useful section. At present it is confined to personal representatives. I think it should be extended to include trustees as well.

(3) Section 4 of the *Trustee Companies Act* 1944 is, I think, unsatisfactory. *Firstly,* it is limited to claims of a *creditor* and does not deal with a person claiming to participate as beneficiary. *Secondly,* it is limited to the estate of a deceased person and does not apply to other types of trust. *Thirdly,* while it shuts out a claimant who does not *start* proceedings within a limited time it does not deal with the question of *due prosecution of the proceedings,* and therefore, as it seems to me, could be fairly easily side-stepped. Section 26 of the Administration and Probate Act does deal with the latter matter.

Consequently I think that if section 26 is extended to trustees generally section 4 could be dropped. The only advantage I saw in section 4 was that where it applied no application to the Court was necessary, whereas it is necessary under section 26. But as shutting out a claimant is a fairly serious matter, I do not consider that an objection to section 26.

(4) Section 6 of the *Trustee Companies Act* 1944, is useful although the necessity for it may be doubted having regard to the jurisdiction illustrated by *Re Hickey* 1925 V.L.R.

However, the section is limited to trustee companies who have obtained probate or letters of administration of an estate and does not cover a trustee company taking over an estate by appointment as new trustee, nor does it cover other trustees. It should be extended to cover these cases. I would not think it necessary to extend it to trusts other than deceased estates, although that could be done if others disagree with me on the point.

In the result I have drafted and enclose sections as follows:—

33. Notices to claimants with simplified language.

33A. and Schedule—taken from section 5 of *Trustee Companies Act* 1944—form of notice is applicable to all cases and in the form I have endeavoured to include trusts other than estates.

33B. extending section 26 Administration and Probate Act to all Trustees.

33C. reproduces section 6 *Trustee Companies Act* 1944 with extensions to all trustees.

Section 4 of the *Trustee Companies Act* 1944 is not reproduced for the reasons stated above.

There would be consequential repeal of the Enactments reproduced.

33. (1) (*a*) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, a trustee may give notice by advertisement in the *Government Gazette,* and in a daily newspaper, published in Melbourne and also if the property includes land not situated within 50 miles of the City of Melbourne in a daily or weekly newspaper published in the district in which the land is situated, and such other like notices, including notices elsewhere than in Victoria, as would in any special case have been directed by the Court in an action for administration, of his intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustee within the time not being less than two months, fixed in the notice or where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(*b*) Notice by advertisement for the purposes of this sub-section given by a trustee shall so far as regards the contents of the advertisement be deemed to be sufficient if given in the form in the Second Schedule to this Act or to the like effect.

(2) In any case where the real and personal property of a testator or intestate are sworn not to exceed One thousand pounds or where the Public Trustee has filed an election to administer the estate of a testator or intestate, notice by advertisement for the purposes of sub-section (1) of this section shall as regards publication be deemed to be sufficient if inserted once in a daily newspaper published in Melbourne, and also, where the testator or intestate resided or carried on business in any place or district in Victoria situated more than 25 miles from Melbourne in a daily or weekly newspaper (if any) published or circulating in such place or district.

(3) At the expiration of the time fixed by the notice the trustee may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims whether formal or not, of which the trustee then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustee has not had notice at the time of conveyance or distribution; but nothing in this section shall—

(*a*) prejudice the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who has received it; or

(*b*) free the trustee from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.

(4) This section applies notwithstanding anything to the contrary in the will or other instrument (if any) creating the trust.

(5) In this and the next three succeeding sections "Trustee" means the trustee of the estate of a deceased person or of a settlement or of a disposition on trust for sale, or a personal representative or a person who has made application to the Registrar of Probates for a grant of representation.

(6) In this section "representation" means the probate of a will or letters of administration.

33A. Notice by advertisement for the purposes of section 33 of this Act given by a trustee shall so far as regards the contents of the advertisement be deemed to be sufficient if given in the form in the Schedule to this Act or to the like effect.

33B. A trustee, having notice, whether under the provisions of section 33 of this Act or otherwise, that any claim has been or may be made against the trust of which he is the trustee by any person claiming to be a creditor of a deceased person or to be entitled to any real or personal estate subject to the trust or to any estate or interest therein, may serve upon any person making or possibly entitled to make such claim a notice requiring such person to take within a period of three months from the date of receiving such notice all proceedings proper to enforce or to establish such claim and to duly prosecute the same.

After the expiration of the said period of three months the trustee may by notice of motion or summons served upon such person or upon any person claiming through him apply to the Court or to a judge thereof for an order to some such effect as hereinafter in this section mentioned. Upon the hearing of such application the Court or judge, if not satisfied that such proceedings as aforesaid have been taken and are being duly prosecuted, may—

(*a*) order that the said period be extended, or

(*b*) order that the claim of any person so served with notice of the application be for all purposes barred, or

(*c*) make any further or other order enabling the estate to be distributed or dealt with without regard to the claim, and

(*d*) in any case impose such conditions and give such directions including a direction as to the payment of the costs of or incidental to the application as to the Court or judge seems just.

33C. (1) Where a trustee of the estate of any deceased person has been informed of the existence at any time of a person who if he had survived the deceased person would have been entitled to a legacy under the will or to the whole or a distributive share of the estate of such deceased person and such person has not nor has any person claiming through him or as one of his issue made a claim in respect of such legacy estate or share within three years after the death of the deceased person, the trustee after advertising as in this section directed may, without being under any liability to such person or to any person claiming through him or to his issue, distribute the estate as if such first-mentioned person had predeceased the deceased person without issue.

(2) The trustee shall before making any such distribution make a report to a judge of the Supreme Court setting out the material facts relating to the matter and obtain a direction from the judge as to the form and number of the advertisements to be inserted and the places in which they are to be published and fixing a time after the insertion of the last of such advertisements at the expiration of which such distribution may be made.

(3) Nothing in this section shall prejudice the right of any person to follow the assets or any part thereof into the hands of the person or persons who have received the same.

(4) This section shall not be construed as in derogation from the provisions of section 33 of this Act.

SCHEDULE.

Creditors, next of kin, and others having claims in respect of (the estate of A. B. late of (set out the usual residence and addition or other description of the deceased), who died (set out the date of death with such accuracy as the information of the trustee permits)), or (the settlement dated the (set out date of the trust instrument) between (set out the names, usual residences, and additions or other descriptions of the parties to the trust instrument)), are required by the trustee..... of ..... (set out the name and address of the trustee), to send particulars of their claims to him by the ..... day of ....., 19.., after which date the trustee may convey or distribute the assets, having regard only to the claims of which he then has notice.

2nd September, 1953.

APPENDIX G.

MEMORANDA BY MR. R. C. NORMAND, PARLIAMENTARY DRAFTSMAN, ON MR. A. A. STEWART'S PROPOSALS *re* CLAUSE 33. MEMORANDUM No. 1.

I have considered Mr. Stewart's proposal to replace clause 33 with a re-drafted clause and then to insert three new clauses after clause 33 and consequentially to replace the Second Schedule with a re-drafted Schedule.

May I say at once that Mr. Stewart's proposals, being definite and considered, merit close examination. Mr. Stewart does not follow the original and rather haphazard Law Institute submission, but, as he sets out his objectives and the reasons for them, it is better to confine all comments to his proposals.

My comments are outlined below.

(1) The general objective is to import into the Trustee Bill certain administration proposals from the Administration and Probate Act and the Trustee Companies Act, and in importing them, to extend them to all executors and administrators as well as to trustees.

(2) Mr. Stewart begins by discarding the Law Institute proposal to import s.4 of the *Trustee Companies Act* 1944. With this I entirely agree. S.4 was passed, at the instance of the trustee companies, who claimed that the Public Trustee should not have the advantage of a similar provision (*Public Trustee Act* 1939 s.23) over them. That provision was transferred from the Curator of the Estates of Deceased Persons when the duties of that officer passed to the Public Trustee. Under such a provision, non-compliance with a certain notice from the Public Trustee or a trustee company results in the claim of a creditor being absolutely barred without any possibility of judicial intervention. In my view, it would be unsafe to confer on private executors and administrators (who are usually interested beneficiaries) a comparable power.

(3) Next, Mr. Stewart proposes to re-draft clause 33 in simplified language. The main way he accomplishes this is to refer only to a "trustee" and then to define "trustee" at length to include certain trustees and executors and administrators and persons who have made application for a grant of probate or administration. This definition is to work for clause 33 and "the next three succeeding sections."

As to clause 33: As this is of guidance to executors and administrators much more often than trustees, my view is that the reference to personal representatives should appear directly in the clause and not be hidden unexpectedly in a definition.

As to the "next three succeeding sections"—I think the first of the sections will turn out to be unnecessary and that the definition is too wide for the last of them.

(4) Mr. Stewart now introduces his three new clauses. Of them—

(*a*) *proposed clause* 33A repeats (unnecessarily, I think) clause 33 (1) (*b*),

(*b*) *proposed clause* 33B repeats s.26 of the *Administration and Probate Act* 1928 with an extension to trustees. (This proposal was not adverted to by the Law Institute),

(*c*) *proposed clause* 33C repeats s.6 of the *Trustee Companies Act* 1944 (and section 25 of the *Public Trustee Act* 1939) with an extension to private executors and administrators and to trustees of the estate of a deceased person.

Both these last two repeated provisions are, I think, much more important to executors and administrators than to trustees. The proposed extension to private executors and administrators of the power of trustee companies to distribute estates under the supervision of the Supreme Court where possible claimants have not lodged claims within three years seems unobjectionable.

But the main question is whether it is proper to transfer to the Trustee Bill provisions which are basically administration and probate provisions. In short, is not the ordinary private executor entitled to expect to find the provisions guiding him in the Administration and Probate Act rather than in the Trustee Act? Unfortunately, the only way to provide ready access to these provisions (and clause 33) for both trustees *and* executors and administrators seems to be the cumbrous method of repeating at least three lengthy clauses in the two Acts.

(5) Assuming that the Committee is in favour of Mr. Stewart's suggestion involving the introduction of new provisions into the Trustee Bill with corresponding repeats of provisions now applicable only to executors and administrators (whether private or public or trustee companies), then the general method of approach I suggest is as follows:—

(1) Retain clause 33 of the Bill with some minor amendment.

(2) Import s.26 of the *Administration and Probate Act* 1928 (with an extension to certain trustees) and consequently repeal s.26 of the Administration and Probate Act.

(3) Import s.6 of the *Trustee Companies Act* 1928 (with an extension to trustees of estates of deceased persons) and consequentially repeal s.6 of the *Trustee Companies Act* 1944 and s.25 of of the *Public Trustee Act* 1939.

(4) Consider the substitution of Mr. Stewart's proposed Schedule for the Second Schedule of the Bill and a consequential repeal of s.5 of, and the Schedule to the *Trustee Companies Act* 1944. (It may noted that the Second Schedule to the Bill follows a form drawn by a former Chief Justice and recommended by the Chief Justice's Sub-Committee.)

(5) The views of Mr. Justice Dean and the other members of the Chief Justice's Sub-Committee, whose recommendations form the basis of the Bill, might be sought on Mr. Stewart's suggestions and the views expressed in this letter.

8th September, 1953.

MEMORANDUM No. 2.

Further to my letter of 8th September, 1953, I now submit herewith copies of suggested amendments to clause 33, new clauses and consequential amendments in the First Schedule as well as a new Schedule to take the place of the Second Schedule.

Perhaps my other letter outlining the method of approach and my actual suggestions for amendments and new clauses herewith might be considered by those interested.

Clause 33, sub-clause (1), line 9, after "trustees" insert "of the estate of a deceased person or".

Clause 33, sub-clause (1), line 16, omit "daily or weekly newspaper published" and insert "newspaper published at least once a week".

SCHEDULES.

First Schedule, page 69, at the beginning of the Schedule insert—

"3632	*Administration and Probate Act* 1928.	Section 26"

First Schedule, page 69, in the last column after "Sections 15, 24" insert "25".

First Schedule, page 69, in the last column omit "Section 2" and insert "Sections 2, 5, 6 and the Schedule".

Second Schedule, page 69, omit this Schedule and insert—

Section 33.

"SECOND SCHEDULE.

Creditors, next of kin, and others having claims in respect of the estate of A.B., late of (*set out the usual residence and addition or other description of the deceased*), who died (*set out the date of death with such accuracy as the information of the trustee or personal representative permits*) (*or*) in respect of property under a settlement or trust instrument (*set out date, parties, and brief description of settlement or instrument*), are required by the trustee or personal representative ..... of ..... (*set out the name and address of the trustee or personal representative*), to send particulars of their claims to him by the ..... day of ....., 19.., *after which date the trustee or personal representative may convey or distribute the assets having regard only to the claims of which he then has notice. (*Date.*)"

*A date not less than two months from date of advertisement.

Insert the following new clauses to follow clause 33.

Trustees and executors or administrators authorized to serve notices on persons having claims against a trust or estate.

Comp. No. 3632 s. 26.

A. (1) A trustee of the estate of a deceased person or of a settlement or of a disposition on trust for sale or a personal representative, having notice, whether under the provisions of the last preceding section or otherwise, that any claim has been or may be made against the trust or estate, may serve upon any person making or possibly entitled to make such claim a notice requiring such person to take within a period of three months from the date of receiving such notice all proceedings proper to enforce or to establish such claim and to duly prosecute the same.

(2) After the expiration of the said period of three months such trustee or personal representative may by notice of motion or summons served upon such person or upon any person claiming through him apply to the Court or to a judge thereof for an order to some such effect as hereinafter in this section mentioned.

(3) Upon the hearing of such application the Court or judge if not satisfied that such proceedings as aforesaid have been taken and are being duly prosecuted may—

(*a*) order that the said period be extended; or

(*b*) order that the claim of any person so served with notice of the application be for all purposes barred; or

(*c*) make any further or other order enabling the trust property or estate to be distributed or dealt with without regard to the claim; and

(*d*) in any case impose such conditions and give such directions including a direction as to the payment of the costs of or incidental to the application as to the Court or judge seems just.

Power to trustee or personal representative to distribute estate where possible claimants have not claimed

Comp. No. 5022 s. 6.

B. (1) Where a trustee of the estate of any deceased person or a personal representative of any deceased person has been informed of the existence at any time of a person who if he had survived the deceased person would have been entitled to a legacy under the will or to the whole or a distributive share of the estate of such deceased person and such person has not nor has any person claiming through him or as one of his issue made a claim in respect of such legacy estate or share within three years after the death of the deceased person, the trustee or personal representative after advertising as in this section directed may, without being under any liability to such person or to any person claiming through him or to his issue, distribute the estate as if such first-mentioned person had predeceased the deceased person without issue.

(2) The trustee or personal representative shall before making any such distribution make a report to a judge of the Supreme Court setting out the material facts relating to the matter and obtain a direction from the judge as to the form and number of the advertisements to be inserted and the places in which they are to be published and fixing a time after the insertion of the last of such advertisements at the expiration of which such distribution may be made.

(3) Nothing in this section shall prejudice the right of any person to follow the assets or any part thereof into the hands of the person or persons who have received the same.

(4) This section shall not be construed as in derogation from the provisions of section 33 of this Act.

8th September, 1953.

APPENDIX H.

MEMORANDUM BY MR. JUSTICE DEAN *re* CLAUSE 33.

1. I agree with Mr. Normand that it is preferable to retain in sub-clauses (1) (*a*), (*b*), and (3) references to personal representatives rather than to adopt the definition method proposed by Mr. Stewart. Either would be satisfactory, but I think it possible that some confusion may result from the definition method, though it should not.

2. I also agree that section 4 of the *Trustee Companies Act* 1944 should not be introduced into clause 33 or anywhere else.

3. The principal point of substance is whether section 26 of the *Administration and Probate Act* 1928 should be deleted from that Act and transferred

to the Bill and applied to trustees generally instead of being confined, as at present, to personal representatives.

In order to examine this proposal it will be convenient to state in general terms the effect of the two sets of provisions in the 1928 Acts.

Section 26 of the *Administration and Probate Act* 1928 enables a personal representative, after giving notice to claimants or possible claimants, to apply to the court to have the claim barred. The notice is that specified by section 27 of the *Trustee Act* 1928. A claim, if barred, is barred for all purposes. Section 26, unlike section 27 of the Trustee Act, deals with specific claims.

Section 27 of the *Trustee Act* 1928 enabled trustees or personal representatives, after giving notices as specified, in the absence of claims, to distribute the estate without regard to claims of which they had no notice. No court application was necessary. But what was barred was merely the right against the trustee: the claimant was still free to "follow" the property into the hands of the persons to whom a distribution was made, and even against the trustee the claim may be enforced in some circumstances (sub-section 3 (*a*)).

Section 26 of the *Administration and Probate Act* 1928 and section 27 of the *Trustee Act* 1928, thus dealt with quite distinct matters and provided a different procedure. A trustee may use the powers successively—section 27 to obtain notice of claims, and section 26 to bar a particular claim of which he has obtained notice.

Clause 33 of the Bill preserved this distinction, and reproduced section 27 of the *Trustee Act* 1928 with a few quite minor alterations. The existence of the two sets of provisions and their purpose is well known and understood by lawyers.

Accordingly, the proposal to bring the two sets of provisions together in the Trustee Bill and to delete section 26 of the *Administration and Probate Act* 1928 is not favoured. Provisions such as clause 33 freeing a trustee from liability if he distributes without notice of a claim, but preserving rights against the beneficiaries, naturally enough find a place in a Trustee Bill. But a provision such as section 26 of the *Administration and Probate Act* 1928, which bars a particular claim altogether, even as against beneficiaries, and preserves no rights whatever to the person barred is legislation dealing with property rights and is more appropriately found in its present position, especially as it extends to claims by persons claiming to be beneficiaries.

Section 26 is a somewhat drastic provision, and I would not be disposed to extend it to property held under settlement.

4. I agree with Mr. Normand that Mr. Stewart's clause 33A is merely a repetition of clause 33 (1) (*b*).

5. I have no comments upon Mr. Normand's re-draft of the second schedule.

September 10th, 1953.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1952-53

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

PROPOSALS CONTAINED IN THE

TRANSFER OF LAND BILL, 1953

TOGETHER WITH

MINUTES OF EVIDENCE AND APPENDICES

Ordered by the Legislative Council to be printed, 8th December, 1953.

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

MONDAY, 22ND DECEMBER, 1952.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

WEDNESDAY, 15TH APRIL, 1953.

8. TRANSFER OF LAND BILL.—The Honorable W. Slater moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

MONDAY, 22ND DECEMBER, 1952.

38. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Mitchell, Mr. Oldham*, Mr. Pettiona, Mr. Randles, Mr. Rylah, and Mr. White (*Allendale*), be appointed members of the Statute Law Revision Committee (*Mr. Cain*)—put and agreed to.

* Died 2nd May, 1953.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of the *Statute Law Revision Committee Act* 1948, have the honour to report as follows :—

1. The Statute Law Revision Committee have considered certain aspects of the Transfer of Land Bill—a Bill to amend and consolidate the Law relating to the Simplification of the Title to and the Dealing with Estates in Land—which was initiated and read a first time in the Legislative Council on the 14th April, 1953. On the following day the debate on the second reading was adjourned and the Legislative Council referred the proposals contained in the Bill to the Statute Law Revision Committee for examination and report.

In moving the second reading of the Bill the Honorable William Slater (Attorney-General) said :—

> " The purpose of the introduction of this Bill is merely to enable its proposals to be remitted to the Statute Law Revision Committee for further examination of only one part of them. The Committee has already carried out a magnificent job on this Bill, which is in a completed form. Certain criticisms of its contents have been made by very competent observers, Mr. Ruoff, who is Deputy Registrar of the Land Registry in London, and Mr. Dallas Wiseman, of Counsel, who played a big part in the preparation of the measure. Consequently, the Government considers it desirable that the Bill should be returned to the Statute Law Revision Committee to enable it to examine the points of view expressed by the gentlemen referred to on the question of caveat."

2. The Bill as introduced is identical with the *Transfer of Land Bill* 1949, which was the subject of detailed and lengthy examination by previous Committees and covered by the following reports :—Victorian Parliamentary Papers—D. No. 3, September, 1949; D. No. 3, November, 1950; D. No. 4, July, 1951; D. No. 4, August, 1952; and D. No. 6, October, 1952. On this occasion no Explanatory Memorandum was circulated with the Bill but the Explanatory Memorandum printed in 1949, is applicable to the Bill under consideration.

3. The criticism of Mr. T. B. F. Ruoff, Assistant Land Registrar at Her Majesty's Land Registry in London, appeared in a series of articles in the *Australian Law Journal* during 1952, Volume 26, pp. 118, 162, 194, and 228. The comments of Mr. H. D. Wiseman on Mr. Ruoff's articles appear herewith as Appendix A.

4. Appended to this Report is the evidence given by the following witnesses who appeared before the Committee :—

Mr. H. D. Wiseman, of Counsel.
Mr. W. J. Taylor, Registrar of Titles.
Councillor E. C. Rigby, C.B.E., Treasurer of the Municipal Association of Victoria.
Mr. J. D. Fagan, Secretary of the Municipal Association of Victoria.
Mr. P. Moerlin Fox, representing the Council of the Law Institute of Victoria.
Mr. T. C. Widdop, Estates and Property Officer of the Housing Commission.
Mr. A. E. Banks, Acting Legal Officer of the Melbourne and Metropolitan Board of Works.

The Committee in addition received valuable assistance from Mr. H. A. Winneke, Q.C. (Solicitor-General), Mr. Andrew Garran (Assistant Parliamentary Draftsman), Mr. B. H. Rowan (Legal Assistant of the Housing Commission), and Mr. W. Creighton (Senior Draughtsman of the Housing Commission).

Memoranda submitted by Mr. W. J. Taylor, Mr. A. Garran, Mr. J. D. Fagan, Mr. H. A. Winneke, Q.C., and the Law Institute of Victoria appear as appendices to this Report.

5. The Committee's deliberations were chiefly directed to the question of caveats and the problem of making the Register Book, as far as possible, a complete repository of all interests claimed in the land, with resultant certainty of title whilst not departing from the principle of simplicity in land registration, which is the main objective of the Torrens system. In this regard the Committee examined in detail the relevant clauses, principally clauses 104, 224, and 240. Briefly these clauses provide as follows :—

Clause 104.—The proprietor of an interest in land under the operation of the Transfer of Land Act shall except in the case of fraud hold the title subject to the encumbrances noted on the Register Book but otherwise free from all other rights or interests except those rights and interests provided for in the clause. These latter rights and interests are—

(*a*) the estate of a proprietor claiming the same land under a prior grant or Certificate of Title ;
(*b*) any portion of the land included by wrong description in the grant or Certificate of a proprietor not being a purchaser for value or one claiming through him ;
(*c*) the reservations, exceptions, conditions and powers (if any) contained in the original grant ;
(*d*) rights by way of adverse possession ;
(*e*) public rights-of-way ;
(*f*) easements acquired by enjoyment or user ; and
(*g*) unpaid rates and taxes.

The Statute Law Revision Committee recommended in its report—Victorian Parliamentary Paper D. No. 4, July, 1951, that clause 104 should be extended to safeguard the interests of a tenant for a term of less than three years. This would avoid the need for protecting short-term tenancies by registered lease or caveat.

Clause 224 deals with the resumption or acquisition of land pursuant to Statutory powers, and requires the person in charge of the administration of the Act under which the land is resumed or acquired to lodge a caveat setting forth the facts of such resumption, acquisition, charge, or restriction.

Clause 240 provides that an unregistered interest in land which has been protected by the lodging of a caveat shall have priority over other unregistered interests which are not so protected. Where several unregistered interests apply to the same land and are protected by caveat priority is determined by the dates on which the caveats are lodged.

It is clear that in recommending the adoption of these clauses the Chief Justice's sub-committee considered that as far as possible the Register Book should disclose all interests in land. While the Committee appreciate the desirability of achieving this object they consider for the reasons hereinafter set out that some of the proposals in the clauses are undesirable.

6. For convenience the Committee have considered under two headings the problems associated with ensuring that the Register Book should disclose all interests in the land :—

(1) The disclosure of interests obtained by Government and semi-Government authorities by acquisition, resumption or charge.
(2) The disclosure of unregistered equitable interests against the title of the registered proprietor.

7. *Interests obtained by acquisition, resumption or charge.*—There are five aspects of this matter which require consideration :—

(*a*) *Where a public authority or Government Department has acquired or resumed land and the procedure of acquisition or resumption has been completed.* In this regard the Committee consider that clause 218 to 223 inclusive which represent the *Transfer of Land* (*Acquisitions*) *Act* 1948 enact a procedure which is adequate, provided that clause 217 is amended as hereinafter set out to require the authority to take appropriate action to register its interest in the land forthwith after it has been obtained. The amendment is as follows :—

Clause 217, page 64, line 37, insert after " authority " the words " forthwith after the vesting of the land."

(*b*) *When an authority by giving notice of its intention to acquire land thereby obtains some interest in the land to the detriment of the title of the registered proprietor.* This can be effectively dealt with by the adoption of the following new clause :—

"A. (1) Whenever any acquiring authority proposes to acquire compulsorily any land under the operation of this Act or any interest therein, if the Act under which the acquisition will be made provides that any notice (whether individual or general) of intention so to acquire is to be served notification in the prescribed form of such intention shall be lodged with the Registrar forthwith upon service of such notice of intention.

(2) The Registrar shall appropriately endorse each grant or Certificate of Title concerned or (where this is not practicable) shall by displaying a map or other appropriate means make such information available to persons searching titles."

This clause will not ensure that the Register Book is appropriately endorsed in all cases, as this is obviously impossible in large-scale acquisitions such as those undertaken by the Housing Commission, but at least information which would disclose whether or not the land is subject to any rights of acquisition will be readily available at the Titles Office to an intending purchaser.

(*c*) *When Public Authorities other than Local Government, Water and Sewerage authorities make advances which become a charge on the land.* The Committee recommend that to meet this position clause 104 should be strengthened by the addition of the words shown in italics hereunder :—

" *Notwithstanding any thing in any Act and* notwithstanding the existence in any other person of any estate or interest, whether derived by grant from Her Majesty or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in cases of fraud *or in relation to any encumbrance as to which at the time of the acquisition of the estate or interest he had notice*, hold the same . . . . ."

In addition provision should be made in the Bill for the notification on the Certificate of Title of any such charge and the following new clause is recommended to meet this position :—

" B. (1) Where in pursuance of any Act a charge on land or any other right in the nature of a charge affecting land is acquired (other than a rate tax or charge referred to in paragraph (*e*) of section one hundred and four of this Act) upon such charge or right being acquired the authority concerned may lodge with the Registrar a notification specifying the volume and folium of the grant or Certificate of Title and the Crown description of the land affected by such charge or right.

(2) The Registrar may make on each such grant or Certificate of Title an appropriate endorsement of such charge or other right as the case requires."

(*d*) *When charges are created against land for unpaid Land Tax and for unpaid rates and other charges owing to Local Government authorities, Water and Sewerage authorities.* The Committee consider that as these charges can usually be ascertained by applying to the relevant Department or authority for a certificate as to such charges owing and such certificate when issued is declared to be binding on the authority, it would be undesirable to clutter up the Register Book with this information and the requiring of its registration would create an unreasonable amount of additional work for both the Titles Office and the relevant authority.

The present position is that section 96 of the *Land Tax Act* 1928 provides that on the application of the purchaser of any land and on payment of a fee the Commissioner shall issue a certificate showing if there is any land tax due and unpaid on the land described in the application. Under section 385 of the *Local Government Act* 1946, provision is made for the issue of a certificate by the local municipal

authority showing what rates and other moneys are owing in connexion with the property, the subject of the application, and the section goes on to provide that "the production of such certificates so signed shall for all purposes whatsoever be deemed conclusive proof that at the date thereof no rates or other moneys were due or payable to such municipalities other than those stated in such certificate in respect of such property."

Section 334 of the *Water Act* 1928 as amended provides that a Water authority shall issue such a certificate and it is also binding on the authority issuing the certificate. This section does not apply to the Melbourne and Metropolitan Board of Works. Section 93 of the *Sewerage Districts Act* 1928 makes similar provision with regard to a Sewerage authority and this section does apply to the Melbourne and Metropolitan Board of Works. Evidence given before the Committee disclosed that there was no obligation upon the Melbourne and Metropolitan Board of Works to issue a certificate in connexion with moneys owing for water rates and charges, although as a matter of practice the Board issued such a certificate on application and considered that it should treat such a certificate as binding upon it. It will be seen from the foregoing that a purchaser of land is therefore in a position to obtain a certificate of all unpaid land tax and all unpaid rates and other charges owing to municipalities and water and sewerage authorities in connexion with the land which he proposes to purchase.

The Committee therefore recommend that sub-paragraph (*e*) of the proviso to clause 104 should be amended to read as follows:—

> "(*e*) Any unpaid land tax and any unpaid rates and other charges which can be discovered from a certificate issued under section three hundred and eighty-five of the *Local Government Act* 1946, section ninety-three of the *Sewerage Districts Act* 1928 or under section three hundred and thirty-four of the *Water Act* 1928."

The Committee further suggest that the Melbourne and Metropolitan Board of Works Acts be amended to provide that the Board should issue upon application a certificate of all water rates and other charges unpaid in connexion with property the subject of the application, and that such certificate should be binding upon the Board, and when this is done paragraph (*e*) of the proviso should be extended to include unpaid rates and other charges which can be discovered from such a certificate.

(*e*) *When restrictions are placed upon the use of any land by virtue of an interim development order under the Town and Country Planning Acts or by zoning of areas under the by-law making powers conferred upon municipalities by the Local Government Acts.*

The Committee consider that no convenient method is available for recording in the Titles Office such restrictions upon the title of the registered proprietor and consider that an intending purchaser should seek such information from the municipality within which the land is situated. It was suggested to the Committee that some form of certificate could be devised to cover such matters, but after hearing the evidence tendered to them by the Municipal Association of Victoria the Committee consider that provision for the issue of such a certificate would be impracticable.

The foregoing amendments make clause 224 of the Bill unnecessary and the Committee consider that it should be abandoned.

8. *The disclosure of unregistered equitable interests.* When the Torrens system of land registration was introduced the authors of the proposals intended that equitable interests should not be recorded in the Register Book. While there have been some minor departures from this principle from time to time, the Committee consider that generally it is sound. The Committee are of the opinion that the proposals contained in clause 240, which virtually make it compulsory for a person claiming an equitable interest to lodge a caveat to protect that interest, would be a serious departure from the principle hereinbefore set out. The Committee were very much impressed with the arguments of Mr. Ruoff against this clause and particularly his statement that it would enable "the fast and the smart . . . . . to beat the slow and the simple."

In addition, it seems clear that its introduction would cause a considerable amount of additional work for the Titles Office and much additional expense and trouble for persons claiming equitable interests. After examining all the relevant evidence the Committee consider that there is insufficient proof that any great hardship is being caused by permitting competing equities to be the subject of judical determination where necessary.

The Committee therefore recommend that clause 240 be not included in the Bill.

Consequential alterations will be necessary to delete clause 235 and sub-clauses (7) and (8) of clause 81.

9. A number of detailed amendments to Part VIII. of the Bill are suggested in the memorandum submitted to the Committee by Mr. Taylor. These suggestions can be shortly summarized as follows :—

(*a*) Provision should be made in clause 231 to permit an agent to a caveator to consent to the registration of a dealing adverse to the interest of the caveator. This will be consistent with the provision that a caveat can be withdrawn by the caveator or his agent.

(*b*) The provisions in clause 231 for the service of notices in connexion with a caveat are out of date. It is considered that it would be sufficient to provide that a caveat should contain an address within Victoria for the service of a notice.

(*c*) Provision should be made in clause 232 that transmission applications and survivorship applications should be registered without causing a caveat to lapse, such applications in no way affect the ownership of the land and provided that the caveator is given notice of the change of ownership it should not be necessary to require his consent to such applications in order to keep the caveat alive.

(*d*) The time within which a caveator must commence proceedings to substantiate his claim is fourteen days. This is considered to be too short a time and it is suggested that it should be extended to 30 days.

(*e*) In clause 236 provision should be made for a caveator or his agent to consent to a change in the proprietorship, or the registration of a dealing affecting land in respect of which a caveat is lodged. In the same clause the term instrument is inappropriate having a limited meaning as defined in clause 3 ; it should be extended to include all dealings affecting the land.

(*f*) In the Sixteenth Schedule provisions should be made for the volume and folio of the land against which a caveat is lodged to be included in the caveat, and the caveat should contain an address within Victoria for the serving of notices.

The Committee recommend that all the above suggestions should be given effect to by amendments to the relevant clauses of the Bill. It appeared to the Committee that the reasons given by Mr. Taylor for the amendments were adequate and if made, the efficient administration of the Act would be facilitated.

10. In view of the complete examination made by the Statute Law Revision Committee of this Bill between 1949 and 1953, the Committee were reluctant to extend the scope of their inquiry beyond those matters raised by the Attorney-General when the Bill was referred to the Committee. However, in view of the fact that Mr. W. J. Taylor has been appointed Registrar of Titles after the completion of most of the evidence in the previous investigation, the Committee thought it desirable to seek his suggestions on improvements to the Bill which would facilitate administration of the Titles Office. Mr. Taylor proposed a number of amendments to the Committee, which are set out in his memorandum annexed to this Report.

11. Mr. Taylor informed the Committee that at the present time the Office of Titles was adopting a very convenient method of recording discharges of mortgages on a Certificate of Title by endorsement in red ink across the entry of the mortgage. This saves time and space on the Certificate of Title, whilst at the same time facilitating searches, but in view of the definition of " instrument " in the Bill, it would, if clause 4 was enacted in its present form, be necessary for a full memorial of the discharge to be entered on Certificates of Title. The Committee therefore recommend that the definition of " instrument " be altered to conform with the 1928 Act and that provision be made in clause 243 of the Bill for discharges of mortgages or charges, and surrenders of leases or sub-leases to be attested in the same manner as powers of attorney.

12. Mr. Taylor informed the Committee that clause 84 of the Bill, which prescribes the particulars which must be included in a memorial of registration would prevent the Titles Office adopting a simple and improved method of registering transfers of part of the land in a title. The Committee recommend that clause 84 be amended to conform generally to the provisions of section 34 of the Real Property Act of Queensland, thereby providing that a memorial of registration shall contain the date and time of the production, for the purpose of registration, of the instrument to which it relates, and such other particulars as the Registrar may direct.

13. Mr. Taylor pointed out to the Committee that the provisions of the Bill particularly clause 210 did not require the production of duplicate Certificates of Title when it was proposed to register transmission applications, survivorship applications, and certain other instruments, and as a consequence the duplicate Certificate of Title was often misleading to a person making an inspection of it. Mr. Taylor recommended that the Bill should be amended to provide that the duplicate Certificate of Title should be lodged for endorsement when any dealing affecting the original Certificate of Title was lodged for registration. The Committee sought the views of the Law Institute of Victoria on this proposal and their objections to it are included as an appendix to this Report. While appreciating the views of the Institute, particularly the disadvantage of the holder of the Certificate of Title requiring a production fee for its lodgment in the Titles Office, the Committee are of the opinion that Mr. Taylor's suggestion should be adopted to overcome the dangers which flow from the existence and circulation of an inaccurate duplicate of the Certificate of Title.

14. Clauses 134 to 138 provide that abutting owners whose land has a right-of-way over a road forming a cul-de-sac are deemed to be owners in fee simple in equity thereof.

Provision is made that such owners may apply for the issue of a Certificate of Title freed from the easements of right-of-way with compensation payable to the owner of the cul-de-sac, or where he cannot be found, such compensation is to be paid into the Assurance Fund.

For this procedure to be adopted under the Act as it is at present it is necessary for at least some part of the land to have a right-of-way over the whole of the cul-de-sac. Where such is not the case the owners cannot avail themselves of the provision in the Act and obtain a title, despite the fact that they are in complete agreement, nor can one person owning all the abutting land do so.

The Committee recommend that the clauses be amended to overcome this position, and that a form of application be prescribed under the Act covering an application for the closing of a cul-de-sac.

15. Clauses 289 and 290, which re-enact sections 236 and 237 of the present Act deal with the powers of the Registrar in what are known as "Stopped Cases." Section 236 was incorporated in the Act subsequent to section 237 and renders section 237 obsolete. It is therefore recommended that clause 290 be deleted from the Bill.

16. With regard to Mr. Taylor's suggestion that the Registrar of Titles be a member of the Rules Committee provided for in clause 328, the Committee consider this is unnecessary in view of the recommendation made in connexion with the 1949 Bill that there be unified control of the Office of Titles.

17. The Committee concur with the suggestion of Mr. Taylor that an additional clause should be added to the Bill to permit the discharge of a mortgage to be effected by the Registrar where the registered proprietor has paid all principal and interest moneys, and holds the duplicate mortgage (if any) and duplicate title, but a formal discharge is unobtainable owing to the death of the mortgagee, or his whereabouts being unknown. A provision to this effect is contained in section 148 of the Real Property Act of South Australia.

18. The Committee gave consideration to another proposal made by Mr. Taylor that provision should be made for the cancellation of a mortgage in respect of which no payments have been made or acknowledgements given by the mortgagor for fifteen years and upwards and under which the rights of the mortgagee are statue-barred by section 304 of the *Property Law Act* 1928.

Although a provision to this effect is contained in the Real Property Act of South Australia, section 148A, the Committee felt some concern at adopting this suggestion as it would place in the hands of the Registrar certain functions involving determination of questions of fact and law, which in the opinion of the Committee should properly remain with the Courts. The Committee sought the advice of the Solicitor-General on this proposal and his views thereon are set out in a memorandum annexed to this Report. The Committee do not recommend this proposal.

19. During their deliberations it was suggested to the Committee that clause 6 of the Table A conditions of sale was causing hardship in some cases. This condition, which appears in the Twenty-fifth Schedule to the Bill, provides that the vendor of land shall not be liable to contribute to a dividing fence between land sold by him and the parts of the subdivision which he has retained.

The Committee, having sought the views of the Law Institute of Victoria on this matter, agree with the evidence given by Mr. Moerlin Fox on behalf of the Institute that it is desirable that condition 6 be excised from Table A.

The Committee desire to draw attention to the recommendation made by a previous Committee which is set out in paragraph 33 of the Final Report on the *Transfer of Land Bill* 1949 (D. No. 4—Parliamentary Papers of 1950–51), that Table A should be redrafted to conform to the conditions of sale in general use.

20. During their investigation the Committee were pleased to note that a very great improvement had been shown in the administration of the Titles Office and that many of the suggestions made by a previous Committee had been acted upon. It was clear that the position of staff was still very unsatisfactory, but the Registrar informed the Committee that he had had assurances from the Public Service Board that steps were being taken to recruit additional staff. The Committee cannot stress too strongly the need for an early improvement in the staff position and desire to emphasize the very great burden which is placed on the staff of the Titles Office and the public generally by the considerable arrears of work which have still to be overcome.

21. With regard to the recommendations of the Statute Law Revision Committee in connexion with the 1949 Bill referred to in paragraph 2 of this Report, the Committee desire to point out that in the Final Report (D. No. 4, July, 1951), the latter portion of paragraph 18 commencing with the words "it will be noted that the effect of this clause . . . . . ." and paragraph 26 may be regarded as no longer effective in view of the recommendations contained in this Report based upon a more detailed investigation of the subject matter.

The remaining recommendations contained in the Final Report and those set out in the Report D. No. 6, October, 1952, should be taken into consideration with this Report, and the Committee realize that to give effect to these recommendations it will be necessary for the Bill to be substantially redrafted.

22. The Committee consider that there is no longer any justification to delay this valuable measure of law reform and strongly recommend its early enactment.

23. The Committee desire to thank all persons who assisted them in their deliberations on the Bill. In addition, the Committee appreciate the action of the Government in making available the services of Mr. Wiseman, of Counsel, for the initial meetings of this inquiry.

24. The Committee conclude by expressing their appreciation of the services of the officers of Parliament who assisted the Committee in their investigations and in the preparation of this Report.

Committee Room,

24th November, 1953.

TRANSFER OF LAND BILL.

MINUTES OF EVIDENCE.

FRIDAY, 3RD JULY, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles.
The Hon. F. M. Thomas.	

Mr. H. D. Wiseman, of Counsel, was in attendance.

Mr. Wiseman.—When we were previously discussing clause 240 of the Bill, it was suggested that we should consider the second of Mr. Ruoff's articles, as reported in *The Australian Law Journal* of the 17th of July, 1952. It is more than obvious that Mr. Ruoff does not approve of clause 240, and, in fact, the word "anathema" is an expression which he thinks is applicable to this provision. Clause 240 relates to priority of unregistered interests.

Dealings in land involve both legal estates and equitable estates, and at some stage conflicts of one kind or another are bound to arise. At page 165 of volume 26 of *The Australian Law Journal,* Mr. Ruoff writes as follows:—

> The Torrens system permits the substantive registration of dealings affecting the land (that is, the legal estate in the land). The aim of simplification would be undermined if the substantive registration of equitable interests were to be allowed also but, since these interests exist to-day just as they have always existed (cf. *Barry* v. *Heider* and *Anor.* (1914) 19 C.L.R. 197 at p. 213), they cannot be ignored, and caveats were invented to enable them to be temporarily protected (*Butler* v. *Fairclough* and *Anor.* (1917) 23 C.L.R. 79, at p. 91). Inevitably, therefore, the proprietor and persons dealing with him must be concerned with the existence of certain equities, but they ought not to be concerned, nor ought they to be made to be concerned, with any qualities of those equities. In other words, it appears that the proper function of a caveat is to enable some one to assert that he has a claim. Whether it be a genuine claim and what its relation to other claims may be are questions that can be determined if need be, when there is a dealing with the land.
>
> Even if viewed from the point of view of equity, the proposals are anathema. The Torrens system was not created for the benefit of owners of equitable interests, and certainly not to enable them to determine for themselves the precedence of their competing claims *inter se.* Furthermore, the proposals amount to an application to realty of the well-known rule in *Dearle* v. *Hall* (1823) (3 Russ 1) so that their adoption might lead to excessive caveating in the process of which the fast and the smart would be enabled to beat the slow and the simple. Lest it be said that the proposals do no more than give formal blessing to decisions such as those in *Butler* v. *Fairclough* (1917) (23 C.L.R. 79), and *Lapin* v. *Abigail* (1930) (44 C.L.R. 166). It may be observed that those cases concerned abnormal circumstances in which the failure to caveat had prejudiced some other person."

A study of the transfer of land legislation as it has existed since 1863 will disclose that on this very point there have been contradications in the Acts. Section 55 of the Transfer of Land Act 1928 clearly states—

> "The Registrar shall not enter in the register book notice of any trust whether express implied or constructive".

The section goes further, but that is the relevant part of it. Stopping there, all that one gets is a bare statement of the legal title, and there is nothing in the register book, in that state, to indicate any equity claimed to be held by any person. That provision was obviously inconvenient to the owner of an equitable title, so section 183 was then introduced to provide that caveats may be lodged. Section 183 begins as follows:—

> "Any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease mortgage or charge under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the registrar . . ."

In other words, a beneficiary can lodge a caveat to protect his equitable interest, and if that caveat is then noted on the certificate of title, there is immediate conflict with section 55. However, it has always worked and nobody has had very much trouble about it. Then the question arises as to whether it is better to leave the matter as it is at the present time, under which legal interests are noted in the register and caveats are also noted on the register book to indicate that somebody who has lodged such a caveat is claiming to have an equitable interest in the land.

The Chairman.—And a person who has not lodged a caveat may also have an equitable interest.

Mr. Wiseman.—That is so, and that equity might take precedence over the equity mentioned in the caveat. The question is whether it is better to do that and let the parties concerned fight their cases in the law courts, in the last resort, at such time in the future as the question of right might arise, or whether it would be better to provide that any person claiming to have an equitable interest must lodge a caveat and that an appropriate note must then be made in the register book. If that were done a proprietor could then say, if he did not agree, "This is all nonsense." He could then apply to the courts to have the caveat removed from his title. The advantages of such a procedure would, perhaps, be twofold. One would be that the conflict could be decided while the matter was still hot—if I may use that expression—with all concerned and when all the surrounding circumstances would be fresh in their minds. In that way the point at issue could be disposed of.

From the other point of view, another advantage would appear to be that any person who searched the title would be able to see on the title who owned the legal estate, and he would then have notice of every person who claimed to have any equitable interest. He would not then find himself in a position in which he had, perhaps, entered into a contract, and lodged a caveat, maybe, to protect his interest, and at a later date discover that some other person was claiming to hold a prior equitable interest in the land. They appear to be the two advantages that will occur. There are, of course, disadvantages which are inevitable. There is one which does not appear to have been given very much prominence; whether or not it is of very much importance I do not know. If a person has a legal interest in land, and he goes to his bank with his title and asks for an overdraft, the banker will promptly say—if that provision were to operate —"I shall have either to lodge a caveat or register a mortgage."

Mr. Byrnes.—Bankers do not do that at present.

Mr. Wiseman.—That is so. Whether or not that is desirable, is a matter of policy.

Mr. Randles.—But the banks take the risk.

Mr. Wiseman.—They take the title and hold it.

Mr. Brennan.—Would you say that, as a general rule, the banks do not register their interests at the present time?

Mr. Wiseman.—As a rule, I think they do not. I do not think they register very many dealings with their private customers.

Mr. Byrnes.—In the country districts the banks do not, as a rule, register their interests to cover overdrafts. They do not like mortgages.

Mr. Wiseman.—I think that is the position. A client gives the bank a lien over his certificate of title and I think the banks are satisfied with that. The other matter is, perhaps, more of a practical one. It would relate to the altering of the order of equities. Ordinarily speaking, the equities run as from the date on which they are created. The other system would have the effect of making the equities run as from the date on which the caveat is lodged.

Mr. Randles.—In those circumstances a person with a prior equity could not fight his case in a court.

Mr. Wiseman.—That is the point—if a person with a prior equity did not lodge his caveat before the lodgment of the second equity, he would lose his position. If a person had an equitable interest, he ought to bring it forward and let other people see what his claim was, and he should do that at an early date.

Mr. Randles.—Again, if all equitable interests had to be registered, it would mean getting down to fine points. Persons with equities in the estate could send in their caveats and the person who might receive priority could be the one with the second equitable interest.

Mr. Wiseman.—That is something that could occur; it is one disadvantage of such a system. Much would depend on the activity of the solicitor handling the dealing.

Mr. Randles.—If clause 240 is put into effect, two or three caveats could be lodged in respect of the one estate. The position would then arise that we ourselves could be directly responsible for defeating the first equitable interest.

Mr. Brennan.—On the other hand, there would be a simplification of dealings in respect of the title, and it would be obligatory on the persons concerned to comply with the provisions of the clause.

Mr. Randles.—That is true, but after this clause is first proclaimed there might be a rush in the lodgment of caveats in the Titles Office and on account of the extra volume of work, it might happen that a prior equitable interest could be defeated by a subsequent equity.

Mr. Byrnes.—Then you agree with Mr. Ruoff's statement that "the fast and the smart would be enabled to beat the slow and the simple."

Mr. Randles.—Yes.

The Chairman.—To avoid confusion, I suggest that at this stage we confine our discussion to the question of the desirability or otherwise of adopting the principle involved. If it should be decided to adopt that principle consideration could then be given to means of protecting something that has occurred in the past.

Mr. Randles.—I think the Chairman's statement hits the nail on the head.

Mr. Brennan.—We could specify "on and after" a particular date.

The Chairman.—I think we might defer discussion of that aspect until a decision is reached on the matter of principle.

Mr. Thomas.—In your view, Mr. Wiseman, would the lodging of a caveat be regarded as notice?

Mr. Wiseman.—Yes, definitely. Although there has been no specific decision on the matter, it has been adverted to in some judgments. I quote from "The Transfer of Land" by Wiseman, second edition, at page 320, the words of Griffiths, *C.J.*—

> A person who has an equitable charge upon the land may protect it by lodging a caveat, which, in my opinion, operates as notice to all the world that the registered proprietor's title is subject to the equitable interest alleged in the caveat.

Here is another reference by Dixon, *J.*, at page 321—

> The view has sometimes been expressed that failure on the part of a prior equitable owner to lodge a caveat is a default sufficient to postpone his interest to a subsequent equity acquired by one who has searched the register for caveats and having found none, has thereupon acquired his interest.

At the present stage it is difficult to say with accuracy whether it matters if a person does or does not lodge a caveat.

Mr. Randles.—If some one claims prior equity, the matter can be fought out in the courts?

Mr. Wiseman.—Yes.

Mr. Randles.—That will not be possible once clause 240 becomes law.

Mr. Wiseman.—That is so.

Mr. Thomas.—Which takes precedence—legal rights or equitable rights?

Mr. Wiseman.—The question is a little ambiguous. I stated yesterday to the Committee that equitable interest takes precedence over legal rights. In other words, if A has a legal title and B has an equitable interest in it, A's legal title would have to give way to B's equitable interest. But if A and B both have an equitable interest and A acquires a legal interest, it may well be that A's legal interest will prevail over B's equitable interest. Normally it would be correct to say that an equitable estate is one to which effect is given by the courts. In other words, if a person can prove that he has an equitable interest in a piece of land, the court will protect that interest—probably by granting an injunction—to restrain the legal owner from dealing with it.

The Chairman.—If a person acquires a right with respect to land by effluxion of time, is he required, at the expiration of that period, to lodge a caveat to protect his right?

Mr. Wiseman.—No. Section 104 protects such right when required. A person does not acquire an equitable right as a result of adverse possession; he acquires merely an interest which will ultimately develop into a legal right.

The Chairman.—Under the provisions of clause 104, it will be unnecessary to register rights arising out of adverse possession.

Mr. Wiseman.—That is so.

Mr. Thomas.—what is the reason for that?

Mr. Wiseman.—Until a man has a title resulting from adverse possession he is a trespasser and accordingly cannot register.

Mr. Pettiona.—He can continue his occupation so long as he is not disturbed?

Mr. Wiseman.—That is so. His title goes on accruing.

Mr. Randles.—After the expiration of fifteen years, a person could register?

Mr. Wiseman.—Yes. Under section 87 of the present Act he could apply for a title by adverse possession. The relevant provision states—

A person who claims that he has acquired a title by possession to land registered under this Act may apply to the Commissioner for an order vesting the land in him for an estate in fee simple or other the estate claimed.

Mr. Pettiona.—Does that dispose of all rights of other people?

Mr. Wiseman.—Yes. They are wiped out altogether.

Mr. Brennan.—It would be possible to have adverse possession against an adverse possessor.

Mr. Wiseman.—I think that if a person has been in possession for ten years and then hands his possessory title to some one else, and that person remains in possession for five years, the two periods may be added together. It is regarded as a chain of possession.

Mr. Randles.—Does that mean that a person may squat on land for fifteen years and, if undisturbed, can then gain a title to it against the legal owner?

Mr. Wiseman.—Yes.

Mr. Brennan.—The situation could arise that a person had held land by adverse possession for fifteen years; then, unknown to him, some one else had entered into possession and he in turn has remained there for fifteen years.

Mr. Wiseman.—Let us suppose that the first adverse possessor remained in possesion. Up to fifteen years he would have no title. After fifteen years he would get a title.

Mr. Brennan.—If he did certain things.

Mr. Wiseman.—Yes. He would need to be in possession and have evidence of his possession. Let us assume that he has complied with those requirements. He can then apply for a title under section 87 of the 1928 Act. If he gets his title, some one else can squat on the land for fifteen years, after the expiration of which period that person could apply for a title under section 87 of the Act.

Mr. Brennan.—There is the further position that if a person had been in adverse possession for fifteen years but had not done what was necessary to apply for a title, and some one else had then entered into adverse possession and remained for fifteen years, the second person could apply for a title.

Mr. Wiseman.—That is so.

Mr. Randles.—I take it that, in order to gain a title by adverse possession, a person must enter into actual physical possession. In other words, it would not be possible for him to claim such a title if he merely erected a humpy on the property and failed to occupy it.

Mr. Wiseman.—That is so, possession must be exclusive. It would not be sufficient to have A in possession while B was exercising rights over the land. A must be in undisturbed and exclusive possession.

Mr. Byrnes.—It is not the purpose of clause 240 to ensure that every claim for a title is legally protected?

Mr. Wiseman.—I am not certain as to the ambit of the expression "legally protected." I would rather say that the intention of the clause is to ensure that when a person looks at a certificate of title he will see particulars of all the interests—legal and equitable—said to affect the land.

Mr. Byrnes.—In other words, every one who has any claim against a title must register it with the Titles Office so as to make it clear to every person concerned that such a claim exists.

Mr. Wiseman.—Suppose an equitable interest exists and is protected by a caveat, if clause 204 were put into effect that equitable interest would, in fact, be raised almost to the position of a legal interest.

Mr. Byrnes.—That appears to be the purpose of the clause, to clarify the legal position as it now exists and to avoid hypothetical cases.

Mr. Wiseman.—That is the idea. In answer to Mr. Randles: If a person has adverse possession of land for a period of fifteen years he can obtain a legal title, not an equitable title.

The Chairman.—At this stage Mr. Wiseman might give us a general statement of the effect of clauses 104, 224, and 240, which are directed towards the same objective, that is, to make the register book as clearly as possible an indication of the certainty of the title.

Mr. Wiseman.—Clause 104 deals with cases in which a person has a legal interest in land, and it provides that certain interests in land are to prevail over the legal estate. After excepting fraud, the clause provides that the legal owner holds the land absolutely free, subject to the exceptions specified in paragraphs (*a*) and (*b*) and in paragraphs (*a*), (*b*), (*c*), (*d*), and (*e*) of the proviso. Those are matters to which any legal title is subject. The first exception—in paragraph (*a*)—relates to the estate or interest of a proprietor claiming the same land under a prior registered grant or certificate of title. The legal title is subject to that provision and also to the exception specified in paragraph (*b*). Briefly stated, the legal title is subject to the interest of a proprietor claiming the same land under a prior certificate of title.

The second portion of the clause states "that the land which is included in any certificate of title or registered instrument shall be deemed to be subject to—

(*a*) the reservations, exceptions, conditions, and powers (if any) contained in the grant thereof; and
(*b*) any rights subsisting under any adverse possession of such land; and
(*c*) any public rights of way; and
(*d*) any easements acquired by enjoyment or user; and
(*e*) any unpaid rates and taxes.

Concerning exception (*a*), for instance, a person might hold a title to land subject to the exception of any mines and minerals and so forth. The characteristic of all those provisions is that the rights referred to are capable of fairly easy discovery, and that being so a person is in a position to protect himself in a proper manner.

The Chairman.—Any person who held any of those rights, would not need to preserve them by lodging a caveat.

Mr. Wiseman.—The rights of such a person would be protected by the Act.

Mr. Randles.—Concerning paragraph (*a*) of clause 104 concerning a claim by a person to the right to land, under a prior registered grant, does that mean that the rights of the legal owner could be defeated by another person bringing forward what might appear to be a stronger claim?

Mr. Wiseman.—No; he would have to produce a certificate of title of prior date in respect of the land in question, but that would be a very rare occurrence. If a person claims a prior legal right, he would have to prove it through either a grant or a certificate of title issued by the Titles Office. It might then appear that the same land, by some error, had been granted to another person. However, it is only in very rare instances that that would occur.

Mr. Byrnes.—Possibly there could have been an error by the Titles Office.

The Chairman.—If the Titles Office, by mistake, issued a certificate of title to Mr. Randles including land that belonged to Mr. Wiseman, Mr. Wiseman

could then say, " You cannot do that; I hold the title to my land, and I was the registered proprietor of that land prior to the title being issued to Mr. Randles."

Mr. Randles.—I take it that, in such a case, the question of compensation would arise.

Mr. Wiseman.—Yes, as it is suggested that the assurance fund would be made available for that purpose.

Mr. Byrnes.—At any rate, no caveats would be necessary in those instances.

Mr. Wiseman.—That is so; the rights of a person having the interest would be protected.

The Chairman.—It is appropriate to mention at this stage that it was previously recommended that there should be added to those protected rights the right of a tenant whose lease does not last for more than three years, provided that if the tenancy agreement included an option to purchase, the rights would not be protected.

Mr. Byrnes.—That point was subject to argument and discussion at the time when it was considered. It was claimed that especially in the City of Melbourne many people were occupying premises of all descriptions merely on weekly tenancies which were, in effect, leases.

Mr. Brennan.—All weekly tenancies are now regarded as leases.

Mr. Wiseman.—My drafting of the relevant provision was as follows:—

> The interest of any tenant whose term or the unexpired portion of whose term does not exceed three years where his possession is not adverse, but not including the rights contained in or conferred by any covenant or option to renew or to purchase or contained in or conferred by any contract to purchase or sell.

There was no limitation to three years.

The Chairman.—The Committee's recommendation was for a limitation to three years.

Mr. Randles.—I shall be interested to learn how the rights of tenants will be protected in certain circumstances.

The Chairman.—It is considered to be unwise to deal with conflicting situations. Rather it is desired to consider the rights of everyday tenants. The Committee is of the opinion that those persons should not have to protect their rights by caveat.

Mr. Randles.—I understand.

The Chairman.—Will you, Mr. Wiseman, please proceed to clause 224?

Mr. Wiseman.—Yes. This clause deals with the acquisitions of land by Government Departments. This has been a vexed question. The clause provides, in effect, that on the resumption or acquisition of land by the Crown, the officer or person in charge of the administration of the Act shall forthwith lodge a caveat setting forth the fact of such resumption, acquisition, charge, or restriction. There are many kinds of acquisition practised by Government Departments. In some instances there has been a " blanket " order in respect of land to the effect that it shall not be disposed of. In such circumstances no one is quite sure as to his rights of disposition. The view is held that when a Government Department takes some rights over land, the public at least should be notified in such a way that any one who searches the title can see whether a Government Department had acquired any interest in the land. Under the provisions of this clause, a person could then ascertain, by searching the title, whether a caveat had been lodged by a Government Department. There would then be protected against the title of the registered proprietor the rights under clause 104 which do not require to be protected by caveat, the rights acquired by Government Departments under clause 224, which should be protected by caveat, and all other equitable interests that come under clause 240. I might say that there is a distinction between a right which is acquired by a Government Department and one which is acquired by an individual. An individual may be in a position in which he can lose his right. After a Government Department acquires a right it may lose it, but it is in a position of being able to reassert it at any time. That raises another question of who is to be responsible in the event of a caveat not being lodged and some one dealing with the owner of the land on the basis that the land was free. That, of course, is a matter of policy. The point is that clause 224 requires rights of this description to be notified on the register book.

The Chairman.—Is there any complementary provision to the effect that if they are not notified a Government Department loses its right?

Mr. Wiseman.—The Government Department loses its right but it can reassert it. Let us assume that an order is made acquiring the land; that land is then vested in the Crown. If a caveat is not lodged, some one may deal with the owner with respect to the land before the title is altered. The person acquiring the land assumes that he has a good title to it, but the Crown merely comes back and says, " We want the land; we have always wanted it." It is only a matter of the Crown reasserting its right.

The Chairman.—Some interesting questions of compensation may arise from such a situation.

Mr. Wiseman.—That is so.

The Chairman.—I take it that if the Crown acquired land in 1953 and lodged a caveat, any compensation would be paid to the registered proprietor who would be the owner of the land, and his compensation would be based on the original acquisition. However, if the Crown failed to lodge a caveat and a dealing took place in 1960, in the event of a reacquisition I take it that the right of the new purchaser to compensation would be determined as at 1960.

Mr. Wiseman.—I think so. Presumably the original owner would have been paid by the person with whom he dealt, or at least he would be in a position to be paid.

Mr. Brennan.—Is this an attempt to deal with the principle of " No time runs against the Crown ?"

Mr. Wiseman.—I fear that the principle involved is much more emphatic than that. What the Crown wants it can take.

Mr. Thomas.—Even including mortgages on the land?

Mr. Wiseman.—Yes.

Mr. Byrnes.—The matter of compensation does not arise in this instance.

Mr. Wiseman.—That is so. It is merely a matter of power under clause 224. It will be seen that the rest of the interests are picked up by clause 240, that is, private interests, and they are required to be noted in the register book. The result is that the title indicates all the interests in the land except those mentioned in clause 104. One does not see any of the interests mentioned in clause 104, but they are fairly common—such as rates—and are easy to trace. Equitable interests are covered by clause 240. All that is necessary, then, is to search the interests referred to in clause 104.

The Chairman.—The register book would then be as complete as it could be.

Mr. Wiseman.—Yes. We had a long discussion some time ago as to what should be included in clause 104.

The Committee adjourned.

MONDAY, 6TH JULY, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas,	Mr. Randles.
The Hon. G. S. McArthur.	

Mr. H. D. Wiseman, of Counsel, was in attendance.

The Chairman.—On Friday Mr. Wiseman gave a general outline of the effect of clauses 104, 224 and 240 of the Bill.

Mr. Wiseman.—To recapitulate shortly, clause 104 deals with certain interests that may be described as overriding the legal title given by the certificate of title, although they are not noted on the certificate of title. They are fairly easy to discover, and include such matters as rates and taxes. Inevitably, all the matters referred to in clause 104 require to be left off the register, otherwise it would be encumbered with many details which alter from time to time, and it would be impracticable to keep a record of them.

Clause 224 deals with resumptions of land by the Crown or the acquisition of interests in land by the Crown, or the taking by the Crown of rights over land, such as the making of a blanket order over land so that the general public would not be able to deal with the land, which is subject to the right claimed by the Crown.

The Chairman.—Does it cover such matters as charges under the Wire Netting Act?

Mr. Brennan.—Paragraph (*c*) of sub-clause (2) seems to cover that question.

Mr. Wiseman.—I think it does. I have re-drafted the clause as follows:—

"(2) Where pursuant to any statute a charge on land under the operation of this statute has been created the same shall be registered on the Crown grant or certificate of title.

"(3) The provisions of this section shall not apply to any charge arising from the non-payment of any rates or taxes or to any moneys charged on land in respect of which a conclusive certificate may be obtained under section 385 of the Local Government Act 1946 or section 93 of the Sewerage Districts Act 1928 or section 334 of the Water Act 1928 or section 38 of the Fruit and Vegetables Act 1928 but save as aforesaid shall bind the Crown."

The intention underlying the suggestion is that when the Government or any Department of the Government takes an interest in land or makes a charge over land, that fact should be noted on the register so that any person dealing with the register, by examining it, can discover the true position of the title.

The effect of clause 240 is that where there is any interest in land, whether it be legal or equitable, a person should lodge a caveat to protect his interests; in other words, it will exclude equities which have not been protected by a caveat. It has the result that instead of equities taking precedence, as they do now in the main by their order of creation, they will take precedence by the order in which a caveat is lodged to protect them and will date not from the date of the creation but from the date of the lodgment of the caveat.

There are advantages to be obtained from following this procedure, and some difficulties are created. The advantage of the three clauses is that a person who searches the title at the Titles Office can ascertain for himself the true position of the title and cannot before registration become affected by any pre-existing or outstanding equity. A difficulty which exists at present is that between the time of entering into a contract and getting a title issued, a person with an equitable interest may bring an action to restrain the registration of the title.

Against the views stated, there are other suggestions—for example, that the race will be to the swift, so to speak, and the weak will be crushed out; that persons who do not know about protecting equitable interests by caveats may fail to protect their interests, and may lose them because some other later equity, which is really subservient to their right, may receive priority by the lodging of a caveat first. It may be that such an event would happen.

Other practical difficulties intrude, and may concern the legal profession to a degree. A strain may be imposed on solicitors and their officers because it may be that owing to pressure of business they may not lodge a caveat immediately and someone else may lodge a caveat relating to a later equity before them; such later equity would then obtain priority over the earlier equity by reason of the lodgment of the caveat to protect it before the lodgment of the caveat to protect the earlier equity.

The matters I have outlined should be considered. The real test is whether it is better to have a certificate of title which shows all the facts on the face of it so that when a person looks at it he can ascertain the true picture, or whether it is better to leave people to their own devices, as they are left at present. It is a problem of far-reaching policy.

The Chairman.—I am not greatly concerned about the second disadvantage stated by Mr. Wiseman, namely, difficulties that may arise from the point of view of the legal profession, but I am perturbed about the problem of the person who does not realize the need to lodge a caveat. Equitable rights seem to me to be so intangible in the minds of many persons that I fear that if a system of the sort suggested is introduced, it may mean that the sharp and clever man, with legal assistance, may derive an advantage over the innocent and not so clever person without legal assistance.

Mr. Wiseman.—The clause under discussion can be excised from the Bill without affecting the rest of it; its enactment would be something of a revolutionary change. It is subject to much criticism, though whether the criticism is justified is a matter of opinion. If the Committee considered it preferable, the clause could be omitted, and if it is referred to elsewhere in the Bill corresponding corrections could be made. The Bill would then be a perfect instrument and people would be left with their equitable interests just where they are at present; there would be no interference with anybody's equities or legal interests. The Act resulting from the passage of the Bill would be quite effective.

The Chairman.—The suggested provision has no counterpart elsewhere in Australia.

Mr. Wiseman.—In my opinion, it is unique. It would have a rather wide, sweeping effect, and no equitable interest in land would be of much value unless it were protected by a caveat on the register, because it could be swept out at any time if someone lodged a caveat and had it noted on the title; any prior equity could be wiped out by the lodgment of a caveat.

Mr. Brennan.—Would you not agree that this clause seeks to fulfil the dominant theme of the legislation. Surely people who are acquiring a title in a property are entitled to seek and gain protection from the register book in regard to any equitable or governmental charge, which at present they may find it difficult to meet? People are being given notice and are being told, "It is only reasonable that you should give notice of any interest you claim in an estate".

The Chairman.—Clause 240 does not affect the governmental charges.

Mr. Wiseman.—That is so; that aspect is dealt with in clause 224. The only question in regard to clause 240 is the possibility of a person being excluded from his equitable right merely by his failure to lodge a caveat, when another person lodges an earlier caveat to protect a later interest.

The Chairman.—Mr. Brennan has suggested that clause 240 is in accordance with the Torrens system, whereas Mr. Ruoff has pointed out that he considered it was not in accordance with the intention of the Torrens system, which was intended to facilitate the number of legal interests in land, and it was never the intention of Torrens that rights in equity should be brought into the registration system.

Mr. Wiseman.—Yes, that is the conflict. I think the preamble to the Transfer of Land Act has always read, *inter alia*—

"Whereas it is expedient to give certainty to the title to estates in land and to facilitate the proof thereof and also to render dealings with land more simple and less expensive:"

I should have thought those words are quite wide enough to cover both legal and equitable interests; but, on the other hand, they do start to deal with the title to estates in land. My own personal view is that it would be more consistent with the original idea of Torrens if the whole title was on the face of the register book. Of course, we have now had about 100 years' experience of this system of conveyancing, and during the whole of that time the two systems of law have been kept distinct. I do not know whether it is now too late to try to combine the two; it may be a question of far-reaching policy. I consider that apart from those people who are less well informed and have less easy access to legal advice, and who may thereby be deprived of their interests in land, the general trend of the clause is in the right direction. However, I appreciate that it is not without difficulties.

Mr. Brennan.—Under sub-clause (1) of clause 240, every person dealing for value with the registered proprietor of land is not required to lodge a caveat. If he does not lodge a caveat, however, he will not get priority over other dealings. The clause does not provide that what such a person does will have no force in equity. His equity will still be subject to a claim.

Mr. Wiseman.—Yes, that is so, but the practical result will be that if a person does not lodge a caveat to protect his equitable interest the next dealing that comes in will overreach his equitable interest.

Mr. Brennan.—Take for example a person who enters into a contract of sale and pays a deposit to the legal proprietor, and, while he is paying off the balance, someone else deals with the vendor: What would be the position in that case?

Mr. Wiseman.—If neither person lodges a caveat the one who enters into the contract first and pays the deposit has the prior equity. He is protected in point of time. If it came to a competition between the first purchaser and the second purchaser, up to that stage the first purchaser would prevail, and he would continue to prevail until one or other of the dealings became registered.

The Chairman.—If the second one registered first he would wipe out the first person's interest?

Mr. Wiseman.—Yes. If registration is effected without a caveat being lodged, whichever one gets registration first will obtain the benefit of the legal estate. That is the present-day position. Still dealing with that situation, it might be said, "Either of them has the right to lodge a caveat." If the first one lodged a caveat we can take it that that would be notice to the second purchaser, if he liked to search, to be on his guard. If the second purchaser lodged a caveat it would not advance his equitable interest over the interest of the first purchaser.

Under clause 240, if the first purchaser fails to lodge a caveat and the second purchaser does lodge a caveat, the interests are reversed as compared with the first position, and the second purchaser, by reason of lodging his caveat, gets the prior title and the first purchaser is pushed out.

Mr. Brennan.—That is excluding fraud, of course?

Mr. Wiseman.—It is excluding fraud on the part of the purchasers. Obviously there would be fraud on the part of the vendor.

Mr. Thomas.—It has been suggested that a smart man who obtained legal advice might be placed in a better position than a person who did not seek legal advice. Would that be due to the fact that laymen try to do their own business in connection with transfers of land, instead of consulting a solicitor?

Mr. Wiseman.—In the main, I think it would. Many people do not consult solicitors on these matters.

Mr. Randles.—I think all members of the Committee agree that the register book should show all dealings in land. Would not that position be met if clause 240 made it mandatory for people to lodge caveats?

Mr. Wiseman.—I think the difficulty would be that although people might actually acquire an equitable interest in land in some way or another they might omit to lodge a caveat. If only the legal owner and a beneficial owner were concerned—there was nobody else between those two—and the beneficial owner failed to lodge a caveat, should he be entitled to no interest at all? That is the effect that your suggestion would have.

Mr. Randles.—I think everyone with an interest in land should protect it. In the case you have cited of a legal owner and a beneficial owner, the legal owner could give another person an equitable interest in the property and tell him to register a caveat straight away. In that way the interests of the beneficial owner, who had not bothered to lodge a caveat, would be defeated.

The Chairman.—That is one of the problems created by this clause.

Mr. Wiseman.—I agree that mandatory provisions would be desirable, but I consider that there is a complicated set of possibilities. Suppose a legal owner creates an equitable interest in land, and intends that the beneficiary should always have the benefit. He dies, not leaving a will, and the next of kin inform the intended beneficiary that he has no equitable interest in the land, as he has not lodged a caveat to protect it. In that instance, the deceased person and the beneficiary have been honest with each other, and it is only upon the death of the owner that trouble arises.

Mr. Randles.—Under the clause as drafted, the equitable owner would not have had any rights?

Mr. Wiseman.—He would have rights.

Mr. Randles.—Provided that the new legal owner did not give some other person a beneficial interest?

Mr. Wiseman.—Yes. I am merely considering a case of a legal owner creating an equitable estate and he and the intended beneficiary being honest about the matter. Suppose a person sells land on terms. Both the vendor and the purchaser are honest persons and the purchaser trusts the vendor and does not lodge a

caveat to protect his title. The vendor dies and leaves all his land to some one. If it were compulsory for a caveat to be lodged, would not the purchaser lose the whole of his interest in the land, although he had paid for it?

Mr. Randles.—If it were mandatory for a caveat to be lodged for every interest, as dealings were entered into a person who bought land would lodge a caveat immediately. In the example cited, if the old beneficial owner did not register a caveat against the purchaser, there would be nothing to prevent the new legal owner from giving some other person a beneficial interest, thus defeating the beneficial interest of the first person.

The Chairman.—I suggest to Mr. Randles that he should consider the examples Mr. Wiseman stated at a previous meeting regarding the manner in which equities are created. I refer to the case of a man who has a son working for him, and the father promises the son, "If you improve the land, it will be yours when I die." I should think that the land would become the property of the son, giving him a right to register, only when the father dies. In the meantime, the son has an equitable interest in the land provided that he carries out the conditions stipulated. If before he dies the father says to his girl-friend, "The land is yours," and she lodges a caveat, she will destroy the right of the son.

Mr. Randles.—That is true. Suppose the father, when he was younger, said to the son, "If you spend money here, I will give you the equity of it; you will carry on and will be the legal or equitable tenant." If the son lodged a caveat, the father could not give the land to his girl-friend.

The Chairman.—In fact, no registerable interest in the land is created until all the work is carried out. There should not be introduced a system which would create a right for a person to register in the expectation of receiving a piece of land at a certain time.

Mr. Wiseman.—Suppose the son in the example cited by the Chairman lodged a caveat and said, "I have an equitable interest in the land," the Titles Office under the proposed system would be bound to receive it. What is to be done with the caveat? The registrar notifies the farmer that the son has lodged a caveat. The father says, "Very well. He will get the land only if he cares for me until I die, and I hope I will live until next year." In my opinion, the caveat could still be enforced; but in reality no son in similar circumstances would think of lodging a caveat.

The Chairman.—It is difficult to contemplate the creation of a registerable interest, as Mr. Randles suggests. Clause 240 may be revolutionary enough in its present form, but if Mr. Randles's suggestion was adopted the basis of the Torrens system would be attacked, because there would be created a system of registering indefinite interests in expectation of the fulfilment of certain events. Such a system would not make proof of the title of the land easier than it is at present.

Mr. Randles.—Nobody seems happy with clause 240 and nobody likes to think that the interests of a person can be defeated because some one else is quicker in taking action. There will be injustices under the operation of clause 240 of the Bill as drafted. How can the difficulty be overcome? I am trying to submit a proposal which will be the lesser of two evils.

Mr. Wiseman.—I agree that anomalies are likely to arise under the provision as drafted. The case of *Lapin* v. *Abigail* was decided in the year 1930 by the High Court of Australia. Two judges held one view and the third judge held a contrary view. Five years later the case was taken on appeal to the Privy Council, which reversed the decision, declaring that the judge who was in the minority was right. I and others consider that a provision similar to clause 240 will help to avoid conflict.

Mr. Brennan.—I wish to submit an example to illustrate the difficulty of innocent persons necessarily brought into conflict through the action of the originator of an interest. A man sells his property on contract, under which the sum of £3,000 is payable. The vendor mortgages the property for the sum of £4,000, and when the purchaser has paid £3,000 he finds himself faced with the mortgage. I ask Mr. Wiseman to consider the position, first, in the case of a bank mortgage, which is not always registered or in which registration has been attempted. Do not the facts outlined show the need for the lodging of a caveat to protect the interest?

Mr. Wiseman.—I think they do. The purchaser, in the first place, when he fails to lodge a caveat, leaves the registered proprietor—that is, the vendor in possession of the certificate of title—with a clear title, and it may be that the vendor goes to a bank and says, "Here is my clear title. Will you lend me £4,000?" Officers of the bank search the title at the Titles Office and find a perfectly clear title. As a result, the bank lends him £4,000. I refer to the case of *Butler* v. *Fairclough.* The fact that a caveat has not been lodged has put everybody off guard, particularly the bank. In the circumstances, the purchaser would have to take over the liability of the mortgage to get his title, because the bank undoubtedly would require the deposit of the certificate of title.

Mr. Brennan.—What would be Mr. Wiseman's view of the matter if the mortgage had not been registered by the bank?

Mr. Wiseman.—I assume that it has not been registered and that it is an equitable mortgage.

Mr. Brennan.—Would Mr. Wiseman regard the action of the purchaser, the taker of the equitable interest, as incomplete or foolish if he had not attempted to protect the equitable interest?

Mr. Wiseman.—I think he would be foolish if he did not lodge a caveat because the purchaser clearly has no right to demand delivery to him of the certificate of title. In the circumstances stated, the person who would have the certificate of title would be the vendor.

Mr. Brennan.—Many purchasers are elderly, confiding tenants, utterly unversed in the law, who decide to try to purchase a home. The facts illustrate the need for a system of notice of registration.

Mr. Wiseman.—Yes.

Mr. McArthur.—If a mandatory provision, such as Mr. Randles has suggested, were enacted, innocent persons could be penalized in the same way.

The Chairman.—Three alternatives have been suggested—(1) that the law be unchanged and that the parties concerned should be free to fight competing equities in court; (2) that the lodging of a caveat be made obligatory; and (3) that all interests be made registrable, and that if a person did not register his interest he would have no rights. Members of the Committee must make a decision on the matter, and probably it is a matter of deciding which is the least evil.

Mr. Wiseman.—I agree with that statement.

Mr. Brennan.—There is a form of contract of sale approved under the Transfer of Land Act, and most purchasers and estate agents buy the forms of contract. Would it help if it were obligatory to include in every contract of sale a notice to the purchaser that he should lodge a caveat?

Mr. Wiseman.—I think it might be a great help, particularly if the notice was printed in very large type.

The Chairman.—Mr. Ruoff suggested that we in Australia might consider the system of searching that operates in England where, instead of the public searching at the Titles Office, photostat copies of titles are supplied, and a check search is made by the office itself prior to the lodging of a transfer. Have you any comment to make on that suggestion.

Mr. Wiseman.—Yes. I should think that system has vast advantages over our system. One complaint about the present method is that titles get misplaced. Under the English system there would be no necessity to pull titles about to the same extent. The handling of the titles would be done by members of the office staff, who would have everything under their own control. In that way the titles might not get in the incorrect bags. From that point of view, I would have thought the English system to be advantageous, also from the point of view of expedition and certainty.

The Chairman.—One difficulty is that if a member of the staff of the Victorian Titles Office makes a mistake in dealing with a check search, the assurance fund provides compensation, and for that reason the Treasury officials might not be keen on the English system.

Mr. Wiseman.—That may be so. I think the clause dealing with compensation overcomes that difficulty.

Mr. Thomas.—Is not the system of issuing photostat copies operating in South Australia?

Mr. Wiseman.—I do not think so. It seems to me to be a very realistic approach to the question of finding out what is on the title. Of course, in Victoria when a person makes a search the whole register book is produced for his inspection, and not only does he see the certificate of title but he sees all the documents that are registered and are in process of being registered against the title. That advantage would not be obtained under a system of issuing photostat copies, because all that the person would receive would be a short summary of the effect of the documents. It would not be possible to see for one's self whether the Titles Office was correct in its summary or not.

The Chairman.—Do you wish to make any further comments on Mr. Ruoff's suggestions?

Mr. Wiseman.—Mr. Ruoff made one suggestion relating to the system of registration operating in New South Wales. I sought and received an explanation from the Registrar of that State of what Mr. Ruoff referred to, and that information may prove of some assistance to the Committee.

The Chairman.—The Committee would appreciate it if you would make that information available.

Mr. Wiseman.—Very well. I think I have covered the main points. There are a number of other matters, but I do not know whether or not the Committee has considered them. One relates to the problem of restrictive covenants which, in my opinion, are now rather outmoded, having regard to the Town and Country Planning Acts.

The Chairman.—In clause 24 of its report on the Transfer of Land Bill 1949 the Committee stated—

"The Committee considers that the present practice of endorsing on certificates of title lengthy restrictive covenants serves no useful purpose and increases the amount of typing and checking in the Office of Titles. The Committee prefer the South Australian system of embodying the terms of a covenant in a separate document, which, when registered as a charge, is referred to in the certificate of title and in subsequent documents by its reference number, and recommend that the clauses be amended to give effect to this simpler method of registering covenants."

Of course, that might have a twofold effect; it would simplify the amount of material going on to a title, and it might discourage people from registering restrictive covenants because separate documents would be necessary to create them.

Mr. Brennan.—Actually that is being done at present.

The Chairman.—Mr. Wiseman, of course, is directing attention to the fact that there should be a simpler method of removing restrictive covenants from titles.

Mr. Wiseman.—I feel that at times the courts are a little over cautious.

The Committee adjourned.

FRIDAY, 17TH JULY, 1953.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. W. J. Taylor, Registrar of Titles, was in attendance.

The Chairman.—This Bill is identical with the Transfer of Land Bill 1949, on which the Statute Law Revision Committee received evidence from you and other people. This measure was introduced into the Legislative Council earlier this year and referred to the Committee for further consideration on the question of caveats. The Committee has embarked upon an inquiry in the light of an article written by Mr. Ruoff, which appeared in the *Australian Law Journal,* particularly related to clauses 104, 224, and 240 of the Bill.

The predecessor to this Committee originally recommended that the Transfer of Land Bill 1949 should be passed into law substantially in the form in which the measure was presented to the House, but with a number of extensive alterations which, I do not think, went to the root of the principles introduced in the Bill. Subsequently there was a further recommendation from the Committee that if it was considered impracticable to introduce the suggested amendments, the Bill should be introduced substantially in the form in which it had been discussed but omitting the somewhat vexatious provisions dealing with caveats and so on. As the Committee again has to reconsider the matter, it would like your assistance.

Mr. Taylor.—Various viewpoints in respect of the caveat provisions of the Bill, which are the most revolutionary portions of the proposed legislation, have been placed before the Committee. Shortly, I concur with the latest recommendation the Committee made, following the evidence given by Mr. Ruoff and myself and the submissions of Mr. Wiseman and the Solicitor-General. I have read Mr. Ruoff's remarks concerning the caveats with interest, and, generally, my views accord with his. I think he has put the matter very well. It has been suggested that under the proposal the volume of caveats would not be appreciably increased. At present, caveats number 40 to 50 every day, and we expect to receive at least 10,000 this year. I do not put forward as a valid objection the fact that the enactment of clause 240

would mean that the Title Office would be called upon to handle 50,000 to 100,000 caveats in addition to those being handled under the present legislation, but I have no doubt that under that clause original certificates of title would be cluttered with caveats.

I consider that undue prominence has been given to caveats which, of course, do protect equitable interests when they are lodged on the title. From the administrative point of view, however, they merely give notice to the caveator of some projected dealing, and the caveator is thereby enabled to take any action he sees fit to protect his equitable interest, and possibly the only means of doing so is to approach the court. The Titles Office procedure with regard to caveats is very simple. We accept caveats that establish any prima facie interest in the land. We do not register the caveats; they are merely lodged. We then send short particulars of the caveats to the registered proprietors of the land, or if we think it is a litigious type of claim as between husband and wife, or something of that nature, we serve a copy of the caveat on the registered proprietor of the land.

If notice of a dealing is lodged for registration, subsequent to the presentation of a caveat, the Titles Office sends notice of the dealing to the caveator, and awaits developments. Unless the caveator takes action within a certain time, his caveat lapses and the dealing proceeds to registration. Alternatively, the caveator may consent to the dealing, in which case it will be registered, and the caveat will remain in force. It will be seen that in these matters the Registrar of Titles does not exercise any judicial functions; he merely enters information concerning the caveat on the title, gives appropriate notices, and complies with the Act as to lapsing.

Clause 240 of the Bill touches on matters entirely outside the administration of the Titles Office. The Committee has received opinions from eminent members of the Bar and other authorities on this subject, and I do not wish to add any statements.

The Chairman.—Do you say that although the additional work created for the staff of the Titles Office is not a valid reason for not enacting clause 240, a considerable amount of extra work would be involved if it were enacted?

Mr. Taylor.—Yes.

Mr. Brennan.—I suppose that difficulty can be overcome by the appointment of extra staff?

Mr. Taylor.—Yes. Since the Committee commenced its deliberations on this Bill many years ago, solicitors have become caveat-minded. The lodging of a caveat is a prudent step for a solicitor to take in an appropriate case. I do not think the increase of caveat lodgments is due to timidity regarding the administration of the Titles Office or the arrears which exist there. Many caveats disclose purchases on extended terms. I consider that certain publicity which followed the announcement of the Committee's recommendations has focused the attention of members of the legal profession on the desirability of lodging caveats.

The Chairman.—It is probably beneficial for solicitors to take such action in protecting the interests of their clients.

Mr. Taylor.—Yes.

The Chairman.—Mr. Brennan suggested that if the Titles Office had more staff, it could deal with more caveats. I understand that it is not only a question of staff, but of space as well?

Mr. Taylor.—Yes.

Mr. Brennan.—Is the necessary space to be obtained in the present building?

Mr. Taylor.—Yes; if other Departments would vacate the Titles Office building. Shortage of space, however, is not the greatest difficulty. The real problem is lack of staff.

Mr. Thomas.—What qualifications are required by members of the staff to deal with caveats?

Mr. Taylor.—Junior staff can perform the work; it is merely a question of numbers. But it must be recognized that caveats create a considerable volume of extra work. My new system of noting particulars of caveats on a title, immediately they are lodged, is working very satisfactorily, but this service is hard to maintain with the large increase in the number of caveats presented for lodgment.

Mr. Thomas.—Do the caveats lodged relate to legal and equitable rights?

Mr. Taylor.—Caveats invariably claim an equitable estate. It is a quibble whether they are legal or equitable. They claim an interest in land.

The Chairman.—The Registrar of Titles has not the duty of deciding whether they are legal or equitable interests?

Mr. Taylor.—That is so, and in my opinion the Registrar properly is not called upon to decide that matter. Mr. Ruoff supports my view on this point.

Mr. Brennan.—Caveats are merely notices of claims.

Mr. Taylor.—Yes. The Titles Office does not register them or confer any indefeasible title on the caveator. Details are recorded on the title, and persons dealing with land, on making a search of a title, may be faced with notice of a caveat under which some equitable interest is claimed.

Mr. Brennan.—In other words, they will beware?

Mr. Taylor.—Yes. If the caveats were called cautions, as they are in England, it would be difficult to place on the functions of a caveat some interpretations ascribed to them.

The Chairman.—If clause 240 is enacted, apart from the work that the Titles Office will be required to perform, the responsibility of the office concerning caveats will greatly increase, will it not?

Mr. Taylor.—Yes.

The Chairman.—The questions of the exact times at which caveats are lodged and the order of priority may raise difficulties?

Mr. Taylor.—Yes.

The Chairman.—Can you suggest how the purpose of clause 224 can be achieved by a different method from that proposed? I refer to the provision which, if enacted, will require Government Departments to give notice of all charges and acquisitions.

Mr. Taylor.—I have had experience in the Conveyancing Branch of the Crown Solicitor's Office, which handles acquisitions by the State Rivers and Water Supply Commission, the Country Roads Board, and other acquiring authorities. In my opinion, it would be almost impossible for the State Rivers and Water Supply Commission, for example, to lodge a caveat acceptable to the Titles Office within a considerable time of the Commission's obtaining possession of land or of an easement over land. I understand that it is the practice of the Commission to serve on persons entitled to receive notice under the Lands Compensation Act a notice to treat, and practically thenceforth the Commission goes in with its surveyors, workmen, and others. In some cases it would, of necessity, be years before an accurate survey of the property acquired could be made.

Whilst the Commission was unable to endorse a plan of the land showing the dimensions of the area acquired, a caveat could be presented for lodgment at the Titles Office, but could not be entered on the title as the land subject to the caveat would be quite indefinite until it had been surveyed.

The Chairman.—Is there any other way of dealing with it?

Mr. Taylor.—I think some other way should be decided as, after all, the giving of notice to persons searching the Register is the sole object of the requirement in the Bill of the acquiring authority having to lodge a caveat. I do not think it requires the formality of a caveat.

Mr. Brennan.—Would it be sufficient to endorse the title "Government caveat present"?

Mr. Taylor.—Some note could be made on the relevant title, even if the description of land was quite vague. In that way a person dealing with the registered proprietor would be placed on his guard and would know that at least part of the land was being taken by some authority.

The Chairman.—Would you be prepared to confer with officers of the Law Department to see if some alternative proposal could be devised, which would achieve the purpose of giving notice on a title of Government acquisition, short of the formal lodging of a caveat?

Mr. Taylor.—Yes. I think it would be advisable if I conferred with representatives of the interested governmental authorities and endeavoured to devise some alternative procedure.

The Chairman.—Does Mr. Taylor wish to make any further comments on Mr. Ruoff's suggestions?

Mr. Taylor.—I should like to make certain observations concerning clause 231 of the Bill. Sub-section (4) provides that an address within the City of Melbourne must be stated. Often this is and can only be complied with by setting out "G.P.O., Melbourne." In terms of sub-clause (5) notices must be sent to both the additional address and the address in Melbourne, which is the General Post Office. There is no risk now that the notices will not be delivered within a short period; therefore, the requirement relating to an address within the limits of Melbourne is farcical and should be deleted. A similar provision was embodied in the original Transfer of Land Act and may have been enacted because of the state of postal facilities in the country compared with those in the City of Melbourne.

Concerning clause 236, a solicitor may withdraw a caveat but cannot consent, on behalf of the caveator, to the registration of a dealing. I consider that the consent by a solicitor who acts in lodgment of a caveat should be made acceptable, and the Bill amended to give necessary recognition. In practice, such an amendment would be exceedingly helpful to the members of the legal profession.

Mr. Thomas.—What is your view of clause 237, which provides for compensation for lodging a caveat without reasonable cause?

Mr. Taylor.—In my opinion, clause 237 is a very desirable provision. I do not think its existence would restrict the number of caveats lodged, but it would confer some protection on a registered proprietor.

The Committee adjourned.

WEDNESDAY, 5TH AUGUST, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. W. J. Taylor, Registrar of Titles, and Mr. H. D. Wiseman, of Counsel, were in attendance.

The Chairman.—Mr. Taylor and Mr. Wiseman are present this morning to discuss a modification of clause 224 of the Transfer of Land Bill, with the view of simplifying the giving of notice by Government authorities purchasing land.

Mr. Taylor.—I have discussed clause 224 with various State Departments, and I understand that it was intended to redraft this clause. It appears to me that a *caveat* is not perhaps the appropriate document and that the case will be met by notification endorsed on the title following advice from the acquiring authority as to the relevant titles affected by an acquisition. Acquisitions by State authorities are on different footings, and the procedures vary as between themselves. The usual form of acquisition is that a notice to treat is served. Unlike the Commonwealth Government gazettal order, this notice may be withdrawn finally or for the parties to agree between themselves. In order to vest the land in the acquiring authority, the notice must be followed by the taking of possession, which has the effect of statutory vesting under the terms of the Lands Compensation Act.

In an effort to surmount administrative difficulties, by the searching of titles and then endeavouring to trace owners for the service of acquisition notices, the Housing Commission has been given statutory power to serve such notices by advertisement. This is popularly known as a blanket acquisition notice. This procedure was used for the acquisition of the Heidelberg estate, which covered an immense area. It would have been practically impossible for Commission officers to have gone to the Titles Office to make certain that every inch of land involved in that estate had been searched, and that notices had been served strictly in compliance with the Lands Compensation Act.

With respect to blanket notice acquisitions, the Housing Commission may release the greater proportion of property mentioned in an advertisement. It does not search the relevant titles, but I think I am right in saying that all other State authorities first make a search, and in that way they are in a different category from the Housing Commission. Having made a search, these other authorities are able to furnish the Registrar with notification of the titles affected by the intended acquisition.

Mr. Byrnes.—The Housing Commission does not deal with minute details?

Mr. Taylor.—That is so. They are concerned with large areas and the necessity of taking over such areas on a particular date. The Commission wishes to avoid delays and prevent speculation in these areas. It does not give foreknowledge of its plan.

Mr. Brennan.—The Housing Commission directs its attention to an area to be developed whereas other acquisitions are directed towards individual titles?

Mr. Taylor.—That is true.

The Chairman.—As a matter of practice, the Housing Commission acquires an area and later releases land that it does not want. Other authorities ascertain what land they will require before they serve notices?

Mr. Taylor.—Yes.

Mr. Wiseman.—One purpose of the blanket order is to stabilize the price of the land affected, and any person owning such land is unable to deal freely with it. In effect, the order is a notice to treat dating from the service of the blanket order by advertisement, and the price is fixed from that date.

Mr. Taylor.—Authorities other than the Housing Commission can conveniently notify the Registrar before or simultaneously with the service of notices to treat. Therefore, the appropriate notification can be placed on the relevant title in the Register book. In the case of the Housing Commission, there may be difficulties. From the point of view of the Titles Office, there is no difficulty in endorsing titles, but the Housing Commission, subsequently to the issuing of a blanket notice, would require to search all titles. Such a task could be colossal, and the Commission might never be quite certain, without a good deal of checking and cross-checking, that it had notified the Titles Office of all the titles affected.

The Chairman.—That view assumes that in the future the Housing Commission will acquire land for housing settlements as it has in the past. There would be no problem if the Housing Commission decided to build a dozen houses at Beaufort and required a small area of land for the purpose.

Mr. Taylor.—Quite so. There is no administrative problem entailed in making the appropriate endorsement or note on titles of land affected by acquisition orders by public authorities other than the Housing Commission. In my opinion, the clause should state that the acquiring authority must quote the particulars of volumes and folios of the relevant titles. My office should not be required to make the searches, which take a good deal of time. Clause 224 might appear to be admirable in providing for the giving of notice of acquisitions and putting everybody on his guard, but it may in respect of claims for compensation or damages be dangerous from the view point of the Housing Commission.

Mr. Wiseman.—Clause 224 as printed in the Bill has been the subject of considerable debate before the Committee and it has been substantially amended. It was considered that the clause was not nearly as comprehensive as desirable. It was admitted that, as drafted, it did not cover the case of the Housing Commission at all. I redrafted it and subsequently discussed the matter with Mr. Taylor. A short provision covering the position of the Commission could be added. The so-called blanket order, when advertised in the press has the effect of serving notices to treat under the Lands Compensation Act. A restriction is imposed on the owner of land because a blanket order fixes the price at the date of publication. A provision should be added to the effect that in cases in which a department serves a notice under section 40 of the Slum Reclamation and Housing Act, for example, it should give notice of the land affected by the general notice.

There appear to be only two main questions concerning clause 224; first, the form of the notification to be placed on the register book, and, secondly, the type of Department that will be affected. On the question of the form, Mr. Taylor has given reasons for not favouring a *caveat* and considers that the making of a note on the title is preferable, because if a *caveat* is lodged notices must be sent to the proprietor and times are set for the taking of objection to the *caveat*. This procedure entails an amount of work.

The Chairman.—Under the present provisions of the Transfer of Land Act, if a *caveat* were lodged the land affected must be specified in survey detail.

Mr. Wiseman.—That is another difficulty regarding a *caveat*. The suggestion now before the Committee is the introduction of what might be described as a novel type of notice.

Mr. Pettiona.—A simple notice.

Mr. Wiseman.—Yes, but it is new to the Transfer of Land Bill. Members of the Committee should realize that it is proposed to introduce something of a different description from anything yet incorporated. In the clauses drafted, the description of the land affected was required to be supplied by the Department concerned. It is generally recognized that an obligation lies on the Department to indicate which land it intends to cover, otherwise nobody would know which land was affected. There must be some control over the Housing Commission as to the land acquired. It should not just state generally that it is intended to acquire 6 acres of land at Heidelberg, for example. A more definite announcement must be made.

The Chairman.—The usual notice given by the Housing Commission in respect of large areas contains merely a description by metes and bounds.

Mr. Wiseman.—The expression metes and bounds is a sufficient description provided that they are ascertainable, and I think they must be in those circumstances, without great difficulty. This leads to the next point about the notification. I imagine that a stamp would be placed on the title stating, for example, " This land is affected by a general notice by the Housing Commission." A person interested is then put on inquiry and probably he would inquire from the Secretary of the Housing Commission details of the position. I do not visualize any difficulty in that regard.

The Chairman.—The Committee considered that there were too many difficulties involved in the *caveat* proposal for it to have a chance of its being implemented. After discussing the matter with Mr. Taylor, members of the Committee decided that the same purpose could be achieved by the issuing of a form of simple notice which would direct the attention of a potential purchaser to the fact that land that he proposed to buy was affected by an acquiring notice of a public authority. The Committee contemplated that the potential purchaser or his solicitor would make his search not at the Titles Office but at the premises of the public authority concerned. Members of the Committee were eager to formulate a scheme the adoption of which would result in the reduction of work at the Titles Office to a minimum. It was envisaged that the Housing Commission would be required to accept the responsibility of notifying the Titles Office of particulars of titles affected by acquisition.

Mr. Wiseman.—Does that statement mean that the Housing Commission would be required to notify the Registrar of Titles of particulars of the volume and folio of the titles affected, and would that procedure raise the difficulty of great searches referred to by Mr. Taylor?

Mr. Taylor.—That is so. To make a thorough search of all the titles involved in the acquisition at Heidelberg would require six months' work. I stated earlier that it was proposed to embody a novel provision and one which, from the point of view of the liability of the Housing Commission, could be dangerous. I consider that the Housing Commission will be perturbed at the proposal. The branch of the law relating to the issuing of notices to treat and compulsory acquisition is exceedingly complex. The clause imposes a definite liability on an authority to make good loss sustained by anybody by reason of failure to notify the Titles Office.

A new liability is being imposed upon the Commission. Under the terms of the notice to treat, the Commission is liable to pay as compensation only for the value of the land at the date of the notice. However, notices to treat do not have the effect of freezing transactions within a particular area. Registered proprietors or owners can sell or mortgage land in the area, despite the blanket acquisition notice.

Mr. Wiseman.—Does not a blanket order freeze the price of the land covered?

Mr. Taylor.—At present, that is so. In the Heidelberg area, an owner could for example say "I will receive as compensation only the value as at the date of the notice. I will sell my block for the amount that I will receive from the Commission." At this stage, no notification appears on the title. The purchaser of the land may start to build a home, and under the present legislation the Commission will say, "We are liable to pay only the value of the land as at the date of the notice of acquisition." The purchaser will reply, "You must buy me out and in addition pay compensation for loss or damage as there is no notification on the title." The Commission may compromise and say to the man, "We will let you remain on the block." By that means, he may secure an excellent block at a low figure and circumvent the acquisition notice.

Mr. Byrnes.—Special legislation had to be passed to cope with one case of that type.

Mr. Taylor.—Yes. There could be collusion between persons which would make the Commission liable. A claim against the vendor for not disclosing the notice to treat would not matter as he may be a man of straw, but the purchaser has the advantage of proceeding against the Housing Commission. It would be almost impossible for the Commission to have the notices on the titles before it might be made liable for damages.

Mr. Randles.—If a man was building his home on a block, I do not think the Commission would interfere but if a man bought land for £200 and the original owner knew the compensation was only £40, possibly the Commission would be liable.

Mr. Taylor.—In such an instance, the Commission might be sued. When liability is being imposed upon authorities such as the Housing Commission, serious consideration should I submit be given to the advisability of altering the existing law covering compensation.

Mr. Pettiona.—Could the Titles Office not employ some one to extract notifications from the *Government Gazette* and put them on the titles affected?

Mr. Taylor.—There may be a time lag of up to six months in the office, during which period many persons may be misled. They could make claims against the Housing Commission and the Commission could say to the Titles Office, "We gave you a technical description of this land; why did you not get the notice on the title?"

The Chairman.—Your officers would have to undertake thousands of searches.

Mr. Taylor.—I think public authorities should carry out their own searches. Although it should not be the province of the Titles Office to do so, it would not be impossible to make searches.

Mr. Brennan.—Would it not be possible to put notices in the volumes of titles?

Mr. Taylor.—We would not know the relevant titles. As soon as they became known, endorsement would be a simple matter.

Mr. Randles.—How are titles filed? Would the titles of Nos. 2, 4, 6, and 8 Collins-street appear in one folio?

Mr. Taylor.—No; they are not grouped.

Mr. Brennan.—They are grouped in a parish plan.

Mr. Taylor.—Many people do not refer to parish plans. Titles to Collins-street properties are not in any one part of the register book, but they can be traced easily.

Mr. Pettiona.—Would it be possible to place all City of Melbourne titles in one register?

Mr. Taylor.—That would not be of great advantage. When making a search, one may have to start with a parent title but within a few minutes one is able to peruse the relevant title. With respect to claims for loss or damage, I do not think responsibility should be placed upon the Titles Office to make searches. The question arises perhaps whether acquiring authorities should drop the blanket form of notice.

Mr. R. T. White.—Is the Housing Commission the only authority experiencing the difficulties you have mentioned?

Mr. Taylor.—Yes.

Mr. Brennan.—One can ring a municipality and immediately be given the parish plan number of a particular allotment, although municipal authorities cannot identify certificates of title. An authority interested in a municipality should consult the municipality to identify parcels of land and so assist with notifications in the Titles Office.

Mr. Taylor.—I think the Housing Commission obtains much information from municipalities. Searching in the Titles Office is relatively simple but it takes time. Housing Commission acquisitions cover enormous areas, and even if all the staff of the Titles Office were put on to searching work, it would be impossible to put the notices on the titles immediately.

The Chairman.—Can we take it that your suggested scheme presents no difficulties to Government Departments, with the exception of the Housing Commission?

Mr. Taylor.—That is the position.

The Chairman.—It may be that we are considering this matter in the light of the emergencies that arose after the war. In future there may not be the large blanket area acquisitions of the Housing Commission that have occurred in the past. I do not think it was contemplated that interim orders would be dealt with under clause 224.

Mr. Taylor.—I am not sure of the meaning of the words "the imposition of any restriction on the right of disposition" in paragraph (*c*) of sub-clause (1).

The Chairman.—Does Mr. Wiseman consider that it extends to interim orders?

Mr. Wiseman.—To all orders.

Mr. Thomas.—I understand that both Mr. Wiseman and Mr. Taylor have a suggestion to make in an endeavour to simplify the law regarding notices of acquisition. Would not service of a notice to treat encourage a person to lodge a *caveat* at the Titles Office?

Mr. Wiseman.—I do not think that the mere service of a notice to treat would invite lodgement of a *caveat* except by the party acquiring.

Mr. Taylor.—In my opinion, if a notice to treat is served in respect of any land, some note should be made on the relevant title.

Mr. Wiseman.—I agree.

The Chairman.—We agree in principle that that procedure should be followed, but the problem to be solved is the method to be adopted.

Mr. Wiseman.—Part of clause 224 imposes a pecuniary liability upon a Department if it fails to give appropriate notice. That provision was included because otherwise there would be no sanction on

the Department if it failed to comply with the clause. If, by inadvertence or other reason, the Department failed to comply with the provision, no notice was put on the title, and somebody dealt with the title, compensation would be a charge against the assurance fund. It was for the purpose of saving the assurance fund from possible claim and also to compel obeyance with the terms of the legislation that the clause was included. Apart from that consideration, the provision does not have any particular effect.

The Chairman.—It is important that the clause should be included if the proposed procedure is to be introduced, because if the method discussed is adopted the register book will be regarded as being a record of all acquisitions and resumptions. Otherwise, the position will be made worse than it is at present.

Mr. Wiseman.—Yes, there would be thrown on to the assurance fund responsibility for meeting any damage.

Mr. Taylor.—In my view, the clause is more than a sanction on acquiring authorities. I have not investigated this question exhaustively, but one of the conveyancing staff of the Crown Solicitor's office raised this point as to the far-reaching consequences of providing that claims could be made against acquiring authorities, other than those for which they are liable under the present legislation. It could lead to many abuses.

The Chairman.—Abuses could arise only if the authorities failed in their duty.

Mr. Taylor.—Yes. A notice of a blanket acquisition is published in the *Government Gazette,* which is read by only a few, and in newspapers. There is a danger that this type of notice does not come to the knowledge even of persons living within or on the fringes of an area in respect of which notice is given. When land was acquired at Heidelberg, dozens of persons inspected at the Titles Office the plan which indicated the land affected by the blanket notice. In some instances, persons owning vacant land knew only that they owned a block at Heidelberg and paid rates on it. This illustration provides an excellent reason why a note should be made on the title. The enactment of the clause would it appears require a departure by the Housing Commission from methods now adopted. The Commission at present merely gives notice by publication of an advertisement. There are certain good reasons for the adoption of that form of notice. From the view point of the Commission, the enabling legislation was most desirable.

Mr. Brennan.—Would you not say that implicit in this scheme of liability is the notional doctrine of the widening of the liability of the Crown in tort as opposed to the reassertion of the Crown in its corporations to seize property? One is counterbalancing the other?

The Chairman.—That is so.

Mr. Byrnes.—I understand that Mr. Taylor is of the opinion that no difficulty arises concerning the majority of the Government Departments or semi-Government Departments which acquire land, but in one or two cases problems may arise, and he is of the opinion that there should be devised a form of notice which would serve the parties in those instances.

Mr. Taylor.—That is so.

The Committee adjourned.

WEDNESDAY, 12TH AUGUST, 1953.

Members present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. H. C. Ludbrook,	Mr. Pettiona,
The Hon. F. M. Thomas,	Mr. Randles.

Messrs. E. C. Rigby and J. D. Fagan, representing the Municipal Association of Victoria, were in attendance.

The Chairman.—We have much pleasure in welcoming Councillor Rigby and Mr. Fagan to assist us in our deliberations in connection with the Transfer of Land Bill. The main purpose of their visit is to express their views on proposed clause 224 of the Bill and also on clause 104. While they are here, we shall also take the opportunity to seek their assistance concerning another matter which is troubling us, and that is the question of making the certificate given under section 385 of the Local Government Act a full and adequate certificate, so that once it has been issued by a municipal council it will be binding on that council. Further, we desire to seek the advice of Councillor Rigby and Mr. Fagan as to whether that section should be extended to ensure that the certificate will cover all moneys which may be owing to a municipal council in relation to the land in question.

One of the problems that the new Transfer of Land Bill is designed to overcome is the difficulty with which a purchaser of land is faced in ascertaining by rate searches or certificates all the encumbrances and charges that may exist in respect of the land intended to be purchased. The purposes of new provisions of the Transfer of Land Bill, particularly clauses 224 and 240, have been directed to that particular problem. However, the Committee is not at all happy about clause 240 in its present form, and we are considering a substantial amendment in clause 224 because after having heard the views of the Registrar of Titles we feel that the caveat procedure is probably not the right type of procedure to follow in dealing with matters covered by clause 224. We have asked the Registrar of Titles, after consultation with Mr. Wiseman who has been assisting the Committee, to submit a proposal for a modification of clause 224, which would ensure that a public authority would be given notice of any charges owing on the land in which it might be interested, but which would not involve a long and expensive procedure. We should also like to hear the Municipal Association's views on that point.

Mr. Rigby.—I would say that there are many reasons why there should be no caveat procedure. It would be expensive; it would cause a great deal of trouble to everybody concerned, and it would necessitate the employment of a larger staff in the Titles Office. One would never be certain of his position. In some municipalities there are thousands of ratepayers who, being the owners of land, are responsible for roadmaking charges. In the municipality of Moorabbin, there are at present 3,000 or 4,000 such ratepayers. If caveats were required to be lodged in respect of such properties, searches would be necessitated whenever land was being purchased. Solicitors would have extra work to do and undoubtedly greater difficulties would be created and more expense would be incurred by persons who were buying land if they had to deal with caveats. I should think that there is no necessity for such a procedure, although I appreciate what the Chairman has said concerning an applicant for a certificate being entitled to find out readily all the charges owing on land, and that it is desirable that the purchaser should be able to ascertain that information from the one source, if possible. That source would be the municipality. I think that

summarizes the objections to the proposed procedure. I do not think it should be necessary in any way to arrange for the proposed system of caveats.

The Chairman.—What would be the views of the Municipal Association on the proposal that clause 104 —particularly paragraph (*e*) of the proviso—should be extended to provide that any unpaid rates and taxes or other charges owing to a municipality shall be covered in that clause? In other words, the registered proprietor would not have an estate paramount to any charges owing to a municipality.

Mr. Rigby.—The proposal, if I understand it rightly, would be most pernicious. If a prospective purchaser of a piece of land applies to a municipality for a certificate of any rates or charges owing on it, I think the certificate issued by the municipality should show everything that is owing to it in respect of that land. If all charges are shown they would remain as charges owing to the municipality concerned. If the municipality should omit something from the certificate and if, after making his adjustments, the purchaser of the land discovers later that, perhaps £100 is owing on account of rates, what is he to do about it? The certificate issued by the municipality should be conclusive. I suggest that it should cover everything that is owing to the council in respect to the land in question. If that were provided for in the Bill, I do not think any hardship would be imposed on municipalities. In my opinion, the purchasers of land must be protected in that respect.

The Chairman.—I might not have expressed my point clearly, but the proposal you have just outlined is exactly what I had in mind.

Mr. Rigby.—That is my view.

The Chairman.—You agree with it?

Mr. Rigby.—Yes. Some municipalities might contend that if a municipality should in mistake omit, say, a roadmaking charge from the certificate, it should be entitled to recover the money owing to it, but any municipality which might take that view would be a voice crying in the wilderness. If a municipality issues a certificate, that certificate should be binding.

The Chairman.—I take it, Mr. Fagan, that you feel that a rates and taxes certificate would not be wide enough at the present time to cover all the charges that might be owing to a municipality?

Mr. Fagan.—We feel that the present clause does not cover the ambit of municipal charges; it would not include such things as street construction charges or paving charges or any other incidental charges made by a municipality that might properly be a charge on the land.

The Chairman.—An amendment of clause 104 would be required to widen the provision to cover all municipal charges which a municipality has statutory authority to charge against land?

Mr. Fagan.—Yes.

Mr. Randles.—Do not certificates now issued by municipal councils cover those charges?

The Chairman.—I should have thought that section 385 of the Local Government Act is not at present sufficiently wide to make that certain, and I should like to hear Mr. Fagan's view on that point. Would you feel that under section 385 a municipal council should be able to issue a certificate covering all moneys owing to it?

Mr. Fagan.—I am of that opinion, but I realize that this Committee has considered the Braybrook case, which does throw some doubt on the validity of a certificate which does not appear in the correct form. We suggest that, if necessary, section 385 of the Local Government Act should be amended to remove any doubt that a certificate issued by a municipality, and which purported to be a rates certificate issued under section 385, should be binding on the municipality. It appears to me that in the Braybrook case the court tried to arrive at a decision which was equitable in the circumstances. Robinson was the purchaser of land in respect of which certain charges were owing to the Shire of Braybrook. Those charges were on account of roadmaking. The council in issuing its rate certificate inserted along the line which indicated private street construction only part of the charge. Three allotments were involved, and part of the charge was shown against private street construction. Another amount was shown, against an allotment number, in respect of sanitary charges. It appears that Robinson had settled with the vendor and had received a full allowance in respect of the charges. He then sought to use the rate certificate to defeat the council in establishing its charge for the street construction. It appears that the Supreme Court tried to make the certificate conclusive and to make Robinson liable for payment because he was endeavouring to cheat the council, or to evade payment of the charges, when in fact he had already been granted an allowance by the vendor. In that case, a remark was made by the late Chief Justice Irvine regarding a rate certificate which did not follow the prescribed form. He considered that such a document was not a rate certificate and could not be relied on. The other two Judges who heard the case came to the same conclusion as the Chief Justice, but for different reasons. To my mind, the case is not very conclusive, it leaves a certain amount of doubt as to whether a rate certificate, if it does not follow exactly the form prescribed in section 385, can be relied on.

If that is the position, the Municipal Association would support an amendment of the Act to provide that the rate certificate shall be conclusive evidence of the charges owing to a municipality, notwithstanding that it does not follow the prescribed form.

The Chairman.—The case creates a rather peculiar situation in that a council, if it issues a proper certificate, is bound by that certificate conclusively.

Mr. Fagan.—That is true.

The Chairman.—On the other hand, if a council carelessly issues a wrong certificate, it is not bound by its mistake.

Mr. Rigby.—Mr. Fagan used some words to the effect that if the certificate issued by a municipality purported to be a rates certificate, it should be conclusive. On that point, there is another matter worth mentioning. Some town clerks have a rubber stamp which they impress at the end of the certificate. In such cases, there might appear on the certificates some hieroglyphics and it may not be possible for anybody to prove by whom the certificate was signed. It might be contended that the initials on the certificate are those of the town clerk or of the rate collector. However, the document is probably not a certificate at all.

Any one could affix a rubber stamp to a document. As the law stands at present, a person who relied on a rate certificate could find himself in great difficulty and be faced with street construction charges of £400 or £500 per allotment. A council should issue a proper certificate and if any error is made or if it is not correctly signed it should be responsible.

Mr. Pettiona.—Would not the seal of the council be the authority?

Mr. Rigby.—The seal is not placed on a certificate. It would be very easy for a town clerk to repudiate a certificate signed with a rubber stamp. I do not know

why the town clerk or a responsible officer of the council should not be authorized to sign the certificates, and, having been signed, they should be conclusive.

The Chairman.—In other words, if a fee is collected a binding document should be given?

Mr. Rigby.—Exactly.

Mr. Randles.—If an unauthorized person used a rubber stamp that was left lying about and negligence was established the council should not be able to frustrate an innocent purchaser simply because of that carelessness.

Mr. Rigby.—The certificates are printed in book form and are in the custody of the council, therefore it is within the province of the council to provide safeguards. A resolution could be passed by the council that the certificates should be signed by the rate collector and countersigned by an officer of another department. The council has many ways, unless there is gross carelessness, of ensuring that a printed document in possession of the council which is issued in pursuance of a request by an intending purchased of land is in good order and proper form.

Mr. Thomas.—I understood that it was mandatory for the town clery to sign all certificates.

Mr. Rigby.—That is so.

Mr. Thomas.—Are you aware of certificates being issued not properly signed?

Mr. Rigby.—Yes. I have received certificates that have not been properly signed by the town clerk; they have been signed with a rubber stamp, without the initials of the issuing officer. I have returned those documents with a request that correct certificates be issued. Under the present law, it is suggested that the council could claim that proper certificates had not been issued because they were not signed by the town clerk, and considerable sums might be involved. I sugest that a certificate issued by the council should be binding on that body. I may be speaking against the interests of councils at present, but I have to be honest and say that I think the councils have every facility for ensuring that certificates leaving their offices cover all aspects.

Mr. Thomas.—Why could not the Municipal Association of Victoria notify town clerks of the seriousness of that position?

Mr. Rigby.—I think that has been done, but it has cut no ice. The legal position is the difficulty. If certificates were legally binding on a council it would take care not to issue a defective certificate. The object of the section is to bind the council, because it provides that the certificate shall be conclusive. Doubts have been thrown upon the conclusiveness of the certificate and I think that should be cleared up.

Mr. Fagan.—I think that originally the whole purport of section 385 of the Local Government Act was to enable a purchaser about to deal in land to apply to a municipality to obtain a binding certificate which he could use as a basis upon which to conduct his negotiations and that certificate was to be final and conclusive proof. If it is assumed now that if a municipal clerk does not sign the certificate as prescribed it becomes worthless, I suggest that section 385 loses a great deal of its value.

Mr. Randles.—The question of what comprises a legal signature is involved. Even typewritten names have been held to be signatures.

The Chairman.—Is not that an argument for ensuring that section 385 of the Local Government Act is sufficiently wide to cover the position that if a council takes a fee and issues a certificate such certificate shall be binding? I think we should now leave that aspect and turn to the next problem, which is perhaps more difficult. The suggestion made this morning gets over the question of monetary charges against land. We now come to the problem of acqusition of land by a municipal council. Mr. Rigby has informed the Committee that he considers the caveat procedure to be clumsy, expensive, and undesirable. That statement, of course, accords with submissions that have already been made to the Committee by an officer of the Titles Office. Could we ask Mr. Rigby and Mr. Fagan to consider an alternative proposal, that instead of clause 224, a clause be inserted in the Bill whereby a council acquiring land would be obliged to notify the Registrar of Titles of the volume and folio of the land affected? The Registrar would then have an obligation to endorse on the backs of the titles so affected, " The land hereunder described is affected by a drainage easement in favour of City Council " or, " The land hereunder described is affected by an acquisition for the widening of a street by the Shire of ." That alternative proposal has been advanced to overcome the problem as far as Government Departments are concerned.

Mr. Fagan.—Does that hinge on street construction?

The Chairman.—It hinges on any powers that councils have to compulsorily acquire land. The case of street construction is quite simple. Quite often, councils take action to acquire land for street construction, and I take it that they do so on occasions for drainage easements.

Mr. Fagan.—Most drainage easements are provided on the subdivisions of land submitted to councils for approval.

The Chairman.—That is so, but there are cases where municipalities require drainage easements over land that is not part of a plan of subdivision.

Mr. Fagan.—I should think that acquisitions of that nature are relatively few and councils could take action to notify the Registrar of Titles in order that an appropriate notation might be made on the titles affected.

The Chairman.—Of course, in the case of councils, the period between the time that the acquisition is made and the title is taken is comparatively short. Councils are not concerned with blanket orders as is the Housing Commission which inserts a notice in the *Government Gazette* and it may be some years before anything is done about taking over the title.

Mr. Fagan.—That is true. The number of acquisitions for public purposes, such as recreation grounds and suchlike things, is relatively small. As I said earlier, most of the drainage easements are provided as new subdivisions are submitted to councils for approval. In older developed areas there is often a need for a council to acquire drainage rights but in those circumstances I do not think any great hardship would be imposed upon the council in having to advise the Registrar of Titles.

The Chairman.—The Committee is seeking assistance in regard to another aspect of the problem, which I think is far more difficult. Is there any feasible way whereby a person purchasing land can ascertain that it is subject to an interim development order under the Town and Country Planning Acts?

Mr. Fagan.—This question has been before the Municipal Association of Victoria on a number of occasions. It has been suggested that it should be shown on the rate certificate, but I contend that if interim development orders are shown on rate certificates such things as municipal zoning by-laws, by-laws prescribing brick areas, and by-laws prescribing a minimum squarage for houses that are to be constructed must also be taken into account. If those matters were taken into consideration nearly every

allotment in the metropolitan area might be involved and it might be necessary for some form of caveat to be lodged in the Titles Office describing the restrictions placed on the land.

Mr. Randles.—The difficulty relating to the size of a building and the fact of its being in a brick area is overcome by the fact that an intending home builder must receive a permit from the council.

Mr. Fagan.—It is true that a person before building must obtain a permit from the council, and if the building does not comply with the requirements a permit is refused, but the intention of putting such a provision in the Transfer of Land Bill seems to imply to me that the Committee is seeking to protect the potential purchaser and to enable him to ascertain before he actually signs the contract of sale that there are certain restrictions as to the use of the land. If such considerations as zoned factory areas, residential areas, brick areas, and a limit of squarage have to be registered nearly every allotment in urban areas will be involved.

The Chairman.—I think you are correct in saying that is the principle which underlies clause 224, but the Committee in considering that clause has appreciated the practical difficulties of this problem, and we are now seeking to find some solution which will achieve the same effect but will not involve the long and expensive processes necessary to effect what clause 224 seeks. Do you see any objection in providing under the Local Government Act for the issue by municipalities of another type of certificate, or the information being included on the rate certificate, showing whether the land is (*a*) subject to an interim development order; (*b*) is a residential area; or (*c*) has some other type of restrictions placed on it.

Mr. Fagan.—That would be a departure from the principles of section 385 which purports only to show the municipal charges owing on the land. This proposal would involve the employment of a considerable number of additional staff, and it would be necessary to charge a higher fee for a certificate to cover the cost that would be involved in making searches that would ensure that the certificate would be conclusive. Consideration would also have to be given to the question as to what would be the ultimate position if a certificate were wrongly issued. Suppose no restrictions were placed on the use of land in a prescribed residential area. If a council issued a certificate which did not state that the residential area by-law applied, would the purchaser of the land be allowed to erect a factory in that residential area, thereby defeating a planning scheme? Or, is it envisaged that by virtue of its mistake the municipality would be liable for the payment of compensation to a bona fide purchaser who bought land on the assumption that he could erect a factory thereon?

The Chairman.—The Committee has not considered the matter in detail, but it has been seeking a method by which the desired objective could be achieved and at the same time avoid Government Departments and municipalities being embarrassed. Perhaps you, gentlemen, would like to consider the points further and give the Committee further evidence at a later stage. I do not think that the Committee is concerned as much with the question of residential areas and zoned areas as with the position that is created by the issue of interim development orders.

Mr. Fagan.—And yet that aspect arises in connection with interim development orders, because a planning scheme would involve the setting aside of residential, factory, industrial, and shopping areas. There is no reason why a bona fide purchaser of land cannot make his inquiries to the municipal clerk, but he would not be given a binding statement; he would merely receive a letter stating whether or not an interim development order covered the land that he proposed to purchase and whether or not it was subject to certain by-laws.

The Chairman.—From a practical point of view, the problem arises not so much as a result of what the purchaser himself does but from what is done by the authority that is concerned in the transactions. There is a strong demand for a system whereby a solicitor can ascertain and assure his client as to all encumbrances on the land to be bought. Lending authorities, such as banks, the War Service Homes Commission, and life insurance societies should have a ready and convenient means of ascertaining whether there are any encumbrances on a title.

Mr. Fagan.—I appreciate that fact. On the other hand, I put this aspect forward for consideration. Encumbrances, including restrictions arising from planning schemes, can be changed from time to time. It is possible that a council may be in the process of making a by-law prescribing a certain area to be industrial or to be set aside for factory purposes. If the by-law had not been completed at the time of the issue of a certificate, no mention could be made of it on that certificate or that it was likely that the area was to be zoned as a factory site. A purchaser may in good faith buy a property thinking that it was in a residential area. In a few weeks' time, a new municipal by-law might come into operation. The municipality would have been quite in order because it would have stated the correct facts at the time of the issue of the certificate. In those circumstances, the future position of a purchaser would not be protected. A planning scheme may be altered from time to time, but it would not include any guarantee in relation to the future rights of a landowner.

Mr. Randles.—If a person acquires land and certain rights with that land, those rights remain, although there may be an alteration in planning affecting that land.

Mr. Fagan.—Under the Local Government Act, a zoning by-law does not carry a right of compensation to an owner.

Mr. Randles.—If a person erected a factory in an area, which later became a residential area, he would be allowed to continue to operate that factory, although, if the building fell down, he might not be permitted to re-erect it.

Mr. Fagan.—That is true.

The Chairman.—Or, he might not be permitted to use the building for a different type of business.

Mr. Fagan.—That is so. There are many residential areas in which factories have been erected prior to the residential area being proclaimed. Such factories are permitted to be operated only for the type of business for which they were built prior to the zoning by-law coming into operation. For instance, a bakery business would be permitted to be continued as such, but the owner would not be permitted to use it as a boot factory.

Mr. Rigby.—The practical difficulty is that land, particularly in the country, is affected by the activities of various instrumentalities, including the State Rivers and Water Supply Commission, the Railway Construction Branch, drainage trust and zoning and building authorities. Under the Transfer of Land Act, it should be made possible for a purchaser to ascertain all charges on the land. I suggest that notice of any works or activities of those governmental instrumentalities that are likely to affect land should be notified to the municipality concerned. Then the municipality would be in a position to indicate those facts to a purchaser. In turn, I do not think that a municipal council should be obliged to say, with regard to a

particular piece of land, that a certain building regulation applies to it, or that a certain restriction operates. However, I consider that the rate certificate should indicate anything that is likely to result in a charge on the land being created. A prospective purchaser is under an obligation to make all necessary inquiries. At present, even solicitors have difficulty in keeping in touch with all activities likely to affect the title to land, and therefore, I suggest that the municipal certificate should indicate whether or not the land is covered by an interim development order. If that were done, the purchaser could then make such further inquiries as he desired, but it would be unreasonable to require that everything relating to a particular piece of land, including such developments as drainage schemes, should be included on the rate certificate. If that were compulsory, a council would be involved in an enormous amount of work in issuing rate certificates. However, if the purchaser has notice of those things, he can make all the necessary inquiries. I think that is the most that should be required without making the working of the method impracticable. The old maxim of *caveat emptor* still applies, and a purchaser should satisfy himself by making all proper inquiries. In my opinion, the legislation should make it as easy as possible for a prospective purchaser to ascertain all relevant facts.

Mr. Ludbrook.—In my opinion, that is a reasonable proposal.

Mr. Thomas.—The question is: What method should be adopted to achieve that end.

The Chairman.—Councillor Rigby and Mr. Fagan might consider the matter further and let the Committee have a memorandum setting out their final views.

Mr. Fagan.—Interim development orders merely freeze the land temporarily while a plan is being prepared. What advantage is to be gained by a prospective purchaser of land knowing that an interim development order has been issued? In the first place, the area usually covered by an interim development order is larger than the area that will ultimately be planned. The order itself does not set out exactly what restrictions are to be placed on the land, except to indicate that the owner cannot do certain things without the approval of the planning authority. It is possible that he would be free to do what he desired. An interim development order is not like a town plan in which a *fait accompli* has occurred; it is only something in its initial stage. The order merely gives a municipality or a planning authority a reasonable method by which it can guide development along certain lines.

The Chairman.—I suppose that the effect of those remarks is that any one who purchases land without finding out from the council exactly what restrictions are placed upon that land is very foolish.

Mr. Fagan.—That is true. As I see it, probably zoning by-laws are more important to an intending purchaser than an interim development order.

The Chairman.—If a certificate were issued that land was affected by (*a*) an interim development order; (*b*) restriction for business purposes; (*c*) restriction as to type of house to be erected, and so on, would that create a considerable amount of work for a municipality, bearing in mind that such a certificate would be issued only in conjunction with a rate certificate, so that the municipality would know what land was being purchased?

Mr. Fagan.—I do not think it would place an insuperable burden on municipalities to do that, but the charge for supplying a certificate would have to be increased materially because a lot of detailed research would have to be undertaken to make sure that the position was covered. At the same time I am afraid that people will buy property and will be guided by the statement as to the use of the land, when actually there may be a change within 24 hours of the time of the certificate being issued. I am somewhat worried as to the value of such a certificate to a purchaser.

The Chairman.—Of course, a purchaser takes that risk now. If a person buys a piece of land in a suburb which is operating on improved rating and the rate is 10s. a year, unknown to him there might be in process a poll for the introduction of unimproved rating and he might find that when he receives his next assessment the rates on the land amount to £2 10s. or £5. I do not think we can contemplate anything but a certificate as to the state of the land at the time of purchase. If you feel that people are going to be misled in some way it should be easy to endorse on the certificate in heavy black type "This is the situation of the land at this time and the purchaser must take into consideration that the council has power to change the plan affecting this land from day to day."

Mr. Rigby.—When these things are notified to the purchaser he has to make his own inquiries about these various things according to his circumstances.

The Committee adjourned.

TUESDAY, 29TH SEPTEMBER, 1953.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Pettiona
The Hon. F. M. Thomas.	Mr. Randles
	Mr. R. T. White.

Mr. Philip Moerlin Fox, representing the Council of the Law Institute of Victoria, was in attendance.

The Chairman.—On behalf of members of the Committee I welcome Mr. Moerlin Fox who is representing the Law Institute of Victoria. Mr. Fox was a member of the Chief Justice's sub-committee on law reform, which originally considered the proposals contained in this Bill and made recommendations that led to its introduction as far back as 1949. At this stage it is not necessary for me to relate the history of the Bill or to explain the reasons for the delay in translating it into law. Mr. Fox knows that certain difficulties of administration in the Titles Office were associated with the delays. This morning Mr. Fox will give evidence, not on the Bill as a whole, but only on particular matters which were referred to in the Attorney-General's second-reading speech earlier this year when he re-referred the 1949 Bill in a reprinted form to this Committee. In making that reference, the Attorney-General said that he intended to ask the Committee to consider certain comments that had been made by Mr. Ruoff, who visited Victoria last year, regarding provision in the Bill relating to caveats and notices generally. It is in that matter that we have asked Mr. Fox to comment.

Mr. Fox.—The Law Institute has been asked to examine the caveat provisions of the 1953 Transfer of Land Bill, and I am present this morning to convey to this Committee the Council's attitude towards these provisions. The Council approves of these provisions with the exception of those contained in clauses 235 and 240.

The Chairman.—Clause 240 relates to caveats and provides for priorities by registration.

Mr. Fox.—The latter clause is designed to remove all doubts which may exist as to the priorities of equities arising under unregistered dealings. If this question of the priorities of equities were one which frequently arose, the Council would have no objection to the clause, but in the experience of the members of the Council the question seldom arises. At a recent meeting of the Council at which there were some sixteen members present—a fair cross-section of the profession—I inquired if any of the members had ever heard of this question of priorities arising, whether in his own office or elsewhere. Only one member was able to refer me to a matter—not in his own office—where such a question might be said to have arisen, but on further discussion it appeared that in this instance the person who claimed an equity did not have such a claim as would result in an equitable interest arising. The result of my inquiry was that no member was able to refer me to any matter in which a question of priorities had arisen in his own experience. So far as cases in court are concerned, only one case of a question of the priorities of equities ever seems to have reached the Victorian Courts—the case of *Bulter* v. *Fairclough* in 1917.

The Council therefore considers that the question of the priorities of equities is academic rather than practical, and it feels that the amount of additional work which will fall on the already inadequate Titles Office staff if the clause becomes law will be out of all proportion to any benefit gained. If the clause becomes law, the Council considers that it will be the duty of the profession to advise all persons who claim equities to lodge caveats, and in view of the new clause 104 this will therefore have to be done in the case of most tenants and of all purchasers under terms contracts. As the law stands under the present Act, the rights of tenants in possession and of purchasers in possession under terms contracts are protected by the present section 72, and it is therefore unnecessary for them to lodge caveats. In the Bill the interests of these classes of persons are not protected by clause 104, and the result will be that every tenant who does not hold under a registered lease, and every purchaser under a terms contract, must be advised to lodge a caveat. I emphasize that point.

The Chairman.—May I point out that the position is not, perhaps, as bad as that, because of the recommendation made by the Committee in its 1950 report? I quote from page 7:—

> "The Committee considers that it is unnecessary to register the interest of a short-term tenant and recommend that the clause be amended to give protection to the interest of a tenant for a term of less than three years, whether registered or not."

Mr. Fox.—In the light of that recommendation, my observation will need to be amended as regards the interests of tenants for a term not exceeding three years, but I would point out that the observation is still valid in relation to the interests of purchasers under terms contracts, of whom there would be a considerable number. The Council agrees with Mr. Wiseman that the new provisions are not likely to lead to excessive caveating, using the word "excessive" as meaning unjustified, but it feels certain that the new provisions will lead to an enormous increase in the number of caveats which will be lodged—an increase which the understaffed Titles Office will be quite unable to handle.

If the question of the priorities of equities was in fact one of everyday occurrence, and the Titles Office could handle the increase in the number of caveats, the Council would raise no objection to the provisions of clause 240, as it considers that in such circumstances the clause would provide a certain answer to the question of priority. On this point the Council prefers the comments by Mr. Wiseman rather than the criticism by Mr. Ruoff. The view of the Council is that the rights of tenants in possession should be protected by clause 104 in the same way as they are at present protected by section 72, and that clause 235 and clause 240 should be omitted from the Bill.

The Chairman.—In view of the Committee's previous recommendation that the interests of tenants should have some protection in clause 104, I take it that this will lessen the number of caveats which you, Mr. Fox, consider would have to be lodged if clause 240 were introduced, but your Council is of the opinion that, in view of the necessity of lodging a caveat in respect of every terms contract and every equitable interest, clause 240 would create a considerable amount of additional work.

Mr. Fox.—That is so.

The Chairman.—Clauses 235 and 240 are new. Do you consider that they stand or fall together?

Mr. Fox.—Yes, I do.

The Chairman.—Clause 235 relates to the renewal of a caveat after it has lapsed?

Mr. Fox.—Yes. It is something that is quite new, and I think it is necessary only because of the provisions of clause 240.

Mr. Randles.—How can a caveat lapse unless a caveator removes it?

Mr. Fox.—If a competing dealing is lodged, the caveat lapses fourteen days after notice is given.

The Chairman.—The position is that caveats remain on the register book until a competing dealing is lodged for registration. Then the caveator is given notice that that dealing has been lodged and he is given fourteen days in which to take action to stop it from taking priority. If he fails to take such action until after fourteen days have elapsed, the caveat lapses and the dealing is registered.

Mr. Fox.—That is so.

Mr. Pettiona.—How may a person renew a caveat?

Mr. Fox.—A caveat can be renewed for what it is worth. The rule up to the present has been that a person cannot lodge a second caveat in respect of the same interest. In other words, a person may lodge a caveat to protect his interests, but if he takes no action when he receives notice that a competing dealing has been lodged, he can do nothing more about it.

Mr. Randles.—If the caveator has but fourteen days in which to defend his claim what happens if, within that period of time, he has not received notice?

Mr. Fox.—The position is unfortunate for the caveator.

Mr. Randles.—Provision should be made in the Bill for the lodgment of another caveat.

Mr. Fox.—Under clause 235, the right is provided to lodge a caveat only following registration. I do not think provision for the lodgment of another caveat would be of much use.

Mr. Pettiona.—Would not the lodging of a second caveat be a protection in respect of any future transfer of that particular piece of land?

Mr. Fox.—It could be. That would depend on the circumstances of the case.

The Chairman.—Cannot a second caveat be lodged under the provisions of the present Act?

Mr. Fox.—No. Section 184 provides that a caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest. At present there is an unqualified prohibition against lodging a second caveat. That is why this amendment is so novel and, perhaps, so drastic.

Mr. Randles.—Let us suppose that a caveat lapses and that land changes hands. Would not the second holder of the land be in the same position as the first one?

Mr. Fox.—It is extremely difficult to express an opinion on such matters without being in possession of all the facts of each case.

Mr. Thomas.—Is not clause 240 a protective provision?

Mr. Fox.—I feel satisfied that under the law as it now stands, if a person at the time of his dealing with a registered proprietor makes a search and ascertains that the title is clear, he will get priority without the provisions of clause 240. There is not so much doubt about the position of a purchaser in those circumstances as some persons seem to think. That view is supported by the fact that such a question seldom arises in cases that come before the courts.

Mr. Brennan.—Conversely, when a purchaser under a contract of sale has in fact lodged a caveat against the registered proprietor, is it not a fact that the Registrar will refuse to register the transfer of that land to any other person until that caveat has been expunged or withdrawn?

Mr. Fox.—That is so, under the Act.

Mr. Brennan.—If the transferee is the caveator, he must still formally withdraw his caveat.

Mr. Fox.—The Act requires that it be removed from the register.

Mr. Brennan.—The caveat is not merely an empty bubble which can be exploded by lodging another deed.

Mr. Fox.—It can be, provided the caveator takes no action.

Mr. Pettiona.—But the caveator can give the Registrar authority to carry on the transaction.

Mr. Fox.—Yes. In his caveat he can except certain dealings if he so wishes.

The Chairman.—Then the caveat does not lapse.

Mr. Fox.—That is so.

The Chairman.—Perhaps it might assist the Committee if I read what Mr. Wiseman says as set out in the explanatory paper on the Transfer of Land Bill. I quote from page 29—

> Section 235. This section enables a caveat which has been lapsed to be renewed. Formerly, a caveat which had lapsed could not be renewed (see the provision in section 184 of the Transfer of Land Act 1928 which has been repealed). In view of the proposed section 240 this provision is essential. The interest protected by the lapsed caveat will be postponed to that protected by any caveat lodged before the date of renewal. This is consistent with section 240. Sub-section (2) provides for the case where the caveat has lapsed only as to portion of the land in which the interest is claimed.

It is clear, therefore, that clause 235 was inserted only because of the need for it, if clause 240 was retained.

Mr. Fox.—If clause 240 were removed, clause 235 would be unnecessary.

The Chairman.—I believe that is so.

Mr. Randles.—If the caveator allows a dealing to take place, his interest will not be overridden by the new purchaser.

Mr. Fox.—If the measure is passed in the suggested form.

Mr. Randles.—In other words, he accepts the caveator's condition, which could be rather onerous. Is that not so? There may not be anything in the point.

Mr. Brennan.—A case could arise where a mortgage is sought to be registered by a lender to a registered proprietor after a caveat has been lodged to protect a purchaser.

Mr. Fox.—Yes. If the purchaser agrees, he yields priority, as it were, to the mortgage. The main view of members of the Council of the Law Institute is that they cannot see any real need for the rather drastic alteration of the law as contained in clause 240.

Mr. Randles.—In other words, your Council contends that it is a purely academic problem?

Mr. Fox.—Yes. I am sure that the Chairman will agree that if the legal profession was continually arguing and coming before the Court on questions of priorities of equity, then clause 240 should be included in the Bill. I do not think Mr. Wiseman's criticism of the existing position is justified. It is intended to solve a problem, but is there a problem?

Mr. Randles.—If clause 240 is retained and if people go to Court, surely the prior equity would be recognized.

Mr. Fox.—That question seems to me to be completely answered by the decision that the prior equity must prevail unless the holder of the prior equity has failed to do something which he should have done—for instance, lodged a caveat.

The Chairman.—There is one aspect of this matter which is more worrying than the question of introducing an academic section. That is the effect of that academic section, if it is introduced, whereby all solicitors will be placed in the position of having to advise their clients to lodge caveats if they are in possession of any equitable interest. The problem which this Committee has not solved is what will happen to all equities existing at the moment if a man becomes registered over a person who is not aware of or has not been advised about clause 240. That creates a very large problem and a responsibility for the legal profession, quite apart from additional work for the Titles Office.

Mr. Fox.—The Committee knows how the Titles Office handles caveats now and I believe we should encourage a continuance of the present system. As soon as possible after a caveat is lodged it is noted on the title. In other words, the Titles Office is following the practice which applies in South Australia. Previously, the caveat did not appear on the title for a period of days or weeks, but now it is entered almost immediately. Even that action has meant much additional work for the Titles Office, but it is very desirable. If the number of caveats is even doubled it will be impossible for the Titles Office to do the work.

The Chairman.—From your experience, what percentage of contracts of sale passing through your office would be terms contracts requiring the lodging of caveats?

Mr. Fox.—The percentage has substantially increased over the last two or three years. I believe it would be almost 50 per cent. in our office now. Just after the war there were very few, but the number is increasing.

The Chairman.—I suppose it would be fair to say that the average solicitor sees comparatively few of the terms contracts entered into by his clients.

Mr. Fox.—That is possible.

The Chairman.—Many clients do not consult a solicitor when they enter into a terms contract to have the title investigated, but when they have paid in full they then ask a solicitor to act on a transfer. In other words, those people who at present do not consult a solicitor would have to lodge caveats to protect their interests?

Mr. Fox.—That is so. That gives me the opportunity to say that the protection by the present section 72 of the interest of a tenant in possession is based on a principle of law long accepted in both England and Australia. We follow England where the first case arose hundreds of years ago. The principle is that the fact that a person is in possession of land is sufficient notice to all the world of his rights. I believe that is why section 72 excepts from the conclusiveness of a title the rights of a tenant in possession. I feel quite satisfied that that was inserted in the original Act because of that long-standing principle. Now we propose to cast that principle aside, for we are saying that the purchaser who is in possession will not be entitled to protection merely because he is the purchaser in possession. That seems to me to be going too far, in view of the principle I mentioned.

The Chairman.—Of course, clause 240 will provide an opening for land sharks. It will be quite possible for a man to sell a block of land three or four times in one day, and the fourth purchaser, if he is shrewd enough to lodge a caveat, would, under clause 240, be entitled to the land to the detriment of the first, second, and third, who failed to lodge a caveat.

Mr. Thomas.—That is the point I had in mind, Clause 240 is protective, is it not?

The Chairman.—No, it rather has the opposite effect.

Mr. Pettiona.—In effect, that would be fraud, would it not?

The Chairman.—It would be fraud as far as the vendor was concerned, but it might be quite an innocent action as far as the fourth purchaser was concerned.

Mr. Fox.—The whole question seems to be whether there is an evil which needs to be remedied by clause 240. If it can be shown that such an evil exists, then let us approve of the clause. Everything that has been said so far this morning appears to tend in the opposition direction, indicating that the proposed clause 240 will be a bad thing, not a good thing.

Mr. Thomas.—The need for clause 240 appears to lie in isolated cases where a man decides not to be honest, and not in its general application.

Mr. Fox.—That may be so, but a need for clause 240 has not yet been shown.

Mr. Thomas.—Does Mr. Fox say that the necessary protection is contained in another part of the Bill?

Mr. Fox.—No. I consider that the protection is given by the courts of equity, and that there is no need to do anything about it.

Mr. Thomas.—How can a person approach the court of equity if he cannot establish a prima facie case?

Mr. Fox.—In most cases it will not be a question of approaching the court, because the decision of the court can be anticipated in most cases.

The Chairman.—On behalf of the Committee, I thank Mr. Fox for his attendance and for the assistance that he has given us. I assure him that consideration will be given to the views that he expressed. At the same time, I desire to tender our thanks to the Council of the Law Institute of Victoria for assisting this Committee in its deliberations.

The Committee adjourned.

WEDNESDAY, 30TH SEPTEMBER, 1953.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Pettiona
The Hon. I. A. Swinburne	Mr. Randles
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. T. C. Widdop, Estates and Property Officer of the Housing Commission, was in attendance.

Mr. Widdop.—A condition such as that proposed in clause 224 of the Bill would present the Housing Commission with an almost insuperable problem. In the metropolitan area, the Commission has resumed land by the square mile and about 75 per cent. of the area that has been found fit for use has been subdivided. The Commission has had to deal with thousands of individual owners. If, as a pre-requisite, the Commission had to search titles for each block to ascertain the ownership and was then forced to lodge caveats or some other form of notice with the Registrar of Titles, the job would never be finished. It would take months to do the preliminary work, and then a check would have to be made to ensure that no changes had been effected during the intervening time.

One of the main problems of the Commission is to obtain control of land quickly. In section 40 of Act No. 4996 there is a short means of making a quick approach to resumptions without the ordinary method of individual service of notices. If a condition such as that included in clause 224 were enforced, the Commission would be placed further behind than its own legislation intended. I am sure that the Commission would regard this provision as an onerous one. I presume that the basis of the legislation is the protection of intending purhasers.

The Chairman.—The intention is to prescribe means whereby a person buying land receives notice of any rights over the land.

Mr. Brennan.—The legislation will ensure that lands that the Commission has acquired or which it proposes to acquire will be given better publicity than the present method of a notice in the *Government Gazette.* Often a vendor does not know that his land has been acquired by the Commission.

Mr. Widdop.—In section 13 of Act No. 4568 application may be made to the Commission for a certificate, giving an intending purchaser information as to whether any notice by the Commission has been served. Normally, a purchaser would engage a solicitor, who would know that that protection was available to his client.

The Chairman.—Is the certificate binding upon the Commission?

Mr. Widdop.—Yes, as a statement of fact, up to the date of issue. In effect, the certificate states that at a particular date notice has or has not been served in respect of certain land.

Mr. Pettiona.—Are there many applications for certificates?

Mr. Widdop.—There is a substantial number. It is widely known among the legal profession that the information can be obtained. The Housing Commission recognizes that it has a moral obligation to

give people some warning, and although a quick service is given in the form of a general notice under section 40 of Act No. 4996, at the earliest opportunity that is followed up with an individual notice to owners.

Mr. Thomas.—From where do you obtain your information regarding the ownership of properties? It is widely known in Collingwood that the Housing Commission proposes to resume an area in that district on which flats will be erected. Some owners will try to sell their houses and when the Commission resumes the area the purchasers will have no protection, as the houses will have no value. Only the value of the land will be taken into consideration.

Mr. Widdop.—Reclamation areas are proclaimed under Part III. of Act No. 4568, and any person who contemplates the purchase of a property within the area can obtain a certificate from the Commission under section 13.

Mr. Thomas.—A person may pay a deposit of £200 on a property and later find that he will receive no compensation.

Mr. Widdop.—When a slum property is condemned someone will lose, whether it is an owner who has had it for 50 years or the person who has been unwary enough to buy it.

Mr. Thomas.—Many of the houses in the area to which I am referring are 80 or 100 years old and, as a result, have no value at all as far as the Commission is concerned.

Mr. Widdop.—The legislation lays down that if the Housing Commission condemns a house and the owner fails in his appeal against the decision of the Commission, the house has no value other than its removal value.

Mr. White.—That is not the fault of the Commission.

Mr. Widdop.—No, the Commission is merely carrying out the instructions of Parliament.

Mr. Randles.—You mentioned that anyone can ascertain from the Commission if there is a notice to treat on land and whether at a particular time the Commission has taken any action. Therefore, I take it that when a large tract of land is acquired you search the titles of the various blocks. If that is so, it is a direct contradiction of what the Committee has been told. You previously stated that it would be impracticable to search titles when a piece of land was being acquired. How can you reconcile the fact that you can furnish a certificate when you do not search individual titles?

Mr. Widdop.—The acquisitions of the Housing Commission, particularly in Melbourne, relate not to single blocks but to tracts of country. It is necessary for the Commission only to identify the position of a block to say whether it is subject to notice to treat; a title search would not be needed. Before the Commission attempts an acquisition of a large area it has to draw plans showing the entire ownerships. Every block is shown on the plan and is valued before resumption is proclaimed. There are thus short ways of ascertaining if a particular block is under notice or not, without going to the trouble of searching the title.

Mr. Brennan.—Do not you go to the municipality to find out particulars of the ownership?

Mr. Widdop.—We do. Although section 13 of Act No. 4568 provides some protection. Legal notice is served when certain publications occur, but the Commission does obtain a list of the ownerships from the council concerned and every individual is then circularized and his attention drawn to the notification and negotiations are opened for purchase. Plans are prepared and valuations made without searching titles. Quite a huge plan can be compiled by obtaining a set of the registered plans and making them into a composite plan. It is then easy to identify the individual blocks. Notice of acquisition is served by proclamation, and the Commission is enabled to make immediate use of the land. The most urgent operation is the planning by the Commission of the use of land for housing. When the question of control has been finalized, a list of the owners of blocks is obtained from the municipal council concerned. A circular is sent to every owner advising him that the land is subject to acquisition, and negotiations for purchase are begun. Protection is provided in a practical form at present. Grave concern would be caused the Commission if it were necessary for every individual title to be searched at a given time and a form of notification lodged with the Registrar. As the years pass—the process extends for a long time—each title eventually is searched, and settlements are made with the owners.

The Chairman.—Most of Mr. Widdop's statements have referred to the acquisition of large tracts of land by the publication of a notice in the *Government Gazette.* Probably similar considerations do not apply in the case of small acquisitions—for example, of 10 or 12 acres of land in a country town?

Mr. Widdop.—That statement is correct. A considerable amount of land in the country is purchased as a result of private negotiations, without the serving of notices. In certain instances, an individual notice is given. All communications are addressed to the owner. The purchaser must protect himself; he must subscribe to the principle of *caveat emptor* and apply for a certificate prescribed by section 13 of the Act.

The Chairman.—When the acquisition of single blocks of land was contemplated, could the Housing Commission without difficulty advise the Titles Office of the titles affected?

Mr. Widdop.—Officers of the Commission would not be perturbed if required to furnish to the Titles Office general information about land proposed to be resumed.

Mr. Brennan.—Mr. Widdop's statements so far have related first to the acquiring of a certain area of land and then to the issuing to individual owners of notices to treat. It is at that juncture that rumours gain currency, and unscrupuluos vendors can sign a contract with a prospective purchaser who is unaware either of the proclamation or of the individual notice to treat. It is in order to protect a purchaser in such circumstances that we seek to elucidate this point. It is necessary to devise a means of notifying the public that certain land is subject to acquisition. We do not attack the present methods of acquisition, but desire to solve the problem of labelling the land, so to speak.

The Chairman.—Mr. Widdop has stated that, regarding the serving of individual notices to treat, he does not envisage great difficulties in informing the Titles Office so that the relevant titles can be endorsed. Would any problems arise in the case of the acquisition of a large area of land if, instead of notice being given to the Titles Office, a plan was submitted to this office showing the area affected by the proposed acquisition?

Mr. Widdop.—No difficulties would be encountered in that regard. At present such a practice is followed as an act of courtesy, and it would not be more onerous to continue that procedure as a requirement

of an Act. Concerning the question of an unscrupulous vendor selling a block of land after notice of acquisition had been given, the fact that the purchaser might pay a ridiculous or unsound price for the property would not be a peculiar circumstance. However, if the buyer paid a fair price for the investment, he would be recompensed. The Commission would adopt the same attitude to him as it adopted to the vendor. In the past 13 or 14 years I can recall only one occasion in which such a case has occurred. It concerned a house in the North Melbourne reclamation area. No difficulties arose; the purchaser had paid a sensible price for the property and the Commission recompensed him. The fact that no trouble has been experienced in this regard is no reason why legislative provision should not be made.

Mr. Brennan.—Sub-standard houses may be subject to a demolition order. Recently, I was handed a contract for the purchase of such a house. The agent had refused to hand the contract over to the purchaser until a deposit of £750 had been paid. In such a case, what opportunity is there to protect the interests of a purchaser?

Mr. Widdop.—If a purchaser has parted with his money, he cannot be assisted.

Mr. Brennan.—If news of the demolition order had been publicized, the position might have been different.

Mr. Widdop.—A man would not have access to any warning in that sense through a caveat.

Mr. Thomas.—When the Commission decides to take over a certain area it should erect notices to that effect. Would it be possible for such notices to be erected?

Mr. Widdop.—The suggestion has merit.

Mr. Randles.—If the Commission contemplated taking over a tract of land, but an acquisition notice had not been served, would a prospective buyer be informed of the Commission's intentions?

Mr. Widdop.—I think we would merely give a certificate as at the date because although we might be contemplating taking action the approval of the Treasurer might not have been obtained.

Mr. White.—The large areas that have been acquired by the Housing Commission are mainly in and around the metropolitan area?

Mr. Widdop.—Yes. There is also one at Geelong.

Mr. White.—Have these areas that have been acquired been subdivided?

Mr. Widdop.—Most of them have been subdivided.

Mr. White.—Has the Commission adopted the practice of allowing an outside agent to notify the people concerned?

Mr. Widdop.—No. At Geelong, after obtaining permission to resume the area known as the Norlane Extension, and before gazetting it, we authorized an agent to see what he could buy land for in the area. He had no authority to tell anybody what our intentions were. We wanted to obtain a basis for valuation.

Mr. White.—It could be taken that to some extent you were notifying them.

Mr. Widdop.—Once the Government has made a decision it is inevitable that information will leak out.

Mr. White.—In the early stages it would be almost impossible to ascertain the owners of all the blocks.

Mr. Widdop.—Yes. In the first estate at Norlane, a square mile of land was acquired, involving approximately 2,500 blocks. I was asked previously if it would embarrass the Commission if notices of intention to serve individual notices to treat had to be lodged in the Titles Office, and I said that it would not. However, I consider that the position is covered by section 13, because the whole matter is dependent upon some solicitor making an inquiry in the proper quarter. When that facility is available, there is no necessity to provide other avenues from which to obtain the same information. While we can do these things, they are all irritating details to be kept in mind, with possible penalties attached for failures. The provisions of the Act under which the Commission operates are aimed at protecting the people.

The Chairman.—I appreciate the point raised by Mr. Widdop, but this is a problem associated with the Torrens system of land registration. Considerable evidence has been furnished to the Committee to the effect that in Victoria there has been a substantial departure from the original aims and objects of the Torrens system, which provided for a simple method of land registration, and anybody was at liberty to ascertain from the register the exact ownership of land. The problem affecting the Housing Commission, now being considered, is somewhat different from that of rates and taxes owing to a municipal council. The Torrens system has always contemplated the title of the registered proprietor as being not paramount to the settlement of outstanding rates and taxes but paramont to all other charges with the exception of a few small matters specified in section 72 of the Transfer of Land Act. The problem affecting the Housing Commission is not easily solved by stating that section 13 exists.

Mr. Widdop.—In my view, the alternatives are, that section 13 covers the situation or that, in circumstances in which a small number of properties is affected, notice is given to the Registrar, and, where a comprehensive acquisition of a large area is entailed, notice is given in the form of a definition of the area. At present the Titles Office is not notified of the acquisition of small areas, but when acquisition of a large area is proposed a plan is sent to that office with all details.

The Chairman.—Mr. Garran, Assistant Parliamentary Draftsman, has suggested for consideration the following draft clause—

A. (1) Whenever any acquiring authority proposes to acquire compulsorily any land under the operation of this Act or any interest therein, if the Act under which the acquisition will be made provides that any notice (whether individual or general) of intention so to acquire is to be served notification in the prescribed form of such intention shall be lodged with the Registrar forthwith upon service of such notice of intention.

(2) The Registrar shall appropriately endorse each grant or certificate of title concerned or (where this is not practicable) shall by displaying a map or other appropriate means make such information available to persons searching titles.

When the Committee has made a tentative decision on the matter, it will be referred to Mr. Widdop for criticism before being finally adopted.

Mr. Pettiona.—Section 12 of the *Housing Act* 1948 relates to implied easements in substitution for certain extinguished easements, and requires the Commission to submit a plan to the Registrar of Titles, who is directed to endorse certificates of title.

Mr. Widdop.—The provision referred to deals with a different subject matter. It relates to the acquisition of part of the land in a sub-divided estate, the re-subdivision of the area acquired, and the changing of the position of streets and other easements, &c. In such circumstances, the position of easements is technically different from that which obtained previously. The Act mentioned by Mr. Pettiona merely provides for the registration by the Registrar of Titles of the rights of the owners over a new set of easements. Its need arises (on the re-subdivision of land and the re-arrangement of streets, &c.) to protect the interests of persons owning adjoining property that has not been acquired.

Mr. Pettiona.—Notice must be given the Registrar of Titles.

Mr. Widdop.—Yes; notice must also be given of subdivisional plans, which must be accepted by the Registrar before they are legally sufficient.

The Committee adjourned.

TUESDAY, 20TH OCTOBER, 1953.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles.
The Hon. H. C. Ludbrook,	
The Hon. G. S. McArthur,	
The Hon. F. M. Thomas.	

Mr. A. E. Banks, Acting Legal Officer of the Melbourne and Metropolitan Board of Works, was in attendance.

The Chairman.—On behalf of the Committee, I welcome Mr. Banks, who is representing the Melbourne and Metropolitan Board of Works. Mr. Banks has been asked to be present this morning so that we could acquaint him of the Committee's proposals concerning the Transfer of Land Act and to seek his views in regard to the question of certificates issued by various bodies, including the Board, to prospective purchasers, showing what sums, if any, may be owing at the time of a transfer of a property.

The Committee have been considering the making of a recommendation that the title of the registered proprietor under the Transfer of Land Act should be paramount to all outstanding charges to public authorities, other than those which can be ascertained and shown on a certificate which would be binding on the authority concerned. The Committee is somewhat concerned regarding the circumstances in which the Melbourne and Metropolitan Board of Works issues certificates. It is uncertain whether the certificate, when it has been issued, would be binding on the Board so far as water rates are concerned.

Mr. Banks.—Certificates given by the Melbourne and Metropolitan Board of Works are issued, not under the provisions of its own Act, but under section 93 of the Sewerage Districts Act, sub-section (1) of which provides that—

> A Sewerage Authority shall upon the application of any person in writing stating the particulars of the property in respect of which information is required . . . forthwith give or send by registered letter through the post to the person so applying . . . a certificate in writing signed by the proper officer stating what (if any) rates or sums of money and interest are due or payable to the Sewerage Authority in respect of such property. . . .

Sub-section (2) goes on as follows:—

> The production of such certificate shall for all purposes whatsoever be deemed conclusive proof that at the date thereof no rates or sums or interest were so due or payable in respect of or were a charge on such property other than those stated in such certificate in respect of such property.

I do not think that the Board can give a certificate as to water rates by virtue of any power given to it under its own Act, and therefore, if the Transfer of Land Act be amended to provide that the title shall be paramount to statutory charges other than those which can be shown by certificate, it probably would be ineffective so far as the Board's water rates are concerned.

The Chairman.—It might be too effective, in that it might be paramount to sums owing for water.

Mr. Brennan.—You know the section of the Act under which the Board is given authority to take extracts of accounts and so forth?

Mr. Banks.—The relevant section gives the Board power to get information from municipal councils. That relates mainly to obtaining information for the purposes of our rates books and for assessing rates.

Mr. Brennan.—The Board does, in fact, accept the valuations of the municipalities?

Mr. Banks.—Yes. In practice, we are supplied with copies of the municipalities' rate books for the purpose of making out our own rate books.

Mr. Brennan.—The net annual value on which the Board bases its charges is that shown on the certificate of the municipality?

Mr. Banks.—Yes. We do, in fact, accept the nett annual valuation of the councils.

Mr. Brennan.—And you vary it from time to time, as it is varied by the municipality?

Mr. Banks.—Except that the Board is always a bit behind in its rating year.

The Chairman.—Exactly what charges are made by the Board?

Mr. Banks.—Each year the Board levies a water rate, which at present is 8d. in the £1 on the net annual value of the property. It also determines a metropolitan general rate which, I think, is 1s. 1d. in the £1. In addition, the Board determines what is known as a drainage and river improvement rate, a metropolitan planning rate and charge for water supplied by measure.

Mr. Brennan.—I have seen certificates with sums as low as 3d. a year for that purpose. Is that the charge known as the betterment rate?

Mr. Banks.—That would be the drainage and river improvement rate; it applies to properties in the metropolitan area where there are no water mains or sewerage facilities.

Mr. Brennan.—And not subdivided?

Mr. Banks.—That is so.

The Chairman.—When application is made to the Board for a certificate of any charges owing, it is the practice of the Board to issue such a certificate showing all the sums owing?

Mr. Banks.—Yes.

The Chairman.—Would you say that, in the issue of certificates, the obligation on the Board arises only under the Sewerage Districts Act?

Mr. Banks.—Yes.

The Chairman.—And that the certificate is binding on the Board only in relation to sewerage charges?

Mr. Banks.—Yes. There have been instances in which certificates have been given wrongly, both as to water rates and sewerage charges, but in practice

the Board has considered itself bound by the operation of such certificates. Technically, the Board might have been able to void the certificate in relation to water rates, but it has considered itself bound in all respects by the certificate.

Mr. Brennan.—In what category is the assessment of excess water charges? In your computation of those charges, that would not be a matter of a certificate, strictly?

Mr. Banks.—No. Excess water is really a charge for goods sold and delivered. It is not a rate. A property is rated at a certain figure and the amount owing is assessed accordingly. The effect is that the owner or occupier is entitled to the consumption of water up to the specified limit at 1s. per 1,000 gallons. Water used over and above that quantity is charged for as excess water at the rate of 1s. 6d. a 1,000 gallons.

The Chairman.—Is excess water a charge against the land?

Mr. Banks.—No.

The Chairman.—It is therefore in the same category as electric light and gas charges.

Mr. Banks.—That is so.

The Chairman.—So no problem arises under the Transfer of Land Act in relation to excess water charges?

Mr. Banks.—That is so. The proposed amendment of the Act would not place the Board in any worse position in that respect.

Mr. Brennan.—Whom does the Board expect to pay the excess water account—the previous owner, or the person who has bought a property and is living on it?

Mr. Banks.—Every attempt is made to recover the sum owing from the subsequent owner. However, our Act is old and it is bad. We put it to the new owner that the sum outstanding in respect of excess water was shown on the certificate at the time of the transfer and that it should have been taken into account. Section 110 of the Melbourne and Metropolitan Board of Works Act provides—

> Except where it is otherwise expressly provided in this Part or in any by-law or agreement made under this Part all rates and charges for water and all sums due to the Board under the provisions of this Part shall be paid by and be recoverable from the person requiring receiving or using the water or from the owner or occupier of the land tenement or premises to which the water is supplied.

That provision may give the Board some rights as against future owners. There is room for argument about that provision which, I think, has not been fully tested in the courts. There was one case—Criterion Theatres *versus* the Board—concerning charges for excess water, the general effect of which was that Mr. Justice Lowe said that the Board was not entitled to recover.

Mr. Byrnes.—Do you think the amendments proposed in the Bill will weaken the position of the Board?

Mr. Banks.—If the proposal is to make the title paramount to all statutory charges other than those which would be required to be shown on a rate certificate, I think there is some doubt as to the effect it would have on the Board's water rates.

Mr. Thomas.—Has the Board any differential rate of charge with respect to the septic-tank system as against the ordinary sewerage system?

Mr. Banks.—Apparently, Mr. Thomas has in mind the installation at Kew, which is an integral part of the Board's sewerage system. Properties serviced by that plant are in the same category as those serviced in the normal way, where the sewage is eventually conveyed to Werribee. Actually, the plant at Kew is a treatment works, similar to that installed at Braeside.

Mr. Brennan.—Can you state the area serviced, first, by the Board's general sewerage system; secondly, by the so-called septic-tank system; and, thirdly, the remaining area which is untreated?

Mr. Banks.—I have insufficient information in my possession for it to be of any value, but, if Mr. Brennan is interested, I can obtain the requisite figures.

Mr. Pettiona.—Would the charge for the supply of excess water by the Board produce much revenue?

Mr. Banks.—That charge used to produce considerable revenue, but the Board expects the charge to yield less revenue in future because of the increased quantities of water that consumers will be entitled to use because of increased valuations.

Mr. Thomas.—Concerning municipal valuations, do you receive an annual return from municipalities for the purpose of assessing rate charges?

Mr. Banks.—As a matter of fact, municipal officers write up the Board's books, and the Board pays the municipalities concerned for the services rendered.

Mr. Randles.—Is the Board concerned in any way with water supply or sewerage outside of the metropolitan area?

Mr. Banks.—Generally, no.

The Chairman.—The concern of this Committee is that a certificate can be obtained which will show the outstanding charges against any particular allotment of land and that that certificate will be binding upon the authority that issues it. Mr. Brennan now asks: Are there any other charges, such as those relating to sewerage construction, which the Board is entitled to charge against the land?

Mr. Banks.—Certain works, such as sewerage house connexions and compulsory repairs to water supply and/or sewerage fittings effected by the Board for which the owner is required to pay. Furthermore, it may be necessary for the Board, on behalf of a property-owner, to clear a blockage in a sewerage connexion, under a statutory power that the Board possesses. The charge for that service is regarded as money owing to the Board, as it comes within the same category as sewerage rates and other charges.

Mr. Brennan.—Is there any danger of those extraordinary charges being omitted from an ordinary certificate?

Mr. Ludbrook.—I should say that one of the first duties of a solicitor who is called upon to register a transfer of land is to ensure that he obtains a correct record of all sums of money owing with respect to the allotment concerned.

Mr. Banks.—A number of transfers are handled by real estate agents and private individuals.

Mr. Brennan.—In cases where the scheme has actually been planned and costs assessed, is there any danger of the extraordinary or anticipatory charges being omitted from the ordinary certificate?

Mr. Banks.—Such a danger arises in the period between completion of the work by the Board and the entry of the charge in its books as a debit. However, steps have been taken to reduce the delay involved. There is also the aspect of work carried out by the Board, under instructions from the owner, to be considered.

Mr. Brennan.—Of course, notice of that is given, is it not?

Mr. Banks.—That is so. At present, the Board is issuing, for the benefit of solicitors, information on undischarged orders and similar matters. For example, a solicitor might act for the purchaser of a property in respect of which the Board has issued a notice to the owner requiring renewal of the water service, which is, therefore, outstanding at the time

of sale. For some time it has been the practice of the Board to supply on application particulars of all outstanding orders in respect of a property—for instance, a notice to renew the water service and house-connexion drains—also information on town-planning provisions.

Mr. Brennan.—Are there many cases in which the Board has to take action to recover the cost of carrying out orders?

Mr. Banks.—There are frequent instances of outstanding accounts.

The Chairman.—But to-day it is not often necessary to resort to selling land in order to recover such amounts, is it?

Mr. Banks.—As a general rule, the Board ultimately receives payment without recourse to that power.

Mr. Thomas.—In closely settled industrial areas, where water pipes are subject to corrosion and damage caused by heavy road traffic, at what point does the Board's responsibility end?

Mr. Banks.—At present, the Board's responsibility ends at the mains, and the owner is responsible for upkeep of the pipes into his property. Until a few years ago the Board accepted responsibility up to the meter, but that was discontinued for economic reasons. Now owners must pay for repairs to pipes carrying water under the road from the main to the meter as well as their own system.

Mr. Ludbrook.—I understand that the amount saved by the Board as a result of that change was about £360,000 per annum.

Mr. Banks.—That is so.

Mr. Brennan.—Is it now the policy of the Board to place the mains deeper in the ground?

Mr. Banks.—No. The Board is considering installing copper pipes, which are a little more expensive, because of their success in Sydney, where they have reduced the incidence of burst mains. Until recently, copper was not available for the purpose.

Mr. Thomas.—Do you mean copper-lined pipes?

Mr. Banks.—I do not know the technical details. I have heard a reference to 16-gauge copper.

Mr. McArthur.—Did I understand you to say that the purchaser of a property is not liable at law for excess water charges incurred by the vendor?

Mr. Banks.—There is grave doubt about the position. Some power is given to the Board by section 110 of the Act.

Mr. McArthur.—Generally, the Board attempts to pursue the previous owner for payment of such charges, does it not?

Mr. Banks.—That is so.

Mr. McArthur.—The object of the Committee is to protect the buyer, but I suggest he is already protected at law, because the Board cannot successfully sue him for moneys owing by the vendor.

Mr. Banks.—If a prospective buyer applies to the Board, he is informed of excess water charges due. Then he can make an adjustment in respect of such outstanding charges when making his final payment to the vendor.

Mr. Brennan.—That applies where the liability is already assessed, where the Board has read the meter.

Mr. Banks.—That is so. The Board makes a special reading of the meter where requested to do so.

Mr. McArthur.—The mere knowledge that charges are outstanding does not make the buyer liable.

Mr. Banks.—At least, there is a grave doubt as to whether the Board could sue the new owner for the money.

The Chairman.—On behalf of the Committee, I thank Mr. Banks for his attendance and assistance.

The Committee adjourned.

TUESDAY, 10TH NOVEMBER, 1953.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. Randles.
The Hon. H. C. Ludbrook,	
The Hon. F. M. Thomas.	

Mr. P. Moerlin Fox, representing the Council of the Law Institute of Victoria, was in attendance.

The Chairman.—Mr. Randles raised a question respecting Condition 6, Table A, of the Twenty-Fifth Schedule of the Bill. Mr. Fox will outline the views of the Council on this condition.

Mr. Fox.—Condition 6 of Table A of Schedule 25 provides that a purchaser of land is not to require his vendor to contribute to the cost of a fence erected to divide the land sold from adjoining land owned by the vendor. It also provides that the purchaser is to indemnify the vendor against any claims under the Fences Act made against the vendor by anyone deriving title through the purchaser. The condition is intended to relieve the vendor from the liability imposed by the Fences Act on adjoining owners.

Condition 6 clearly binds the purchaser prior to the land being transferred to him, and the purchaser probably continues to be bound after he takes his transfer, although on one view of the doctrine that the contract becomes merged in the conveyance the condition may then cease to bind him. The effect of the condition as regards a sub-purchaser is a matter of some doubt. If at the time of the sale to the sub-purchaser the purchaser has taken his transfer and has a title in his own name, it would seem that the sub-purchaser will not be bound, though the purchaser may still be bound as a matter of contract. Where the original contract is not yet paid off, and its benefit is assigned to a sub-purchaser, it would seem that the sub-purchaser may be bound by the condition and thus precluded from taking advantage of the provisions of the Fences Act.

Whatever is the correct view of the effect of the condition, the Council of the Law Institute does not favour its retention in Table A. The question of the fairness of the condition was debated by the Council at the time when the Law Institute's own form of contract of sale was being drafted. The view of the Council was that, while most laymen had some understanding of the provisions of the Fences Act, and knew that in general the owner or occupier of a piece of land was entitled to call on the adjoining owner or occupier to contribute to the cost of a dividing fence, few laymen knew of the existence or effect of Condition 6 in Table A. It was felt by the Council that the public in general purchased land in the belief that they would be able to rely on the provisions of the Fences Act, and that since their attention is not directed by anything in the contract to the existence of Condition 6, and need not be so directed, this condition was unfair to purchasers. The Council of the Law Institute considers that the question of contribution to the cost of the erection of a dividing fence should be a matter of conscious bargaining between the parties, and not the subject of a statutory condition of which most laymen are unaware. For this reason, the Law Institute form of contract of sale provides that Condition 6 of Table A shall not apply to the contract. The result is that if a vendor desires to preclude his purchaser from requiring him to contribute to the cost of the erection of a dividing fence, a special condition to that effect must be typed into the contract, where it is not likely to escape the notice of the purchaser.

Mr. Brennan.—Mr. Fox stated that, in the opinion of members of the Law Institute of Victoria, it was unfair that persons might purchase land in ignorance of the fact that they were liable to pay a levy. Is it not equally unfair that, after having quoted a price, vendors of land, who are ignorant of the deletion of the condition discussed, learn that they must pay half the cost of the erection of a fence?

Mr. Fox.—In many instances, the vendor will not be affected either way by this condition. In the example I have furnished, the vendor will be required to pay half the cost of the fence. If the block is subdivided in another way, he may have to pay half the cost of the fences on either side. However, if he subdivides in a certain way, none of the fences concern him, because the condition refers to a fence which divides land sold from that retained by the vendor. He could not be required to pay towards the cost of more than two fences. Mr. Brennan's statement does not alter my view of the fairness or unfairness of the condition. It should be a matter of conscious bargaining, and if the effect of the condition is to increase the price of the land, that result is better than that the purchaser should be disadvantaged by being unaware of the existence of the condition.

Mr. Byrnes.—When Mr. Fox used the expression "conscious bargaining," I assumed he meant that the facts should be clearly understood by both the purchaser and the vendor, and that, if necessary, a clause relating to this subject should be inserted in the contract.

The Chairman.—Yes. Mr. Fox stated that a vendor could scarcely be required to contribute to the cost of more than two or three fences. In a large subdivision, if the vendor sold certain blocks and retained others he might be liable to pay half the cost of a large number of fences.

Mr. Fox.—That situation could arise if the vendor retained blocks in different parts of a subdivision.

The Chairman.—In your view, could the problem be met by the inclusion in a contract of sale of a specific provision which could be directed to the attention of an intending purchaser?

Mr. Fox.—Yes. I produce two forms of contracts of sale which have been used extensively by members of the Law Institute for the last two months.

The Chairman.—The forms are described as the Law Institute copyright conditions of sale, and paragraph (*c*) of clause 4 states that Condition 6 of Table A of the Twenty-fifth Schedule of the Transfer of Land Act and Condition 7 of the Fourth Schedule of the Property Law Act shall be deleted. One form relates to the sale of land on terms and the other to a cash sale.

Mr. Byrnes.—A vendor could protect himself in circumstances envisaged by Mr. Brennan, assuming that a block is divided into many allotments for sale by auction. Condition 6 of Table A could become a condition of the sale, and bidders would be made aware of this fact.

The Chairman.—Mr. Fox has suggested that Condition 6 be removed from Table A, and that if it is intended to protect the vendor in a large subdivision, a specific new condition should be included in the contract of sale. Mr. Fox has pointed out that at present, with the condition in Table A, it would merely be necessary to delete the clause in the contract that Condition 6 shall not apply, and then the purchaser would be liable to pay the cost of the fencing, but he would not realize that fact, because Table A is rarely read or drawn to the attention of a purchaser. The substance of the proposal of the Law Institute on this question is that the condition should be deleted from the statutory conditions, and that if a vendor desires its protection it should be specifically typed or printed in the contract as a special condition of the sale.

Mr. Fox.—That is the contention of the Institute.

Mr. Pettiona.—Mr. Randles has envisaged that a vendor might retain certain selected blocks in a subdivision in order to evade the liability to pay part of the cost of fences and later, when the value of the land has become enhanced, sell those blocks at a higher price than would have been realized for them at the subdivisional sale.

Mr. Fox.—Such a circumstance would arise, and it could operate unfairly on purchasers.

Mr. Randles.—If a vendor sold every second block, he could escape liability for payments towards the cost of two or even three fences.

The Chairman.—If Condition 6 of Table A of the Twenty-fifth Schedule were omitted, a similar condition could be included in a contract of sale, if desired.

Mr. Fox.—That statement is true.

The Chairman.—If such a condition were included in a contract, intending purchasers would probably continue to buy land, but the provision would be brought to their attention.

Mr. Fox.—Yes. This is the crux of the matter.

Mr. Brennan.—If a fence is erected, it is for the immediate advantage of the purchaser; he cuts off his land from that of the vendor by carrying out an act of proprietorship, namely, by erecting a fence.

Mr. Fox.—I do not agree with that view. The erection of a fence is for the benefit of both parties.

Mr. Byrnes.—I do not consider that that is so in the case of rural land; the erection of a fence might be to the advantage of the vendor, but not of the purchaser.

Mr. Fox.—I appreciate the point.

Mr. Byrnes.—The vendor might insist that the purchaser fence his land, but the purchaser might reply that he would do so in his own good time.

Mr. Thomas.—Is it not a generally accepted principle that the adjoining owners shall contribute to the cost of a dividing fence?

Mr. Fox.—I should think it is, but Table A does not necessarily say so, when the adjoining land is owned by the vendor. This principle applies even under Table A when blocks are purchased by different persons. Condition 6 of Table A applies only when the vendor retains adjoining land. If all the blocks in a subdivision are sold, this condition does not operate, and each purchaser must contribute half the cost of the fencing. The condition is only for the protection of the vendor concerning land which he retains. The problem is easy to understand if we consider a simple subdivision in which the vendor lives in a house on a large block of land, and decides to sell part of the land. By the terms of Condition 6 of Table A of the Twenty-fifth Schedule, the purchaser is required to pay the whole cost of the dividing fence.

Mr. Ludbrook.—An asset is thereby created for the vendor.

Mr. Fox.—In the suburbs, such a fence is as much for the benefit of one person as the other, and each should bear part of the cost.

Mr. Thomas.—Mr. Fox is definitely of the opinion that Condition 6 of Table A should be omitted.

The Chairman.—Yes; that is the substance of his evidence. With regard to Table A generally, I direct your attention, Mr. Fox, to the report already made by the Committee in 1951 relating to Table A generally. Paragraph 33 of the report reads—

> Clause 320 provides that the conditions of sale in the Twenty-fifth Schedule—Table A—may be adopted by reference. The Committee consider that Table A should be amended to clarify the postion where default is made in the payment of purchase money, and to provide that, in the event of breach, a purchaser shall have a reasonable time after such breach to remedy the default before rescission takes place. Consideration should also be given to the amendment of Table A to conform to the current forms of contract in general use.

Is that recommendation sufficient to cover your Council's general views on Table A.

Mr. Fox.—Yes.

The Chairman.—No doubt, the Committee will reconsider the Bill after it has been presented to Parliament next year, and consideration could then be given to any specific recommendation of the Law Institute concerning Table A. When the Bill is referred back to the Committee, there will not be a long investigation; therefore, the Law Institute should make any subsequent investigations and recommendations as soon as convenient.

Mr. Fox.—I shall direct the attention of the Council to that question.

The Committee adjourned.

APPENDICES

COMMENTS BY MR. H. D. WISEMAN ON ARTICLES BY MR. T. B. F. RUOFF IN AUSTRALIAN LAW JOURNAL

APPENDIX A.

PART I.

I have been asked to consider the opinions of Mr. Ruoff of the English Land Registry contained in a series of articles published in the *Australian Law Journal* in volume 26 at pages 118, 162, 194 and a further article on the New Zealand system at page 228.

I am not very much impressed with reference to "A Mirror Principle" and to "A Curtain Principle." Metaphors are apt to mislead and I would prefer to consider the Act or the Bill as an integrated whole. My objection to Mr. Ruoff's approach is illustrated in his next remark (page 118, column 2):—"To clutter the picture with trusts and 'obscure equities' . . . is an evil and is forbidden." *Wolfsen* v. *R.-G.* (*N.S.W.*), 1934, 51 C.L.R., at page 308. This is no doubt a reference to such a provision as section 55 of the 1928 Act (clause 81 (1) of the Bill). The difficulty about this statement is that the Act does provide for a caveat to protect "an estate or interest in land," and restrictive covenants are also noted on the register.

This matter goes, I feel, far deeper than is suggested by Mr. Ruoff. The truth I think is that the original framer of the Act hoped to eliminate equities from the law altogether, hence clause 81 (1). He found, however, that the prejudices in favour of equities were too strong. Hence the provisions as to caveats and the other provisions for the protection of trusts. Consequently, as soon as the Act came before the Courts, equities were recognized and flourished as formerly. At the moment I am not concerned whether this is good or bad, but I feel that a comprehension of this view is fundamental. The Act is a compromise of conflicting principles and the Courts have confirmed it. This I think is the basis of much of the conflicting opinion, judicial and other, concerning the rights arising under or outside of the Act.

His use of the term "indefeasible" at page 118, column 2, recalls that this word has been the cause of care, overdue perhaps in the Titles Office to ensure that the wrong person will not secure a title of this strength at the possible expense of the assurance fund. One might also recall that it is not the transferor who gives an indefeasible title, but the Act. This is a matter which is linked up with the administration of the assurance fund and will be dealt with later.

The "overriding interests" which he refers to at page 119, column 1, are comprised in clause 104 of the Bill and are also referred to in clause 224 (1) of the Bill.

I agree with his statement at page 119 that "It is broadly true to say that if a transaction would be void or voidable under the general law, the mere fact of registering a transfer will not affect the personal equities subsisting between the parties to it" and that it is indisputable "that many inconvenient breaches of principle occur." This is another illustration of the Act being a compromise of conflicting views.

At page 119, column 2, first paragraph, he refers to "the baneful influence of overriding statutes," i.e., those giving a charge over land, &c. An attempt to overcome this is contained in clause 224 (1) of the Bill. It may be necessary to introduce a Bill along the lines of Part V. of the *Land Charges Act* 1925, 15 Geo. 9, V., cl. 22. Unfortunately, I fear that there is an element of conflict between Government Departments given power to acquire charges or rights over land without registration and the operation of the Transfer of Land Act. The provisions of section 59 (2) of the *English Land Registration Act* 1925 are not completely satisfactory, as it seems to leave the unregistered charge with its priority, even though its registration has been deferred. Section 59 (2) provides—"(2) Registration of a land charge (other than a local land charge) shall, where the land affected is registered, be effected only by registering under this Act a notice, caution or other prescribed entry: Provided that before a land charge including a local land charge affecting registered land (being a charge to secure money) is realized, it shall be registered and take effect as a registered charge under this Act in the prescribed manner, without prejudice to the priority conferred by the land charge." I think in principle that this is wrong. I think the statutory land charge should take priority only as from the time when it is registered. I do not think that the English provision is improved by section 34 of the *Land Registration Act* 1925 which provides "(1) Subject to any entry on the register to the contrary, the proprietor of a charge shall have and may exercise all the powers conferred by law on the owner of a legal mortgage," as sub-section (2) of that section uses the expression "Subject to any entry to the contrary on the register and subject to the right of any persons appearing on the register to be prior incumbrancers the proprietor of a charge may . . . " do the things prescribed. The form of expression used in sub-section (2) I agree with.

I agree with Mr. Ruoff's suggestion at the top of page 120, column 1, that the Board or Department for whose benefit the provisions as to charges were made must alone suffer. I also agree that "there is an advantage to be gained if the head of each titles office diligently peruses all draft bills and draws the attention of his ministerial head to provisions that may conflict with established Torrens principles,". This would not have the effect of "muzzling future Parliaments" as it requires the Department merely to comply with the provisions imposed by the Transfer of Land Act. See *The Commonwealth* v. *The State of New South Wales* (1923), 33 C.L.R. 1, and "*The Stamp Duty Case*" (1918), 25 C.L.R., at page 340.

I agree that "unpaid rates and taxes" (clause 104, proviso (*e*)) need not be registered, but that once land has been acquired or blanketed by a public authority this should appear on the register book. This seems to have been provided for in New South Wales by the *Conveyancing Acts* 1919-1943 (New South Wales), section 196A, and the *Real Property Act* 1900 (New South Wales), section 346A. Restraints on disposition of whatever nature should be registered as should a charge on any or *all* lands of any person.

I do not think it is necessary to have a register of causes, writs and orders such as is created by sections 185 *et seq.* of the *Conveyancing Acts* 1919-1943 (New South Wales). Clause 318 deals with "*lis pendens*." Section 205 of the Property Law Act makes orders of the Court conclusive. Vesting orders are dealt with by clause 325.

His reference to adverse possession has been solved so far as Victoria is concerned by Part V. of the Bill—clauses 118 *et seq.*—on the basis that it is preferable that land should be "owned" by some person and that the title should not be for ever divorced from possession.

PART II.

I think that both in the transfer and in the certificate of title simplicity of dealing accompanied by simplicity of form and expression are essential (26 A.L.J., page 162). An attempt to achieve even greater simplicity has been made by the proposed alteration of the present section 121 repealing reference to a statement of the true consideration. This carries with it the corresponding simplification of the form in the Eighth Schedule. I would think it rare that an estate less than the fee simple is transferred. We still retain joint tenancies and tenancies in common which were abolished in England in 1925 by sections 34 *et seq.* of the *Law of Property Act* 1925. His reference at page 162, column 1, to restrictive covenants prompts the suggestion that these are rather anacronisms in view of the provisions for town planning contained in the *Town and Country Planning Acts* 1944-1949.

I agree that dead registrations should be expunged from the register.

I also think that his suggestion on page 163, column 1, should if possible be adopted, namely, that it should be possible to obtain a complete photostatic copy of the

register. The principle which he here describes appears simple and effective. A further advantage, as he points out, is that there is no need for a searcher to make a personal attendance. It would also eliminate the possibility of certificates becoming misplaced when being produced for the use of the public.

His reference to plans of subdivision on page 163, column 2, prompts the suggestion that before a transfer is accepted at the Office of Titles containing a reference to a plan of subdivision, the plan of subdivision referred to should have been approved by the Titles Office. The present practice of allowing transfers to be lodged before a plan is approved causes such transfers and all dealings dependent on them to become "stopped cases." Objections may be raised by prospective vendors who, no doubt, would claim that their land being under the Act must be transferable in accordance with its provisions and that they cannot wait while a plan is approved. The answer would seem to be that no great harm would be caused to the vendor or purchaser if the delay were caused prior to the title being lodged rather than after it were lodged; that either the vendor could have foreseen the possibility of his wanting to subdivide, or if he did not or could not that it is his responsibility to get the plan approved before selling or in the last resort to describe the land by metes and bounds.

I agree with what he says at page 163 about the adoption of tested business methods (which are merely applied common-sense) and think as far as possible that they should be applied. At page 163 Mr. Ruoff refers to the "new proposals for indexing names in Sydney." I have written to the Registrar-General in Sydney who has supplied me with information as to the system proposed. This information is available to the Statute Law Revision Committee.

At page 164, Mr. Ruoff refers to transmission applications. As I understand the term "transmission application" it refers to an application to be registered by a person claiming under operation of law, the most frequent being an application by an executor to be registered as proprietor. There can be very little difficulty at this stage, because the application would be based on the grant of probate. I would imagine that in Victoria the production of the probate would always be required. The next stage is one where, I could imagine, difficulties might arise. That is where the executor who has been registered as proprietor "as executor" desires to sell. I would have thought that the proper attitude was that taken in South Australia where "the Registrar treats his duties in this respect as being purely unministerial." *Droop* v. *Colonial Bank* (1881), 7 V.L.R. 71, appears to support this view. See also *Burke* v. *Dawes* (1937-8), 59 C.L.R. 1. This procedure appears to have effect in England by the Land Registration Rules 1925, rule 170, by which he is bound to assume that the personal representative is acting correctly and within his powers. If it should be considered desirable to require a certificate of correctness by a solicitor for a personal representative proposing to transfer or by the personal representative himself (see pages 164-5), this could be introduced by a rule. I would think that it would take the matter very little further.

At page 165, column 1, Mr. Ruoff criticizes clause 240 of the Bill. The criticism seems curiously inept as he says: "If these suggestions become law, there will be direct conflict with a fundamental Torrens principle because interests which ought to be kept behind the curtain will be given undue prominence." I have already pointed out that the Transfer of Land Act contains a conflict within itself by providing by section 55 that "The Registrar shall not enter in the register book notice of any trust . . . " and by section 183 that "any beneficiary or other person claiming any estate or interest in land . . . may lodge a caveat." These two provisions are logically irreconcilable. Where the matter first came before the Courts, instead of perpetuating the system of unregistered equities, they could with quite as much justification have said that the register is everything and the equity nothing and it would at least have given some effect to section 179. Moreover, who says that these are "interests which ought to be kept behind the curtain?" Section 183 says quite clearly that a caveat may be lodged to protect them. And why should they not be given "undue prominence?"—whatever "undue" may mean in this collocation. If the owner of the interest chooses to lodge a caveat under section 183, is it then given undue prominence?" It is simply noted on the register.

I think it would be correct to describe it as the first effective attempt to get rid of vague and shadowy equities which are apt to emerge from their darkness long after the evidence to support or rebut them has vanished or the memory of witnesses has become dulled by the lapse of time.

I can understand it being said that the "slow and the simple" will be deprived of their equities by the "fast and the smart." But is it true? It conforms to the equitable era in that equity assists the vigilant and not the sleeping. Since the time of Charles II., contracts relating to land have to be in writing or manifested in writing signed by the party to be charged therewith and express trusts of land have to be declared in writing.

Some criticism appears to be levelled at the clause because it is said that "the proposals amount to an application to realty of the well-known rule in *Dearle* v. *Hall* (1823), 3 Russ. 1." If this be a criticism of the rule in *Dearle* v. *Hall*, it is the first one I have heard. If it be said that the rule in *Dearle* v. *Hall* should not be extended to realty, it may be answered that since 1872 in Victoria there has been a tendency to assimilate the rules of realty to the rules of personalty, at least as far as the lands of deceased persons are concerned, and that a similar tendency has been apparent in England since 1925.

I can understand it being said that this will lead to "excessive caveating." I would think that it would not. If a person imagines he has an equity in certain land, he will have to determine whether he will lodge a caveat. If his claim is quite unsubstantial, he will know that an application will be made to the Court, or, if he be given authority, to the Commissioner, to remove it. This will involve him in costs. If he is a man of straw, it will certainly cause annoyance, but exactly the same thing could happen to-day, but the answer is it does not happen.

At page 165, column 2, Mr. Ruoff says: "Yet, throughout Australia, there is an uncomfortable feeling that not all Her Majesty's judges have the same wealth of knowledge and the same practical grasp of the implications of the Torrens system as of other branches of law relating to land. This impression is not unknown in England." This, I am afraid, is unhappily true. But I think it leads to this conclusion, that if one strong man could be found, his position should be that of Commissioner of Titles with considerable powers over land conferred upon him, equivalent in status to a Supreme Court Judge. He should be able to deal with actions for the removal of caveats vesting orders which he can now deal with, but does not, removal of restrictive covenants, if they be perpetuated and so forth—in short, be competent to try any Supreme Court action relating to land.

This leads to the observation that much of the confusion occurring in the Titles Office originates in the misconception that matters relating to dealings in land necessarily involve questions of equity. Primarily they are questions of common law. This misconception, years ago, led to the appointment of an eminent equity lawyer as Commissioner, and I think it is reasonably correct to say that his desire to perpetuate and apply equitable rules in the Titles Office instead of administering common law originated most of the troubles in that office. In short, he looked in the wrong direction.

Part III.

"The Insurance Principle," page 194. With what Mr. Ruoff says as to the insurance principle, I think I can say that I am in complete accord. It is obviously reasonable that the methods to be applied should be, I would not say those "of an insurance business," but those which an insurance business would apply if it desired to act fairly between the parties acting upon the spirit and not relying upon the letter of the agreement.

A realistic approach should be applied and where a fair business risk, and perhaps, where even less than a fair business risk, offers it should be accepted. This will depend on various elements of the risk, such as the value of the property, the type of defect in the title, the amount involved should a claim be made, the chance that time will cure the defect, and so on. Taking a long view of legal rights, it is reasonably true to say that time cures most things. But of course it does not and cannot cure all.

There are two matters to be considered. One is that if it becomes generally believed that "anything will do for the Titles Office" there are bound to be some members of the profession who "will risk it" and see if they can get away with it. This could be controlled by the application of the loading principle contained in section 44 of the Act to applications to bring defective titles under the Act (now contained in clause 46 of the Bill), and by clause 295 of the Bill (formerly section 242 of the Act of 1928).

The other objection is departmental. It has been suggested that too great freedom with the assurance fund would or might lead to indifference to defects by members of the staff. This, if it exists, would seem to be a matter of internal discipline.

An attempt has been made to liberalize payments out of the assurance fund by clause 301. It is considered that this has substantially extended the field in which claims can be made. Since this clause was drafted, the *Transfer*

of Land (Forgeries) Act 1951 has been enacted to overcome the injustice which arose from the set of transactions disclosed in *Davies* v. *Ryan* (1951), V.L.R. 283. The facts were that Davies was registered as proprietor. Clayton stole his certificate of title and forged his signature to a transfer to Ryan, who became registered through this forgery. Ryan sold the land back to Clayton (unregistered) and Clayton resold the land to Ford (unregistered). In this state of affairs Davies sued to be restored to the register book. Ford's position is the one with which we are concerned. It was held that Ford could not recover from the assurance fund either (1) under section 246 of the *Transfer of Land Act* 1928, because he was not "deprived" of any land by reason of the matters referred to in that section, or (2) under section 2 of the *Transfer of Land (Forgeries) Act* 1939, because he could not show that he claimed an estate or interest in land "by virtue of the registration" of a forged instrument, because when the transfer was registered he acquired no rights under it, not having contracted with the registered proprietor. Had he contracted with Ryan, the registered proprietor, he might have recovered under that Act.

To remedy this position, the *Transfer of Land (Forgeries) Act* 1951 was passed. The words in this Act are "on the strength of" not "by virtue of" and the Act extends relief to meet the above case.

In my opinion, clause 301 is not satisfactory. Sub-clause (1) (*f*) is taken from section 252 of the *Transfer of Land Act* 1928. Had section 252 gone as far as clause 301 (1) (*f*) is required to go, there would have been no need for the *Transfer of Land (Forgeries) Acts* of 1939 and 1951.

In my opinion, further sub-clauses should be added to clause 301. I think the object of the assurance fund should be to enable any person, who "in consequence of" some action of the Commissioner or Registrar or in consequence of the state of the register book upon which he has acted, to be compensated for any loss sustained. The only question which should be open is one of fact, namely, is his loss consequential on such act or state of the register, in the sense that had the register not been as it was, he would not have sustained any loss. For example, in *Davies* v. *Ryan*, Ford acted as he did because of the forged entry in the register book. Had he not looked at the register at all, but simply entered into a contract with Clayton, it would not seem reasonable for him to be compensated.

The rule in *Gibbs* v. *Messer* (1891) A.C. at page 355 that payment from the assurance fund is limited to persons actually dealing with a proprietor whose name is upon the register is outmoded and should be abolished. See pages 231-2.

I also agree with Mr. Ruoff's assessment of the qualifications required for the head of a titles office (page 196, column 1).

I agree also that the insurance principle should be applied to survey and mapping work.

I agree also that in Victoria, and especially in city areas, undue emphasis is placed on measurement as contrasted with actual occupation.

Part IV.

The System in New Zealand.

The comments on *South-Eastern Drainage Board (S.A.)* v. *Savings Bank of South Australia* (1939), 62 C.L.R. 603, and the *New Zealand Statutory Land Charges Registration Act* 1928-1930 emphasize the necessity for some such provision as that in clause 224, which should go further and provide for the postponement of any rights acquired by a public authority where they have failed to lodge a caveat, or lodged it late. In the latter case, the rights of the public authority should be postponed to any subsequent equity protected by caveat. The position of Acts which give a "first charge" to the public authority require consideration. If lodged before any caveat protecting a subsequent equity, they should carry their prescribed statutory priority. If, however, a caveat is lodged to protect a subsequent equity before a caveat is lodged to protect the statutory interest, it, I think, would have to be postponed to *all* the interests protected by prior caveats. For example, if you had (1) a mortgage, (2) a statutory first charge, (3) a second mortgage, in that order of time with caveats lodged promptly in that order, your order of preference would, under the present system, be: (2), (1), (3). If, however, the caveat to protect (2) were lodged after the caveat in (3), the times of creation of rights being the same, the order of priority would be (1), (3), (2). As (3) has always to come after (1), with or without (2) intervening, this would seem to be the only combination left, if (2) is to be penalized for the late lodgment of its caveat.

SUMMARY.

Part I.

1. The only overriding interests which should be permitted are those contained in clause 104.
2. (*a*) All other statutory rights and charges should be noted on the register. If this is not practicable, a "Lands Charges Act" should be passed: Cf. *Land Charges Act* (1925), Eng.; *Conveyancing Act* 1919-43 (N.S.W.), section 196A; *Real Property Act* 1900 (N.S.W.), section 46A;
   (*b*) Such rights and charges should take effect from the time of such notification only. In default of, or until notification, other rights noted on the register take precedence.
3. There should be no further register of causes, writs and orders.
4. Adverse possession should remain in its present form.

Part II.

1. Simplicity in dealings essential.
2. Register book should be kept clear by expunging dead registrations.
3. Introduction of English practice of supplying photostatic copy of register book should be introduced.
4. Plans of subdivision should be complete before being lodged for acceptance at the Titles Office.
5. Transmission applications should be registered without requisition by Titles Office.
6. The introduction of a certificate of correctness would seem unnecessary.
7. Clause 240 of Bill should stand.
8. The position of Commissioner of Titles should be filled by an experienced lawyer invested with ample powers.
9. The Titles Office should administer common law—not equity.

Part III.

1. Insurance principle should be applied and extended—
   (*a*) Contributions to assurance fund could be required;
   (*b*) Discipline of staff could be applied.
2. Payments from assurance fund should be liberalized.
3. Clause 301 should be extended.
4. Persons relying on register should be entitled to compensation even though registered proprietor is a myth. This abolishes rule in *Gibbs* v. *Wesser* (1891), A.C. 248.

Part IV.

1. Clause 224 of Bill should be extended.

26th February, 1953.

APPENDIX B.

Memorandum by Mr. W. J. Taylor, Registrar of Titles, *re* Caveat Provisions.

As requested, I forward draft copies of clause 224 giving effect to the suggestion made to your committee whereby a notice on the title will warn searchers that the land is subject to a statutory charge or is in process of being acquired by the Crown or a public authority.

As you well know, there are many variations of the Lands Compensation Act and the diverse methods of compulsory acquisition and statutory vesting do not simplify the drafting of an appropriate clause. A few examples may illustrate this point and assist in the interpretation of the draft—

1. Section 286 of the *Land Act* 1928 covers many acquisitions by the Government, e.g., Education Department, &c. The Crown through the Minister *resumes* the land by *Gazette* notice, &c. No notice is necessarily given to the owner.
2. By section 20 of the *Country Roads Act* 1928, an order is published in the *Gazette* and the Board can immediately take the land. (In practice, a notice is, I believe, served on the owner.)
3. By the Soldier Settlement Acts (Nos. 5107 and 5438), the land vests in the Crown after publication of the second *Gazette* notice.
4. Section 75 of the Hospitals and Charities Act makes provision for resumption on preliminary certificate by the Minister and approval of Governor in Council.

Sub-clause (1) provides in general form that a notification must be given and sub-clause (2) sets out when the notification should be lodged at the Titles Office. The addition of the words "or any interest therein" to sub-clause (1) is intended to cover easements.

In lieu of the liability to pay compensation on failure to lodge a notification, it is provided in sub-clause (1) that, in default of lodgment of the notification, persons dealing with the proprietor are not affected by notice of the acquisition. This is consistent with the Torrens system and in particular clause 228, and should compel the authorities to lodge the notification.

A short form of notice will have to be prescribed which will require particulars of the relative (the present owner) title and if a lot on a plan of subdivision, this must also be stated in order to surmount administrative difficulties in issuing new titles.

Sub-clause (2) of clause 224 will be deleted from the Bill as redundant (see clauses 218 to 223) and sub-clause (3) should, I suggest, also be deleted as the required notification will be sufficient protection to persons dealing with the land.

I have perused Part VIII., caveat section of the Bill, and have amended the clauses in ink. A short explanatory note as to the amendments is attached to the amended clauses.

I trust that clause 240 and, with it, clause 81 will be dropped. The right to lodge a caveat is not limited by other caveat provisions and on an average about 50 caveats are lodged daily. A very good substitute for clause 240 would be prompt registration in this office.

PROPOSED NEW CLAUSE 224.

224. (1) Whenever any acquiring authority or the Crown proposes to acquire compulsorily or resume any land under the operation of this Act or any interest therein, notification in the prescribed form of such intention shall be lodged with the Registrar at the time and in the manner provided in sub-section (2) of this section and in default of such notification being so lodged the proposed acquisition or resumption shall not affect any person who contracts or deals with the proprietor of the land and has no notice actual or constructive of the proposed acquisition or resumption.

(2) (*a*) If the Victorian or Commonwealth Act under which the acquisition or resumption will be made provides that any notice (either individual or general) of intention of such acquisition or resumption is to be served the notification required by sub-section (1) of this section shall be lodged with the Registrar forthwith upon service of such notice of intention being given.

(*b*) In all other cases to which this section applies such notification shall be lodged with the Registrar forthwith after the acquisition or resumption becomes effective.

(3) Where in pursuance of any Victorian or Commonwealth Act a charge on land or any other right in the nature of a charge affecting land is acquired, forthwith upon such charge or right being acquired there shall be lodged with the Registrar a notification specifying the volume and folium of the relevant grant or certificate of tiltle and the Crown description of the land affected by such charge or right and in default of such notification being so lodged the charge or right shall not affect any person who contracts or deals with the proprietor of the land and has no notice actual or constructive of the charge or right.

(4) The Registrar is hereby directed to make on each such grant or certificate of title an appropriate endorsement of such acquisition, resumption, charge or other right as the case may require.

(5) The provisions of this section shall not apply to any charge arising from the non-payment of any rates or taxes and shall not apply to rates or irrigation charges of which a certificate may be obtained under section 334 of the *Water Act* 1928, but save as aforesaid shall bind the Crown.

PROPOSED AMENDMENTS.

PART VIII.—CAVEATS.

Clause 231, sub-clause (1).—Words "or his agent" added—see also clause 236 (I suggested that as a solicitor could withdraw a caveat he should be permitted to consent); sub-clauses (4) and (5) deleted. The address appointed for service of notice in the caveat should be sufficient. The posting of two notices, one to G.P.O., perhaps, should be avoided.

Clause 232, sub-clause (2).—The exception applies to transmission applications (applications by executors, &c.) and survivorship applications. There is, in effect, no change in ownership of the land, but if caveator does not consent, his caveat lapses. Notice will be sent, but caveat will be kept alive.

Clause 234, sub-clause (1).—Thirty days substituted as desired by the Committee.

Clause 236.—Words "or his agent" added to permit of solicitor consenting on behalf of the caveator. He, in many cases, has signed the caveat on his behalf. The term "instrument" has a defined meaning under clause 4 and *all dealings are not included in that term.* It is therefore important to correct this, particularly in the proviso. The term "dealing" should possibly be defined to cover not only "instruments," but various other registrable documents.

Sixteenth Schedule.—Amendment requiring particulars of the volume and folium of the relative title will preclude dealing being stopped for caveator to supply same. In view of 30-day period as to lapsing, address in Victoria should be given.

25th August, 1953.

APPENDIX C.

MEMORANDUM BY MR. ANDREW GARRAN, ASSISTANT PARLIAMENTARY DRAFTSMAN, IN RESPECT OF CLAUSE 224.

I submit as requested a précis of the evidence I gave before the Statute Law Revision Committee on the 23rd September, 1953, in respect of clause 224 of the Transfer of Land Bill, together with suggested drafts relating thereto.

Clause 224 is new to Victorian legislation. It purports to be taken from a New South Wales Act, but actually this is so only so far as sub-section (2) is concerned. That sub-section is appropriate to New South Wales administration but not to Victorian. If translated into terms of Victorian administration, it adds nothing to the preceding clauses of the division which represent the Victorian *Transfer of Land (Acquisitions) Act* 1948. That 1948 Act was drafted after careful discussion with interested parties and is, despite some minor difficulties, working satisfactorily. It applies to all land, whether previously under the Transfer of Land Acts or not. Sub-section (1) of clause 224 introduces a new concept of compulsory caveats and cuts across the Victorian administration.

It is suggested that clause 224 be abandoned. But this requires attention to the matters which gave rise to its inclusion in the Bill. These are—

(*a*) Effective registration of compulsory acquisitions by acquiring authorities.

This is covered sufficiently by clauses 218 to 223 of the Bill which, as stated above, reproduced the *Transfer of Land (Acquisitions) Act* 1948. However, it may be considered desirable to make one small amendment in the Bill, viz., clause 219, page 64, line 37, after "authority" insert "forthwith after the vesting of the land" or words to that effect.

(*b*) Notification of notice of intention to acquire compulsorily.

The scope within which action can be taken on this matter is limited—

(i) These notices create no "interest" in land, but are merely preliminary to a possible dealing in land.

(ii) Action taken cannot effectively cover land which is not under the Transfer of Land Acts.

It is considered that the most that can be done is to require notification to be given to the Registrar, who will then make the information available by stamping affected titles appropriately or in the case of a large "blanket area" by displaying a map showing streets, numbers and position of plans of subdivision and lots thereon. The following is a suggested draft clause to meet the matter.

A. (1) Whenever any acquiring authority proposes to acquire compulsorily any land under the operation of this Act or any interest therein, if the Act under which the acquisition will be made provides that any notice (whether individual or general) of intention so to acquire is to be served, notification in the prescribed form of such intention shall be lodged with the Registrar forthwith upon service of such notice of intention.

(2) The Registrar shall appropriately endorse each grant or certificate of title concerned or (where this is not practicable) shall by displaying a map or other appropriate means make such information available to persons searching titles.

(*c*) Notification of charges.

This is a question of determining which charges the public must search for itself at the office of the authority concerned, and which

charges will fall before the paramount estate of a registered proprietor who has no notice. The Committee, it is understood, wish to extend paragraph (*e*) of clause 104 of the Bill to cover charges under the Water Acts and Local Government Acts. This could be done by redrafting paragraph (*e*) to read as follows:—

(*e*) any unpaid rates and taxes, and also any other charges which can be discovered from a certificate issued under section 385 of the *Local Government Act* 1946 or under section 334 of the *Water Act* 1928.

It may also be considered advisable to strengthen the introductory words of clause 104 to read as follows:—

Notwithstanding anything in any Act and notwithstanding the existence in any other person of any estate or interest, whether derived by grant from Her Majesty or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in cases of fraud or in relation to any encumbrance as to which at the time of the acquisition of the estate or interest he had notice, hold the same . . .

It may be that some alteration should also be made to the Local Government Acts and Water Acts to overcome the possible application of the dictum of Irvine, L. *J.*, in *President of the Shire of Braybrook* v. *Robinson*, 1920 V.L.R., p. 552. Further, the following clause is suggested to provide a suitable means whereby statutory authorities may give notice of charges other than those referred to in paragraph (*e*) of clause 104 as redrafted.

B. (1) Where in pursuance of any Act a charge on land or any other right in the nature of a charge affecting land is acquired (other than a rate tax or charge referred to in paragraph (*e*) of section one hundred and four of this Act) upon such charge or right being acquired the authority concerned may lodge with the Registrar a notification specifying the volume and folium of the grant or certificate of title and the Crown description of the land affected by such charge or right.

(2) The Registrar may make on each such grant or certificate of title an appropriate endorsement of such charge or other right as the case requires.

29th September, 1953.

APPENDIX D.

MEMORANDUM BY MR. W. J. TAYLOR, REGISTRAR OF TITLES.

Any departures from simplicity, which should be the predominant feature of the Torrens System, should be avoided.

Clause 4 of the Bill includes in the definition of an "Instrument" a discharge of mortgage or charge and a surrender of lease or sub-lease. These dealings are according to the Explanatory Paper, considered to be of sufficient importance to require attesting by a "qualified" witness in like manner as transfers, mortgages, &c.

In consequence, a discharge of mortgage can only be registered by entering a memorial on the title and on the mortgage and by endorsing a certificate on the discharge—see clauses 77, 84, and 85, which prescribe this procedure. The memorial on the title would not necessarily be immediately underneath the entry of the mortgage on the title, as there may be several intervening endorsements. This would be an antiqated procedure, although still followed in New South Wales and, apart from inconveniencing persons searching titles, would cause a tremendous amount of extra endorsing work. The office deals with over 20,000 discharges each year.

The present Act contains no directions governing the mode of registration of a discharge of mortgage. The word "Discharged" is stamped in red ink obliquely over the entry of the mortgage on the title and on the memorial on the back of the mortgage, and the date is added. Nothing is endorsed on the discharge. This is speedy and facilitates searching. It cancels the mortgage endorsement and takes up no extra space on the title.

The wishes of the sub-committee which drew up the original draft Bill can, however, be met as to the desirability of qualified persons witnessing discharges, &c., by deleting the terms in question—discharge of mortgage, &c.—from clause 4 and inserting them in clause 243 (8) after the words "power of attorney". Such dealings will then be "instruments" within the meaning of clause 243 only, which provides for the attestation of such instruments by a qualified witness.

I have just referred to an extension of the directions by the legislature to the Registrar of the manner in which he must carry out some purely administrative act. Clause 84 sets out how a transfer, mortgage, &c., must be registered by prescribing the contents of the memorial.

Last year, I showed this Committee a much shorter and simpler method than that one then in use, of registering transfers as to part. It omits certain particulars which, although surplusage, are required by the section from which clause 84 is copied.

I respectfully suggest that clause 84 be amended to accord with the provisions of section 34 of the Real Property Act, Queensland, which require that the memorial of registration should only contain apart from the time of the production of the instrument for registration "such other particulars as the Registrar may direct". This amendment could assist the administration of the office by leaving the way open for improved methods of registration.

Additional provisions are required to permit—

(*a*) the discharge of a mortgage to be effected by the Registrar where the registered proprietor has paid all principal and interest moneys, and holds the duplicate mortgage (if any) and duplicate title, but a formal discharge is unobtainable owing to the death of the mortgagee, or his whereabouts being unknown, and

(*b*) cancellation of a mortgage in respect of which no payments have been made or acknowledgments given by the mortgagor for fifteen years and upwards and under which the rights of the mortgagee are statute-barred by section 304 of the *Property Law Act* 1928. The provisions would also require to cover the issue of a new duplicate title subject to satisfactory proofs.

Sections 148 and 148A of the Real Property Act of South Australia deal with both the above matters.

The only method under our Act is for the person who is already the registered proprietor to apply under section 87 for a vesting order based on adverse possession against the mortgagee. This is a very round-about and costly method.

A plan of survey must be furnished. The applicant having supplied proofs of possession, evidence by disinterested persons and the rate collector, eventually receives a title which is a replica of his earlier title save that the mortgage is not shown thereon. Costs could be between £60 or £100.

It is desirable that particulars of the registered proprietor should agree on both original and duplicate titles. In South Australia this practice is strictly followed.

Here, it is not necessary to produce duplicate title, mortgage, &c., in connexion with transmission applications (entering executors or administrators as proprietors). The direction in clause 210 to enter a memorandum in the register book refers to the original title or mortgage only (see clause 73 as to what constitutes the register book).

There should be inserted in line 6 of clause 210 after the word "book", the following—"and on the duplicate grant or certificate of title" and the expression "when produced for any purpose" should be deleted. (See clause 281, lines 16 and 17.)

This will ensure that all changes of ownership endorsed on original titles and instruments will also be shown on the duplicates thereof.

Clauses 134 to 138 provide that abutting owners or registered proprietors whose land has a right-of-way over a road forming a cul-de-sac are deemed to be owners in fee-simple in equity thereof.

These owners or proprietors may apply for the issue to them of a certificate of title freed from the easements of rights-of-way. Compensation as determined by the Commissioner must, however, be paid to the owner of the cul-de-sac or, if he cannot be found, it is paid into the Assurance Fund.

At present, the Act is not sufficiently wide and is limited to circumstances in which the whole or some part of the abutting land has a right-of-way over the whole of the cul-de-sac. There are, in fact, many instances of an existing right-of-way easement over part of the cul-de-sac in favour of the land abutting on such part and a like easement over the remaining part of the cul-de-sac appurtenant to the land abutting on this part. Possibly a Crown boundary intersects the cul-de-sac. Although the

owners of both parts of the cul-de-sac would be estopped from denying that it is a road because the whole cul-de-sac consists of a former road, the abutting owners cannot avail themselves of the cul-de-sac provisions and obtain a title. Applications of this nature have been refused by the Commissioner of Titles, even where one person owned all the abutting land.

This technicality could be resolved by slight amendments to the clauses making them applicable if no part of the cul-de-sac is free of an easement of right-of-way in favour of some part of the abutting land, although no part of such land has such an easement over the whole of the cul-de-sac.

A form of application should also be prescribed.

The only Titles Office representative on the Rules Committee is the Commissioner of Titles. The obvious omission of the Registrar should be remedied by an amendment of clause 328 of the Bill.

Dealings which cannot proceed to registration owing to mistakes by solicitors, short fees, absence of evidence in support, &c., are know as "Stopped Cases". Unless the lodging parties attend in answer to the postcard and comply with the requisitions, these dealings may remain years in the office. The only machinery enabling them to be disposed of is to send rejection notices, and upon the expiry of fourteen days the dealings may be returned by registered letter. This is a costly procedure, but effectual if staff be available.

Clauses 289 and 290 re-enact sections 236 and 237 of the present Act. In the 1915 Act, only section 237 was operative, but was defective in that dealings could not be rejected unless they were in terms of the section "erroneous and defective". Section 236 embodying much wider provisions was enacted in 1916, and ever since rejection notices have been served, pursuant to this section.

Clause 289 suffices to afford relief from the burden of mounting stopped cases and renders clause 290 obsolete, particularly with respect to the provision for the return of half fees.

Clause 290 should, therefore, be omitted from the Bill.

14th October, 1953.

APPENDIX E.

MEMORANDUM BY MR. J. D. FAGAN, SECRETARY OF THE MUNICIPAL ASSOCIATION OF VICTORIA.

The Statute Law Revision Committee has been asked to consider the desirability of including a clause in the above Bill requiring that the existence of an interim development order should be shown on a rate certificate. The Committee has asked the Municipal Association of Victoria to set out its views in the form of a memorandum.

The proposal is not new, having been sponsored by the Law Institute of Victoria on several occasions in recent years, and each time the Municipal Association has indicated that it is not favourably disposed towards the proposal.

It is first necessary to appreciate the object of a rate certificate. A rate certificate is issued by a municipality, pursuant to section 385 of the *Local Government Act* 1946, and sets out in detailed form moneys due to it in respect of a certain parcel of land. As such, it binds the Council to the amounts set out and, if any omission occurs, the council suffers a monetary loss. A rate certificate is, in most cases, obtained to form part of the basis upon which a land transaction is finalized; that is to say, as between purchaser and vendor or between mortgagee and mortgagor.

The position is entirely different with an interim development order taken out by an authority under the provisions of the Town and Country Planning Act. An interim development order is not a sum of money owing, but a general encumbrance on the development of land. Looking at the question of planning as a whole, an interim development order merely prevents the development of land covered by the order, except with the permission of the planning authority. Knowledge of the existence of such an order would be necessary before a prospective purchaser agreed to purchase, and such knowledge would only partly aid a person contemplating the purchase of land for a specific purpose. He would have to consult the planning authority to ascertain how it was proposed that the land in question could be used, and he would need to peruse all the municipal by-laws dealing with matters such as zoning, brick areas, minimum squarage, &c., before he could be finally sure of the restrictions imposed upon the use of land in question.

It would not be reasonable to contend that a planning scheme in respect of certain land should not be implemented, merely because the existence of an interim development order was omitted from a rate certificate. However, it would be reasonable to assume that a bona fide party injured by such omission should be entitled to claim for damages suffered. On the other hand, a council may legitimately amend the use for which certain land may be used and, in such a case, a purchaser may be misled as to the use to which he could put the land. This seriously endangers any degree of stability that a rate certificate might purport to give. The most satisfactory method of inquiry would be for the purchaser to consult the Council, either in writing or by contact with the municipal clerk.

Again, the effect of an error could have serious repercussions on the finances of a council from the point of view of damages. Consideration would have to be given to whether or not such a certificate should be issued under the seal of the council rather than under the signature of the municipal clerk.

A rate certificate is a formal certificate prescribed by statute, and the information it contains carries an air of permanence and stability, which could not be said to exist in regard to information concerning planning. As planning, zoning, and regulating the use of land for particular purposes can be invoked rapidly and changed from time to time, the permanence and stability of a certificate would be seriously open to question. If such information were contained on a rate certificate, it could easily lead to misunderstanding and recrimination in cases where, after the issue of the certificate, the council altered its decision with regard to the land in question, which it would be quite entitled to do. In short, the issue of the certificate could be a source of embarrassment to the council without giving any real security to the person to whom it was issued.

16th October, 1953.

APPENDIX F.

MEMORANDUM BY MR. W. J. TAYLOR, REGISTRAR OF TITLES.

Further to your requesting me to consider any suggestions for implementing the Committee's recommendation in its report of 11th July, 1951, concerning directions to the Commissioner to waive surveys where possible. I concur that the Commissioner should be given absolute discretion in the widest terms in this matter which is at present denied him. Therefore the provisions in clauses 119 (vesting orders) and 271 (requiring lodgment of survey plans) should be deleted. Clause 253 will require amendment by adding a reference to an application for a vesting order.

Occasionally surveys have been dispensed with in support of applications to bring land under the Act, and titles then issue in accordance with deed measurements. This concession has, however, been limited to whole Crown allotments, but doubtless should be extended. Solicitors or surveyors could first consult this office before undertaking a survey in support of an application.

It would be difficult to prescribe positive directions to the Commissioner as his discretion must be the deciding factor. Up to the present, it has been mandatory to have a survey made in respect of section 87 (vesting order) and section 215 (amendment of title), applications, but on the other hand section 102 applications (extinguishment of easements of way owing to non-user), and cul-de-sac applications never have any supporting survey information. One might expect that survey plans should be submitted in these applications, but the Act is silent. There is little doubt that other applications could likewise be facilitated if surveys were not called for.

2nd November, 1953.

APPENDIX G.

MEMORANDUM BY MR. H. A. WINNEKE, Q.C., SOLICITOR-GENERAL.

I refer to your letter of the 22nd October, 1953, with reference to the above Bill, in which you advise that the Registrar of Titles has suggested in evidence before the Committee that power be given to the Registrar to cancel a mortgage and, if necessary, issue a new duplicate certificate of title, in cases where a mortgagee's rights are barred by the provisions of section 304, *Property Law Act* 1928.

You referred me to section 148A of the Real Property Act of South Australia, which contains a provision somewhat along the lines of that suggested by the Registrar. Section 148A was included in the South Australian legislation in 1945 by Act No. 39, and for your convenience I quote its terms hereunder:—

> 148A. (1) If the Registrar-General is satisfied that the mortgagor of any land is in possession thereof and that the rights of the mortgagee to bring an action for the money secured by the mortgage are barred by the *Limitation of Actions Act* 1936, the Registrar-General, with the concurrence of the Solicitor of his Department, may make an entry in the register book and on the mortgage noting that the rights of the

mortgagee are barred by statute, and shall make a similar entry on the duplicate certificate or other instrument of title and on the duplicate mortgage if produced to him for any purpose.

(2) Upon the making of an entry in the register book pursuant to this section the mortgage shall be deemed to be discharged.

(3) If the duplicate certificate or instrument of title is not produced to the Registrar-General at or before the time when he makes an entry pursuant to this section, that certificate or instrument shall be deemed to be lost within the meaning of section 79 of this Act.

Whilst I can fully appreciate the reasons which have actuated the Registrar in putting forward this suggestion, and that such a provision would be a great convenience in some cases, there are two reasons which would incline me to reject it.

The first is that I would consider it to be foreign to our long established system of regulating rights and duties as between citizens. Our system is to entrust the established courts of law with the power and duty of determining rights as between subjects, and this provision, if adopted, would confer that power upon an administrative official. In some cases the question whether a mortgagee's rights were barred under section 304 would involve the determination of difficult and disputed questions of fact, and such a determination appears to me to be the proper province of the appropriate courts of law. To confer the power upon the Registrar would involve investing him with a judicial or quasi-judicial function of finally deciding rights as between subject and subject, and in my view it would be undesirable and perhaps a dangerous precedent to vest such a function in an officer who is for all practical purposes an administrative official.

The second reason is that the adoption of the proposal might well in some cases involve additional and unexpected complications. Section 304, Property Law Act, is concerned only with barring a mortgagee's right to bring proceedings for the recovery of the money secured by the mortgage. As you are aware a mortgagee has under his charge other rights beyond his right to sue for his money on the personal covenant, one of the most important of which is his power of sale of the mortgaged property which arises upon default by the mortgagor. In *re Australian Deposit and Mortgage Bank Limited* (1907) V.L.R. 348, the Full Court of Victoria decided that the barring of the right to sue for the recovery of the mortgage money does not in itself extinguish the mortgagee's power of sale. In *Levy* v. *Williams* (1925) V.L.R. 615, Cussen J. held, *inter alia,* that the barring of the mortgagee's remedy under section 304 does not *per se* extinguish the mortgagee's interest in the subject property.

Accordingly, if the Registrar's suggestion is adopted and he is empowered to cancel the mortgage because the mortgagee's right to sue for recovery of the mortgage money is barred under section 304, it would not necessarily follow that other rights of the mortgagee were all extinguished. In a case where the power of sale, for instance, still remained, a most unsatisfactory situation would be created if the record of the mortgage had been expunged from the register because the right to sue on the personal covenant had become barred. To put it at its lowest, the adoption of the suggestion could well involve consequences which are by no means apparent at first sight, and might well give rise to the Registrar being faced with the determination of very difficult questions of law in particular cases. This also, in my opinion, is a matter for determination by a duly constituted court of law rather than by the Registrar.

The foregoing are the considerations which actuate me to advise the Committee against the adoption of the suggestion. I hope I have made my reasons clear, but if I have failed to do so or if I have overlooked some relevant matter, I shall be glad to attend upon the Committee in person for further discussion.

6th November, 1953.

APPENDIX H.

MEMORANDUM BY MR. ARTHUR HEYMANSON, SECRETARY OF THE LAW INSTITUTE OF VICTORIA.

In reply to your letter of the 22nd October with reference to the amendment to clause 210 of the Transfer of Land Bill suggested by the Registrar of Titles and confirming the evidence of Mr. P. M. Fox before your Committee, I am directed by my council to inform you that the council considers that the present practice in relation to transmission applications has worked satisfactorily for a long period, and no amendment is necessary. It is also desired to point out that in a few cases where the duplicate certificate of title is held by a mortgagee, the estate of the registered proprietor will be put to additional expense in payment of a production fee if the duplicate certificate of title is required to be lodged at the Titles Office as a condition of registration of the transmission application.

16th November, 1953.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1952-53

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

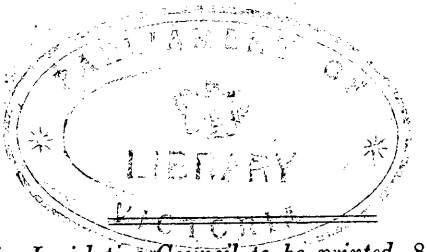
ON THE

PROPOSALS CONTAINED IN THE

STATUTE LAW REVISION BILL

TOGETHER WITH

MINUTES OF EVIDENCE



Ordered by the Legislative Council to be printed, 8th December, 1953.

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

MONDAY, 22ND DECEMBER, 1952.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable P. L. Coleman moved, by leave, That the Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas be members of the Statute Law Revision Committee.
Question—put and resolved in the affirmative.

TUESDAY, 1ST DECEMBER, 1953.

18. STATUTE LAW REVISION BILL.—The Honorable W. Slater moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.
Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

MONDAY, 22ND DECEMBER, 1952.

38. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Mitchell, Mr. Oldham*, Mr. Pettiona, Mr. Randles, Mr. Rylah, and Mr. White (*Allendale*), be appointed members of the Statute Law Revision Committee (*Mr. Cain*)—put and agreed to.

* Died 2nd May, 1953.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of the *Statute Law Revision Committee Act* 1948, have the honour to report as follows :—

1. The Statute Law Revision Committee have considered the Statute Law Revision Bill—a Bill to revise the Statute Law and for other purposes—which was initiated and read a first time in the Legislative Council on the 25th November, 1953. On the 1st December, 1953, the debate on the second reading was adjourned and the Legislative Council referred the proposals contained in the Bill to the Statute Law Revision Committee for examination and report. The Bill, together with an Explanatory Memorandum, was circulated to all Members of Parliament.

2. Mr. Andrew Garran, Assistant Parliamentary Draftsman, who appeared before the Committee, supplemented the information given in the Explanatory Paper, and his evidence is appended to this Report.

3. The Committee have examined the proposals contained in the Bill and are satisfied that the amendments proposed do not make any substantive changes in the law and do not go beyond the ambit of a Bill to revise the Statutes.

4. The Committee recommend that the Bill be proceeded with and passed into law.

Committee Room,
8th December, 1953.

STATUTE LAW REVISION BILL

MINUTES OF EVIDENCE

FRIDAY, 4TH DECEMBER, 1953.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. Andrew Garran, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—Gentlemen, this is a Bill to revise the Statute Law and for other purposes, and it was referred to this Committee by the Legislative Council following upon its introduction by the Attorney-General earlier this week. The procedure in relation to a Bill of this sort is standard for this Committee; the Parliamentary Draftsman, who is responsible for the preparation of the Bill, is asked to come before the Committee and explain such of the Bill as he considers necessary and give the usual certificate that it is a Bill to revise the law and does not contain any substantive changes in the law.

Mr. Randles.—When the Bills to which this particular measure relates are reprinted in the future will these particular amendments be incorporated?

Mr. Garran.—Yes, that is covered by clause 4 of the covering clauses of the Bill on page 1. It does not, of course, mean that immediately the Government Printer will rush in to reprint with the amendments but when the time comes for a reprint then he will incorporate the amendments. In practice, what happens is that he sends copies of the whole of the Act, amended as necessary, to the Crown Law authorities where it is checked by the Parliamentary Draftsman who certifies to the Attorney-General. The Attorney-General in turn certifies and the reprint is made on that basis.

Mr. Randles.—For some time there could be some little confusion as to the Statute Law.

Mr. Garran.—Not really, no more than in relation to any other amending Act that is passed. The index at the back of each sessional volume will show the amendments made.

The Chairman.—Mr. Garran, will you now give such explanations as you think are necessary?

Mr. Garran.—I think I can say generally that it is the normal type of Statute Law Revision Bill; it contains such matters that do not effect substantive amendment of the law as come to the notice of the Drafting Department from various sources, partly departmental and partly from the practising side of the profession. A number of these amendments are concerned with straightening up one of the results of the Public Service Act 1946. Before that Act appointments in the Public Service were made by the Governor in Council; after that they were made by the Public Service Board, but a lot of the old Acts start off by saying, " Subject to the Public Service Act the Governor in Council may appoint . . . ." It is a typical amendment and I do not think it is necessary for me to go through it in detail unless honorable members desire me to do so. All the points are covered by the memorandum. Possibly the one nearest to over-stepping the mark is the second amendment, the amendment to the Education Act. There are two, the first is an amendment of the Education (Amendment) Act 1951. In 1951 the Education (Amendment) Act sought by this section to widen the scholarship provisions in the Education Act. Up until then scholarships could only be given in the State schools, technical schools, and high schools and other State schools. It is sought there to make provision for travelling scholarships, going abroad. The way it was worded there was some doubt as to whether the word at the end of the section related back to the words " travelling scholarships " which would mean the travelling scholarships would have to be held at a school, university, or other educational institution. That was not the original intention and this amendment puts it beyond doubt. That comes the nearest to any substantive change. Apart from that there is really nothing I could call to your attention unless honorable members wish me to discuss any particular one, either taken at random or that they have any trouble about.

Mr. Thomas.—Would " educational institution " include such an institution as the Workingmen's College?

Mr. Garran.—Yes.

Mr. Thomas.—It would include any place where there is education authorized by the Education Department?

Mr. Garran.—When you say " authorized " it would include a public school outside the State schools.

The Chairman.—Mr. Garran, there is one relating to the Maintenance Act 1928, at the bottom of the first page of the memorandum.

Mr. Garran.—To explain it fully I would like to have the Act in front of me but roughly it is a paragraph section and certain words became displaced and were put inside one of the paragraphs instead of immediately after the paragraph. This happened in the 1915 Consolidation, persisted in the 1928 Consolidation, and now has been noticed. Really we are putting back the position to where it was in 1912. I do not think there will be any doubt on anybody reading it but it is technically incorrect.

The Chairman.—The one dealing with the Property Law Act 1928 is explained as necessary because of the abolition of distress for rent. Would you explain to the Committee the effect of the same?

Mr. Garran.—The change really cuts out deadwood, nothing more.

The Chairman.—The amendment substitutes the words commencing " may enter into and distrain " and ending " such distress and receipt " for the words " may take possession of the income of the land, etcetra."

Mr. Garran.—Actually that is not a substitution of words. You will see I have taken out a lot of words and those are a few of the words I have taken out and want to put back and save and they are there now. It is not a substitution of those words but the substitution of a few words which are already contained in a larger block of words for that larger block of words.

The Chairman.—That explains the matter from my point of view.

Mr. Thomas.—How does the amendment to the Maintenance Act conflict with the amendments just put through?

Mr. Garran.—The Interstate Destitute Persons Relief Act was a 1912 Act which was consolidated by the 1915 Maintenance Act so this is really referring to some old matters. The 1912 Act has now been repealed but to explain the amending of the amendment I had to resurrect it. It is not part of our law.

Mr. Brennan.—It is of the Commonwealth.

Mr. Garran.—Not altogether. There is provision in our Act for reciprocation.

Mr. Brennan.—At the time the law was consolidated that defect was not noticed.

Mr. Garran.—That is so. It occurred in the first Consolidation and it was overlooked in the second Consolidation.

Mr. Thomas.—Could these be taken in order?

The Chairman.—I think we should do that as this is the first Statute Law Revision Bill to be dealt with by this Committee, and it may assist the Committee if they are taken one by one.

Mr. Garran.—As I said, I have no more to say than appears in the memorandum, except insofar as any member of the Committee desires further advice.

The Chairman.—I will take them in order and if there are any points members of the Committee desire to raise they can do so. The first one relating to the Bees Act 1928 is a verbal amendment and it appears in relation to quite a number of other amendments. You have already explained the amendment to the Education Act 1928, Mr. Garran. The amendment in relation to the Fertilizers Act 1928 is a similar amendment to that made in the Bees Act 1928 and for the same reason. What is the position in regard to the Fire Brigades Act 1928, Mr. Garran?

Mr. Garran.—That is consequential upon the abolition of the Treasury contributions under the Act of 1952.

The Chairman.—The amendments to the Fruit and Vegetables Act 1928 and the Fungicides Act 1928 are similar amendments to those proposed in regard to the Bees Act 1928, and for the same reasons. Mr. Garran has already explained the amendment to the Maintenance Act 1928. The amendment to the Milk and Dairy Supervision Act 1928 is again similar to the amendment in respect to the Bees Act 1928.

Mr. Brennan.—You will notice there is only one letter " p " in the word " appoint " where it appears on page 3, " The Governor in Council may appoint . . . "

Mr. Garran.—That could be amended in the House.

The Chairman.—Mr. Garran has already explained the amendment to the Property Law Act 1928 in answer to questions by me. The amendment to the Stock Diseases Act 1928 is similar to the amendment to the Bees Act 1928 and for the same reason. What is the position in relation to the Superannuation Act 1928, Mr. Garran?

Mr. Garran.—That is consequent upon the Master in Equity being renamed the Master of the Supreme Court.

The Chairman.—Having been renamed the Master of the Supreme Court you presumably then find that he is not entitled to superannuation?

Mr. Garran.—No, it is just picking up references and straightening them out. We did a lot of amendments but we missed that one.

The Chairman.—The amendment to the Vegetation and Vine Diseases Act 1928 is similiar to that in relation to the Bees Act 1928 and for the same reason. The next item is the Water Act 1928.

Mr. Pettiona.—Apparently the only thing wrong here is that the word " until " appears twice and we will require to go through this procedure to remove the superfluous word.

Mr. Garran.—I would not do it unless there is an opportunity for it to be done.

The Chairman.—The next item is an amendment to the Police Offences (Race-meetings) Act 1929.

Mr. Garran.—It is debatable whether this is necessary or not. The Acts Interpretation Act provides that when one Act repeals another provision and re-enacts it then any reference in a third Act to the original provision will be read as a reference to the re-enacted provision and this would have been unnecessary only that when the re-enactment was made the amendment was made in one part of the Police Offences (Race-meetings) Act 1929 and not in another section. This amendment corrects the omission. Again it is a very small and doubtful if necessary point.

The Chairman.—The next item is the Milk Board Act 1933.

Mr. Garran.—The Milk Board Act 1951 substituted all except Part I. of the original Milk Board Act. It gave a new heading to Part II. The substituted Part II. forgot to amend section 2 of the principal Act which sets out for convenience the headings of the Parts. This amendment picks up that omission. In addition the 1951 Act abandoned the basis of " metropolis." That " metropolis " had become rather fanciful and extended to Ballarat, Bendigo and other places. Instead the Act used the term " milk districts " but the use of the word " metropolis " in one place was overlooked, and that is corrected by this amendment.

The Chairman.—The amendment to the Anti-Cancer Council Act 1936 is clearly the substitution of a new name for an old authority.

Mr. Garran.—That is so.

The Chairman.—The amendment to the Public Trustee Act 1940 is again because of the new name for the Master in Equity, and I take it there are a few places where that should be inserted?

Mr. Garran.—Yes, that is so.

The Chairman.—The next item is the Education (Patriotic Ceremonies) Act 1940. This apparently has already been amended by a Statute Law Revision Act. Is there anything further on that, Mr. Garran?

Mr. Garran.—No, there is nothing further to what has been set out. The words " Teaching Service Acts " shall be substituted for the words " Public Service Acts "; the words " Teachers Tribunal " shall be substituted for the words " Public Service Board "; " From the teaching service " shall be substituted for " From the Public Service."

The Chairman.—The next item is the Land Act 1941 and the Teaching Service Act 1946. That merely changes the title of " Minister of Public Instruction " to " Minister of Education? "

Mr. Garran.—Yes.

The Chairman.—The next item is the Firearms Act 1951. That actually relates to the spelling of the word " Property? "

Mr. Garran.—Yes.

The Chairman.—The next item is the Marketing of Primary Products (Egg and Egg Pulp) Act 1951. Is there anything in that that we should know?

Mr. Garran.—No, I do not think so. It is merely what was understood by the House, but it was badly expressed; it would not satisfy a purist. If I had a copy of the Act, I could show it to you.

The Chairman.—Would any member like to see this in the Act?

Mr. Randles.—No.

The Chairman.—The next item is the Motor Car Act 1951. This is only a change of name?

Mr. Garran.—That is so.

The Chairman.—The next item is the Coal Mine Workers Pensions Act 1952. What have you to say on that, Mr. Garran?

Mr. Garran.—This is only a question of technical drafting; section 4 (1) of the Coal Mine Workers Pensions Act of 1952 overlooked a slight difference of the wording between paragraphs (*a*) and (*b*) of section 9 of the 1942 Act as amended by section 4 of the 1948 Act.

The Chairman.—The next item is the Mines (Amendment) Act 1952; what have you to say on that, Mr. Garran?

Mr. Garran.—"Of such a mine" occurred twice, once in relation to the underground work of the mine, and once in relation to the office of the mine. The words to be inserted were not very apt in relation to the office of the mine. Quite a lot of these things are so minor that it is doubtful whether they should be done. There are two views of thought on the matter. This is what has been done in the past, and it is proposed that it be carried on.

Mr. Thomas.—Take the case of the Coal Mine Workers Pensions Act 1952; it is an Act that is used extensively. There is a possibility of discussion of it when it gets into Court.

Mr. Garran.—I doubt if it ever gets into Court. I do not think the Court would have any trouble; it is only the question of the difference between two words. Some of these things want correcting, but a lot of them are doubtful. As I say, it is a debatable point.

Mr. Randles.—It is a question of "Trifles make perfection, and perfection is no trifle."

The Chairman.—We have omitted one item, that is the Stamps (Betting Tax) Act 1951. Is there anything we should know of that?

Mr. Garran.—That again was merely a drafting mistake. In sub-section (2) of section nine after the expression "Subdivision (12)" there shall be inserted the words "of Division three." It is quite clear; the expression appears twice elsewhere in the Act.

The Chairman.—That completes the list. There is nothing further you wish to say, Mr. Garran?

Mr. Garran.—No. The amendments contained in the Bill are purely designed to revise minor errors, and have no substantive significance.

The Committee adjourned.

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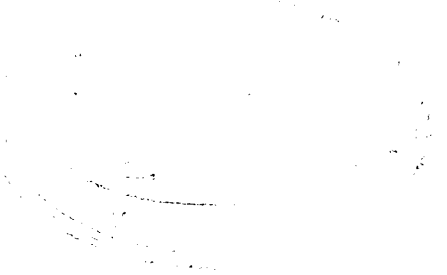

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