VICTORIA - MINUTES OF THE PROCEEDINGS OF THE LEG. COUNCIL, SESSION 1954-55

COUNCIL CHAMBER.

VICTORIA.

MINUTES OF THE PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL.

SESSION 1954-55.

WITH A COPY OF THE DOCUMENTS ORDERED TO BE PRINTED.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 1.

THURSDAY, 25TH FEBRUARY, 1954.

1. The Council met pursuant to the Proclamation of His Excellency the Governor, bearing date the fifth day of February, 1954, which Proclamation was read by the Clerk and is as follows :—

FURTHER PROROGUING PARLIAMENT AND FIXING THE TIME FOR HOLDING THE SECOND 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.

WHEREAS the Parliament of Victoria stands prorogued until Tuesday, the ninth day of February, 1954 : Now I, the Governor of the State of Victoria, in the Commonwealth of Australia, do by this my Proclamation further prorogue the said Parliament of Victoria until Thursday, the twenty-fifth day of February, 1954, and I do hereby fix Thursday, the twenty-fifth day of February, 1954, aforesaid, at the hour of half-past Two o'clock in the afternoon, as the time for the commencement and holding of the next Session of the said Parliament of Victoria, for the despatch of business, 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 fifth day of February, 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 !

2. APPROACH OF HER MAJESTY THE QUEEN.—The approach of Her Majesty Queen Elizabeth the Second was announced by the Usher of the Black Rod.

Her Majesty, accompanied by His Royal Highness the Duke of Edinburgh, having come into the Council Chamber, was conducted to the Royal Chair by the Usher of the Black Rod, and His Royal Highness occupied a Chair to the left of the Royal Chair.

Her Majesty commanded the Usher of the Black Rod to desire the immediate attendance of the Legislative Assembly, who being come with their Speaker, Her Majesty was pleased to speak as follows :—

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

It is but seldom that the Sovereign is able to open Parliament outside the United Kingdom, and I welcome the opportunity to exercise this historic privilege in Victoria.

When I first opened Parliament at Westminster late in 1952, I said that I looked forward with deep pleasure to fulfilling my long-cherished hopes of visiting with my husband my peoples in Australia, New Zealand and Ceylon.

Those hopes are now being fulfilled.

After the warmth and cordiality of the welcome accorded to us on our arrival in Victoria we anticipate with pleasure our sojourn in this State.

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

A review of revenue and expenditure for the first half of the current financial year indicates that a satisfactory Budget is assured.

Supplementary estimates of expenditure for the year 1953-54 will be laid before you in due course.

1701/54. (240 copies.)

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

For eight successive years Victoria has been blessed with bountiful seasons. During the year just ended the Spring growth of pastures was good and the production of all kinds of livestock was high. It is estimated that the wheat crop will yield more than fifty million bushels.

A programme of important legislation will be brought forward later in the Session.

This will include a Bill relating to child welfare. The existing legislation is, in many ways, not adaptable to progressive social standards. The new measure will deal comprehensively with the care, maintenance and welfare of those children who come under the supervision of the Children's Welfare Department.

A Bill designed to improve and consolidate the law controlling the transfer of land will be laid before you.

The regulation of building is being attentively examined with a view to legislation.

A comprehensive amending measure dealing with public health will be introduced.

Other measures will be laid before you in due course.

I now leave you to the discharge of your important duties.

I pray that the blessing of Almighty God will rest upon your deliberations.

Which being concluded, a copy of the Speech was delivered to the President, and a copy to Mr. Speaker, and Her Majesty the Queen, together with His Royal Highness the Duke of Edinburgh, left the Chamber.

The Legislative Assembly then withdrew.

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

4. PRESENTATION OF ADDRESS OF WELCOME TO HER MAJESTY QUEEN ELIZABETH II.—The President reported that, in accordance with the resolution adopted by both Houses on the 12th day of December last he, together with the Honorable the Speaker of the Legislative Assembly and Honorable Members of both Houses, had yesterday presented the Joint Address of Welcome to Her Majesty the Queen, in the Queen's Hall, Parliament House (for Address see Minutes of the Proceedings of the Legislative Council, Session 1952–53, page 96), and that Her Majesty had been pleased to make the following reply :—

MR. PRESIDENT AND MR. SPEAKER,

I sincerely thank you for the cordial welcome which you have extended to me and to my husband on behalf of the Legislative Council and the Legislative Assembly of Victoria.

Your expressions of loyalty and devotion are greatly valued by us both.

I look forward to meeting you all to-morrow when I shall have the pleasure of opening the second session of your Parliament and I can assure you that we shall both enjoy to the full our visit to your State.

5. PRIVILEGE BILL.—STATUTE LAW REVISION BILL.—On the motion of the Honorable P. L. Coleman, 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.

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 Sir James Kennedy,
The Honorable Gordon Stewart McArthur,
The Honorable William Slater, and
The Honorable Ivan Archie Swinburne

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

Given under my hand this twenty-fifth day of February, One thousand nine hundred and fifty-four.

CLIFDEN EAGER,
President of the Legislative Council.

7. 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-fifth day of February, One thousand nine hundred and and fifty-four.

CLIFDEN EAGER,
President of the Legislative Council.

8. 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.

9. LEAVE OF ABSENCE.—The Honorable F. M. Thomas moved, by leave, That leave of absence be granted to the Honorable Maurice Patrick Sheehy for four months on account of ill-health.

Question—put and resolved in the affirmative.

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

Apprenticeship Acts—Proclamation proclaiming certain Apprenticeship Trades.

Architects Acts—Regulations (No. 5).

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 1952–53.

Companies Act 1938—Return by Prothonotary of business of the Supreme Court in connexion with the winding-up of Companies during the year 1953.

Country Fire Authority Acts—Amendment of Country Fire Authority (General) Regulations.

Dried Fruits Act 1938—

Amendment of Regulations.

Statements of accounts of the Dried Fruits Board for the year 1953.

Education Act 1928—Amendment of Regulations—

Regulation XVI.—Allowance for Conveyance of Pupils to Primary Schools.

Regulation XVII.—Conveyance of Pupils to Post-Primary Schools and Classes.

Explosives Act 1928—Orders in Council relating to—

Classification of Explosives—Class 6—Ammunition (three papers).

Definition of Explosives—

Class 3—Nitro-Compound ; Class 6—Ammunition.
Class 6—Ammunition (two papers).

Hairdressers Registration Acts—Hairdressers Registration Regulations 1953.

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Ballarat North, Casterton, Frankston South, Glen Waverley, Glen Waverley North, Moorabbin, Mornington, and Mount Waverley (eight papers).

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

Marketing of Primary Products Act 1935—

Proclamation declaring that Potatoes shall become the property of the Potato Marketing Board for the period from 4th January to 31st October, 1954.

Regulations—

Potato Marketing Board—Fourth and fifth periods of time for the computation of or accounting for the net proceeds of the sale of potatoes.

Seed Beans Marketing Board—

Seed Beans Marketing Board Regulations 1954.
Travelling Expenses.

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 1952–53.

Melbourne Harbor Trust Act 1928—Statement of Accounts of the Melbourne Harbor Trust Commissioners for the year 1952.

Mental Hygiene Acts—

Mental Hygiene Authority Regulations 1953 (No. 6).

Report of the Mental Hygiene Authority for the year 1952–53.

Milk Pasteurization Act 1949—Regulation prescribing Districts.

Motor Car Acts—

Amendment No. 1 of Motor Car Regulations 1952.

Statistical Returns by Authorized Third-Party Insurers for the year 1952–53.

Motor Car Act 1951 and Workers Compensation Act 1951—Report, Profit and Loss Account, and Balance-sheet for the year 1952–53 of—

State Accident Insurance Office.
State Motor Car Insurance Office.

Nurses Act 1928—Amending Nurses Regulations 1953.

Opticians Registration Act 1935—Amendment of Opticians Regulations 1946.

Poisons Acts—Pharmacy Board of Victoria—Proclamations amending—

Second Schedule to Poisons Act 1928.
Sixth Schedule to Poisons Act 1928.

Police Regulation Acts—Determinations Nos. 46 and 47 of the Police Classification Board (two papers).

Portland Harbor Trust Act 1949—Statement of Receipts and Expenditure, Revenue Account and Balance-sheet of the Portland Harbor Trust Commissioners for the year 1952–53.

Public Service Act 1946—

Public Service (Governor in Council) Regulations.—All Regulations repealed—Regulations substituted.

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

Public Service (Public Service Board) Regulations.—All Regulations repealed—Regulations substituted.

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

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 30th September, 1953.

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

River Improvement Act 1948—Regulations—Ovens River Improvement Trust—Election and Term of Office of Commissioners.

River Murray Waters Act 1915—Report of the River Murray Commission for the year 1952–53.

Road Traffic Act 1935—Regulation—Major Street.

Soil Conservation and Land Utilization Acts—Report of the Soil Conservation Authority for the year 1952–53.

Teaching Service Act 1946—Amendment of Regulations—

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

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

11. SPEECH OF HER MAJESTY QUEEN ELIZABETH II.—The President reported the Speech of Her Majesty the Queen.

The Honorable P. L. Coleman moved, That the Council agree to the following Address to Her Majesty the Queen in reply to Her Majesty's Opening Speech :—

To Her Most Gracious Majesty ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith :

MAY IT PLEASE YOUR MOST GRACIOUS MAJESTY—

We, the Legislative Council of Victoria in Parliament assembled, beg to express our humble thanks for the gracious Speech Your Majesty has been pleased to address to Parliament, and to re-affirm our deep and abiding loyalty to the Throne and our affection for Your Majesty's person.

We are deeply conscious of the privilege granted to us and the honour bestowed upon us by Your Majesty in opening this Session of the Thirty-ninth Parliament.

We assure Your Majesty that our most earnest consideration will be given to the measures to be submitted to us, and join with Your Majesty in praying for Divine Guidance in all our deliberations.

Debate ensued.

Question—put and resolved in the affirmative.

The Honorable P. L. Coleman announced that he had ascertained it to be the pleasure of Her Majesty the Queen that the Address in Reply to Her Majesty's Speech be presented to His Excellency the Governor, and that His Excellency would be pleased to receive the Address on Her Majesty's behalf at a quarter to Twelve o'clock on Tuesday, the 30th March next, at Government House.

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 on Tuesday, the 30th March next, at a quarter to Twelve o'clock.

Question—put and resolved in the affirmative.

12. 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.

And then the Council, at fifty-three minutes past Five 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: W. M. HOUSTON, Government Printer, Melbourne.

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 1.

TUESDAY, 27TH APRIL, 1954.

ORDER OF THE DAY :—

Government Business.

1. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, A. M. Fraser, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

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MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 2.

WEDNESDAY, 28TH APRIL, 1954.

Questions.

*1. The Hon. A. J. BAILEY: To ask the Honorable the Minister of Transport—

(*a*) How many hostels were erected by the Railways Department for housing migrants in the country and in the metropolitan area, respectively.

(*b*) What was the cost of erecting and equipping each hostel.

(*c*) How many migrants are at present in each hostel.

(*d*) What is the cost of maintaining a migrant employee in a hostel.

(*e*) What is the cost of maintaining each unoccupied hostel.

(*f*) Has the Department any plans for the future use of unoccupied hostels.

*2. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—Will the Minister lay on the table of the Library the file containing all papers and correspondence in connexion with the recent application by the Camberwell City Council for the transfer of one and one-half acres situated within the Camberwell Public Gardens for the purpose of building a Town Hall.

NOTICES OF MOTION:—

*1. The Hon. C. P. GARTSIDE: To move, That he have leave to bring in a Bill to further amend the Landlord and Tenant Acts.

*2. The Hon. P. L. COLEMAN: To move, 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; 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.

*3. The Hon. P. L. COLEMAN: To move, 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.

*4. The Hon. P. L. COLEMAN: To move, That the Honorables P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne be members of the House Committee.

*5. The Hon. P. L. COLEMAN: To move, That the Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater, be members of the Joint Committee to manage the Library.

*6. The Hon. P. L. COLEMAN: To move, 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.

* *Notifications to which an asterisk* (*) *is prefixed appear for the first time.*

1702/54. (100 copies.)

ERS OF THE DAY :—

Government Business.

*1. POLICE OFFENCES (OBSCENE PUBLICATIONS) BILL—(*from Assembly—Hon. A. M. Fraser*)—Second reading.

2. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, A. M. Fraser, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 2.

TUESDAY, 27TH APRIL, 1954.

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. PRESENTATION OF ADDRESS TO HIS EXCELLENCY THE GOVERNOR.—The President reported that, accompanied by Honorable Members, he had, on the 30th March last, waited upon His Excellency the Governor and had presented to him in compliance with the wish of Her Majesty the Queen the Address adopted by the Legislative Council on the 25th February last, in reply to Her Majesty's Speech on the Opening of Parliament, and that His Excellency had been pleased to make the following reply :—

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

In accordance with the wishes 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, which I shall be pleased to transmit to Her Majesty.

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.

4. POLICE OFFENCES (UNLAWFUL GAMES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Seventy-two and Ninety-three of the 'Police Offences 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, by leave, to be read a second time later this day.

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 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. LOCAL GOVERNMENT (CITY OF SUNSHINE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Three of the 'Local Government (Shire of Braybrook) Act* 1950'" 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.

7. STATE SAVINGS BANK (DEPOSITS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to re-enact Section Thirty-three of the 'State Savings Bank Act* 1928'" 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.

8. POLICE OFFENCES (OBSCENE PUBLICATIONS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Part V. of the 'Police Offences Act* 1928', *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.

9. CHANDLER HIGHWAY AND BRIDGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to vest in Her Majesty the Chandler Highway and Bridge in the Cities of Heidelberg and Kew*" 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.

10. STATUTE LAW REVISION COMMITTEE—FRAUDULENT PRACTICES IN CONNEXION WITH COMPANIES.—The Honorable F. M. Thomas brought up a Progress Report from the Statute Law Revision Committee on amendments of the statute law to deal with fraudulent practices by persons interested in the promotion and/or direction of companies and by firms.

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

1701/54. (240 copies.)

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

Bookmakers Act 1953—Bookmakers and Bookmakers' Clerks Registration Regulations.
Co-operation Act 1953—Co-operative Societies (Advisory Council) Regulations.
Country Fire Authority Acts—Report of the Country Fire Authority for the year 1952–53.
Country Roads Act 1928—Report of the Country Roads Board for the year 1952–53.
Discharged Servicemen's Preference Act 1943—Amendment of Regulations.
Dried Fruits Act 1938—Amendment of Dried Fruits Regulations.
Education Act 1928—Amendment of Regulations—

- Regulation VI.—Teacher's Certificates.
- Regulation IX. (A).—Second Class Honours.
- Regulation XIII. (A).—Certificate for Teacher of the Deaf.
- Regulation XIX.—Allowances for School Requisites and Maintenance to Pupils Attending Post-primary Schools and Classes.
- Regulation XX. (C).—Trained Special Teacher's Certificate.
- Regulation XX. (M).—Trained Teacher's Certificate for Teacher of the Deaf.
- Regulation XXI.—Scholarships.
- Regulation L.—Studentships and Courses at Teachers' Colleges or Other Approved Institutions.

Entertainments Tax Act 1953—Regulations.
Fire Brigades Act 1928—Report of the Metropolitan Fire Brigades Board for the year 1952–53.
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 Lake Murdeduke until the last day preceding the first Saturday in September, 1955.

Forests Act 1928—Report of the Forests Commission for the year 1952–53.
Justices Acts and Maintenance (Amendment) Act 1953—Justices Act (Maintenance Order Enforcement) Rules 1954.
Land Act 1928—

- Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Ballarat North, Clayton East, Collingwood, Dromeville, Traralgon North, and Werribee (six papers).
- Schedule of country lands proposed to be sold by public auction.

Marketing of Primary Products Act 1935—Proclamations—

- Declaring that Chicory shall become the property of the Chicory Marketing Board for a further period of two years.
- Declaring that Onions shall become the property of the Onion Marketing Board for a further period of two years.
- Declaring that Seed Beans shall become the property of the Seed Beans Marketing Board for a period of two years.

Midwives Acts—Midwives Regulations 1954.
Mines Act 1928—

- Amendment of Regulations relating to Licences to search for Metals (other than Gold) and Minerals.
- Return of Mining Leases in respect of which suspensions of Labour Covenants have been granted during 1953.

Nurses Act 1928—Nurses Regulations 1954.
Poisons Acts—Pharmacy Board of Victoria—Poisons Regulations 1954.
Police Regulation Acts—Determination No. 48 of the Police Classification Board.
Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—

- Part III.—Salaries, Increments and Allowances (seventeen papers).
- Part VI.—Travelling Expenses (two papers).

Registration of Births Deaths and Marriages Act 1928—General Abstract of the number of Births, Deaths, and Marriages registered during the year 1953.
Stamps Acts—Betting Tax Regulations.
State Development Act 1941—First Progress Report of the State Development Committee on the development of Western and North-Western Victoria.
State Electricity Commission Acts—Kiewa Works Protection Regulations 1954.
Supreme Court Acts—

- Amendment of Rules of the Supreme Court.
- Supreme Court Office Fees Regulations 1954.

Teaching Service Act 1946—

- Amendment of Regulations—
  - Teaching Service (Classification, Salaries and Allowances) Regulations (three papers).
  - Teaching Service (Teachers Tribunal) Regulations (three papers).
- Report of the Teachers Tribunal for the year 1952–53.

University Act 1928—University of Melbourne—

- Financial Statements for the year 1952.
- Report, together with Statutes and Regulations and Amendments allowed by His Excellency the Governor, for the year 1953.

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

12. 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.

13. POLICE OFFENCES (UNLAWFUL GAMES) 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. LOCAL GOVERNMENT (CITY OF SUNSHINE) 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. STATE SAVINGS BANK (DEPOSITS) 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. CHANDLER HIGHWAY AND BRIDGE 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.

17. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the Council, at its rising, adjourn until to-morrow at half-past Four o'clock.

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 twenty-two minutes past Eight o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 3.

WEDNESDAY, 28TH APRIL, 1954.

1. The Council met in accordance with adjournment.

2. ABSENCE OF THE PRESIDENT.—The Clerk having announced that the Honorable the President was unavoidably absent, the Honorable D. J. Walters, on the motion of the Honorable P. L. Coleman, was chosen to fill temporarily the office and perform all the duties of the President during such absence.

3. The Acting-President took the Chair and read the Prayer.

4. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL.—The Acting-President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Entitlement to Vote at Municipal Elections and Polls, 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. The President entered and took the Chair.

6. LANDLORD AND TENANT (AMENDMENT) BILL.—On the motion of the Honorable C. P. Gartside, leave was given to bring in a Bill to further 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.

7. 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; 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.

8. STANDING ORDERS COMMITTEE.—The Honorable P. L. Coleman moved, 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, 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, That the Honorables the President, G. L. Chandler, W. O. Fulton, 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, 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. POLICE OFFENCES (OBSCENE PUBLICATIONS) 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.

13. 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, by leave, to be read a second time later this day.

    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 the next day of meeting.

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 Eight o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 3.

TUESDAY, 4TH MAY, 1954.

Questions.

1. The Hon. A. J. BAILEY: To ask the Honorable the Minister of Transport—
   (*a*) How many hostels were erected by the Railways Department for housing migrants in the country and in the metropolitan area, respectively.
   (*b*) What was the cost of erecting and equipping each hostel.
   (*c*) How many migrants are at present in each hostel.
   (*d*) What is the cost of maintaining a migrant employee in a hostel.
   (*e*) What is the cost of maintaining each unoccupied hostel.
   (*f*) Has the Department any plans for the future use of unoccupied hostels.

*2. The Hon. D. L. ARNOTT: To ask the Honorable the Minister of Transport—
   (*a*) Up to the end of the year 1953—(i) what was the total amount expended by the Victorian Government in respect of World War II. Soldier Settlement; (ii) what was the total amount of contributions made by the Commonwealth Government and what amount of such contribution was made in respect of amounts written-off; and (iii) what was the total amount written-off by the Victorian Government.
   (*b*) How many applicants are still to be settled and when is it anticipated that these applicants will be settled.

Government Business.

ORDERS OF THE DAY:—

1. POLICE OFFENCES (OBSCENE PUBLICATIONS) BILL—(*from Assembly—Hon. A. M. Fraser*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

*2. TOWN AND COUNTRY PLANNING BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir James Kennedy*).

*3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

4. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

General Business.

ORDER OF THE DAY:—

*1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

* *Notifications to which an asterisk* (*) *is prefixed appear for the first time.*

1702/54. (100 copies.)

4. [illegible]

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, A. M. Fraser, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—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.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 4.

WEDNESDAY, 5TH MAY, 1954.

Questions.

*1. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—

(*a*) How many interim leases have been issued to settlers under the Soldier Settlement Acts.

(*b*) How many settlers are due to be issued with interim leases.

(*c*) What has caused delay (if any) in the issue of such leases.

*2. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—

(*a*) Is the Minister aware that certain departmental officers have stated that there was no intention to declare Argentine ants as pests; if so, what are the reasons for such decision.

(*b*) Will the Government consider declaring such ants as pests under existing Acts.

General Business.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading.

Government Business.

NOTICE OF MOTION:—

*1. The Hon. P. L. COLEMAN: To move, 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 in each week shall be half-past Four o'clock be suspended during the remainder of the present month, and that during the remainder of the present month new business may be taken at any hour and the hour of meeting on Thursdays shall be Eleven o'clock.

ORDERS OF THE DAY:—

*1. MELBOURNE AND METROPOLITAN TRAMWAYS (BOARD) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*2. MELBOURNE CRICKET GROUND (GUARANTEE) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*3. SUPERANNUATION (FEMALE OFFICERS) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

*4. HEALTH (INFECTIOUS DISEASES) BILL—(*from Assembly—Hon. A. M. Fraser*)—Second reading.

*5. CRIMES BILL—(*from Assembly—Hon. W. Slater*)—Second reading.

6. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

7. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

* *Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (100 copies.)

4. [illegible]

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, A. M. Fraser, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—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.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 4.

TUESDAY, 4TH MAY, 1954.

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. :—

Coal Mine Workers Pensions (Amendment) Act.
Police Offences (Unlawful Games) Act.
Local Government (City of Sunshine) Act.
State Savings Bank (Deposits) Act.
Chandler Highway and Bridge Act.

3. MELBOURNE AND METROPOLITAN TRAMWAYS (BOARD) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Constitution and Powers of the Melbourne and Metropolitan Tramways Board*" 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, to be read a second time later this day.

4. MELBOURNE CRICKET GROUND (GUARANTEE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to guarantee the Repayment of certain Moneys proposed to be borrowed for the Purpose of effecting Alterations Additions and Improvements to the Melbourne Cricket Ground, 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. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Fisheries Acts—Notice of Intention to issue a Proclamation to specify the Crocodile Reservoir as inland water for the purpose of section 5 of the Fisheries (Inland Angling) Act 1950.

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.

1701/54. (240 copies.)

6. POLICE OFFENCES (OBSCENE PUBLICATIONS) 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.

7. SUPERANNUATION (FEMALE OFFICERS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Sixteen of the 'Superannuation 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.

8. TOWN AND COUNTRY PLANNING 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.

9. HEALTH (INFECTIOUS DISEASES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section One hundred and twenty-six of the 'Health Act* 1928'" 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 to be read a second time on the next day of meeting.

10. CRIMES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Criminal Law in relation to Wilfully False Promises and Company Frauds*" 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.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 5.

WEDNESDAY, 5TH MAY, 1954.

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

2. POLICE OFFENCES (OBSCENE PUBLICATIONS) 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.

3. MINISTERIAL STATEMENT—DEVELOPMENT OF MORWELL PROJECT.—The Honorable J. W. Galbally, by leave, made a Ministerial Statement with respect to the future development of the Morwell project by the State Electricity Commission.

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

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

   Superannuation Act 1928—Report of the State Superannuation Board for the year 1952-53.

5. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of the Order of the Day, General Business, be postponed until the next day of meeting.

11

6. 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 in each week shall be half-past Four o'clock be suspended during the remainder of the present month, and that during the remainder of the present month new business may be taken at any hour and the hour of meeting on Thursdays shall be Eleven o'clock.

Debate ensued.

Question—put and resolved in the affirmative.

7. MELBOURNE AND METROPOLITAN TRAMWAYS (BOARD) 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.

8. 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.

9. HEALTH (INFECTIOUS DISEASES) 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. 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-one million two hundred and thirteen thousand one hundred and seventy-seven pounds to the service of the year One thousand nine hundred and fifty-four and One thousand nine hundred and fifty-five*" 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.

11. MELBOURNE CRICKET GROUND (GUARANTEE) 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. SUPERANNUATION (FEMALE OFFICERS) 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. CRIMES 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. STATUTE LAW REVISION COMMITTEE—FRAUDULENT PRACTICES IN CONNEXION WITH COMPANIES.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the following resolution:—

> That, in their enquiries into anomalies in the statute law which appear to permit (*a*) persons interested in the promotion and/or direction of companies and (*b*) firms, to engage in fraudulent practices, the Statute Law Revision Committee be empowered to avail themselves of the assistance of counsel—

and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, the Council agreed to the foregoing resolution and ordered that a Message be sent to the Assembly acquainting them therewith.

15. LOCAL GOVERNMENT (ELECTIONS AND POLLS) 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.

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

THURSDAY, 6TH MAY, 1954.

Debate continued.

Question—put.

The Council divided.

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

And so it passed in the negative.

16. MELBOURNE AND METROPOLITAN TRAMWAYS (BOARD) 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 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:—

Amendment made by the Legislative Council.	How dealt with by the Legislative Assembly.
1. Clause 2, sub-clause (1), page 3, line 36, at the end of the line insert "and, where any member was, immediately prior to his appointment as member, a full-time officer or employé of the Board or of any trade union to which officers or employés of the Board customarily belong, his service as such an officer or employé of the Board or of that trade union shall, for the purpose of determining his existing and accruing rights privileges liabilities and obligations with respect to superannuation, gratuities or annuities, long service leave, annual leave and sick leave, be taken into account as if it had been service as a member of the Board".	Agreed to with the following amendment:— Omit "a full-time officer or employé of the Board or of any trade union to which officers or employés of the Board customarily belong, his service as such an officer or employé of the Board or of that trade union" and insert— "(i) a full-time officer or employé of the Board; or (ii) (having been such an officer or employé) a full-time officer or employé of a trade union or other similar organization to which officers or employés of the Board customarily belong— his service or aggregate service as such an officer or employé."

On the motion of the Honorable P. L. Coleman, the Council agreed to the amendment 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.

17. CONSOLIDATED REVENUE BILL (No. 1).—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. 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.

And then the Council, at forty-nine minutes past Two 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.

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 5.

TUESDAY, 14TH SEPTEMBER, 1954.

Government Business.

ORDER OF THE DAY :—

1. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

General Business.

ORDER OF THE DAY :—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

1702/54. (100 copies.)

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 6.

TUESDAY, 14TH SEPTEMBER, 1954.

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. RESIGNATION OF MEMBER.—The President announced that he had received the following communications :—

Government House,
Melbourne, 21st June, 1954.

MR. PRESIDENT,

I have the honour to transmit to you the attached communication which I have received this day from the Honorable Archibald McDonald Fraser, resigning his seat as a Member of the Legislative Council representing the Melbourne North Province of Victoria.

I have the honour to be,
Sir,
Your obedient servant,
DALLAS BROOKS,
Governor.

The Honorable Sir Clifden Eager, K.B.E., Q.C., M.L.C.,
President of the Legislative Council,
Parliament House, Melbourne.

Old Treasury Building,
Spring-street,
Melbourne, C.1,
21st June, 1954.

To His Excellency,
General Sir Dallas Brooks, K.C.B., K.C.M.G., K.C.V.O., D.S.O., R.M.,
Governor of Victoria,
Government House, Melbourne.

YOUR EXCELLENCY,

Pursuant to the provisions of *The Constitution Act*, I hereby resign my seat in the Legislative Council of Victoria as one of the Members for the Melbourne North Province.

I have the honour to be,
Your Excellency's most obedient servant,
A. M. FRASER.

[ENDORSEMENT.]
Received this resignation this 21st day of June, 1954.
DALLAS BROOKS,
Governor of Victoria.

1701/54. (240 copies.)

113 Osborne-street,
South Yarra, S.E.1,
21st June, 1954.

The Honorable Sir Clifden Eager, K.B.E., Q.C., M.L.C.,
President of the Legislative Council,
Parliament House, Melbourne.

DEAR SIR CLIFDEN,

I desire to inform you that I have to-day tendered to His Excellency the Governor my resignation from membership of the Legislative Council as one of the representatives of the Melbourne North Province.

I thank you for your courtesy and help to me both during your term as Unofficial Leader (as you then were when I entered the House) and as President.

I would be obliged if you will convey to all Honorable Members and the Officers of the House how greatly I appreciate the courtesy and assistance extended to me during my membership of the House over a period of fourteen years.

In one sense I greatly regret the termination of an association which will always have for me the happiest of recollections.

Yours sincerely,

A. M. FRASER.

4. RETURN TO WRIT.—The President announced that on the 8th July last he had issued a Writ for the election of a Member to serve for the Melbourne North Province in the place of the Honorable Archibald McDonald Fraser, resigned, and that such Writ had been returned to him and by the indorsement thereon it appeared that John Albert Little had been elected in pursuance thereof.

5. SWEARING-IN OF NEW MEMBER.—The Honorable John Albert Little, having been introduced, took and subscribed the Oath of Allegiance.

6. 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 11th May last, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Town and Country Planning Act.
Police Offences (Obscene Publications) Act.
Health (Infectious Diseases) Act.
Melbourne Cricket Ground (Guarantee) Act.
Superannuation (Female Officers) Act.
Crimes Act.
Melbourne and Metropolitan Tramways (Board) Act.
Consolidated Revenue Act.

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

Education—Report of the Minister of Education 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 :—

Apprenticeship Acts—Amendment of Regulations—

Aircraft Mechanic Trades Apprenticeship Regulations.
Boilermaking Trades Apprenticeship Regulations.
Bootmaking Trades Apprenticeship Regulations.
Bread Trade Apprenticeship Regulations (two papers).
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.
Electroplating Trade Apprenticeship Regulations.
Engineering Trades Apprenticeship Regulations.
Fibrous Plastering Trade Apprenticeship Regulations (three papers).
Furniture Trades Apprenticeship Regulations.
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.
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.
Silverware and Silverplating Trades Apprenticeship Regulations.
Vehicle Industry Trades Apprenticeship Regulations.
Watchmaking Trades Apprenticeship Regulations (two papers).

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Constitution Act Amendment Acts—

Amendment of Joint Electoral (Commonwealth and Victoria) Regulations.
Statements of appointments and alterations of classification in the Departments of the Legislative Council and the Legislative Assembly (two papers).

Co-operation Act 1953—

Co-operative Societies (Model Rules) Regulations.
Co-operative Societies (General) Regulations.

Country Fire Authority Acts—Amendment of Country Fire Authority Superannuation and Endowment Assurance Regulations 1953.

Dairy Products Acts—Report of the Victorian Dairy Products Board for the six months ended 31st December, 1953.

Education Act 1928—Amendment of Regulations—

Regulation IV. (F).—Girls' Secondary School Intermediate Certificate.
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 XX. (B).—Trained Infant Teacher's Certificate.
Regulation XXI.—Scholarships.
Regulation XXIII.—Records.
Regulation XXXIII.—Consolidated Schools and Group Schools.
Regulation XXXV.—Girls' Secondary Schools.
Regulation XXXVI.—District High Schools.
Regulation XLIV.—School Hours and Organization.

Explosives Act 1928—Orders in Council relating to—

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

Fisheries Acts—Notices of Intention to issue Proclamations—

To alter the periods during which a bag limit for trout shall operate in certain waters.
To prohibit fishing in certain waters (two papers).
To revoke the proclamation respecting certain fishing in the Wurdee Boluc Storage Reservoir, Parish of Tutegong.
To specify the Oliver's Gully and Langi Ghiran Reservoirs as inland waters for the purpose of section 5 of the Fisheries (Inland Angling) Act 1950.

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 1953.

Fruit and Vegetables Acts—Amendment of Regulations—Tomatoes.

Geelong Waterworks and Sewerage Act 1928—Balance-sheet of the Geelong Waterworks and Sewerage Trust as at 30th June, 1953.

Justices Act 1928 and Labour and Industry Act 1953—Amendment of Justices Act Rules 1936 (No. 1).

Labour and Industry Act—Amendment of Regulations (two papers.)

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Alfredton, Bairnsdale, Ballarat East, Bayview, Blackburn, Bulleen, Chadstone Park, Cheltenham East, Clayton North, Eastoakleigh, Fawkner, Frankston North, Glen Waverley, Greythorn, Heatherdale, Heatherton, Heidelberg North, Highett West, Holmesglen, Korumburra, Licola, Lockington, Montrose, Moorabbin, Pascoe Vale, Rosanna, Roslyn, Stawell West, Wallington, Waverley South, and Westall (thirty-five papers).
Schedules 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 1953–54.

Latrobe Valley Water and Sewerage Acts—

Latrobe Valley Water and Sewerage Board Election Regulations 1954.
Regulations—Travelling Expenses.

Legal Profession Practice Act 1928—Council of Legal Education—Amendment of Rules relating to the Qualification and Admission of Candidates.

Local Government Act 1946—

Amendment of Scaffolding Regulations.
Order in Council relating to compulsory voting at election of councillors for the City of Horsham.

Marketing of Primary Products Act 1935—Regulations—

Chicory Marketing Board—Periods of time for the computation of or accounting for the net proceeds of the sale of chicory.
Maize Marketing Board—Nineteenth period of time for the computation of or accounting for the net proceeds of the sale of maize.

Onion Marketing Board—Registration of producers.

Potato Marketing Board—

Amendment of Potato Marketing Board Regulations 1948.

Sixth period of time for the computation of or accounting for the net proceeds of sale of potatoes.

Travelling Expenses (three papers).

Mental Hygiene Authority Act 1950—Mental Hygiene Authority Regulations 1954 (No. 1).

Milk and Dairy Supervision Act 1943—Regulation prescribing a Milk Depot.

Milk Board Acts—Regulations—Delivery hours in certain districts.

Milk Pasteurization Act 1949—Regulations prescribing districts.

Motor Car Acts—Motor Car Regulations 1954.

Nurses Act 1928—Nurses Regulations 1954 (No. 2).

Police Offences (Obscene Publications) Act 1954—Police Offences (Obscene Publications) Regulations 1954.

Police Regulation Acts—

Amendment of Police Regulations 1951 (two papers).

Determination No. 49 of the Police Classification Board.

Portland Harbor Trust Act 1949—Amendment of Regulations (four papers).

Public Service Act 1946—

Amendment of Public Service (Governor in Council) Regulations—

Part IV.—Leave of Absence (two papers).

Amendment of Public Service (Public Service Board) Regulations—

Part I.—Appointments to the Administrative, Professional, and Technical and General Divisions (two papers).

Part II.—Promotions and Transfers.

Part III.—Salaries, Increments and Allowances (seventy-six papers).

Part VI.—Travelling Expenses (three papers).

Railways Act 1928—Reports of the Victorian Railways Commissioners for the quarters ended 31st December, 1953, and 31st March, 1954 (two papers).

Road Traffic Acts—

Road Traffic Regulations 1954.

Road Traffic (Country) Regulations 1954.

Stamps Acts—Amendment of Stamps (Cheques) Act 1951 Regulations.

State Electricity Commission Acts—Amendment of Kiewa Works Protection Regulations 1954.

State Savings Bank Act 1928—General Orders Nos. 48 and 49 (two papers).

Supreme Court Acts—Rules of the Supreme Court—

Amendment of Rules of Procedure in Civil Proceedings (two papers).

Amendment of Rules of Procedure in Divorce and Matrimonial Causes.

Tattersall Consultations Act 1953—Tattersall Consultations Regulations 1954.

Teaching Service Act 1946—Amendment of Regulations—

Teachers Tribunal Elections Regulations (two papers).

Teaching Service (Classification, Salaries and Allowances) Regulations (five papers).

Teaching Service (Teachers Tribunal) Regulations (three papers).

Town and Country Planning Act 1944—

City of Brunswick Planning Scheme No. 3, 1953.

Latrobe Valley Sub-Regional Planning Scheme, Amendment No. 1, 1953.

Shire of Broadmeadows Planning Scheme, Amendment No. 1, 1953.

Trade Unions Act 1928—Report of the Government Statist for the year 1953.

Workers Compensation Acts—

Workers Compensation Regulations 1954.

Workers Compensation Board Regulations 1954.

8. ADJOURNMENT.—The Honorable P. L. Coleman moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 28th 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 seventeen minutes past Five o'clock, adjourned until Tuesday, the 28th instant.

ROY S. SARAH,
Clerk of the Legislative Council.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 6.

TUESDAY, 28TH SEPTEMBER, 1954.

Questions.

*1. The Hon. G. L. CHANDLER: To ask the Honorable the Minister of Transport—

(*a*) What loan money has been allocated to Victoria by the Loan Council, or raised by semi-governmental borrowing authorized by the Loan Council, during each financial year from 1944–45 to date.

(*b*) What amount has been available each financial year to the—(i) State Rivers and Water Supply Commission; (ii) State Electricity Commission; and (iii) Melbourne and Metropolitan Board of Works.

*2. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—

(*a*) What amount has been received by, or is due to, the Government from Tattersall consultations.

(*b*) How many consultations does such amount represent.

(*c*) Is it the intention of the Government to license authorized agents; if so, how many and in what localities.

(*d*) What steps are being taken to prevent continuance of the operations of unauthorized agents.

*3. The Hon. A. G. WARNER: To ask the Honorable the Minister of Transport—What percentage of the total number of road accidents in Victoria involving casualties on days other than Saturdays and Sundays occurred between the hours of 7 a.m. and 12 noon during each of the last eight quarterly periods.

*4. The Hon. P. JONES: To ask the Honorable the Minister of Transport—What is the number, nature, and value of scholarships now awarded by the State Government.

*5. The Hon. H. C. LUDBROOK: To ask the Honorable the Minister of Transport—

(*a*) What is the number of prisoners in Pentridge under the age of 18 years.

(*b*) What is the number of prisoners in Langi Kal Kal training farm over the age of 18 years.

Government Business.

NOTICES OF MOTION:—

*1. The Hon. W. SLATER: To move, That he have leave to bring in a Bill to further amend Part V. of the *Goods Act* 1928.

*2. The Hon. W. SLATER: To move, That he have leave to bring in a Bill relating to Powers of Judges of the County Court and Chairmen of General Sessions.

*3. The Hon. J. W. GALBALLY: To move, That he have leave to bring in a Bill to amend Section Twenty-nine of the *Police Offences Act* 1928.

ORDER OF THE DAY:—

1. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

* *Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (100 copies.)

General Business.

NOTICES OF MOTION :—

*1. The Hon. C. P. GARTSIDE : To move, That he have leave to bring in a Bill relating to Disagreements between the two Houses of Parliament.

*2. The Hon. H. C. LUDBROOK : To move, That he have leave to bring in a Bill to amend Section One hundred and ninety-five of the *Water Act* 1928.

*3. The Hon. A. G. WARNER : To move, That he have leave to bring in a Bill to amend the Housing Acts.

ORDER OF THE DAY :—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 7.

TUESDAY, 28TH SEPTEMBER, 1954.

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

2. AUDITOR-GENERAL'S SALARY BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Salary of the Auditor-General*" 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.

3. 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 nine hundred and one thousand four hundred and seventy-five pounds to the service of the year One thousand nine hundred and fifty-four and One thousand nine hundred and fifty-five*" 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. 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 Two million six hundred and ninety-six thousand five hundred and four 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.

5. CORNEAL GRAFTING BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision with respect to the Use of Eyes of Deceased Persons for Therapeutic 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.

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

   Police—Report of the Chief Commissioner of Police for the year 1953.

   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—

   Amendments of Regulations—

   Bread Trade Apprenticeship Regulations.
   Butchering Trades Apprenticeship Regulations.
   Electrical Trades Apprenticeship Regulations.
   Fibrous Plastering Trade Apprenticeship Regulations.
   Printing and Allied Trades Apprenticeship Regulations.
   Printing Trades (Country) Apprenticeship Regulations.
   Vehicle Industry Trades Apprenticeship Regulations.
   Watchmaking Trades Apprenticeship Regulations.

   Amendment of Printing Trades Apprenticeship Proclamation.

   Children's Welfare Act 1928—Report of the Secretary to the Children's Welfare Department and the Department for Reformatory Schools—

   For the years 1951 and 1952.
   For the year 1953.

   Co-operation Act 1953—Co-operative Societies (Model Rules) Regulations (No. 2).

1701/54. (240 copies.)

Co-operative Housing Societies Acts—Report of the Registrar of Co-operative Housing Societies for the year 1952–53.

Constitution Statute—Statement of Expenditure under Schedule D to Act 18 and 19 Vict., Cap. 55, Acts 3660 and 5380 during the year 1953–54.

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 Colac West and Dandenong (two papers).

Marketing of Primary Products Act 1935—Proclamation declaring that Potatoes shall become the property of the Potato Marketing Board for a further period.

Nurses Act 1928—Nurses Regulations 1954 (No. 3).

Poisons Acts—Pharmacy Board of Victoria—Dangerous Drugs Regulations 1954.

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

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

Part VI.—Travelling Expenses.

Rural Finance Corporation Act 1949—Report of the Rural Finance Corporation, together with Balance-sheet and Profit and Loss Account for the year 1952–53.

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

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

7. GOODS (AMENDMENT) BILL.—On the motion of the Honorable J. W. Galbally, leave was given to bring in a Bill to further amend Part V. of the *Goods 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.

8. JUDGES (POWERS) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill relating to Powers of Judges of the County Court and Chairmen of General Sessions, 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. POLICE OFFENCES (FEMALE OFFENDERS) BILL.—On the motion of the Honorable J. W. Galbally, leave was given to bring in a Bill to amend Section Twenty-nine of the *Police Offences 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.

10. CONSOLIDATED REVENUE 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.

11. CONSOLIDATED REVENUE BILL (No. 3).—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 Tuesday, the 12th October next.

Question—put and resolved in the affirmative.

And then the Council, at forty-five minutes past Ten o'clock, adjourned until Tuesday, the 12th October next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 7.

TUESDAY, 12TH OCTOBER, 1954.

Question.

*1. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—

(*a*) What is the total area of land held by the Housing Commission in the Broadmeadows–Somerton area in regard to which negotiations for acquisition have been completed.

(*b*) What additional area is involved in cases where acquisition notices have been served on owners but no agreement has been reached in regard to price, and how many owners are so affected.

Government Business.

ORDERS OF THE DAY:—

*1. AUDITOR-GENERAL'S SALARY BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*2. CORNEAL GRAFTING BILL—(*from Assembly—Hon. W. Slater*)—Second reading.

*3. GOODS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.

*4. JUDGES (POWERS) BILL—(*Hon. W. Slater*)—Second reading.

*5. POLICE OFFENCES (FEMALE OFFENDERS) BILL—(*Hon. J. W. Galbally*)—Second reading.

6. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

General Business.

NOTICES OF MOTION:—

1. The Hon. C. P. GARTSIDE: To move, That he have leave to bring in a Bill relating to Disagreements between the two Houses of Parliament.

2. The Hon. H. C. LUDBROOK: To move, That he have leave to bring in a Bill to amend Section One hundred and ninety-five of the *Water Act* 1928.

3. The Hon. A. G. WARNER: To move, That he have leave to bring in a Bill to amend the Housing Acts.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 8.

TUESDAY, 12TH OCTOBER, 1954.

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 29th September last, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Consolidated Revenue Act (*No.* 2).

Consolidated Revenue Act (*No.* 3).

3. MELBOURNE AND METROPOLITAN BOARD OF WORKS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Melbourne and Metropolitan Board of Works Act* 1928'" 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. MINISTERIAL STATEMENT—UNDERGROUND WATER RESOURCES.—The Honorable D. P. J. Ferguson, by leave, made a Ministerial Statement with respect to the investigation by the Mines Department in conjunction with the State Rivers and Water Supply Commission of the underground water resources of the State.

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

Apprenticeship Acts—Plumbing and Gasfitting Trades Apprenticeship Regulations.

Health Act 1928—Report of the Commission of Public Health for the year 1953–54.

Justices Act 1928—Amendment of Justices Act Rules 1936 (No. 1).

Land Act 1928—

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

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

Marketing of Primary Products Act 1935—Regulations—

Egg and Egg Pulp Marketing Board—Producers of eggs.

Potato Marketing Board—Ninth period of time for the computation of or accounting for the net proceeds of the sale of potatoes.

Melbourne and Metropolitan Tramways Act 1928—Report and Statement of Accounts of the Melbourne and Metropolitan Tramways Board for the year 1953–54.

Mines Acts—Mines Acts General Regulations.

Poisons Acts—Pharmacy Board of Victoria—Proclamations amending—

Second Schedule to Poisons Act 1928 (two papers).

Fourth Schedule to Poisons Act 1928.

Sixth Schedule to Poisons Act 1928.

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

Part II.—Promotions and Transfers.

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

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

Seeds Acts—Amendment of Regulations.

6. AUDITOR-GENERAL'S SALARY 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.

1701/54. (240 copies.)

7. CORNEAL GRAFTING 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. GOODS (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 transmitted to the Assembly with a Message desiring their concurrence therein.

9. FINANCE (RACING) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Police Offences Acts, the 'Totalizator Act* 1930', *the 'Trotting Races Act* 1946' *and the Stamps Acts in respect of certain Financial Matters relating to Race-courses and Race-meetings, 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. JUDGES (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 transmitted to the Assembly with a Message desiring their concurrence therein.

11. POLICE OFFENCES (FEMALE OFFENDERS) 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.

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

13. CONSTITUTION (REFORM) BILL.—On the motion of the Honorable C. P. Gartside, leave was given to bring in a Bill relating to Disagreements between the two Houses of Parliament, 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.

14. WATER (CONNECTIONS TO MAINS) BILL.—On the motion of the Honorable H. C. Ludbrook, leave was given to bring in a Bill to amend Section One hundred and ninety-five of the *Water 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.

15. HOUSING (BUILDINGS) BILL.—On the motion of the Honorable A. G. Warner, leave was given to bring in a Bill to amend Section Four of the *Housing Act* 1943, 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.

16. 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.

Debate ensued.

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

Ordered—That the debate be adjourned until Wednesday, the 20th instant.

17. COUNTRY ROADS AND LEVEL CROSSINGS FUNDS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Country Roads Board Fund and the Level Crossings Fund*" 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. ENTERTAINMENTS TAX (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for Reduced Rates of Entertainments Tax*" 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.

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19. 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-six 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.

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 8.

TUESDAY, 19TH OCTOBER, 1954.

Questions.

*1. The Hon. T. W. BRENNAN: To ask the Honorable the Minister of Transport—

(*a*) What amount was paid in pay-roll tax by the Government of Victoria through its various instrumentalities—(i) for the financial year 1953-54; (ii) for the quarter ended 30th September, 1954; and (iii) from the institution of this tax to date.

(*b*) Will the Government investigate the possibility of having pay-roll tax remitted in respect of State Government undertakings.

*2. The Hon. W. MACAULAY: To ask the Honorable the Minister of Transport—In view of the fact that land occupied by the Yarram-Woodside railway was paid for by a levy upon adjoining and adjacent landholders, and in view of the fact that local public opinion is strongly opposed to its alienation, will the Government review its decision to sell the land with a view to retaining it for possible future use and development.

*3. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—Has the Government received a report from the Committee set up to revise the Uniform Building Regulations.

*4. The Hon. G. L. CHANDLER: To ask the Honorable the Minister of Transport—

(*a*) What amount of loan money was applied for by the Melbourne and Metropolitan Board of Works for each of the last ten years.

(*b*) By what amount (if any) was each application reduced by the Treasurer before being recommended to the Loan Council.

*5. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—Is it the intention of the Railways Department to continue the existing Wodonga-Cudgewa railway service.

*6. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—What comparable townships were used by the State Rivers and Water Supply Commission as a basis in fixing land values in the Tallangatta township.

Government Business.

ORDERS OF THE DAY:—

*1. MELBOURNE AND METROPOLITAN BOARD OF WORKS (AMENDMENT) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*2. FINANCE (RACING) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*3. COUNTRY ROADS AND LEVEL CROSSINGS FUNDS BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*4. ENTERTAINMENTS TAX (AMENDMENT) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

5. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

General Business.

ORDERS OF THE DAY:—

*1. CONSTITUTION (REFORM) BILL—(*Hon. C. P. Garstide*)—Second reading.

*2. WATER (CONNECTIONS TO MAINS) BILL—(*Hon. H. C. Ludbrook*)—Second reading.

*3. HOUSING (BUILDINGS) BILL—(*Hon. A. G. Warner*)—Second reading.

WEDNESDAY, 20TH OCTOBER.

General Business.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 9.

WEDNESDAY, 20TH OCTOBER, 1954.

Questions.

*1. The Hon. D. L. ARNOTT: To ask the Honorable the Minister in Charge of Electrical Undertakings—In view of the importance of Portland as a port and the great development taking place there, will the Minister endeavour to expedite the supply of electric power to that district, and is he in a position to indicate when the State Electricity Commission will be able to supply power.

*2. The Hon. G. L. CHANDLER: To ask the Honorable the Minister of Transport—

(*a*) Will the Government indicate when construction of the proposed Cobbledick's Ford reservoir, near Werribee, is likely to commence.

(*b*) What water storage schemes not yet commenced have a higher priority than Cobbledick's, and when is it proposed to commence each.

(*c*) What water storages are now under construction; when was each commenced; what is the estimated cost and the percentage towards completion in each case.

General Business.

ORDERS OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).
2. CONSTITUTION (REFORM) BILL—(*Hon. C. P. Gartside*)—Second reading.
3. WATER (CONNECTIONS TO MAINS) BILL—(*Hon. H. C. Ludbrook*)—Second reading.
4. HOUSING (BUILDINGS) BILL—(*Hon. A. G. Warner*)—Second reading.

Government Business.

NOTICE OF MOTION:—

*1. The Hon. W. SLATER: To move, That he have leave to bring in a Bill to amend the Administration and Probate Acts, the *Business Names Act* 1928, the Justices Acts, the Landlord and Tenant Acts, the Maintenance Acts, the Marriage Acts, the *Poor Persons Legal Assistance Act* 1928, the Supreme Court Acts, the Wills Acts, the *Dried Fruits Act* 1938, the Companies Acts and the Marketing of Primary Products Acts.

ORDERS OF THE DAY:—

1. FINANCE (RACING) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
2. COUNTRY ROADS AND LEVEL CROSSINGS FUNDS BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading—*Resumption of debate* (*Hon. I. A. Swinburne*).
3. ENTERTAINMENTS TAX (AMENDMENT) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*4. BELLARINE WATER SUPPLY BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

*5. APPRENTICESHIP (AMENDMENT) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

6. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 9.

TUESDAY, 19TH OCTOBER, 1954.

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

2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Lieutenant-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. :—

Auditor-General's Salary Act.

Corneal Grafting Act.

3. BELLARINE WATER SUPPLY BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Water Supply in the Bellarine Peninsula, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. APPRENTICESHIP (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Twenty-six and Thirty-eight of the 'Apprenticeship 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.

5. SALARIES AND ALLOWANCES OF MEMBERS OF PARLIAMENT.—The Honorable P. L. Coleman moved, by leave, That the Report of the Committee of Inquiry into the Salaries and Allowances of Members of the Parliament of Victoria be laid upon the Table of the House.

Question—put and resolved in the affirmative.

6. PAPERS.—The Honorable P. L. Coleman presented, in accordance with the Order of the Council—

Salaries and Allowances of Members of Parliament—Report of the Committee of Inquiry.

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—Regulations relating to the Issue of Debentures.

Explosives Act 1928—Report of the Chief Inspector of Explosives on the working of the Act for the year 1953.

Housing Acts—Report of the Housing Commission for the year 1952–53.

Police Regulation Acts—Determination No. 51 of the Police Classification Board.

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

7. MELBOURNE AND METROPOLITAN BOARD OF WORKS (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.

8. TOTALIZATOR (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Totalizator Act* 1930'" 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.

1701/54. (240 copies.)

9. 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.

10. COUNTRY ROADS AND LEVEL CROSSINGS FUNDS 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 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.

11. TOTALIZATOR (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.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 10.

WEDNESDAY, 20TH OCTOBER, 1954.

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:—

Education Act 1928, University Act 1928, and Teaching Service Act 1946—Amendment of Regulations—

Regulation VI.—Teachers' Certificates.

Regulation XIX.—Allowances for School Requisites and Maintenance to Pupils attending Post-primary Schools and Classes.

Regulation XX. (N).—Trained Physical Education Teachers' Certificate (Primary).

Regulation XXI.—Scholarships.

Regulation L.—Studentships and Courses at Teachers' Colleges or Other Approved Institutions.

Police Offences (Obscene Publications) Act 1954—Amendment of Police Offences (Obscene Publications) Regulations 1954.

3. POSTPONEMENT OF ORDER OF THE DAY.—Ordered, after debate, That the consideration of Order of the Day, General Business, No. 1, be postponed until Wednesday, the 3rd November next.

4. CONSTITUTION (REFORM) 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 President said—

One of the difficulties in determining the propriety of a Bill is that upon its first reading the Bill is not produced. It is produced to members and to the President for the first time when the member moving its second reading proceeds to do so and to speak upon it. Since Mr. Gartside began his speech I have had a little time to look at the Bill, and its last clause is the one to which I now direct attention.

I would ask Mr. Gartside this question: Is this not a Bill which must originate in the Assembly by virtue of section LVI. of The Constitution Act? The Bill undoubtedly, by clause 6, proposes to increase, in the circumstances there stated, the sum of £2,000,000 payable out of the Public Account under section 16 of the *Public Account Act* 1951 to a further undesignated sum which the Treasurer may certify to be necesary for the services of the State during the period between the proposed double dissolution and the commencement of the new Parliament thereafter. Clause 6 of the Bill proposes the insertion of a proviso to sub-section (1) of section 16 of the *Public Account Act* 1951. That sub-section reads:—

> There may be issued and applied temporarily out of the Public Account any sum or sums (not exceeding in all £2,000,000) required to be provided for advances to the Treasurer to enable him to meet urgent claims that may arise before Parliamentary sanction therefor is obtained.

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The Public Account therein referred to is stated by section 4 of the Public Account Act to consist of the Consolidated Revenue established under section XLIV. of the Constitution Act, together with certain other funds. Clause 6 of the Bill is as follows :—

> At the end of sub-section (1) of section sixteen of the *Public Account Act* 1951 there shall be inserted the following proviso :—
>
> "Provided that in the case where a simultaneous dissolution of the Legislative Council and the Legislative Assembly takes place following the rejection by the Council of a Supply Bill passed by the Assembly the sum of Two million pounds aforesaid shall be temporarily increased by such amount as the Treasurer certifies is necessary to carry on the services of the State until the commencement of a new Parliament following the elections consequent on such simultaneous dissolution ; and such services shall be deemed to be urgent claims for the purposes of this sub-section."

Section LVI. of The Constitution Act provides that all Bills for appropriating any part of the revenue of Victoria shall originate in the Assembly. This provision applies to Supply which necessarily involves such an appropriation.

Now, as I understand clause 6 of this Bill, it is proposed to authorize the issue and application out of the Consolidated Revenue of such sum as the Treasurer of the day may certify to be necessary in order to carry on the Government of the country over the intermediate period between the dissolution of both Houses and the commencement of the new Parliament, when Supply can be obtained and appropriation made by Act of Parliament in the ordinary way. Clause 6 of the Bill therefore seems to violate section LVI. of The Constitution Act, and the long course of practice in relation to money Bills during the last 100 years. I was anxious to allow the honorable member to make as much progress as he properly could with his speech, so that I could hear what he might have to say on this clause.

The Hon. C. P. Gartside.—Mr. President, what is now the position ?

The President.—Unless the honorable member can convince me to the contrary, I think the Bill is one that cannot originate in this House and, therefore, must be laid aside. However, I am willing to hear argument from Mr. Gartside before I definitely rule on that point.

* * * * * * * *

The Hon. C. P. Gartside.—During the last hour, I have investigated certain matters that have been brought to my notice, and I cannot disagree with your ruling, Mr. President. Concerning clause 6, I must confess that, notwithstanding the advice I have received from the Law Department, through certain channels, I was not acquainted with the aspect to which you, Sir, have referred.

The Hon. William Slater.—Would it be the duty of the Law Department to advise you in that regard ?

The Hon. C. P. Gartside.—In view of the fact that the measure was prepared by the Parliamentary Draftsman, I consider that I was entitled to guidance by the Law Department.

The Hon. William Slater.—The essence of your Bill is contained in clause 6. Without clause 6, the complete structure of the measure falls to the ground.

The Hon. C. P. Gartside.—I appreciate that fact, but I should like to make—by leave, if necessary—a short statement concerning the Bill in general, and clause 6 in particular.

The President.—I am certain that no member desires to prevent Mr. Gartside from doing what he properly may do. I have invited him to address argument to me upon clause 6 of the Bill and the question of whether it is a proper provision to be contained in a Bill originating in this House. In so doing, Mr. Gartside may well state the purpose of the clause and what he ultimately desires to achieve as a result of its enactment. He may be able to reveal something concerning the provision and its propriety that is not apparent on the surface.

The Hon. C. P. Gartside.—I confess my inability, Sir, to alter your determination. I am prepared to allow the Bill to rest, but I should like to make one or two observations concerning it.

The President.—I think the honorable member, while respecting the ruling of the presiding officer, may, at any rate by leave of the House, make a statement of his future intention, but not a speech upon the Bill. I think I understand what Mr. Gartside means ; he intends to indicate, in a general way, his intentions concerning this matter.

The Hon. C. P. Gartside.—That, Mr. President, is the position.

The President.—If no honorable member objects, such a statement may be made by leave of the House.

The Hon. C. P. Gartside.—I desire to intimate that I am bitterly disappointed at the fate of my Bill. When I brought it down, I had no idea that I would infringe the rules of the House and I regret exceedingly that I am prevented from proceeding with the measure because of a technical point. That aspect was not apparent to me, and I was not advised concerning it.

* * * * * * * *

The President.—Mr. Gartside has said that he had been prevented from proceeding with the Bill because of a technical objection. I should like to point out that the ruling I gave is based on the very foundation of the relations between the two Houses of Parliament, and the provisions of The Constitution Act, namely, that this House—the Legislative Council—cannot originate what is called a money Bill. It would be an extremely unfortunate happening if, in order to correct one injustice that the honorable member thinks exists in the present constitutional relation between the two Houses, we should now depart from another constitutional limitation that has existed during the period of nearly 100 years of responsible government in Victoria. That would be the effect if the Bill were proceeded with in this House ; we would be violating a fundamental provision of the Constitution concerning the relationship between, and the powers of, the two Houses.

For reasons I have stated, I hold that the Bill cannot be originated in this House and, therefore, it must fall to the ground. The proper direction, I think, is that the Bill be laid aside, and I so direct.

5. POSTPONEMENT OF ORDERS OF THE DAY.—

Ordered—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 Wednesday, the 3rd November next.

6. 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 *Business Names Act* 1928, the Justices Acts, the Landlord and Tenant Acts, the Maintenance Acts, the Marriage Acts, the *Poor Persons Legal Assistance Act* 1928, the Supreme Court Acts, the Wills Acts, the *Dried Fruits Act* 1938, the Companies Acts and the Marketing of Primary Products 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.

7. 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.

8. COUNTRY ROADS AND LEVEL CROSSINGS FUNDS 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.

9. COUNTRY ROADS AND LEVEL CROSSINGS FUNDS 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 returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

10. ENTERTAINMENTS TAX (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 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. FINANCE (RACING) 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. BELLARINE WATER SUPPLY 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. 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-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.

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 10.

TUESDAY, 26TH OCTOBER, 1954.

Questions.

1. The Hon. G. L. CHANDLER: To ask the Honorable the Minister of Transport—
   (*a*) Will the Government indicate when construction of the proposed Cobbledick's Ford reservoir, near Werribee, is likely to commence.
   (*b*) What water storage schemes not yet commenced have a higher priority than Cobbledick's, and when is it proposed to commence each.
   (*c*) What water storages are now under construction; when was each commenced; what is the estimated cost and the percentage towards completion in each case.

*2. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—
   (*a*) What grants were made available by the Commonwealth Government to this State for each section of extension work by the Department of Agriculture during each of the last five financial years.
   (*b*) What amount of such grants was expended in each year.
   (*c*) What State funds were used to supplement such grants in each year.

*3. The Hon. W. O. FULTON: To ask the Honorable the Minister of Transport—
   (*a*) What number of veterinary scholarships have been made available each year by the Government since the inception of the scheme.
   (*b*) What has been the total cost to the Government of such scholarships.
   (*c*) How many students allotted scholarships have graduated.
   (*d*) How many veterinary surgeons are employed in the Department of Agriculture, and where.

*4. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—
   (*a*) How many applications by proprietors of metropolitan bus routes for approval to increase fares to enable continuance of their bus services have been refused since 1st January, 1954.
   (*b*) What bus services were affected by such refusals.
   (*c*) How are such applications determined and by whom.

*5. The Hon. W. O. FULTON: To ask the Honorable the Minister of Transport—In the proposed reconstruction of the Housing Commission, will provision be made for the inclusion of a person representing country interests.

Government Business.

ORDERS OF THE DAY:—

*1. STATUTES AMENDMENT BILL—(*Hon. W. Slater*)—Second reading.
2. APPRENTICESHIP (AMENDMENT) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.
3. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

General Business.

ORDER OF THE DAY:—

1. WATER (CONNECTIONS TO MAINS) BILL—(*Hon. H. C. Ludbrook*)—Second reading.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

WEDNESDAY, 3RD NOVEMBER.

General Business.

ORDERS OF THE DAY :—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).
2. HOUSING (BUILDINGS) BILL—(*Hon. A. G. Warner*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 11.

TUESDAY, 26TH OCTOBER, 1954.

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 22nd instant, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Totalizator (Amendment) Act.

Country Roads and Level Crossings Funds Act.

Entertainments Tax (Amendment) Act.

Finance (Racing) Act.

Bellarine Water Supply Act.

3. VERMIN AND NOXIOUS WEEDS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Vermin and Noxious Weeds Act* 1949', *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. STATUTE LAW REVISION COMMITTEE—FRAUDULENT PRACTICES IN CONNEXION WITH COMPANIES.—The Honorable F. M. Thomas brought up a Report from the Statute Law Revision Committee on amendments of the statute law to deal with fraudulent practices by persons interested in the promotion and/or direction of companies and by firms.

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 :—

Fungicides Acts—Vermin Destroyer (Rat-Poison) Regulations 1954.

Geelong Harbor Trust Acts—Amendment of Principal Regulations.

Marketing of Primary Products Act 1935—Onion Marketing Board—Regulations—Forty-third period of time for the computation of or accounting for the net proceeds of the sale of onions.

Milk Pasteurization Act 1949—Regulation prescribing districts.

Police Regulation Acts—Determination No. 50 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 1953-54.

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

State Savings Bank Act 1928—Statements and Returns of the State Savings Bank for the year 1953-54.

Stock Foods Acts—Amendment of Regulations.

Transport Regulation Acts—Report of the Transport Regulation Board for the year 1953-54.

1701/54. (240 copies.)

6. 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 G. S. McArthur 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. APPRENTICESHIP (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.

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

Question—put and resolved in the affirmative.

And then the Council, at twenty-one minutes past Six o'clock, adjourned until Wednesday, the 3rd November next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 11.

WEDNESDAY, 3RD NOVEMBER, 1954.

Questions.

*1. The Hon. A. K. BRADBURY: To ask the Honorable the Minister in Charge of Electrical Undertakings—

(*a*) How many rural dwellers have applied to the State Electricity Commission for connexion of electricity supply under—(i) the 50 per cent.; and (ii) the 100 per cent. "self help" schemes.

(*b*) How many of such applicants are still awaiting connexion.

(*c*) How much money is the Commission holding in respect of such applications where connexions—(i) have been completed; and (ii) have not been completed.

*2. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—

(*a*) Was a member of the Police Force dismissed by the Police Discipline Board presided over by Mr. Blair, S.M., on Wednesday, 20th October, 1954; if so, what was the charge preferred against him.

(*b*) Was it proved that the member of the Police Force concerned had demanded a reward from a car-towing service in exchange for supplying information relating to an accident.

(*c*) Were the proceedings held *in camera*; if so, why.

(*d*) Will the Minister give an undertaking that all future cases before the Police Discipline Board will be heard in public; if not, why.

(*e*) Is the Government aware of any other instances where members of the Police Force have demanded money from car-towing services for informing them of car accidents; if so, what are the relevant facts.

General Business.

ORDERS OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).
2. HOUSING (BUILDINGS) BILL—(*Hon. A. G. Warner*)—Second reading.
3. WATER (CONNECTIONS TO MAINS) BILL—(*Hon. H. C. Ludbrook*)—Second reading.

Government Business.

ORDERS OF THE DAY:—

1. STATUTES AMENDMENT BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. G. S. McArthur*).

*2. VERMIN AND NOXIOUS WEEDS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

3. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

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

1702/54. (125 copies.)

6. 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 G. S. McArthur 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. APPRENTICESHIP (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.

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

Question—put and resolved in the affirmative.

And then the Council, at twenty-one minutes past Six o'clock, adjourned until Wednesday, the 3rd November next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 11.

WEDNESDAY, 3RD NOVEMBER, 1954.

Questions.

*1. The Hon. A. K. BRADBURY: To ask the Honorable the Minister in Charge of Electrical Undertakings—

(*a*) How many rural dwellers have applied to the State Electricity Commission for connexion of electricity supply under—(i) the 50 per cent.; and (ii) the 100 per cent. "self help" schemes.

(*b*) How many of such applicants are still awaiting connexion.

(*c*) How much money is the Commission holding in respect of such applications where connexions—(i) have been completed; and (ii) have not been completed.

*2. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—

(*a*) Was a member of the Police Force dismissed by the Police Discipline Board presided over by Mr. Blair, S.M., on Wednesday, 20th October, 1954; if so, what was the charge preferred against him.

(*b*) Was it proved that the member of the Police Force concerned had demanded a reward from a car-towing service in exchange for supplying information relating to an accident.

(*c*) Were the proceedings held *in camera*; if so, why.

(*d*) Will the Minister give an undertaking that all future cases before the Police Discipline Board will be heard in public; if not, why.

(*e*) Is the Government aware of any other instances where members of the Police Force have demanded money from car-towing services for informing them of car accidents; if so, what are the relevant facts.

General Business.

ORDERS OF THE DAY: —

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).
2. HOUSING (BUILDINGS) BILL—(*Hon. A. G. Warner*)—Second reading.
3. WATER (CONNECTIONS TO MAINS) BILL—(*Hon. H. C. Ludbrook*)—Second reading.

Government Business.

ORDERS OF THE DAY:—

1. STATUTES AMENDMENT BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. G. S. McArthur*).

*2. VERMIN AND NOXIOUS WEEDS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

3. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 12.

WEDNESDAY, 3RD NOVEMBER, 1954.

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. :—

Melbourne and Metropolitan Board of Works (Amendment) Act.
Apprenticeship (Amendment) Act.
Judges (Powers) Act.
Goods (Amendment) Act.

3. GEELONG AND DISTRICT CULTURAL INSTITUTE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Incorporation of the Geelong and District Cultural Institute, the Constitution of the Institute and the Council thereof and the Objects and Management thereof, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. PORTLAND HARBOR TRUST (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Portland Harbor Trust Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. FRIENDLY SOCIETIES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Friendly Societies Acts 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.

6. PUBLIC SERVICE (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend section Thirty-one of the 'Public Service Act* 1946'" 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. NORTH GEELONG TO FYANSFORD RAILWAY CONSTRUCTION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to repeal Section Nineteen of the 'North Geelong to Fyansford Railway Construction Act* 1916'" 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. MELBOURNE AND METROPOLITAN BOARD OF WORKS (AMENDMENT) 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. JUDGES (POWERS) 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. GOODS (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.

1701/54. (240 copies.)

11. STATUTE LAW REVISION COMMITTEE—TRANSPORT REGULATION BILL.—The Honorable F. M. Thomas brought up a Report from the Statute Law Revision Committee on the proposals contained in the Transport Regulation Bill.

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

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

Discharged Servicemen's Preference Act 1943—Amendment of Regulations.

Education Act 1928—Report of the Council of Public Education for the year 1953-54.

Lands (Charitable Trusts) Acts—Statement of the terms of the proposed consent by the Attorney-General to the transfer of the Hampton Memorial Hall site at Sandringham.

Opticians Registration Act 1935—Amendment of Opticians Regulations 1946.

Poisons Acts—Pharmacy Board of Victoria—Proclamations amending—
Second Schedule to Poisons Act 1928 (two papers).
Sixth Schedule to Poisons Act 1928 (two papers).

Public Service Act 1946—
Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances (two papers).
Report of the Public Service Board for the year 1952-53.

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

13. 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—

Debate resumed.

Question—put.

The Council divided.

Ayes, 16.	Noes, 14.
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,	D. P. J. Ferguson,
W. O. Fulton (*Teller*),	J. W. Galbally,
C. P. Gartside,	J. J. Jones,
T. H. Grigg,	P. Jones,
H. C. Ludbrook,	J. A. Little,
G. S. McArthur (*Teller*),	R. R. Rawson,
W. MacAulay,	M. P. Sheehy (*Teller*),
H. V. MacLeod,	W. Slater,
A. R. Mansell,	A. Smith,
I. A. Swinburne,	F. M. Thomas,
G. J. Tuckett,	G. L. Tilley.
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 reported that the Committee had made progress in the Bill, and asked leave to sit again.

Resolved—That the Council will, on Wednesday, the 24th instant, again resolve itself into the said Committee.

14. HOUSING (BUILDINGS) BILL.—DISCHARGE OF ORDER OF THE DAY.—The Order of the Day for the second reading of this Bill having been read—

The Honorable A. G. Warner moved, That the said Order be discharged.

Question—put and resolved in the affirmative.

Ordered—That the Bill be withdrawn.

15. WATER (CONNEXIONS TO MAINS) 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. 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, having been read—

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.

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17. VERMIN AND NOXIOUS WEEDS (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable D. P. J. Ferguson moved, That this Bill be now read a second time.

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.

18. GAS REGULATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Gas Regulation Act* 1933', *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.

19. POLICE OFFENCES (FEMALE OFFENDERS) 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. FRIENDLY 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.

21. 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-nine 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.

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 12.

TUESDAY, 9TH NOVEMBER, 1954.

Questions.

*1. The Hon. H. C. LUDBROOK: To ask the Honorable the Minister of Transport—

(*a*) When were inmates first admitted to Langi Kal Kal Training Farm.

(*b*) How many inmates have been rehabilitated and returned to civil life since the inception of the scheme.

(*c*) What is the number of instructors on the staff, and what subjects do they teach.

(*d*) What is the system used for training in farming practice.

*2. The Hon. A. G. WARNER: To ask the Honorable the Minister of Transport—

(*a*) By how much did the revenue of the Housing Commission from rental of houses fail to meet expenses during each of the financial years 1951–52, 1952–53, and 1953–54.

(*b*) To what extent were the losses in each of these years due to abatement of rent.

(*c*) If the figures for 1953–54 are not available, will the Minister give an estimate.

*3. The Hon. C. P. GARTSIDE: To ask the Honorable the Minister of Transport—Will the Government, before implementing the recommendations of the Committee appointed earlier this year to report upon the salaries of Members of Parliament, appoint a similar committee to report upon a basis on which rents should be stabilized.

*4. The Hon. G. L. CHANDLER: To ask the Honorable the Minister of Transport—

(*a*) How many electors were enrolled for each of the Legislative Council Provinces at the periodical election in 1952.

(*b*) How many electors are now enrolled for each Province, and what is the percentage increase or decrease in each case.

*5. The Hon. H. C. LUDBROOK: To ask the Honorable the Minister of Transport—

(*a*) Whether it is advisable to have inmates at Langi Kal Kal Training Farm housed together in dormitories irrespective of age.

(*b*) Will the Government give consideration to grading these inmates according to their ages so that inmates of 15 years of age would not be under the influence of youths 21 years of age.

(*c*) Will the Government give consideration to the transfer of the Langi Kal Kal Farm from the Penal Department to the Children's Welfare Department so that it can function as a rehabilitation centre for first offenders under the age of 18 years, for which purpose it was originally intended.

*6. The Hon. W. O. FULTON: To ask the Honorable the Minister of Transport—Has the Government subsidized any veterinary service in the State; if so, in what district, what amount of finance was made available, and upon what conditions.

Government Business.

ORDERS OF THE DAY: —

1. STATUTES AMENDMENT BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. A. G. Warner*).
2. VERMIN AND NOXIOUS WEEDS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. I. A. Swinburne*).

*3. GEELONG AND DISTRICT CULTURAL INSTITUTE BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

*4. PORTLAND HARBOR TRUST (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

*5. PUBLIC SERVICE (AMENDMENT) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

*6. NORTH GEELONG TO FYANSFORD RAILWAY CONSTRUCTION BILL—(*from Assembly—Hon. P. L. Coleman*) – Second reading.

*7. GAS REGULATION (AMENDMENT) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

8. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

CONTINGENT NOTICE OF MOTION.

Upon the Statutes Amendment Bill being committed—

*1. The Hon. W. SLATER: To move, That it be an instruction to the Committee that they have power to consider a new clause amending the *Registration of Births Deaths and Marriages Act* 1928 by providing for the registration of the reception of bodies for anatomical examination.

WEDNESDAY, 24TH NOVEMBER.

General Business.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—To be further considered in Committee.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 13.

WEDNESDAY, 10TH NOVEMBER, 1954.

Government Business.

NOTICES OF MOTION :—

*1. The Hon. W. SLATER : To move, That he have leave to bring in a Bill to amend Sections Sixty-four, Sixty-five and Ninety-nine of the *Justices Act* 1928.

*2. The Hon. W. SLATER : To move, That he have leave to bring in a Bill to suspend the Operation of certain Provisions of the *Hide and Leather Industries Act* 1948.

ORDERS OF THE DAY: —

1. STATUTES AMENDMENT BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. P. L. Coleman*).

2. VERMIN AND NOXIOUS WEEDS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. I. A. Swinburne*).

*3. SURPLUS REVENUE BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

4. GEELONG AND DISTRICT CULTURAL INSTITUTE BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. A. R. Mansell*).

*5. DOG RACES BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

6. PUBLIC SERVICE (AMENDMENT) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

7. PORTLAND HARBOR TRUST (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

8. GAS REGULATION (AMENDMENT) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

9. NORTH GEELONG TO FYANSFORD RAILWAY CONSTRUCTION BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

10. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

CONTINGENT NOTICE OF MOTION.

Upon the Statutes Amendment Bill being committed—

1. The Hon. W. SLATER : To move, That it be an instruction to the Committee that they have power to consider a new clause amending the *Registration of Births Deaths and Marriages Act* 1928 by providing for the registration of the reception of bodies for anatomical examination.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

WEDNESDAY, 24TH NOVEMBER.

General Business.

ORDER OF THE DAY :—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—To be further considered in Committee.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

MEETING OF SELECT COMMITTEE.

Tuesday, 16th November.

LIBRARY (JOINT)—*At a quarter to Two o'clock.*

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 13.

TUESDAY, 9TH NOVEMBER, 1954.

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

2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Lieutenant-Governor, as Deputy for 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. :—

Police Offences (*Female Offenders*) *Act.*
Friendly Societies (*Amendment*) *Act.*

3. SURPLUS REVENUE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply the Surplus Revenue for the Financial Year ended on the Thirtieth Day of June 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 to be read a second time on the next day of meeting.

4. DOG RACES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make provision with respect to Dog Races, 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. PAPERS.—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.

Stamps Acts—Amendment of Betting Tax Regulations.

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. GEELONG AND DISTRICT CULTURAL INSTITUTE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable D. P. J. Ferguson moved, That this Bill be now read a second time.

The Honorable A. R. Mansell 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. 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, having been read—

Debate resumed.

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 the next day of meeting.

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

ROY S. SARAH,
Clerk of the Legislative Council.

1701/54. (240 copies.)

No. 14.

WEDNESDAY, 10TH NOVEMBER, 1954.

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

2. PARKING OF VEHICLES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Parking of Vehicles 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 to be read a second time on the next day of meeting.

3. JUSTICES (JURISDICTION) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to amend Sections Sixty-four, Sixty-five and Ninety-nine of the *Justices 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.

4. HIDE AND LEATHER INDUSTRIES (SUSPENSION) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to suspend the Operation of certain Provisions of the *Hide and Leather Industries Act* 1948, 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. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 to 6 inclusive, be postponed until later this day.

6. PORTLAND 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 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. PUBLIC SERVICE (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.

8. GEELONG AND DISTRICT CULTURAL INSTITUTE 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.

9. VERMIN AND NOXIOUS WEEDS (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 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. 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-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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 14.

TUESDAY, 16TH NOVEMBER, 1954.

Question.

*1. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—What methods are adopted by the Melbourne and Metropolitan Tramways Board to space buses in Bourke-street so as to obviate three to five buses being in one block thus causing gaps in the service and unnecessarily long delays to intending passengers in other parts of the street.

Government Business.

ORDERS OF THE DAY:—

1. STATUTES AMENDMENT BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. P. L. Coleman*).
2. SURPLUS REVENUE BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
3. DOG RACES BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
4. GAS REGULATION (AMENDMENT) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
5. NORTH GEELONG TO FYANSFORD RAILWAY CONSTRUCTION BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*6. PARKING OF VEHICLES (AMENDMENT) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

*7. JUSTICES (JURISDICTION) BILL—(*Hon. W. Slater*)—Second reading.

*8. HIDE AND LEATHER INDUSTRIES (SUSPENSION) BILL—(*Hon. W. Slater*)—Second reading.

9. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

CONTINGENT NOTICE OF MOTION.

Upon the Statutes Amendment Bill being committed—

*1. The Hon. W. SLATER: To move, That it be an instruction to the Committee that they have power to consider a new clause amending the Acts Interpretation Acts in respect of the effect of Victorian Acts in relation to Irish Citizens and a new clause amending the *Registration of Births Deaths and Marriages Act* 1928 by providing for the registration of the reception of bodies for anatomical examination.

WEDNESDAY, 24TH NOVEMBER.

General Business.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—To be further considered in Committee.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 15.

WEDNESDAY, 17TH NOVEMBER, 1954.

Questions.

*1. The Hon. A. R. MANSELL: To ask the Honorable the Minister of Transport—

(*a*) What is the formula for Government assistance to sewerage authorities engaged in new schemes.

(*b*) Has this formula been revised recently; if so, in what way; if not, does the Government intend to vary the formula.

*2. The Hon. A. G. WARNER: To ask the Honorable the Minister of Transport—

(*a*) How, where, and upon what dates did the Housing Commission advertise for tenders in respect of ten acres of land at Heidelberg for use as shopping blocks.

(*b*) What was the cost of the land to the Commission.

(*c*) What was the highest tender received.

(*d*) Will the Minister lay on the table of the Library copies of the advertisements, specimen tender form, and a list of the available shopping sites.

*3. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—

(*a*) What is the average capital value (land only) of blocks allotted to settlers under the Soldier Settlement Acts (but not including single units) for—(i) grazing and mixed farming; and (ii) dairying.

(*b*) What is the average cost of—(i) houses; and (ii) outbuildings, erected by the Soldier Settlement Commission on such blocks.

(*c*) Has the Government particulars of the comparable costs in other States.

Government Business.

NOTICE OF MOTION:—

*1. The Hon. P. L. COLEMAN: To move, That so much of the Sessional Orders as provides that the hour of meeting on Thursdays shall be half-past Four o'clock be suspended during the remainder of this year and that during the remainder of this year the hour of meeting on Thursdays shall be Eleven o'clock.

ORDERS OF THE DAY:—

1. NORTH GEELONG TO FYANSFORD RAILWAY CONSTRUCTION BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading—*Resumption of debate* (*Hon. G. S. McArthur*).
2. DOG RACES BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*3. COUNTY COURT (JUDGES) BILL—(*from Assembly—Hon. W. Slater*)—Second reading.

*4. SWAN HILL LANDS EXCHANGE BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*5. GAS AND FUEL CORPORATION (KYNETON UNDERTAKING) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*6. MINERS' PHTHISIS (TREASURY ALLOWANCES) AMENDMENT BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

*7. PUBLIC OFFICERS SALARIES BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*8. WHEAT INDUSTRY STABILIZATION BILL—(*from Assembly—Hon. W. Slater*)—Second reading.

9. HIDE AND LEATHER INDUSTRIES (SUSPENSION) BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. A. K. Bradbury*).
10. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

WEDNESDAY, 24TH NOVEMBER.

General Business.

ORDER OF THE DAY :—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—To be further considered in Committee.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 15.

TUESDAY, 16TH NOVEMBER, 1954.

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. :—

Portland Harbor Trust (Amendment) Act.
Public Service (Amendment) Act.
Geelong and District Cultural Institute Act.

3. SWAN HILL LANDS EXCHANGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Exchange of Lands at Swan Hill*" 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. COUNTY COURT (JUDGES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision for Increasing the Number of Judges of County Courts*" 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. PARLIAMENTARY SALARIES AND ALLOWANCES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision with respect to Parliamentary and Ministerial Salaries and Allowances*" 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. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Land Act 1928—Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Lilydale and Port Welshpool (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 (six papers).

7. 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.

8. SURPLUS REVENUE 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. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 3, be postponed until later this day.

1701/54. (240 copies.)

10. GAS 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 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. NORTH GEELONG TO FYANSFORD RAILWAY CONSTRUCTION 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 G. S. McArthur 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. PARKING OF VEHICLES (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.

13. JUSTICES (JURISDICTION) 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.

14. GAS AND FUEL CORPORATION (KYNETON 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 Kyneton*" 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.

15. MINERS' PHTHISIS (TREASURY ALLOWANCES) AMENDMENT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to further amend the 'Miners' Phthisis (Treasury Allowances) Act* 1938'" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. PUBLIC OFFICERS SALARIES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Cost of Living Adjustment of the Salaries of certain Public Officers*" 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.

17. VERMIN AND NOXIOUS WEEDS (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.

18. PARLIAMENTARY SALARIES AND ALLOWANCES BILL.—This Bill was, according to Order and after debate, 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.

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19. HIDE AND LEATHER INDUSTRIES (SUSPENSION) 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. K. Bradbury 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. 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 the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

The Honorable W. Slater moved, That it be an instruction to the Committee that they have power to consider a new clause amending the Acts Interpretation Acts in respect of the effect of Victorian Acts in relation to Irish Citizens and a new clause amending the *Registration of Births Deaths and Marriages Act* 1928 by providing for the registration of the reception of bodies for anatomical examination.

Question—put and resolved in the affirmative.

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 and had amended the title thereof, which title is as follows:—

"*An Act to amend the Acts Interpretation Acts, the Administration and Probate Acts, the 'Business Names Act* 1928', *the Justices Acts, the Landlord and Tenant Acts, the Maintenance Acts, the Marriage Acts, the 'Poor Persons Legal Assistance Act* 1928', *the Registration of Births Deaths and Marriages Acts, the Supreme Court Acts, the Wills Acts, the 'Dried Fruits Act* 1938', *the Companies Acts and the Marketing of Primary Products Acts*"—

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.

21. WHEAT INDUSTRY STABILIZATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Stabilization of the Wheat Industry, 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.

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 forty minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 16.

WEDNESDAY, 17TH NOVEMBER, 1954.

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

2. INFECTIOUS DISEASES HOSPITALS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Infectious Diseases Hospitals*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. CORRECTION IN STATUTES AMENDMENT 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 Statutes Amendment Bill, viz.:—

Clause 11, sub-clause (3), the expression "*Dried Fruits Act* 1938" has been inserted instead of the expression "*Dried Fruits Act* 1928".

4. 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 1953-54.

Discharged Servicemen's Preference Act 1943—Amendment of Regulations—Travelling Allowances.

Marketing of Primary Products Act 1935—Regulations—

Egg and Egg Pulp Marketing Board—Definition of producer of eggs.

Potato Marketing Board—Seventh and eighth periods of time for the computation of or accounting for the net proceeds of the sale of potatoes (two papers).

Supreme Court Acts—Amendment of Rules of Procedure in Civil Proceedings.

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 Thursdays shall be half-past Four o'clock be suspended during the remainder of this year and that during the remainder of this year the hour of meeting on Thursdays shall be Eleven o'clock.

Question—put and resolved in the affirmative.

6. NORTH GEELONG TO FYANSFORD RAILWAY CONSTRUCTION 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, 15.	Noes, 16.
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,
J. W. Galbally,	C. P. Gartside,
J. J. Jones (*Teller*),	T. H. Grigg,
P. Jones,	H. C. Ludbrook (*Teller*),
J. A. Little,	G. S. McArthur,
R. R. Rawson,	W. MacAulay,
M. P. Sheehy,	H. V. MacLeod,
W. Slater,	A. R. Mansell,
A. Smith (*Teller*),	I. A. Swinburne (*Teller*),
F. M. Thomas,	G. J. Tuckett,
G. L. Tilley.	D. J. Walters,
	A. G. Warner.

And so it passed in the negative.

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. COUNTY COURT (JUDGES) 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. SWAN HILL LANDS EXCHANGE 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. GAS AND FUEL CORPORATION (KYNETON UNDERTAKING) 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 T. H. Grigg 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.

11. MINERS' PHTHISIS (TREASURY ALLOWANCES) 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.

12. GAS AND FUEL CORPORATION (KYNETON UNDERTAKING) 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.

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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. Dog 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.

14. Postponement of Orders of the Day.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 7 and 8, be postponed until the next day of meeting.

15. Hide and Leather Industries (Suspension) 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 transmitted to the Assembly with a Message desiring their concurrence therein.

16. 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 Sewerage Flood Protection and River Improvement, 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.

17. 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 forty 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.

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 16.

TUESDAY, 23RD NOVEMBER, 1954.

Questions.

1. The Hon. A. G. WARNER: To ask the Honorable the Minister of Transport—
   (*a*) How, where, and upon what dates did the Housing Commission advertise for tenders in respect of ten acres of land at Heidelberg for use as shopping blocks.
   (*b*) What was the cost of the land to the Commission.
   (*c*) What was the highest tender received.
   (*d*) Will the Minister lay on the table of the Library copies of the advertisements, specimen tender form, and a list of the available shopping sites.

*2. The Hon. W. MACAULAY: To ask the Honorable the Minister of Transport—
   (*a*) How many applications have been made to the recently-constituted Licensing Court for new liquor licences in—(i) the metropolitan area; and (ii) the rest of the State.
   (*b*) How many of such applications—(i) have been granted; (ii) are still under consideration; and (iii) have been refused.

*3. The Hon. A. J. BAILEY: To ask the Honorable the Minister of Transport—
   (*a*) Who has been appointed to the Albert Park Trust as Government nominee.
   (*b*) Were any representations made on behalf of the appointee; if so, by whom.
   (*c*) Will the Minister lay on the table of the Library the file relating to this appointment.

*4. The Hon. A. G. WARNER: To ask the Honorable the Minister of Transport—
   (*a*) Are Sunday newspapers printed in Sydney permitted to be sold in Melbourne on Sunday.
   (*b*) Would a Melbourne Sunday newspaper be permitted to be sold in Melbourne on Sunday if printed in—(i) Sydney; (ii) Melbourne; or (iii) Albury.

Government Business.

NOTICE OF MOTION:—

*1. The Hon. P. L. COLEMAN: To move, 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 during the remainder of this year and that during the remainder of this year new business may be taken at any hour.

ORDERS OF THE DAY: —

1. PUBLIC OFFICERS SALARIES BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
2. WHEAT INDUSTRY STABILIZATION BILL—(*from Assembly—Hon. W. Slater*)—Second reading.
*3. INFECTIOUS DISEASES HOSPITALS BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
*4. WATER SUPPLY LOAN APPLICATION BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
5. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

WEDNESDAY, 24TH NOVEMBER.

General Business.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—To be further considered in Committee.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, Sir James Kennedy, G. S. McArthur, W. Slater, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, Sir James Kennedy, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 17.

WEDNESDAY, 24TH NOVEMBER, 1954.

Questions.

*1. The Hon. P. T. BYRNES: To ask the Honorable the Minister of Transport—

(*a*) What was the total amount collected in permit fees from interstate road hauliers in Victoria during the last financial year.

(*b*) Will the Minister make available to Members of this House a copy of the recent Privy Council decision relating to interstate road transport.

(*c*) Because of the constitutional issues involved, will the Minister make a comprehensive statement to the House before any action to regulate or control interstate road transport is taken as a result of conferences between State Governments.

*2. The Hon. A. K. BRADBURY: To ask the Honorable the Minister of Transport—What subsidies have been made available in each of the past five years, toward the cost of constructing swimming pools, giving the names of the recipients, and the amounts granted in each year.

*3. The Hon. A. G. WARNER: To ask the Honorable the Attorney-General—What items are still subject to specific price control by the Prices Commissioner.

General Business.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—To be further considered in Committee.

Government Business.

NOTICES OF MOTION:—

*1. The Hon. W. SLATER: To move, That he have leave to bring in a Bill to make further amendments in the Law relating to Landlord and Tenant.

*2. The Hon. W. SLATER: To move, That he have leave to bring in a Bill to amend Section Two and the Title of the *Police Offences* (*Raffles*) *Act* 1940.

*3. The Hon. W. SLATER: To move, That he have leave to bring in a Bill to amend the Adoption of Children Acts.

ORDERS OF THE DAY:—

1. WATER SUPPLY LOAN APPLICATION BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading —*Resumption of debate* (*Hon. G. L. Chandler*).
*2. NAPIER-STREET BRIDGE BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
*3. CHILDREN'S WELFARE BILL—(*from Assembly—Hon. W. Slater*)—Second reading.
*4. MENTAL HYGIENE (MAINTENANCE) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
*5. FORESTS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
*6. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
7. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

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STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

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PRINTING.—(Appointed 28th April, 1954).—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.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER PAST ELEVEN O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 18.

THURSDAY, 25TH NOVEMBER, 1954.

Question.

*1. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—

(*a*) Is the Minister aware of the fact that in an article in the *Herald* of 4th October last, the Premier was reported as having quoted figures showing comparable costs of soldier-settlement blocks in Victoria and other States.

(*b*) Did the amounts quoted in connexion with other States include cost of improvements or other items.

(*c*) What were the comparable carrying capacities in Victoria and the other States mentioned in the article.

(*d*) In view of the Minister's reply to my question on this matter last week, " that the Government had no knowledge of comparable figures in other States ", upon what basis were the Premier's figures calculated.

Government Business.

ORDERS OF THE DAY: —

1. CHILDREN'S WELFARE BILL—(*from Assembly—Hon. W. Slater*)—Second reading.
*2. ADOPTION OF CHILDREN (AMENDMENT) BILL—(*Hon. W. Slater*)—Second reading.
3. MENTAL HYGIENE (MAINTENANCE) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
*4. PARLIAMENTARY CONTRIBUTORY RETIREMENT FUND BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
*5. POLICE OFFENCES (RAFFLES) BILL—(*Hon. W. Slater*)—Second reading.
6. WATER SUPPLY LOAN APPLICATION BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading —*Resumption of debate* (*Hon. G. L. Chandler*).
7. NAPIER-STREET BRIDGE BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
8. FORESTS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
9. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
10. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

WEDNESDAY, 1ST DECEMBER.

General Business.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—To be further considered in Committee.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, and I. A. Swinburne.

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STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 17.

TUESDAY, 23RD NOVEMBER, 1954.

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

2. THE LATE HONORABLE SIR JAMES ARTHUR KENNEDY.—The Honorable P. L. Coleman moved, by leave, That this House place on record its deep regret at the death of the Honorable Sir James Arthur Kennedy, one of the Members for the Higinbotham Province and a former Minister of the Crown, 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.

3. ADJOURNMENT.—The Honorable P. L. Coleman moved, That the House, out of respect to the memory of the late Honorable Sir James Arthur Kennedy, do now adjourn until a quarter to Eight o'clock this day.

   Question—put and resolved in the affirmative.

And then the Council, at twenty 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. 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. :—

   Vermin and Noxious Weeds (Amendment) Act.
   Surplus Revenue Act.
   Gas Regulation (Amendment) Act.
   Parking of Vehicles (Amendment) Act.
   Parliamentary Salaries and Allowances Act.
   County Court (Judges) Act.
   Swan Hill Lands Exchange Act.
   Miners' Phthisis (Treasury Allowances) Amendment Act.
   Gas and Fuel Corporation (Kyneton Undertaking) Act.
   Dog Races Act.

3. NAPIER-STREET BRIDGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision with respect to the Construction of a New Bridge over the Maribyrnong River between Melbourne and Footscray and Matters incidental thereto*" 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. CHILDREN'S WELFARE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for and promote the Welfare Protection and Care of Children and Young Persons*" 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. MENTAL HYGIENE (MAINTENANCE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to repeal Part VII. of the 'Mental Hygiene Act* 1928' *and the 'Mental Institution Benefits Act* 1949' *and consequentially to amend various Acts*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable D. P. J. Ferguson, 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.

1701/54. (240 copies.)

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

Penal Establishments, Gaols and Reformatory Prisons—Report and Statistical Tables for the year 1953.

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 :—

Constitution Act Amendment Act 1928—Part IX.—Statements of persons temporarily employed in the Departments of the Legislative Council, the Legislative Assembly, and the Parliament Library (three papers).

Country Fire Authority Acts—Amendment of Regulations (two papers).

Explosives Act 1928—Order in Council relating to the Classification of Explosives—

Class 1—Gunpowder.
Class 2—Nitrate Mixture.
Class 3—Nitro-Compound.
Class 4—Chlorate Mixture.
Class 5—Fulminate.
Class 6—Ammunition.
Class 7—Firework.

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Lyndale, Lysterfield, and Sale (three papers).

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

Marketing of Primary Products Act 1935—Regulations—

Amendment of Egg and Egg Pulp Marketing Board Regulations 1953.

Seed Beans Marketing Board—First period of time for the computation of or accounting for the net proceeds of the sale of seed beans.

Mothercraft Nurses Act 1949—Mothercraft Nurses Regulations 1954.

Railways Act 1928—Report of the Victorian Railways Commissioners for the year 1953–54.

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 the hour of half-past Ten o'clock be suspended during the remainder of this year and that during the remainder of this year new business may be taken at any hour.

Debate ensued.

Question—put and resolved in the affirmative.

8. 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.

9. WHEAT INDUSTRY STABILIZATION 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.

10. INFECTIOUS DISEASES HOSPITALS 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. FORESTS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Forests Act* 1928' *and the 'Forests Act* 1939'" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. WATER SUPPLY LOAN APPLICATION 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 G. L. Chandler 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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13. PUBLIC OFFICERS SALARIES 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. 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.

15. 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-three minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 18.

WEDNESDAY, 24TH NOVEMBER, 1954.

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

2. WHEAT INDUSTRY STABILIZATION 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.

3. PARLIAMENTARY CONTRIBUTORY RETIREMENT FUND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Two Six and Seven of the 'Parliamentary Contributory Retirement Fund 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.

4. MINISTERIAL STATEMENT—INTERSTATE ROAD TRANSPORT.—The Honorable P. L. Coleman, by leave, made a Ministerial Statement with respect to the regulation of interstate road transport.

5. 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—Accounts and Statement of Receipts and Expenditure of the Geelong Harbor Trust for the year 1953.

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

6. POSTPONEMENT OF ORDER OF THE DAY.—Ordered, after debate, That the consideration of the Order of the Day, General Business, be postponed until Wednesday next.

7. LANDLORD AND TENANT BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to make further amendments in the Law relating to Landlord and Tenant, 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. POLICE OFFENCES (RAFFLES) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to amend Section Two and the Title of the *Police Offences (Raffles) Act* 1940, 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. ADOPTION OF CHILDREN (AMENDMENT) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to amend the Adoption of Children Acts, 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.

10. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 to 7 inclusive, be postponed until later this day.

11. 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.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 19.

THURSDAY, 25TH NOVEMBER, 1954.

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

2. COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President laid upon the Table the following Warrant appointing members of 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 Charles Percival Gartside, and
The Honorable Arthur Smith

to be members of The Committee of Elections and Qualifications.

Given under my hand this twenty-fifth day of November, One thousand nine hundred and fifty-four.

CLIFDEN EAGER,
President of the Legislative Council.

3. CHILDREN'S WELFARE 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.

4. WHEAT INDUSTRY STABILIZATION 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 19, sub-clause (1), line 31, the words "in Council" have been omitted after the words "The Governor", and acquainting the Council that they have agreed that such error be corrected by the insertion of the words "in Council" after the words "The Governor" in clause 19, sub-clause (1), page 13, line 31, and desiring the concurrence of the Council therein.

On the motion of the Honorable W. Slater, 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.

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

State Electricity Commission Act 1928—Report of the State Electricity Commission for the year 1953–54.

6. ADJOURNMENT.—The Honorable W. Slater moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at ten 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.

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 19.

TUESDAY, 30TH NOVEMBER, 1954.

Question.

1. The Hon. E. P. CAMERON: To ask the Honorable the Minister of Transport—
   (*a*) Is the Minister aware of the fact that in an article in the *Herald* of 4th October last, the Premier was reported as having quoted figures showing comparable costs of soldier-settlement blocks in Victoria and other States.
   (*b*) Did the amounts quoted in connexion with other States include cost of improvements or other items.
   (*c*) What were the comparable carrying capacities in Victoria and the other States mentioned in the article.
   (*d*) In view of the Minister's reply to my question on this matter last week, "that the Government had no knowledge of comparable figures in other States", upon what basis were the Premier's figures calculated.

Government Business.

ORDERS OF THE DAY:—

1. ADOPTION OF CHILDREN (AMENDMENT) BILL—(*Hon. W. Slater*)—Second reading.
2. MENTAL HYGIENE (MAINTENANCE) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
3. PARLIAMENTARY CONTRIBUTORY RETIREMENT FUND BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
4. POLICE OFFENCES (RAFFLES) BILL—(*Hon. W. Slater*)—Second reading.
5. WATER SUPPLY LOAN APPLICATION BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading —*Resumption of debate* (*Hon. G. L. Chandler*).
6. NAPIER-STREET BRIDGE BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
7. FORESTS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
8. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
9. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

WEDNESDAY, 1ST DECEMBER.

General Business.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—To be further considered in Committee.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

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SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, C. P. Gartside†, G. S. McArthur, W. Slater, A. Smith†, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

†*Appointed 25th November,* 1954.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER PAST TWO O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 20.

WEDNESDAY, 1ST DECEMBER, 1954.

Questions.

*1. The Hon. W. MACAULAY: To ask the Honorable the Minister of Forests—What area of land has been acquired during the past ten years by the Forests Commission for re-afforestation purposes in the shires of—(i) Alberton; (ii) South Gippsland; (iii) Morwell; (iv) Rosedale; and (v) Mirboo.

*2. The Hon. G. L. CHANDLER: To ask the Honorable the Minister of Transport—

(*a*) What is the total area of land held by the Housing Commission in—(i) Victoria; (ii) Greater Melbourne included in the planning scheme prepared by the Melbourne and Metropolitan Board of Works; (iii) Shire of Dandenong; (iv) Shire of Mulgrave; and (v) Shire of Broadmeadows.

(*b*) What percentage of the land in each case is being reserved for—(i) parks and gardens; (ii) sports grounds; and (iii) commercial purposes.

General Business.

ORDER OF THE DAY:—

1. LANDLORD AND TENANT (AMENDMENT) BILL—(*Hon. C. P. Gartside*)—To be further considered in Committee.

Government Business.

NOTICES OF MOTION:—

*1. The Hon. W. SLATER: To move, That he have leave to bring in a Bill to continue the Operation of the Prices Regulation Acts.

*2. The Hon. P. L. COLEMAN: To move, That during the remainder of this year the Council shall meet for the despatch of business on Fridays and that Eleven o'clock shall be the hour of meeting.

ORDERS OF THE DAY:—

*1. HEALTH (AMENDMENT) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

2. FORESTS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

*3. CO-OPERATIVE HOUSING SOCIETIES (GUARANTEES) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

*4. FIRE BRIGADES (AMENDMENT) BILL—(*from Assembly—Hon. W. Slater*)—Second reading.

*5. MILDURA COLLEGE LANDS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

6. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*7. MIDWIVES (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

8. POLICE OFFENCES (RAFFLES) BILL—(*Hon. W. Slater*)—Second reading.

*9. STATE ELECTRICITY COMMISSION (BORROWING) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*10. JUSTICES (JURISDICTION) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.

*11. COUNTRY ROADS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

*12. SOLDIER SETTLEMENT (FINANCIAL) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*13. HOUSING BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

14. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

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THURSDAY, 2ND DECEMBER.

Government Business.

ORDER OF THE DAY :—

1. ADOPTION OF CHILDREN (AMENDMENT) BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. H. C. Ludbrook*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, C. P. Gartside†, G. S. McArthur, W. Slater, A. Smith†, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

†*Appointed 25th November*, 1954.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER PAST ELEVEN O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 21.

THURSDAY, 2ND DECEMBER, 1954.

Question.

1. The Hon. G. L. CHANDLER: To ask the Honorable the Minister of Transport—
   (*a*) What is the total area of land held by the Housing Commission in—(i) Victoria; (ii) Greater Melbourne included in the planning scheme prepared by the Melbourne and Metropolitan Board of Works; (iii) Shire of Dandenong; (iv) Shire of Mulgrave; and (v) Shire of Broadmeadows.
   (*b*) What percentage of the land in each case is being reserved for—(i) parks and gardens; (ii) sports grounds; and (iii) commercial purposes.

Government Business.

NOTICES OF MOTION:—

1. The Hon. P. L. COLEMAN: To move, That during the remainder of this year the Council shall meet for the despatch of business on Fridays and that Eleven o'clock shall be the hour of meeting.

ORDERS OF THE DAY: —

1. HEALTH (AMENDMENT) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.
2. FORESTS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
3. ADOPTION OF CHILDREN (AMENDMENT) BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. H. C. Ludbrook*).
4. CO-OPERATIVE HOUSING SOCIETIES (GUARANTEES) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
5. FIRE BRIGADES (AMENDMENT) BILL—(*from Assembly—Hon. W. Slater*)—Second reading.
6. MILDURA COLLEGE LANDS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
7. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
8. MIDWIVES (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
9. POLICE OFFENCES (RAFFLES) BILL—(*Hon. W. Slater*)—Second reading.
10. STATE ELECTRICITY COMMISSION (BORROWING) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
11. JUSTICES (JURISDICTION) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.
12. COUNTRY ROADS (AMENDMENT) BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.
13. SOLDIER SETTLEMENT (FINANCIAL) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
14. HOUSING BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
15. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

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SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, C. P. Gartside†, G. S. McArthur, W. Slater, A. Smith†, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

†*Appointed 25th November,* 1954.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 20.

TUESDAY, 30TH NOVEMBER, 1954.

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. :—

Infectious Diseases Hospitals Act.
Public Officers Salaries Act.
Wheat Industry Stabilization Act.

3. HEALTH (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Law relating to Public Health*" 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. HOUSING BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision with respect to the Ministerial Control and the Reconstitution of the Housing Commission and to amend the 'Slum Reclamation and Housing Act* 1938*' and the 'Housing Act* 1943*'*" 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. CO-OPERATIVE HOUSING SOCIETIES (GUARANTEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Sixty-one of the 'Co-operative Housing Societies Act* 1944*'*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. FIRE BRIGADES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Fire Brigades Acts, 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.

7. 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 seven hundred and ninety-five thousand three hundred and forty-five pounds to the service of the year One thousand nine hundred and fifty-four and One thousand nine hundred and fifty-five*" 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.

8. MILDURA COLLEGE LANDS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Mildura College Lands Act* 1916*'*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. MIDWIVES (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 'Midwives Act* 1928*'*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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.

1701/54. (240 copies.)

10. CHILDREN'S WELFARE 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.

11. STATUTE LAW REVISION COMMITTEE—TRANSFER OF LAND BILL 1954.—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 1954.

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

12. 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—

Radio Tradesman Trade Apprenticeship Regulations.
Silverware and Silverplating Trades Apprenticeship Regulations.

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

Marketing of Primary Products (Egg and Egg Pulp) Act 1951—Report of the Egg and Egg Pulp Marketing Board for the year 1953–54.

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

Victorian Inland Meat Authority Act 1942—Report of the Victorian Inland Meat Authority for the year 1953–54.

13. 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 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. ADOPTION OF CHILDREN (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 H. C. Ludbrook 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.

15. MENTAL HYGIENE (MAINTENANCE) 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. PARLIAMENTARY CONTRIBUTORY RETIREMENT 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 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. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 4, be postponed until later this day.

18. WATER SUPPLY LOAN APPLICATION 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 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 returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

19. JUSTICES (JURISDICTION) 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 amendments made by the Assembly in this Bill be considered on the next day of meeting.

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20. STATE ELECTRICITY COMMISSION (BORROWING) 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 State Electricity Commission of Victoria, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. L. Coleman for 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. COUNTRY ROADS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Country Roads Acts, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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. NAPIER-STREET BRIDGE 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 returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

23. SOLDIER SETTLEMENT (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Loan Moneys for the Purposes of the Soldier Settlement 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.

24. 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.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 21.

WEDNESDAY, 1ST DECEMBER, 1954.

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:—

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 30th June, 1954.

3. LANDLORD AND TENANT (AMENDMENT) BILL.—DISCHARGE OF ORDER OF THE DAY.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read—

The Honorable C. P. Gartside moved, That the said Order be discharged.

Question—put and resolved in the affirmative.

Ordered—That the Bill be withdrawn.

4. 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.

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

Question—put.

The Council divided.

Ayes, 15.	Noes, 17.
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,	Sir Frank Clarke,
J. W. Galbally,	W. O. Fulton (*Teller*),
J. J. Jones,	C. P. Gartside,
P. Jones (*Teller*),	T. H. Grigg (*Teller*),
J. A. Little,	H. C. Ludbrook,
R. R. Rawson,	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,
	D. J. Walters,
	A. G. Warner.

And so it passed in the negative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 22.

THURSDAY, 2ND DECEMBER, 1954.

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

2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable P. L. Coleman presented a Message from His Excellency the Lieutenant-Governor, as Deputy for the Governor, informing the Council that he had, on the 1st instant, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Children's Welfare Act.
Consolidated Revenue Act.
Mental Hygiene (Maintenance) Act.
Parliamentary Contributory Retirement Fund Act.

3. STATUTE LAW REVISION COMMITTEE—TRANSPORT REGULATION BILL.—The Honorable F. M. Thomas brought up a Supplementary Report from the Statute Law Revision Committee on the proposals contained in the Transport Regulation Bill.

Ordered to lie on the Table and be printed.

4. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. L. Coleman moved, That during the remainder of this year 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.

5. HEALTH (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. FORESTS (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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7. ADOPTION OF CHILDREN (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 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. CO-OPERATIVE HOUSING SOCIETIES (GUARANTEES) 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. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 5 to 7 inclusive, be postponed until later this day.

10. MIDWIVES (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. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Town Planning in respect of the Metropolitan Area, 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.

12. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 9, be postponed until the next day of meeting.

13. STATE ELECTRICITY COMMISSION (BORROWING) 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. WATER BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Water Acts, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable D. P. J. Ferguson, 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.

15. JUSTICES (JURISDICTION) BILL.—The Order of the Day for the consideration of the amendments made by the Assembly in this Bill having been read, the said amendments were read and are as follows:—

1. Clause 1, sub-clause (1), line 6, omit "*Jurisdiction*" and insert "*Amendment*".

2. *Insert the following new clause to follow clause* 1:—

A. (1) The Principal Act is hereby amended as follows:—

(*a*) In sub-section (1) of section twenty-three for the words "seventy-two hours" there shall be substituted the words "five days";

(*b*) In the second proviso to sub-section (1) of section sixty-five for the word "twelve" there shall be substituted the word "twenty-one";

(*c*) In section ninety-nine—

(i) in sub-section (2) for the word "six" there shall be substituted the word "fourteen"; and

(ii) in sub-section (3) for the words "forty-eight hours" (where twice occurring) there shall be substituted the words "seven days"; and

(iii) in paragraph (*c*) of sub-section (6) for the words "forty-eight hours" there shall be substituted the words "seven days"; and

(*d*) In sub-section (2) of section one hundred and thirty-seven for the word "seven" there shall be substituted the word "fourteen".

(2) The amendments made by the last preceding sub-section shall not apply with respect to any proceedings which were instituted before the commencement of this Act.

3. Title, omit "sections Sixty-four, Sixty-five and Ninety-nine of".

On the motion of the Honorable W. Slater, 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.

16. FIRE BRIGADES (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.

17. RIVER MURRAY WATERS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to ratify and approve an Agreement for the further Variation of the Agreement entered into between the Prime Minister of the Commonwealth and the Premiers of the States of New South Wales, Victoria and South Australia respecting the River Murray and Lake Victoria and other Waters, 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.

18. MILDURA COLLEGE LANDS (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.

19. COUNTRY ROADS (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.

20. SOLDIER SETTLEMENT (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.

21. 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-six 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.

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 22.

TUESDAY, 7TH DECEMBER, 1954.

Question.

1. The Hon. G. L. CHANDLER: To ask the Honorable the Minister of Transport—
   (*a*) What is the total area of land held by the Housing Commission in—(i) Victoria; (ii) Greater Melbourne included in the planning scheme prepared by the Melbourne and Metropolitan Board of Works; (iii) Shire of Dandenong; (iv) Shire of Mulgrave; and (v) Shire of Broadmeadows.
   (*b*) What percentage of the land in each case is being reserved for—(i) parks and gardens; (ii) sports grounds; and (iii) commercial purposes.

Government Business.

ORDERS OF THE DAY: —

*1. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

*2. WATER BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

*3. RIVER MURRAY WATERS BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

4. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

5. POLICE OFFENCES (RAFFLES) BILL—(*Hon. W. Slater*)—Second reading.

6. HOUSING BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

7. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, C. P. Gartside†, G. S. McArthur, W. Slater, A. Smith†, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

†*Appointed 25th November,* 1954.

* *Notifications to which an asterisk* (*) *is prefixed appear for the first time.*

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

1702/54. (125 copies.)

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO TWO O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 23.

WEDNESDAY, 8TH DECEMBER, 1954.

Questions.

*1. The Hon. A. J. BAILEY: To ask the Honorable the Minister of Transport—

(*a*) What were the voting figures for the Footscray and District Hospital Board of Management election 1954—(i) after the first preference count; and (ii) after distribution of preferences.

(*b*) On what date was the election held.

(*c*) On what date was the resignation of Mr. R. Thorne, one of the re-elected Board members, submitted.

(*d*) What was the last meeting attended by Mr. Thorne.

(*e*) Who has been elected by the Board of Management to fill the vacancy caused by Mr. Thorne's resignation.

*2. The Hon. A. K. BRADBURY: To ask the Honorable the Minister of Transport—

(*a*) What areas of land of five acres or more have been acquired by the Education Department for State primary school purposes during the last five years.

(*b*) What is the location of and the number of acres comprising each purchase.

General Business.

NOTICE OF MOTION:—

*1. The Hon. A. G. WARNER: To move, That he have leave to bring in a Bill to amend the Landlord and Tenant Acts.

Government Business.

ORDERS OF THE DAY: —

*1. GAS AND FUEL CORPORATION (MORNINGTON UNDERTAKING) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

*2. RAILWAYS (COMMISSIONERS' SALARIES) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

3. WATER BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

*4. POLICE OFFENCES (SPORTS GROUNDS) BILL—(*from Assembly—Hon. W. Slater*)—Second reading.

*5. RAILWAY LOAN APPLICATION BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.

*6. JUDGES SALARIES BILL—(*from Assembly—Hon. W. Slater*)—Second reading.

*7. STATE FORESTS LOAN APPLICATION BILL—(*from Assembly—Hon. D. P. J. Ferguson*)—Second reading.

*8. LOCAL GOVERNMENT (AMENDMENT) BILL—(*from Assembly—Hon. J. W. Galbally*)—Second reading.

*9. WATER (CONNEXIONS TO MAINS) BILL—AMENDMENT OF THE ASSEMBLY—To be considered.

*10. TRANSFER OF LAND BILL—(*from Assembly—Hon. W. Slater*)—Second reading.

11. POLICE OFFENCES (RAFFLES) BILL—(*Hon. W. Slater*)—Second reading.

12. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

1702/54. (125 copies.)

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, C. P. Gartside†, G. S. McArthur, W. Slater, A. Smith†, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

†*Appointed 25th November,* 1954.

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

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER-PAST ELEVEN O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 24.

THURSDAY, 9TH DECEMBER, 1954.

Questions.

1. The Hon. A. J. BAILEY: To ask the Honorable the Minister of Transport—
   (*a*) What were the voting figures for the Footscray and District Hospital Board of Management election 1954—(i) after the first preference count; and (ii) after distribution of preferences.
   (*b*) On what date was the election held.
   (*c*) On what date was the resignation of Mr. R. Thorne, one of the re-elected Board members, submitted.
   (*d*) What was the last meeting attended by Mr. Thorne.
   (*e*) Who has been elected by the Board of Management to fill the vacancy caused by Mr. Thorne's resignation.

*2. The Hon. G. L. CHANDLER: To ask the Honorable the Minister of Transport—What area of land does the Housing Commission propose to reserve for recreation and park purposes in the—(i) Shire of Dandenong; (ii) Shire of Mulgrave; and (iii) Shire of Broadmeadows.

Government Business.

ORDERS OF THE DAY: —

*1. LANDLORD AND TENANT BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.
*2. TRANSPORT REGULATION (AMENDMENT) BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
*3. ADOPTION OF CHILDREN (AMENDMENT) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.
*4. PUBLIC WORKS LOAN APPLICATION BILL—(*from Assembly—Hon. P. L. Coleman*)—Second reading.
5. JUDGES SALARIES BILL—(*from Assembly—Hon. W. Slater*)—Second reading.
6. POLICE OFFENCES (RAFFLES) BILL—(*Hon. W. Slater*)—Second reading.
7. STATUTE LAW REVISION BILL—(*Hon. P. L. Coleman*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, C. P. Gartside†, G. S. McArthur, W. Slater, A. Smith†, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

†*Appointed 25th November,* 1954.

* *Notifications to which an asterisk* (*) *is prefixed appear for the first time.*

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

1702/54. (125 copies.)

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 23.

TUESDAY, 7TH DECEMBER, 1954.

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. :—

   Water Supply Loan Application Act.
   Napier-street Bridge Act.

3. POLICE OFFENCES (SPORTS GROUNDS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Police Offences (Sports Grounds) Act* 1931'" 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. GAS AND FUEL CORPORATION (MORNINGTON 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 Mornington*" 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.

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 to be read a second time on the next day of meeting.

6. RAILWAYS (COMMISSIONERS' SALARIES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Sixty-six of the 'Railways Act* 1928', *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.

7. 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 D. P. J. Ferguson, the Bill transmitted by the foregoing Message was read a first tine and ordered to be printed and to be read a second time on the next day of meeting.

8. 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 the Melbourne Building By-laws 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.

1701/54. (240 copies.)

9. TRANSFER OF LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend and consolidate the Law relating to the Simplification of the Title to and the Dealing with Estates and Interests in Land, 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. WATER (CONNEXIONS to MAINS) 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 amendment made by the Assembly in this Bill be considered on the next day of meeting.

11. 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—
Bread Trade Apprenticeship Regulations.
Dental Mechanic Trade Apprenticeship Regulations.
Fibrous Plastering Trade Apprenticeship Regulations.
Furniture Trades Apprenticeship Regulations.
Instrument Making Trade Apprenticeship Regulations.
Motor Mechanics Trades Apprenticeship Regulations.
Trade Committees Regulations.
Watchmaking Trades Apprenticeship Regulations.

Education Act 1928—Amendment of Regulation IV. (E).—Accountancy Certificate.

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

Soldier Settlement Act 1945—Report of the Soldier Settlement Commission for the year 1953-54.

Teaching Service Act 1946—Teaching Service (Classification, Salaries and Allowances) Regulations.—Regulations repealed—Regulations substituted.

Town and Country Planning Acts—Town and Country Planning Regulations (No. 5)—Interim Development Order Appeals.

12. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 to 3 inclusive, be postponed until later this day.

13. 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—put.

The Council divided.

Ayes, 15.	Noes, 16.
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,
J. W. Galbally,	C. P. Gartside,
J. J. Jones,	T. H. Grigg,
P. Jones,	H. C. Ludbrook,
J. A. Little,	G. S. McArthur,
R. R. Rawson (*Teller*),	W. MacAulay,
M. P. Sheehy,	H. V. MacLeod,
W. Slater,	A. R. Mansell,
A. Smith,	I. A. Swinburne,
F. M. Thomas,	G. J. Tuckett,
G. L. Tilley (*Teller*).	D. J. Walters,
	A. G. Warner.

And so it passed in the negative.

14. RIVER MURRAY WATERS 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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15. JUDGES SALARIES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Salaries and Allowances of Judges of the Supreme Court of the State of Victoria and of Judges of County Courts*" 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.

16. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) 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.

17. WATER BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable D. P. J. Ferguson 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.

18. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 5, be postponed until later this day.

19. 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.

20. 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 One o'clock.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 24.

WEDNESDAY, 8TH DECEMBER, 1954.

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

2. TRANSPORT REGULATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Law relating to the Regulation of Transport, 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.

3. LAND TAX BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to declare the Rates of Land Tax for the Year ending the thirty-first day of December One thousand nine hundred and fifty-five*" 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. ADOPTION OF CHILDREN (AMENDMENT) 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 amendments made by the Assembly in this Bill be considered later this day.

5. LANDLORD AND TENANT (AMENDMENT) BILL (No. 2).—On the motion of the Honorable A. G. Warner, leave was given to bring in a Bill to amend the Landlord and Tenant Acts.

The Honorable A. G. Warner moved, That this Bill be now read a first time.

Question—put.

The Council divided.

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,
T. H. Grigg (*Teller*),	D. P. J. Ferguson,
H. C. Ludbrook (*Teller*),	J. W. Galbally,
W. MacAulay,	C. P. Gartside,
A. R. Mansell,	J. J. Jones,
I. A. Swinburne,	P. Jones (*Teller*),
G. J. Tuckett,	J. A. Little,
D. J. Walters,	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.

6. GAS AND FUEL CORPORATION (MORNINGTON 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 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. RAILWAYS (COMMISSIONERS' SALARIES) 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. WATER 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.

9. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 4 to 6 inclusive, be postponed until later this day.

10. 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.

11. RAILWAY 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.

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12. POLICE OFFENCES (SPORTS GROUNDS) 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. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 8 and 9, be postponed until later this day.

14. TRANSFER OF 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 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.

15. 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 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. WATER (CONNEXIONS TO MAINS) BILL.—The Order of the Day for the consideration of the amendment made by the Assembly in this Bill having been read, the said amendment was read and is as follows:—

Clause 2, line 8, after "section" insert "insofar as applies to the pipe between such tenement and the pipe of the Authority".

On the motion of the Honorable J. W. Galbally, and after debate, 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.

17. 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 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.

18. 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 amendments made by the Assembly in this Bill be considered on the next day of meeting.

19. LAND TAX 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.

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 three minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 25.

THURSDAY, 9TH DECEMBER, 1954.

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

2. 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.

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

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

Supreme Court Act 1928—Amendment of Supreme Court Office Fees Regulations 1954.

4. LANDLORD AND TENANT BILL.—The Order of the Day for the consideration of the amendments made by the Assembly in this Bill having been read, the said amendments were read and are as follows:—

1. Clause 4, sub-clause (1), lines 24–29, omit words beginning "at the commencement" and ending at the end of the sub-clause and insert:—

"at the first day of November One thousand nine hundred and fifty-four were unoccupied or were occupied by a lessee solely for residential purposes, were not a boarding-house or a common lodging-house within the meaning of the *Health Act* 1928 and were not sub-let in part to any person".

2. ,, page 3, sub-clause (4), line 12, after "applies" insert "(including, where the premises are unoccupied, an intending lessor and an intending lessee)".

3. ,, page 3, sub-clause (4), lines 16–18, omit "and the provisions of the *Landlord and Tenant Act* 1948 (except section twenty-five thereof) shall apply thereto accordingly" and insert "and 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 day from which the fair rent is altered by the agreement 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".

4. Clause 8, lines 12–16, omit "not being less than one-half of the amount of a total permanent incapacity pension payable for the time being" and insert "of not less than Three pounds a week".

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.

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 without amendment, the Report was adopted.

The Honorable P. L. Coleman moved, That the Bill be now read a third time.

Debate ensued.

Question—put.

The Council divided.

Ayes, 17.	Noes, 14.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey (*Teller*),	P. T. Byrnes,
T. W. Brennan (*Teller*),	E. P. Cameron,
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson,	W. O. Fulton (*Teller*),
J. W. Galbally,	T. H. Grigg,
C. P. Gartside,	H. C. Ludbrook,
J. J. Jones,	G. S. McArthur,
P. Jones,	W. MacAulay,
J. A. Little,	A. R. Mansell,
H. V. MacLeod,	I. A. Swinburne,
R. R. Rawson,	G. J. Tuckett,
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 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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6. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 3 and 4, be postponed until later this day.

7. JUDGES SALARIES BILL.—This Bill was, according to Order and after debate, 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.

8. ADOPTION OF CHILDREN (AMENDMENT) BILL.—The Order of the Day for the consideration of the amendments made by the Assembly in this Bill having been read, the said amendments were read and are as follows:—

1. Clause 4, line 25, omit "inserted" and insert "substituted".
2. Clause 4, line 32, omit "Secretary" and insert "Director".

Amendment 1 agreed to.

Amendment 2 disagreed with.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them therewith.

9. 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.

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

Hospitals and Charities Act 1948—Report of the Hospitals and Charities Commission for the year 1953–54.

Soldier Settlement Acts—Amendment of Regulations.

11. 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-five 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, to be read a second time later this day.

The Honorable P. L. Coleman moved, That this Bill be now read a second time.

The Honorable A. G. Warner moved, as an amendment, That all the words after "That" be omitted with the view of inserting in place thereof the words "this House is of the opinion that the annual Appropriation Bill should not be passed at this stage, but that a further Supply Bill granting Supply to the end of April next should be substituted".

Debate ensued.

Question—That the words proposed to be omitted stand part of the 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,
J. W. Galbally,	T. H. Grigg (*Teller*),
C. P. Gartside,	H. C. Ludbrook (*Teller*),
J. J. Jones,	G. S. McArthur,
P. Jones (*Teller*),	W. MacAulay,
J. A. Little (*Teller*),	A. R. Mansell,
H. V. MacLeod,	I. A. Swinburne,
R. R. Rawson,	G. J. Tuckett,
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.—Amendment negatived.

Question—That this Bill be now read a second time—put and resolved in the affirmative. Bill read a second time and committed to a Committee of the whole.

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

FRIDAY, 10TH DECEMBER, 1954.

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. ADOPTION OF CHILDREN (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they do not insist on the amendment made by the Assembly in this Bill with which the Council have disagreed.

13. 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-two minutes past Twelve 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.

MR. PRESIDENT TAKES THE CHAIR AT A QUARTER TO FIVE O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 25.

TUESDAY, 19TH APRIL, 1955.

Government Business.

ORDERS OF THE DAY:—

1. POLICE OFFENCES (RAFFLES) BILL—(*Hon. W. Slater*)—Second reading.
2. STATUTE LAW REVISION BILL—Second reading.

General Business.

NOTICE OF MOTION:—

*1. The Hon. A. G. WARNER: To move, That he have leave to bring in a Bill to amend the Landlord and Tenant Acts.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 25th February, 1954).—The Honorables P. T. Byrnes, G. L. Chandler, C. P. Gartside†, G. S. McArthur, W. Slater, A. Smith†, and I. A. Swinburne.

STATUTE LAW REVISION (JOINT).—(Appointed 25th February, 1954).—The Honorables T. W. Brennan, P. T. Byrnes, H. C. Ludbrook, G. S. McArthur, I. A. Swinburne, and F. M. Thomas.

STANDING ORDERS.—(Appointed 28th April, 1954).—The Honorables the President, P. T. Byrnes, J. W. Galbally, C. P. Gartside, T. H. Grigg, W. MacAulay, D. J. Walters, and A. G. Warner.

HOUSE (JOINT).—(Appointed 28th April, 1954).—The Honorables the President (*ex officio*), P. T. Byrnes, E. P. Cameron, P. Jones, and I. A. Swinburne.

LIBRARY (JOINT).—(Appointed 28th April, 1954).—The Honorables the President, G. L. Chandler, W. O. Fulton, R. R. Rawson, and W. Slater.

PRINTING.—(Appointed 28th April, 1954).—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.

†*Appointed 25th November*, 1954.

** Notifications to which an asterisk (*) is prefixed appear for the first time.*

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1702/54 (350 copies.)

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 26.

TUESDAY, 19TH APRIL, 1955.

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. RETURNS TO WRITS.—The President announced that on the 17th December last and the 25th February last, respectively, he had issued Writs for the election of Members to serve for the undermentioned Provinces in the places of the Honorables Sir James Arthur Kennedy and Sir Francis Grenville Clarke, K.B.E., deceased, and that such Writs had been returned to him and by the indorsements thereon it appeared that the following Members had been elected in pursuance thereof:—

The Honorable Lindsay Hamilton Simpson Thompson for the Higinbotham Province.

The Honorable Charles Sherwin Gawith for the Monash Province.

4. SWEARING-IN OF NEW MEMBERS.—The Honorables Lindsay Hamilton Simpson Thompson and Charles Sherwin Gawith, having been introduced, took and subscribed the Oath of Allegiance.

5. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable J. W. Galbally presented Messages from His Excellency the Governor informing the Council that he had, on the dates mentioned hereunder, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz.:—

On the 13th December, 1954—

Health (Amendment) Act.
Forests (Amendment) Act.

On the 14th December, 1954—

Co-operative Housing Societies (Guarantees) Act.
Midwives (Amendment) Act.
State Electricity Commission (Borrowing) Act.
Justices (Amendment) Act.
Fire Brigades (Amendment) Act.
Mildura College Lands (Amendment) Act.
Country Roads (Amendment) Act.
Soldier Settlement (Financial) Act.
River Murray Waters Act.
Town and Country Planning (Metropolitan Area) Act.
Housing Act.
Gas and Fuel Corporation (Mornington Undertaking) Act.
Railways (Commissioners' Salaries) Act.
Water Act.
State Forests Loan Application Act.
Railway Loan Application Act.
Police Offences (Sports Grounds) Act.
Transfer of Land Act.
Local Government (Amendment) Act.
Land Tax Act.
Water (Connexions to Mains) Act.
Statutes Amendment Act.
Landlord and Tenant Act.
Transport Regulation (Amendment) Act.
Judges Salaries Act.
Public Works Loan Application Act.
Adoption of Children (Amendment) Act.
Hide and Leather Industries (Suspension) Act.

3097/55. (240 copies.)

6. HIDE AND LEATHER INDUSTRIES (SUSPENSION) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

7. STATUTE LAW REVISION COMMITTEE—WATER ACTS COMPENSATION PROVISIONS.—The Honorable F. M. Thomas brought up a Progress Report from the Statute Law Revision Committee on amendments of the Statute Law for the removal of any anomalies in the provisions of Division 2 of Part VI. of the *Water Act* 1928, as amended, relating to the liability of Water Authorities to make compensation in respect of injury loss or damage caused by works of such Authorities and the procedure for settling disputes in relation thereto.

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

8. PAPERS.—The Honorable J. W. Galbally presented, by command of His Excellency the Governor—

Building Regulations—Report of Board of Inquiry.

Indeterminate Sentences Board—Report for the year 1953–54.

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 :—

Adoption of Children Act 1928—Adoption of Children (Consents to Adoption and Revocation of Consents) Rules 1955.

Adult Education Act 1946—Adult Education Regulations 1955.

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 1953–54.

Companies Act 1938—Return by Prothonotary of business of the Supreme Court in connexion with the winding-up of Companies during the year 1954.

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

Corneal Grafting Act 1954—Corneal Grafting Regulations 1955.

Country Fire Authority Acts—
- Amendment of Regulations (two papers).
- Report of the Country Fire Authority for the year 1953–54.

Country Roads Act 1928—Report of the Country Roads Board for the year 1953–54.

County Court Act 1928—
- Amendment of County Court Rules 1930.
- Order in Council relating to Fees in County Courts.

Dairy Products Acts—Report of the Dairy Products Board for the six months ended 30th June, 1954.

Discharged Servicemen's Preference Act 1943—Amendment of Regulations (two papers).

Dried Fruits Act 1938—
- Amendment of Regulations.
- Statement of Receipts and Expenditure and Balance-sheet of the Dried Fruits Board for the year 1954.

Education Act 1928—Amendment of Regulation XXI.—Scholarships.

Explosives Act 1928—
- Amendment of Regulations relating to the manufacture of explosives.
- Orders in Council relating to—
  - Classification of Explosives—Categories; Class 3—Nitro-Compound (two papers); Class 6—Ammunition; Class 7—Firework.
  - Definition of Explosives—Categories; Class 3—Nitro-Compound (two papers); Class 6—Ammunition; Class 7—Firework.
- Report of the Chief Inspector of Explosives on the working of the Act for the year 1954.

Fire Brigades Acts—
- Amendment of Metropolitan Fire Brigades General Regulations 1951.
- Report of the Metropolitan Fire Brigades Board for the year 1953–54.

Fisheries Acts—Notice of Intention to Issue a Proclamation respecting netting at the mouths of the Erskine and George Rivers, near Lorne.

Free Library Service Board Act 1946—Report of the Free Library Service Board for the year 1953–54.

Friendly Societies Act 1928 and Benefit Associations Act 1951—Report of the Government Statist on—
- Friendly Societies for the year 1952–53.
- Benefit Associations for the period ended 30th September, 1954.

Fruit and Vegetables Acts—Amendment of Regulations—Potatoes.

Geelong Waterworks and Sewerage Act 1928—Balance-sheet of the Geelong Waterworks and Sewerage Trust as at 30th June, 1954.

Grain Elevators Act 1934—Report of the Grain Elevators Board for the year ended 31st October, 1953.

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Justices Acts—Amendment of Rules under the Justices Acts (four papers).

Labour and Industry Act 1953—

Regulations fixing holidays in certain trades (three papers).

Report of the Department of Labour and Industry for the year 1953.

Land Act 1928—Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Bentleigh, Berwick, Braeside, Brunswick North-West, Clarinda, Clayton, Dandenong, Drouin, Footscray North, Glenroy West, Keilor, Keon Park, Koonung, Krowera, Lyndale, Merrilands, Moorabbin, Paisley, Southwood, Syndal South, Warracknabeal, and Warrnambool East (twenty-two papers).

Landlord and Tenant Acts—Landlord and Tenant Regulations No. 4.

Marketing of Primary Products Act 1935—

Maize Marketing Board—Regulations—Twentieth period of time for the computation of or accounting for the net proceeds of the sale of maize.

Seed Beans Marketing Board—Amendment of Seed Beans Marketing Board Regulations 1954.

Medical Act 1928—Pharmacy Board of Victoria—Pharmacy Regulations 1955.

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 1953–54.

Mental Hygiene Authority Act 1950—Mental Hygiene Authority Regulations 1955 (No. 1).

Midwives Acts—Midwives Regulations 1955 (No. 1).

Milk and Dairy Supervision Acts—Amendment of Dairy Produce Regulations.

Milk Board Acts—

Amendment of Regulations.

Statement and Account showing all moneys received and paid by the Milk Board during the year 1953–54 and all assets and liabilities of the Board.

Milk Pasteurization Act 1949—Regulation prescribing a district.

Motor Car Act 1951 and Workers Compensation Act 1951—Report, Profit and Loss Account, and Balance-sheet for the year 1953–54 of—

State Accident Insurance Office.

State Motor Car Insurance Office.

Police Regulation Acts—

Amendment of Police Regulations 1951.

Determinations Nos. 52 and 53 of the Police Classification Board (two papers).

Portland Harbor Trust Act 1949—Amendment of Regulations.

Public Library National Gallery and Museums Acts—Reports, with Statements of Income and Expenditure, for the year 1953–54, 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 IV.—Leave of Absence (two papers).

Amendment of Public Service (Public Service Board) Regulations—

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

Part VI.—Travelling Expenses (two papers).

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 30th September, 1954.

Registration of Births Deaths and Marriages Act 1928—

Amendment of Births Deaths and Marriages Regulations 1952.

General Abstract of the number of Births, Deaths, and Marriages registered during the year 1954.

Road Traffic Acts—

Road Traffic (Country) Regulations 1955.

Road Traffic (Metropolitan) Regulations 1955.

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

River Murray Waters Act 1915—Report of the River Murray Commission for the year 1953–54.

Rural Finance Corporation Act 1949—Amendment of Rural Finance Corporation Regulations 1950.

Soil Conservation and Land Utilization Acts—Report of the Soil Conservation Authority for the year 1953–54.

State Electricity Commission Acts—

Amendment of Restrictions on Electrical Apparatus Regulations.

Yallourn Works Protection Regulations 1954.

State Savings Bank Act 1928—General Order No. 50.

Superannuation Act 1928—Report of the State Superannuation Board for the year 1953–54.

Supreme Court Acts—

Amendment of Rules of the Supreme Court (two papers).
Amendment of Supreme Court Office Fees Regulations 1954.

Teaching Service Act 1946—

Teaching Service (Classification, Salaries and Allowances) Regulations—All Regulations repealed—Regulations substituted.

Amendment of Regulations—

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

Report of the Teachers Tribunal for the year 1953–54.

Town and Country Planning Act 1944—

Report of the Town and Country Planning Board for the year 1953–54.
Town and Country Planning Regulations (No. 6).

Trotting Races Act 1946—Amendment of Regulations.

Water Acts—Report of the State Rivers and Water Supply Commission for the year 1953–54.

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

Workers Compensation Act 1951—

Workers Compensation Board (Amendment) Regulations 1954.
Workers Compensation Board Fund—Balance-sheet and Statement of Receipts and Expenditure for the year 1953–54.

9. THE LATE HONORABLE SIR FRANCIS GRENVILLE CLARKE, K.B.E.—The Honorable J. W. Galbally moved, by leave, That this House place on record its deep regret at the death of the Honorable Sir Francis Grenville Clarke, K.B.E., one of the Members for the Monash Province, a former Member for the old Northern and Melbourne South Provinces, a former Minister of the Crown, and a former President 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.

10. ADJOURNMENT.—The Honorable J. W. Galbally moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable J. W. Galbally moved, That the House, out of respect to the memory of the late Honorable Sir Francis Grenville Clarke, K.B.E., do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at thirty-four 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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SESSION 1954–55.

QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO.

QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO—*continued.*

[1807]

VICTORIA
GOVERNMENT GAZETTE

Published by Authority

[*Registered at the General Post Office, Melbourne, for transmission by post as a newspaper.*]

No. 184] **FRIDAY, APRIL 22.** **[1955**

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 by The Constitution Act it was amongst other things enacted that it should be lawful for the Governor to fix such places within Victoria, and, subject to the limitation therein contained, such times for holding the first and every other Session of the Council and Assembly, and to vary and alter the same respectively in such manner as he might think fit; and also from time to time to prorogue the said Council and Assembly, and to dissolve the said Assembly, by Proclamation or otherwise, whenever he should deem it expedient: And whereas it is expedient to prorogue the said Council and Assembly, called "The Parliament of Victoria": Now therefore I, the Governor of the State of Victoria in the Commonwealth of Australia, in exercise of the power conferred by the said Act, do by this my Proclamation prorogue the said Council and Assembly, called "The Parliament of Victoria", until Wednesday, the twenty-seventh day of April, 1955.

Given under my Hand and the Seal of the State of Victoria aforesaid, at Melbourne, this twenty-second day of April, in the year of our Lord One thousand nine hundred and fifty-five, and in the fourth 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!

DISCHARGING MEMBERS OF THE LEGISLATIVE COUNCIL FROM ATTENDANCE AND DISSOLVING THE LEGISLATIVE ASSEMBLY.

PROCLAMATION

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

WHEREAS by *The Constitution Act* it was amongst other things enacted that it should be lawful for the Governor to fix such places within Victoria and, subject to the limitation therein contained, such times for holding the first and every other Session of the Council and Assembly, and to vary and alter the same respectively in such manner as he might think fit; and also from time to time to prorogue the said Council and Assembly, and to dissolve the said Assembly, by Proclamation or otherwise, whenever he should deem it expedient: And

whereas the said Council and Assembly, called "The Parliament of Victoria", stand prorogued until Wednesday, the twenty-seventh day of April, 1955: And whereas it is expedient to dissolve the Legislative Assembly: Now therefore I, the Governor of the State of Victoria, in the Commonwealth of Australia, in exercise of the power in me vested in this behalf, do by this my Proclamation discharge the Honourable the Members of the Legislative Council from their meeting and attendance on Tuesday, the twenty-sixth day of April, 1955: And I do dissolve the Legislative Assembly, such dissolution to take effect on Friday, the twenty-second day of April, 1955: And I do hereby declare that I have this day given Order that Writs be issued in due form, and according to law, for the election of Members to be duly returned to serve in the Legislative Assembly.

Given under my Hand and the Seal of the State of Victoria, at Melbourne, this twenty-second day of April, in the year of our Lord One thousand nine hundred and fifty-five and in the fourth 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!

GENERAL ELECTION.

NOTICE is hereby given that His Excellency the Governor will issue Writs for a General Election of Members to serve in the Legislative Assembly of Victoria on the day first hereinafter mentioned, viz.:—

Date of Issue of Writs	Tuesday, 26th April, 1955.
Day of Nomination (before or on which nominations are to be made)	Friday, 6th May, 1955. (Up to 12 o'clock noon).
Day of Polling	Saturday, 28th May, 1955.
Return of Writs	Wednesday, 15th June, 1955.

By His Excellency's Command,

A. MAHLSTEDT,
Official Secretary.

The Governor's Office,
Melbourne, 22nd April, 1955.

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

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SELECT COMMITTEES

APPOINTED DURING THE SESSION 1954–55.

No. 1.—ELECTIONS AND QUALIFICATIONS.

Appointed (by Mr. President's Warrant) 25th February, 1954.

The Hon. P. T. Byrnes	The Hon. G. S. McArthur
G. L. Chandler	W. Slater
A. M. Fraser*	A. Smith†
C. P. Gartside†	I. A. Swinburne.
Sir James Kennedy§	

No. 2.—STANDING ORDERS.

Appointed 28th April, 1954.

The Hon. the President	The Hon. C. P. Gartside
P. T. Byrnes	T. H. Grigg
Sir Frank Clarke‡	W. MacAulay
A. M. Fraser*	D. J. Walters
J. W. Galbally	A. G. Warner.

No. 3.—HOUSE (JOINT).

Appointed 28th April, 1954.
(*See* Act No. 3660, s. 367.)

The Hon. the President (*ex officio*)	The Hon. P. Jones
P. T. Byrnes	Sir James Kennedy§
E. P. Cameron	I. A. Swinburne.

No. 4.—LIBRARY (JOINT).

Appointed 28th April, 1954.
(*See* Act No. 3660 s. 375.)

The Hon. the President	The Hon. R. R. Rawson
G. L. Chandler	W. Slater.
W. O. Fulton	

* Resigned as a Member of the Council 21st June, 1954.
† Appointed 25th November, 1954.
§ Died 20th November, 1954.
‡ Died 13th February, 1955.

SELECT COMMITTEES—*continued.*

No. 5.—PRINTING.

Appointed 28th April, 1954.

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 25th February, 1954.

(*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.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1954.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 1.

WEDNESDAY, 5TH MAY, 1954.

No. 1.—MELBOURNE AND METROPOLITAN TRAMWAYS (BOARD) BILL.—Clause 2—

2. (1) The Principal Act as amended by any Act is hereby amended as follows:—

* * * * * * * *

(*b*) In section six for the words "seven members" there shall be substituted the words "three members";

* * * * * * * *

(*d*) For section nine there shall be substituted the following section:—

"9. One of the members other than the chairman shall be appointed as representing employés of the Board."

* * * * * * * *

—(*Hon. P. L. Coleman.*)

Amendment proposed—That the words "three members" be omitted with the view of inserting in place thereof the words "one member".

—(*Hon. P. T. Byrnes.*)

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, 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,	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 (*Teller*),	G. S. McArthur,
H. V. MacLeod,	W. MacAulay,
R. R. Rawson,	A. R. Mansell (*Teller*),
W. Slater,	I. A. Swinburne,
A. Smith (*Teller*),	G. J. Tuckett.
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.

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No. 2.—Melbourne and Metropolitan Tramways (Board) Bill.—Clause 2—

[*For this clause, see Division No. 1 above.*]

—(*Hon. P. L. Coleman.*)

Amendment proposed—That the words " and shall be a person who is not and never has been a member of or associated with the Communist Party " be inserted after the word " Board " in substituted section nine.

—(*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, 14.	Noes, 16.
The Hon. A. K. Bradbury,	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 (*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,	W. Slater,
G. J. Tuckett.	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 1954.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 2.

WEDNESDAY, 20TH OCTOBER, 1954.

No. 1.—COUNTRY ROADS AND LEVEL CROSSINGS FUNDS BILL.—Clause 2—

2. (1) There shall be established and kept in the Treasury a fund to be called the "Level Crossings Fund".

(2) There shall be paid to the credit of the said fund such amounts as are payable thereto under the Motor Car Acts or any other Act.

* * * * * * * *

—(*Hon. P. L. Coleman.*)

Motion made and question put—That is be a suggestion to the Legislative Assembly that they make the following amendment in the Bill, viz :—

Clause 2, omit the words "Motor Car Acts" and insert the words "Transport Regulation Acts".

—(*Hon. I. A. Swinburne.*)

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 9.	Noes, 17.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron (*Teller*),	T. W. Brennan,
W. O. Fulton,	G. L. Chandler,
Sir James Kennedy,	P. L. Coleman,
W. MacAulay (*Teller*),	D. P. J. Ferguson,
I. A. Swinburne,	J. W. Galbally,
G. J. Tuckett,	C. P. Gartside,
A. G. Warner.	J. J. Jones,
	P. Jones,
	J. A. Little (*Teller*),
	H. V. MacLeod,
	R. R. Rawson,
	M. P. Sheehy,
	A. Smith (*Teller*),
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

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1703/54. (140 copies.)

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1954.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 3.

WEDNESDAY, 3RD NOVEMBER, 1954.

No. 1.—LANDLORD AND TENANT (AMENDMENT) BILL.—Clause 1—

1. (1) This Act may be cited as the *Landlord and Tenant (Amendment) Act* 1954 and shall be read and construed as one with the *Landlord and Tenant Act* 1928 and the Acts amending the same all of which Acts and this Act may be cited together as the Landlord and Tenant Acts.

(2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

—(*Hon. C. P. Gartside.*)

Question—That clause 1 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 13.	Noes, 15.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey,
E. P. Cameron (*Teller*),	T. W. Brennan,
G. L. Chandler,	P. L. Coleman,
W. O. Fulton,	D. P. J. Ferguson,
C. P. Gartside,	J. W. Galbally,
T. H. Grigg,	J. J. Jones (*Teller*),
H. C. Ludbrook,	P. Jones,
W. MacAulay,	J. A. Little,
A. R. Mansell (*Teller*),	R. R. Rawson,
I. A. Swinburne,	M. P. Sheehy,
G. J. Tuckett,	W. Slater,
A. G. Warner.	A. Smith (*Teller*),
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

1703/54. (140 copies.)

No. 2.—Friendly Societies (Amendment) Bill.—Clause 4—

4. For paragraphs (*b*) and (*c*) of sub-section (XI.) of section sixteen of the Principal Act there shall be substituted the following paragraph :—

"(*b*) Notwithstanding anything in this or any other Act all such medicines and appliances may, where the rules so allow, be sold and supplied to any persons whether or not members of the society or branch."

—(*Hon. W. Slater.*)

Amendment proposed—That the following new sub-clause be added to the clause :—

"( ) This section shall not come into operation until a day appointed by the Governor in Council but such day shall not be so appointed unless and until the Governor in Council is satisfied that income tax is payable pursuant to a Commonwealth Act by societies and branches in relation to their profits at rates at least equal to those payable by co-operative societies."

—(*Hon. E. P. Cameron.*)

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

And so it passed in the negative.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1954.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 4.

WEDNESDAY, 10TH NOVEMBER, 1954.

No. 1.—VERMIN AND NOXIOUS WEEDS (AMENDMENT) BILL.—Clause 2—

2. Section eight of the Principal Act is hereby amended as follows:—

(*a*) In sub-section (1)—

(i) for the words "finds vermin on any land he" there shall be substituted the words "or any person engaged or employed under this Act as an assistant inspector finds vermin on any land the inspector";

(ii) after the words "free of all vermin" there shall be inserted the words "for six months after the service of the notice";

(*b*) In sub-section (3) in paragraph (*b*) the expression "(including the taking out filling up and stopping of all burrows)" is hereby repealed.

—(*Hon. D. P. J. Ferguson.*)

Amendment proposed—That the expression "(including the taking out filling up and stopping of all burrows)" be omitted with the view of inserting in place thereof the expression "(including the digging out filling up and stopping of all warrens and burrows)".

—(*Hon. D. P. J. Ferguson.*)

Question—That the expression proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 11.	Noes, 17.
The Hon. A. K. Bradbury, P. T. Byrnes, E. P. Cameron, G. L. Chandler, W. O. Fulton (*Teller*), H. C. Ludbrook, G. S. McArthur, A. R. Mansell (*Teller*), I. A. Swinburne, G. J. Tuckett, A. G. Warner.	The Hon. D. L. Arnott, A. J. Bailey, T. W. Brennan, P. L. Coleman, D. P. J. Ferguson, J. W. Galbally, C. P. Gartside, J. J. Jones, P. Jones, J. A. Little, H. V. MacLeod, R. R. Rawson (*Teller*), M. P. Sheehy, W. Slater, A. Smith (*Teller*), F. M. Thomas, G. L. Tilley.

And so it passed in the negative.

1703/54. (140 copies.)

No. 2.—Vermin and Noxious Weeds (Amendment) Bill.—Clause 2 (*as amended*)—

2. Section eight of the Principal Act is hereby amended as follows :—

(*a*) In sub-section (1)—

(i) for the words " finds vermin on any land he " there shall be substituted the words " or any person engaged or employed under this Act as an assistant inspector finds vermin on any land the inspector " ;

(ii) after the words " free of all vermin " there shall be inserted the words " for six months after the service of the notice " ;

(*b*) In sub-section (3) in paragraph (*b*) the expression " (including the digging out filling up and stopping of all warrens and burrows) " is hereby repealed.

—(*Hon. D. P. J. Ferguson.*)

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, 11.
The Hon. D. L. Arnott, A. J. Bailey (*Teller*), T. W. Brennan (*Teller*), P. L. Coleman, D. P. J. Ferguson, J. W. Galbally, C. P. Gartside, J. J. Jones, P. Jones, J. A. Little, H. V. MacLeod, R. R. Rawson, M. P. Sheehy, W. Slater, A. Smith, F. M. Thomas, G. L. Tilley.	The Hon. A. K. Bradbury (*Teller*), P. T. Byrnes, E. P. Cameron, G. L. Chandler, W. O. Fulton, H. C. Ludbrook, G. S. McArthur (*Teller*), A. R. Mansell, I. A. Swinburne, G. J. Tuckett, A. G. Warner.

And so it was resolved in the affirmative.

No. 3.—Vermin and Noxious Weeds (Amendment) Bill.—Clause 3—

3. Section nine of the Principal Act is hereby amended as follows :—

(*a*) In sub-section (1)—

(i) after the words " fallen timber " there shall be inserted the words " or any warren burrow or underground cover " ;

(ii) after paragraph (*d*) there shall be inserted the following paragraph :—

" (*e*) such warren burrow or underground cover to be destroyed ; " ;

(*b*) In sub-section (3) after the word " dividing " there shall be inserted the words " live fence " ;

(*c*) After sub-section (3) there shall be inserted the following sub-section :—

" (4) If such owner or occupier fails or neglects to comply with the requirements of the notice any inspector after fifty-six days from the date of the service of such notice may with the authority in writing of the Superintendent and without any further notice summon such owner or occupier before a court of petty sessions consisting of a stipendiary magistrate ; and if in the opinion of the court such owner or occupier has failed or neglected to take all practicable and reasonable means to comply with the requirement of the notice he shall (in addition to any other penalty or liability to which he may be subject) be liable for a first offence to a penalty of not less than Five nor more than Fifty pounds and for a second or any subsequent offence to a penalty of not less than Ten nor more than One hundred pounds ; and proceedings for an offence against this sub-section may be brought against any person at any time after fourteen days after prior proceedings have been brought against such person for an offence against this sub-section notwithstanding that the prior proceedings have not resulted or do not result in a conviction." ;

(*d*) For the expression " (4) If after three months " there shall be substituted the expression—

" (5) Without affecting any proceeding against or the liability of any owner or occupier under this section, if after fifty-six days " ;

(*e*) After the expression "(iv) removing or burning such dead or fallen timber" there shall be inserted the expression—

"(v) destroying such warren burrow or underground cover".

—(*Hon. D. P. J. Ferguson.*)

Question—That clause 3 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 17.	Noes, 11.
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,
J. W. Galbally,	H. C. Ludbrook (*Teller*),
C. P. Gartside,	G. S. McArthur,
J. J. Jones,	A. R. Mansell,
P. Jones,	I. A. Swinburne,
J. A. Little (*Teller*),	G. J. Tuckett,
H. V. Macleod,	A. G. Warner.
R. R. Rawson,	
M. P. Sheehy (*Teller*),	
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 1954.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 5.

THURSDAY, 2ND DECEMBER, 1954.

No. 1.—HEALTH (AMENDMENT) BILL.—Clause 18—

18. (1) In the next four succeeding sections unless inconsistent with the context or subject-matter—

"Temporary public building" means a public building which is not of a permanent character and includes any tent or marquee with accommodation for fifty or more persons in which, or any other moveable temporary structure of any kind in or upon which, members of the public are or are to be invited to sit stand or assemble on one or more than one occasion for the purposes of recreation amusement entertainment or instruction.

(2) This and the next four succeeding sections shall be deemed to be incorporated in Part IX. of the Principal Act.

—(*Hon. J. W. Galbally.*)

Amendment proposed—That the words "one or" be omitted.

—(*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, A. J. Bailey (*Teller*), T. W. Brennan (*Teller*), P. L. Coleman, D. P. J. Ferguson, J. W. Galbally, C. P. Gartside, J. J. Jones, P. Jones, J. A. Little, H. V. MacLeod, 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 (*Teller*), G. L. Chandler, W. O. Fulton, T. H. Grigg, H. C. Ludbrook, G. S. McArthur, W. MacAulay (*Teller*), A. R. Mansell, I. A. Swinburne, G. J. Tuckett, A. G. Warner.

And so it was resolved in the affirmative.

1703/54. (140 copies.)

No. 2.—Fire Brigades (Amendment) Bill.—Clause 2—

2. (1) In section seven of the Principal Act as amended by any Act—

(*a*) for the words "nine members" there shall be substituted the words "ten members";

(*b*) at the end of the section there shall be inserted the following paragraph and sub-section :—

"One member shall be an officer or employé of the Board elected by officers and employés of the Board.

(2) For the purposes of this section 'officer or employé' means a full-time paid officer or employé of the Board whether an officer or member of the Metropolitan Fire Brigade or not, and does not include any part-time or volunteer member of the said brigade."

(2) The Principal Act as amended by any Act is hereby amended as follows :—

(*a*) In sub-section (3) of section sixteen after the words "body or bodies" there shall be inserted the words "or class of persons";

(*b*) In section seventeen after the words "body or bodies" (wherever occurring) there shall be inserted the words "or class of persons";

(*c*) At the end of section nineteen there shall be inserted the following sub-section :—

"(3) If the member elected by officers and employés of the Board ceases to be an officer or employé of the Board he shall cease to be a member of the Board and his office shall thereupon become vacant; but notwithstanding anything in sub-section (1) of this section no such member shall cease to be a member of the Board nor shall his office become vacant by reason of his being an officer or employé of the Board";

(*d*) For paragraph (19) of section thirty-nine there shall be substituted the following paragraph :—

"(19) For regulating the conduct of various elections of members of the Board, the preparation of any rolls required therefor, the manner of making nominations and conducting polls, the manner of voting, forms of ballot-papers, the counting of votes, and generally all matters whatsoever necessary or expedient to be prescribed in relation thereto".

(3) The first election of the member to be elected by officers and employés of the Board—

(*a*) shall be held on such day as is appointed by the Governor in Council;

(*b*) shall for all purposes be deemed to be an election to fill an extraordinary vacancy in the office of such a member whose normal term of office would expire on the thirty-first day of December One thousand nine hundred and fifty-six.

(4) The Board as reconstituted by this Act shall be and be deemed to be the same Board and no act matter or thing shall be affected or abated thereby.

—(*Hon. W. Slater.*)

Question—That clause 2 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

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,
P. L. Coleman,	G. L. Chandler,
D. P. J. Ferguson,	W. O. Fulton,
J. W. Galbally,	T. H. Grigg,
J. J. Jones (*Teller*),	H. C. Ludbrook,
P. Jones,	G. S. McArthur,
J. A. Little,	W. MacAulay,
R. R. Rawson,	A. R. Mansell (*Teller*),
M. P. Sheehy (*Teller*),	I. A. Swinburne,
W. Slater,	G. J. Tuckett,
A. Smith,	A. G. Warner.
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 1954.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 6.

TUESDAY, 7TH DECEMBER, 1954.

No. 1.—HOUSING BILL.—Clause 2—

2. (1) For sections five to fourteen of the Principal Act as amended by any Act there shall be substituted the following sections :—

"5. In the exercise of the powers functions authorities and duties conferred upon the Commission by or under this or any other Act the Commission shall be subject to the direction and control of the Minister.

6. (1) The Commission shall consist of three members appointed by the Governor in Council.

* * * * * * * *

—(*Hon. P. L. Coleman.*)

Amendment proposed—That the words "and one of the members so appointed shall be a person having a special knowledge of housing problems in country areas" be inserted after the word "Council".

—(*Hon. I. A. Swinburne.*)

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, 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,	J. W. Galbally,
H. C. Ludbrook (*Teller*),	C. P. Gartside,
G. S. McArthur (*Teller*),	J. J. Jones,
W. MacAulay,	P. Jones,
A. R. Mansell,	J. A. Little (*Teller*),
I. A. Swinburne,	H. V. MacLeod,
G. J. Tuckett,	R. R. Rawson,
A. G. Warner.	M. P. Sheehy,
	W. Slater,
	A. Smith (*Teller*),
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

1703/54. (140 copies.)

THURSDAY, 9TH DECEMBER, 1954.

No. 2.—TRANSPORT REGULATION (AMENDMENT) BILL.—Clause 2—

2. (1) On application by the owner as prescribed the Board shall grant a permit for any commercial passenger vehicle or commercial goods vehicle to operate on a journey or journeys in the course and for the purposes of interstate trade commerce or intercourse.

(2) Any such permit may be granted subject to conditions reasonably necessary for the preservation of public safety and health the regulation of traffic the preservation and maintenance of the roads and the use and enjoyment by the public of the roads.

(3) No fee shall be chargeable in respect of any such permit, but the Board if authorized by the Governor in Council to collect charges under this section may require payment of a reasonable charge for the use by any vehicle operating under any such permit of the roads over which it travels and for relevant administration expenses of the Board, and the amount of all such charges less administration expenses aforesaid shall be paid into the Country Roads Board Fund.

(4) Notwithstanding anything in the Transport Regulation Acts no other licence or permit under those Acts is required in respect of any commercial passenger vehicle or commercial goods vehicle in so far as it is operating in the course and for the purposes of interstate trade commerce or intercourse if there is in force in respect of such vehicle a permit under this section authorizing such operation.

(5) The *Transport Regulation Act* 1933 as amended by any Act is hereby amended as follows :—

(*a*) In section forty-five—

(i) in paragraph (*b*) after the words " licensed as such " there shall be inserted the words " or authorized by permit so to operate " ;

(ii) in the provisos after the word " licensed " (wherever occurring) there shall be inserted the words " or authorized by permit to operate " ;

(*b*) In section forty-six for the words " licensed under this Part " there shall be substituted the words " under this Part licensed or authorized by permit to operate " ;

(*c*) At the end of the first proviso to section forty-eight there shall be inserted the expression " but this proviso shall not apply in the case of any operation for which a permit could be granted under the *Transport Regulation* (*Amendment*) *Act* 1954 ".

—(*Hon. P. L. Coleman.*)

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

Clause 2, at the end of sub-clause (2) insert the following proviso :—

" Provided that such conditions shall not be more restrictive in their application than any of the conditions regulating the use of motor cars or trailers set out in section thirty-two of the *Motor Car Act* 1951."

—(*Hon. P. T. Byrnes.*)

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 13.	Noes, 17.
The Hon. A. K. Bradbury (*Teller*),	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*),	J. W. Galbally,
H. C. Ludbrook,	C. P. Gartside,
G. S. McArthur,	J. J. Jones,
W. MacAulay,	P. Jones,
A. R. Mansell,	J. A. Little,
I. A. Swinburne,	H. V. MacLeod,
G. J. Tuckett,	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.—TRANSPORT REGULATION (AMENDMENT) BILL.—Clause 2—

[*For this clause, see Division No. 2 above.*]

—(*Hon. P. L. Coleman.*)

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

Clause 2, insert the following new sub-clause to follow sub-clause (3) :—

" ( ) The amount of any such charges for the use of the roads shall be determined by the Board having regard to recommendations to be made from time to time by a Committee consisting of—

(*a*) the chairman of the Country Roads Board ;

(*b*) the chairman of the Transport Regulation Board ;

(*c*) a person appointed by the Governor in Council as representing interstate commercial road transport operators."

—(*Hon. P. T. Byrnes.*

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,	J. W. Galbally,
H. C. Ludbrook (*Teller*),	C. P. Gartside,
G. S. McArthur,	J. J. Jones,
W. MacAulay (*Teller*),	P. Jones,
A. R. Mansell,	J. A. Little (*Teller*),
I. A. Swinburne,	H. V. MacLeod,
G. J. Tuckett,	R. R. Rawson,
A. G. Warner.	M. P. Sheehy,
	W. Slater,
	A. Smith (*Teller*),
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

No. 4.—Transport Regulation (Amendment) Bill.—Clause 2—

[*For this clause, see Division No. 2 above.*]

—(*Hon. P. L. Coleman.*)

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

Clause 2, insert the following new sub-clause to follow sub-clause (4) :—

"( ) The foregoing provisions of this section shall have effect for the period of twelve months from the commencement of this Act and no longer."

—(*Hon. A. G. Warner.*)

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 (*Teller*),	T. W. Brennan (*Teller*),
G. L. Chandler,	P. L. Coleman,
W. O. Fulton,	D. P. J. Ferguson,
T. H. Grigg,	J. W. Galbally,
H. C. Ludbrook,	C. P. Gartside,
G. S. McArthur,	J. J. Jones,
W. MacAulay,	P. Jones (*Teller*),
A. R. Mansell (*Teller*),	J. A. Little,
I. A. Swinburne,	H. V. MacLeod,
G. J. Tuckett,	R. R. Rawson,
A. G. Warner.	M. P. Sheehy,
	W. Slater,
	A. Smith,
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

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

1954

VICTORIA

PROGRESS REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

AMENDMENTS OF THE STATUTE LAW TO DEAL WITH FRAUDULENT PRACTICES BY PERSONS INTERESTED IN THE PROMOTION AND/OR DIRECTION OF COMPANIES AND BY FIRMS

TOGETHER WITH

MINUTES OF EVIDENCE

Ordered by the Legislative Council to be printed 27th April, 1954.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

D.—No. 1—[3s. 3d.]—2544/54.

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.

THURSDAY, 25TH FEBRUARY, 1954.

8. 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.

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.

SATURDAY, 12TH DECEMBER, 1953.

18. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question proposed—That Mr. Hollway be appointed a member of the Statute Law Revision Committee (*Mr. Cain*).

Amendment proposed—That the name "Mr. Hollway" be omitted with the view of inserting in place thereof the name "Colonel Leggatt" (*Mr. Bolte*).

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

The House divided.

Ayes, 26.		Noes, 12.	
Mr. Barry	Mr. Pettiona	Mr. Bolte	Mr. Stirling
Mr. Bourke	Mr. Randles	Mr. Brose	Mr. Turnbull
Mr. Cain	Mr. Scully	Colonel Leggatt	Mr. Whately
Mr. Coates	Mr. Shepherd	Mr. McDonald	
Mr. Connell	Mr. Smith	Mr. Moss	*Tellers.*
Mr. D'Arcy	Mr. Stoddart	Mr. Petty	Mr. Bloomfield
Mr. Doube	Mr. Stoneham	Mr. Rylah	Mr. Mibus
Mr. Fewster	Brig. Tovell		
Mr. Galvin	Mr. White		
Mr. Gray	(*Mentone*)		
Mr. Hayes			
Mr. Holt			
Mr. Lucy	*Tellers.*		
Mr. Merrifield	Mr. Corrigan		
Mr. Morton	Mr. Murphy		

And so it was resolved in the affirmative.

THURSDAY, 25TH FEBRUARY, 1954.

6. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Hollway, Mr. Mitchell, 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.

PROGRESS 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 Honorable the Attorney-General, by letter dated 22nd October, 1953, recommended to the Statute Law Revision Committee that they should examine anomalies in the statute law which appear to permit (*a*) persons interested in the promotion and/or direction of companies ; and (*b*) firms—to engage in fraudulent practices, with a view to reporting upon the measures deemed necessary to afford adequate protection to shareholders, creditors, and members of the public.

2. On 30th October, 1953, the Committee adopted this recommendation and commenced their inquiries. However, the Committee ceased to hold office on 24th February, 1954, and a new Committee was appointed on the first day of the present Session of Parliament, namely, 25th February, 1954.

The present Committee continued the inquiry and, to date, evidence has been received from the following persons :—

His Honor Judge Nelson.
Mr. W. H. Garvey, Senior Detective in charge of the Fraud, Special Investigation and Company Squad, Criminal Investigation Branch.
Mr. E. T. Spackman, Chairman, Company Auditors Board.
Mr. W. Oswald Burt.
Mr. W. J. Taylor, Registrar-General and Registrar of Titles.
Mr. J. E. Quinlivan, Mr. T. S. Welsh } Deputy Registrars-General
Mr. N. L. Colbran, of Messrs. Corr and Corr, Solicitors.
Mr. G. E. Fitzgerald, Mr. J. Wallace Ross } Members of the Company Law Revision Committee, Australian Society of Accountants
Mr. J. H. Opas.
Mr. R. J. McArthur, Mr. J. M. Rodd, Mr. R. N. Vroland } Members of the Council of the Law Institute of Victoria.
Mr. L. Rigg, Editor, *Truth* and *Sportsman* Ltd.

In addition, Mr. H. A. Winneke, Solicitor-General, Mr. T. F. E. Mornane, Assistant Crown Solicitor, and Mr. R. M. Eggleston, Q.C., assisted the Committee in their deliberations.

3. The Committee have not yet completed their inquiries but are of opinion that a Progress Report should be submitted in order that the evidence already received can be made available for the information of Honorable Members and that certain recommendations can be made at this stage.

The Minutes of Evidence to the present stage are appended to this Report.

4. The Solicitor-General advised the Committee that, in his opinion, among the many issues involved in the investigation, three major problems stood out. These were—

(*a*) cases where creditors are dishonestly induced to part with their funds to or for the benefit of companies—e.g., where building companies induce contracts and receive deposits and subsequent instalments or where trading companies induce contracts for the supply of goods which are to be delivered upon payment in full ;

(*b*) cases where persons are dishonestly induced to invest in shares or trust certificates or the like ; and

(*c*) cases where shareholders' funds are dissipated by loans to other companies in which directors of the parent or original company are also interested as directors or otherwise.

5. All witnesses emphasized the difficulty of restricting the activities of, or effectively punishing for their misdeeds, those persons who have caused considerable losses to investors and other members of the public by means of specious promises of early or extensive monetary returns.

In many cases, schemes of an apparently sound character have failed by reason of incompetence or mismanagement or both, whilst in others, the prospects of ultimate success may have existed only in the minds of the propounders of the schemes.

Anomalies and weaknesses in existing legislation have, in many cases, prevented effective action against those responsible for the losses.

6. It appeared from evidence given to the Committee that the criminal law relating to false pretences is limited to cases where there has been a false statement of fact, and—

(*a*) such statement has been made with the knowledge of its falsity;

(*b*) such statement has been intended to induce the person to whom it has been made to act upon it; and

(*c*) such person must in fact have been induced to act upon it to his detriment;

and, consequently, there must have been a false representation as an existing fact of that which is not an existing fact.

As a result, a representation of a present intention to do a future act will not support a charge of false pretences because a representation as to a present state of mind is not regarded in law as a representation of fact. It follows that a false promise cannot be a basis for a criminal charge and accordingly he who is careful to make his representations in the form of promises provides himself with immunity from the criminal law although such representations might be the subject of a civil claim for damages for fraud.

7. Many propositions placed before the public are based upon promises which, at the time of making—

(*a*) the promissor does not intend to fulfil; or

(*b*) the promissor has no reasonable expectation of being able to fulfil;

and such promises are often made by persons who would not be able to meet civil actions for damages.

The Committee recommend that early action be taken to amend Sections 181 to 183 of the *Crimes Act* 1928 by the addition of an offence of making a "wilfully false promise". This offence was included in New South Wales legislation by the Crimes Amendment Act of 1951.

Consideration should be given as to whether the words "wilfully false promise" require a definition, and also whether such amendment would be sufficient to meet the usual types of company frauds which have been referred to in evidence and appear in a number of files made available to the Committee by the Crown Law authorities or whether it would be desirable to introduce a further section along the lines of Section 12 of the *Prevention of Frauds* (*Investment*) *Act* 1939 of the United Kingdom.

This section reads as follows:—

"12. (1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—

(*a*) to enter into or offer to enter into—

(i) any agreement for, or with a view to, acquiring, disposing of, subscribing for or under-writing securities or lending or depositing money to or with any industrial and provident society or building society; or

(ii) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(*b*) to acquire or offer to acquire any right or interest under any arrangements the purpose or effect, or pretended purpose or effect, of which is to provide facilities for the participation by persons in profits or income alleged to arise or to be likely to arise from the acquisition, holding, management or disposal of any property other than securities; or

(*c*) to enter into or offer to enter into an agreement the purpose or pretended purpose of which is to secure a profit to any of the parties by reference to fluctuations in the value of any property other than securities—

shall be guilty of an offence, and liable to penal servitude for a term not exceeding seven years.

(2) Any person guilty of conspiracy to commit an offence under the preceding sub-section shall be punishable as if he had committed such an offence."

It will be seen that this section covers reckless statements of fact which have the effect of misleading the public into purchasing valueless securities or other property, or making loans or deposits of money. It would require suitable amendment to adapt it to companies generally in this State.

8. The Committee view with some concern the possibility of this type of legislation being used against a person who has broken a promise honestly made. The Committee therefore, recommend that provision be made in the Crimes Act that no prosecution for a "wilfully false promise" should be commenced without the sanction of the Attorney-General.

9. The Committee have received many suggestions which, together with other relevant matters, are still the subject of investigation.

Some of these suggestions are as follows:—

(*a*) That provisions of Sections 40 and 366 (1) (*d*) of the *Companies Act* 1938 be clarified with a view to tightening up the provisions relating to the lodging of a statement in lieu of a prospectus and the provisions relating to when a prospectus becomes stale.

(*b*) That Section 123 of the *Companies Act* 1938 be amended to extend the offence in sub-section (1) to persons connected with a company other than Directors and to make the offence in sub-section (6) an indictable offence.

(*c*) That the provisions of Section 142 of the *Companies Act* 1938, which prevent an undischarged bankrupt from being a Director of or directly or indirectly taking part in the management of a company except with the leave of the Court, be extended to prevent such a person being directly or indirectly concerned in the management of any partnership or firm.

(*d*) That a section similar to Section 142 of the Companies Act be introduced to prevent a person convicted of dishonesty from taking part in the promotion or management of a company without the leave of the Court.

(*e*) That Section 367 of the *Companies Act* 1938 be amended to ensure that dividends paid in cash are out of profits which are actually realized and not from unrealized or estimated profits.

(*f*) That all serious offences under the Companies Acts be made indictable offences as it has been found in many cases in practice impossible to prosecute within twelve months of the offence having been committed.

(*g*) That provision be made, unless the shareholders or a specified majority thereof decide otherwise, for the annual audit of the accounts of a proprietary company and that the report of the auditor together with a certified copy of a balance-sheet, profit and loss and trading accounts be sealed and lodged with the Registrar-General and be opened only upon an order of the Court where there is a *prima facie* case of fraud or misconduct in the operation of the company's affairs.

(*h*) That provision be made in the Companies Act requiring the Secretary of a company to have certain qualifications, to perform certain statutory duties and to be a person other than a Director of the company. That Company to file a return at the Registrar-General's Office showing who is the Secretary and public officer of the company.

(*i*) That the provisions of the Companies Act be extended to ensure that devices such as the creation of lot-holders and concession-holders should not be permitted as such schemes enable the Directors of a company to avoid the responsibilities which they normally have to share-holders.

(*j*) That depositions taken before an inspector appointed under the *Companies (Special Investigations) Act* 1940 be admissible in evidence in subsequent proceedings against the person giving the evidence.

(*k*) That the opinion of an investigating officer appointed under the *Companies (Special Investigations) Act* 1940 or of a properly qualified auditor of the financial state of a company at a particular date be *prima facie* evidence of the company's financial position at that date.

(*l*) That an investigating officer appointed under the *Companies (Special Investigations) Act* 1940 be empowered to compel persons who have left the State to answer questions and comply with summonses under the Act.

(*m*) That the *Companies (Special Investigations) Act* 1940 be amended to enable the Attorney-General to order at an earlier stage than is possible under the existing law, an investigation of a company whose activities are suspect.

10. The Committee are examining the New South Wales *Lay-by Sales Act* 1943 and the Queensland Trust Accounts Acts with a view to ascertaining to what extent, if any, the provisions of these legislative measures would be desirable for incorporation in the Victorian legislation.

11. The Committee also have under consideration the strengthening of the present legislation relating to share hawking.

It is felt that some assistance can be gained from the United Kingdom Act already referred to.

In addition, legislation would appear necessary to prevent the hawking of various types of contracts which offer lots or concessions in an undertaking.

12. The Committee recommend that legislation be introduced at an early date to give effect to the recommendations contained in paragraphs 7 and 8 of this report.

Committee Room,
7th April, 1954.

STATUTE LAW REVISION COMMITTEE

Minutes of Evidence of Inquiry re Anomalies in the Statute Law Relating to Companies and Firms

TUESDAY, 4TH FEBRUARY, 1954.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon. P. T. Byrnes	Mr. Pettiona
The Hon. H. C. Ludbrook	Mr. Randles.
The Hon. F. M. Thomas	

His Honour Acting-Judge Nelson was in attendance.

The Chairman.—The purpose of this inquiry is the examination of anomalies in the statute law which appear to permit (*a*) persons interested in the promotion and/or direction of companies, and (*b*) firms, to engage in fraudulent practices, with a view to reporting upon the measures deemed necessary to afford adequate protection to shareholders, creditors, and members of the public.

When His Honour Judge Nelson was acting as Senior Crown Prosecutor, he made considerable research into the problems arising over the prosecution of persons who defrauded members and creditors of companies and the public generally. His Honour will give the Committee an outline of those problems and his ideas as to how the law may be improved to enable prosecutions to be launched successfully in the future.

His Honour.—This morning, I do not propose comprehensively to review all deficiencies there may be in the law to deal with various company problems that have arisen or may arise. I propose to discuss certain outstanding aspects that I have observed in the investigation of company matters—I shall term them "company frauds" although that may be too severe a judgment upon some of them—which have come before me in the last few years. These were cases as to which there had been a public outcry, and people have lost money as the outcome of the operation of the companies, but it was felt that the evidence was insufficient to enable prosecutions to be launched.

In general, these concerns fell into two classes. The most common class is that of companies that commence trading with very little capital—in some cases the capital is almost non-existent. A company starts a business that has a popular appeal, such as a home-building business or a home-supplying business. Having practically no capital it has found itself unable to carry out the commitments into which it has entered, except by obtaining more and more customers and requiring substantial deposits from them under a contract. It has used the deposits for the purpose of carrying out earlier commitments. The result has been that the commitments have "snowballed." The companies are usually marked by a great deal of mismanagement and frequently by personal extravagance on the part of the directors and other officers. The position has finally arisen that there have been so many complaints that the company has been investigated by an inspector appointed by the Attorney-General, and the winding-up of the concern has been recommended. Following the report of the inspector, the case has been sent to the Law Department to see if there is evidence of criminal activities on the part of those who promoted and ran the business. It was at that stage that these matters were referred to me during the last few years.

In these companies the pattern has been exactly the same. As I have stated, a company has started with very little capital. At the outset, apparently the company was a genuine trading concern. It is difficult to determine whether a company was trading genuinely at the start or whether a face of trading had been put on. In cases that I have investigated, I have no reason to believe that the companies did not start as genuine trading companies. Because of lack of capital and in many cases because at the inception the company took over another business already saddled with hopeless commitments, these companies reached the position where their liabilities "snowballed" and the inevitable crash occurred. In each case the result has been that a number of people lost money that they could ill afford to lose. People were encouraged to enter into contracts with these companies in the hope of getting a new home in six months. They have paid substantial deposits and, in many cases, have made substantial progress payments. Either nothing has been done to construct the proposed homes or else the amount of work done has not been comparable to the sum of money that these clients have paid.

When it comes to investigating the company from the point of view of seeing if there is anything criminal involved, it is generally found that there is no evidence of misappropriation of company money or property by the directors or other officers. The promoters usually appear to be penniless at the time of the crash. We cannot always say with certainty that there has not been misappropriation because the books of the company are usually in a hopeless state. Accountants making investigations are unable to trace what has happened to the money paid over by unfortunate customers.

That has been one of the first angles of approach from the criminal point of view. Under the present law, failure to keep proper books of account constitutes a criminal offence under two provisions of the Companies Act. I direct attention to sub-section (1) of section 123, which provides—

> Every company and the directors and manager thereof shall cause to be kept proper books of account in which shall be kept full true and complete accounts of the affairs and transactions of the company.

That provision applies both to proprietary and public companies. The terms of sub-section (6) are—

> Every person being a director of a company who—
>
> (*a*) fails to take all reasonable steps to secure compliance by the company with the requirements of sub-section (1) or sub-section (2) of this section, or has by his own wilful act been the cause of any default by the company under either of the said sub-sections; or

(*b*) fails to take all reasonable steps to comply with the provisions of sub-section (3) or sub-section (4) or sub-section (5) of this section—

shall, in respect of each offence, be liable on summary conviction to imprisonment for a term of not more than six months or to a penalty of not more than Two hundred pounds:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case the offence was committed wilfully.

It will be seen that under sub-section (1) the onus of ensuring that proper books of account are kept is placed on the directors and the manager of a company but under sub-section (6) the directors only are criminally liable. The manager of a company need not be a director. In some companies the moving spirit is not a director. The most notorious example of that in recent times was the case of Group Constructions Proprietary Limited, with which Mr. Peter Russell Clarke was associated. On the evidence elicited at the inquiry there was no doubt that Clarke was the moving force behind the company. He made all decisions, carried out negotiations as to contracts, and so on, but he was not a director. In fact, the directors played only a minor part in the activities of the company. It appears illogical that in section 123 the onus is placed on the directors and the manager to keep proper books of account, but if reasonable steps are not taken to ensure that that is done, the section makes only directors liable for the offence. The section provides for the offence to be treated on summary conviction in a court of petty sessions. Under this section, proceedings are not taken in the higher courts by way of an indictable offence. In the Justices Act which governs the activities of courts of petty sessions, there is a time limit of twelve months within which such prosecutions must be commenced. Once a company has failed, a considerable time inevitably elapses before an investigation takes place. First, the stage must be reached where there is a public outcry or there are sufficient complaints to direct official attention to the matter; then, normally, there is an investigation by an inspector appointed under the Companies (Special Investigations) Act, and there are other delays before the stage is reached where a prosecution can be considered. After the offence of failing to keep books has been committed, twelve months is a very short delay. Of course, the company might have been struggling on for years before the crash comes. Under section 123, no action can be taken in respect of any failure to keep books prior to twelve months before the initiation of a prosecution. Of course, it is those transactions which occurred much earlier than the twelve months' period where an investigation is desirable and where the keeping of books is important. From the practical point of view, sub-section (6) of section 123 is not of much use.

Section 274 also deals with failure to keep books This provision applies to a company where a winding-up order has been made, whereas section 123 relates to companies which have not been wound up. Sub-section (1) of section 274 provides—

If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction on indictment to a penalty of not more than One hundred pounds or to imprisonment for a term of not more than one year, or on summary conviction to a penalty of not more than Fifty pounds or to imprisonment for a term of not more than six months.

It will be seen that under that section the institution of prosecution is not limited by the twelve months' period, as is section 123, because there can be conviction on indictment—that is, a company can be proceeded against before a jury instead of in the Court of Petty Sessions. There is, however, a limitation period of two years preceding the commencement of the winding up, and I suggest that period might be increased.

Where there has been a failure to keep books, there has been some possibility of successful action in certain cases, but one cannot pretend that a prosecution for failure to keep proper books is of very much satisfaction to the people who have lost money, consequently there has not been a great desire to institute proceedings in such cases. When people consider that they have been defrauded, that is not the type of action they desire to be taken against the company managers concerned. In the absence of evidence of actual misappropriation of money, what other remedy is available? First, mere mismanagement or bungling is not a criminal matter. The real evil is that companies, particularly building companies which have entered into contracts to build or supply homes, have continued to enter into contracts and commitments, and to take moneys under those contracts, when the directors and officers of the companies must have known that there was no prospect at all of those contracts being carried out. Such cases do not come within the category of obtaining money under false pretences. To the layman, it would appear to be false pretences to represent to a person that a home could be supplied in six months for so much money when the company was so hopelessly involved that it could not carry out the contracts into which it had previously entered. Under our law, the offence of obtaining money under false pretences is committed when a false statement or a false representation of fact, as we term it, has been made. That does not include a promise of something in the future, even if it is known that the promise cannot be carried out.

If a person wrongly says that he is acting on behalf of, say, the Red Cross Society and sells tickets to other people the proceeds of which he says are to go to that society, he can be prosecuted for obtaining money under false pretences because a false statement of fact has been made. However, if that person conducted a fete and advertised that the proceeds would be given to the Red Cross Society, and people gave money on that understanding, no prosecution could be launched for obtaining money under false pretences if the proceeds were not given to the Society, because no false representation of an existing fact had been made. All that had been said was that the money would be given to the Red Cross Society in the future. That provision has existed in Victoria for many years, and for probably hundreds of years in England. In such cases, it is not possible under our present law to institute proceedings for obtaining money under false pretences.

The problem has been tackled in New South Wales, where it is provided that it is an offence to obtain money by making a wilfully false promise, although I am not wedded to that expression. If it is used, I consider that a suitable definition is required of what is meant by " wilfully false promise."

Mr. Brennan.—There is the phrase, " making a promise that one knows very well one cannot possibly fulfil."

His Honour.—That is so. Without affecting the generality of the expression, I should like to see included in the definition of " wilfully false promise " a provision relating to the making of a contract which

the promissor either does not believe or has no reasonable grounds for believing will be carried out. I consider that such a provision would enable the Crown to deal with the problem, although it would not get over all the difficulties.

The main problem which we encounter relates to proof. In the Criminal Court particularly we are bound by very rigid rules of evidence, and any matter that is alleged against an accused person has to be proved according to the established rules of evidence. In this type of case, as I have already said, the difficulty is that the company has made a promise to do work at a time when, financially, it cannot carry it out, so that it would be necessary for the Crown to prove that the company, at the time the promise was made, was financially unable to carry out the work. That, in the present state of our law, seems to be almost an impossibility, from the point of view of strictly legal proof. It could be done by admission, if the accused man were ill advised enough to admit that the company could not carry out the work at the time he entered into the contract, but even the most foolish person is unlikely to do that because, the more foolish he is, the more ready he is to believe that manna would come from heaven, so to speak, and that the company could carry out its contract.

At the present time, from the point of view of the ordinary investigation, we say that a company is unable to pay its debts because an accountant has examined the books of the concern; he has had its bank statements and, for all practical purposes, he has been enabled to say, " This company's assets were not more than so much and its liabilities were such a figure, which revealed that the concern was hopelessly insolvent at that time." If an attempt is made to prove that position according to our laws of evidence in the Criminal Court, it will be necessary to prove what was the assets position of the company at that time. It will also be necessary to prove what was the liabilities position of the company at that time.

The easiest way of proving these matters is through the officers of the company, but they are the last people from whom it will be possible to get assistance. The accountant who has made his investigation can only give hearsay evidence, which is not admissible. We can prove the state of the bank account—that is provided for under our law—but that is only one element in the accounts of the company. To prove its debts as a matter of strict proof, it would be necessary to call every person or company that alleged that the company owed them money. It is likely that the accused person would dispute any such debts. It would then become necessary to prove what were the assets of the company and, from the practical point of view, I do not know how to set about doing that, especially as the person concerned would be prosecuted for something with respect to which all these matters were only incidental in the proof. The whole case would be bound up in proving an incidental matter in the prosecution and, frankly, I do not know of any practicable way under our law at the present time of proving in a criminal prosecution that a company was insolvent at any particular date.

Mr. Thomas.—Has not the English law provided for that contingency?

His Honour.—I do not know.

Mr. Pettiona.—Section 12 of the English Act, known as the *Prevention of Fraud (Investments) Act* 1939, is in the following terms:—

"12. PENALTY FOR FRAUDULENTLY INDUCING PERSONS TO INVEST MONEY.

(1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—

(*a*) to enter into or offer to enter into—

(i) any agreement for, or with a view to, acquiring, disposing of, subscribing for or underwriting securities or lending or depositing money to or with any industrial and provident society or building society, or

(ii) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities, or

(*b*) to acquire or offer to acquire any right or interest under any arrangement the purpose or effect, or pretended purpose or effect, of which is to provide facilities for the participation by persons in profits or income alleged to arise or to be likely to arise from the acquisition, holding, management, or disposal of any property other than securities, or

(*c*) to enter into or offer to enter into an agreement the purpose or pretented purpose of which is to secure a profit to any of the parties by reference to fluctuations in the value of any property other than securities

shall be guilty of an offence, and liable to penal servitude for a term not exceeding seven years.

(2) Any person guilty of conspiracy to commit an offence under the preceding sub-section shall be punishable as if he had committed such an offence."

His Honour.—That provision goes a long way towards meeting the first problem I mentioned, namely, the absence of a provision in our laws relating to wilfully false promises. Section 12 of the English enactment refers to " any statement, promise or forecast which he knows to be misleading, false or deceptive," but it does not touch the matter with which I am dealing at present, namely, proof of the financial position of the company. One of the outstanding features of these company prosecutions is that, at the time the company entered into certain contracts, it was insolvent, and its officers knew that it was insolvent. However, to prove the company's insolvency is our practical difficulty. I believe it is necessary to have an evidentiary provision which will simplify proof on that particular matter. I am very chary, and I have no doubt that members of the Committee are chary also, about introducing an evidentiary provision to simplify proof in criminal cases, but I consider that the problem here is one of sufficient seriousness to warrant a provision of this character, so long as adequate safeguards are provided.

In my view, the only practicable way of surmounting the difficulty is to provide that an accountant—a qualified person—who has made an investigation of the affairs of the company may give evidence as a result of his investigations concerning the financial position of the company at any particular date, which shall be regarded as prima facie evidence of the financial position of the company at that date.

Mr. Brennan.—Could not provision be made for the compulsory filing with the Registrar-General every twelve months of a certificate by an auditor that an audit had, in effect, been made of the affairs of the company?

His Honour.—That would be a big step forward so far as keeping companies " on the rails " is concerned. It must be borne in mind, however, that auditors' certificates are sometimes very easy to obtain, and they do not supply any real answer to the problem which has to be faced. In respect of many companies, allegedly audited balance-sheets have been produced, but they cannot be relied upon.

Mr. Pettiona.—A difficulty arises in determining when to direct an accountant to investigate the affairs of a company. Possibly no investigation will take place until after something has gone wrong.

His Honour.—It is only at that stage that the question of prosecution arises. Then an accountant may investigate the books of the company and, later, say, "As a result of my investigation, in my opinion, the company on the 31st December, 1947, when it entered into a certain contract, was insolvent, and it was insolvent to this extent . . . ." The importance of that investigation lies in the fact that, if there is a marked discrepancy between the assets and liabilities at that time, the directors must have been aware of it. I agree that the investigation takes place only after the "bubble has burst," but I am looking at the matter from the point of view of prosecution.

Mr. Pettiona.—If, as is generally the case, the books of the concern are in a chaotic state, the accountant would experience difficulty in stating the position accurately.

His Honour.—I agree that, in practically all instances, the accountant would be unable to give a precisely accurate statement of what were the assets and liabilities at a particular time, but he could state whether the company was insolvent or not. If the discrepancy between assets and liabilities were great, the accountant could state that, in his view, there was at least a certain deficiency. I make that suggestion because, from the practical point of view of the prosecutor, the degree of discrepancy is the most important factor. A jury will pay but little attention to the fact that the value of the assets is slightly below the value of the liabilities, but if there is a gross discrepancy between the values of the assets and liabilities, it will be obvious to a jury that the person conducting the company must have known that it could not carry out its commitments.

The Chairman.—If the discrepancy were small, the matter would not be referred to the Crown Law Office at all. It is only when frauds of a substantial character are perpetrated on the public that the Law Department is brought into the matter.

His Honour.—That is so. Prosecution might take place after the collapse of the company when the discrepancy is large, whereas, the particular contract in respect of which proceedings are instituted may have been entered into at an earlier period of the company's history, when the discrepancy was smaller than at the time of the crash. I should think that the company would not be prosecuted unless there were a marked discrepancy between the value of the assets and the value of the liabilities, lest there should be difficulty in satisfying a jury, from the practical point of view, that the directors must have known at the time that the company was in an insolvent financial position.

Mr. Randles.—If it was considered that the directors had a reasonable opportunity of carrying out the contract into which they had entered, prosecution proceedings would not be launched.

His Honour.—That is so. In all cases, reasonable administration must be taken into consideration.

Mr. Thomas.—Some companies commence operations with a nominal capital of £30,000, but the paid-up capital may be £5 only. A guarantee should be given that a certain proportion of the nominal capital will be paid up and that the actual paid-up capital will be deposited in the bank before the company is granted registration.

His Honour.—That is a matter of policy on which I am not able to express a view. I can only purport to give the Committee assistance from the point of view of criminal liability and any deficiencies in our criminal law or proof.

Mr. Thomas.—I have in mind a particular firm, Bernco. Members of Parliament interviewed the manager of that concern, a Mr. Foley. Three weeks ago his activities were written up in South Australia where he was doing the same thing as in Victoria. In fact, it has proceeded beyond the shores of Australia.

The Chairman.—I think we should allow His Honour to confine his remarks to the matter on which he is giving evidence.

His Honour.—I do not know that I can add anything in respect of that particular type of company. It seems to me that the problem is two-fold. The first requirement is a provision making it a criminal offence for a company's officers to knowingly enter into contracts which the company has no reasonable prospect of performing. Secondly, I think such a provision would be of no more than paper value unless it were reinforced by an evidentiary provision simplifying proof in a criminal court of the financial position of a company at any particular date.

The only suggestion I can make in regard to an evidentiary provision is that the evidence of some qualified person, who has been appointed to investigate the affairs of the company, as to what in his opinion was its financial position at any particular date, should be prima facie evidence of that fact. That would still leave it open to the defence to challenge the basis upon which he arrived at his opinion, and I do not think it would place any improper burden on the defence. The fact that he was a person who had to be appointed—preferably by the Attorney-General—would give some assurance against an irresponsible expression of opinion. In my opinion any prosecution of the nature I have been discussing should only be initiated on the fiat of the Attorney-General, in order to make certain that no vindictive use of the provision is made by some person who believes he has been victimized in any particular case.

The second class of case to be considered is the one in which one company is linked with a number of other companies through its directorate. For example, there is a group of companies with apparently no logical connexion in respect of their trading, but all of which have the same board of directors and substantially the same shareholders. If such companies limited their shareholders to those of the first company, no one would worry very much, but unfortunately in some cases they have other shareholders too. One company, which has the greatest financial resources by way of shareholders' funds, is using its money to bolster up, say, another two companies, either by way of loans or by doing work on their behalf, for which they are not paid but in respect of which the first company properly makes an entry in its books. The company's books are properly kept showing details of loans made to the other companies and of work which it has done for them. The two companies so assisted, either as a result of mismanagement or for some other reason, are hopelessly insolvent, and what appears to be perfectly legitimate trading on the part of the first company, with loans to the other companies which are apparently secured, is really founded on completely worthless assets.

An example of this type of case is the Rubinstein group of companies. In that case the first company, a firm known as Chemical Plastics, had advanced large

sums of money to two other companies in the same group called British Furs and B.M. Manufacturing Co. Chemical Plastics' books showed properly the amounts of money owing to it by both other companies. At one stage a debt of approximately £5,000 owed by one of the companies to Chemical Plastics was dealt with by Chemical Plastics taking shares in British Furs in satisfaction of the debt. The shares were of the same face value as the debt, but their actual value at the time was about 3s. in the £1. I am not quite certain what the answer to this question is.

Mr. Brennan.—There are cases in which one company puts its surplus profits into another company.

His Honour.—In this case Chemical Plastics apparently had no actual business of its own, other than the support of the other two companies, into which it could put its money. I do not want the Committee to misinterpret what I am saying. I am not in a position to say that there was in fact anything fraudulent in the cases I have cited. There was nothing in the material before me on which I could express a view that there was any fraud at all. That may have been because there were deficiencies in the material before me, but I could not say that that was so.

Mr. Brennan.—Could it have been a desire to escape taxation which was behind the transactions?

His Honour.—I do not think so, although that may have come into the picture. I was impressed by the position which was in fact created—whether it was fraudulent or not. Shareholders in Chemical Plastics were actually invited to subscribe for additional share issues, and did so subscribe, on the basis of what appeared to them to be perfectly sound business. The moneys of Chemical Plastics were invested in these other two companies and the link was the fact that there was the same directorate in each case. That was probably the only reason why any such investment would be made.

I gave some thought to the question of what could be done about the matter. The only provision which I did think of is one which is extremely stringent, perhaps too much so to be practical. That is a provision that any director of a company who was knowingly a party to the application of any of the funds of the company to or for the benefit of any other company of which he was also a director, and who at the time of such application did not believe or had no reasonable grounds for believing that the second company was or would be able to repay or return such money, is guilty of an offence. I throw that in as a basis for discussion.

Mr. Pettiona.—Could such a provision be dangerous to parent companies which had subsidiary companies conducting experiments on their behalf, for example?

His Honour.—It could. That is why I say the question would require a good deal of consideration. I should like to have the opinion of qualified company accountants on such aspects before anything was done. I think I have broadly covered the matters which have struck me with greatest force in the cases I have investigated.

The Chairman.—The Committee would appreciate the opportunity of further discussing these problems with His Honour next Tuesday morning.

His Honour.—I shall be very happy to do so. If there is any particular matter which the Committee would like to discuss next week, it would assist me to prepare evidence if I could receive advance advice of such matter.

The Committee adjourned.

TUESDAY, 9TH FEBRUARY, 1954.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon H. C. Ludbrook	Mr. Pettiona
The Hon. F. M. Thomas.	Mr. Randles
	Mr. R. T. White.

His Honour Acting-Judge Nelson was in attendance.

The Chairman.—I shall ask His Honour, Judge Nelson, first to add anything he may wish to what he has already told the Committee.

His Honour.—The only matter on which I desire to say anything further is in relation to simplifying proof in the cases we considered last week. I have already referred to the desirability of some sort of provision which would help to establish the financial position of a company at any particular date. Another matter which normally must be proved in criminal proceedings strictly in accordance with the criminal law of evidence is that a man is a director of a company at any particular point of time. From the practical point of view, as far as the layman is concerned, there appears to be no difficulty because some records are filed at the Registrar-General's office and so on, setting out the directors of a company, but that is not sufficient to prove it in a court of law. Strictly, one should prove the man's formal appointment in a criminal case. That is not easy in the case of a company the officers of which are not prepared to assist, and the minute books of which are very often kept in a scrappy fashion. Normally, the matter is proved by admission by the man himself. However, that is an unsafe basis on which to proceed because, as in one case which I have in mind, when one arrives at the stage of questioning the witness for purposes of admission, he may have received legal advice and may adopt the course, which he is perfectly entitled to do, of saying that he does not propose to answer any questions at all.

I thought use might be made of the provisions of the Companies Act which require a company to file a return of directors. Section 144 of the Act provides first of all that companies shall keep a register of their directors or managers, setting out certain particulars. Of course, no statutory provision will make a company which does not wish to do that carry it out. The second sub-section provides that the company shall file with the Registrar-General a return of directors, and shall also file a notification of any change in its directors. The first of those returns must be filed within 21 days after incorporation. That return is normally filed because at that stage there have been no difficulties in connexion with the company. So that normally there is a record of the directors of the company at some stage of its history. Any change in the directors thereafter should be notified to the Registrar-General by the filing of a notice of change. I had in mind that the proof that a man was at a particular time a director of a company could be considerably simplified if the court were able to receive in evidence a notice which had been filed at the Registrar-General's Office, together with the fact that there had been no notification of change of directors, as prima facie proof that a man whose name appeared on that notice was in fact a director at any relevant time. If he was not, if the company had merely failed to discharge its obligations and had not filed a notice of change of directorship, it would be very easy for the man concerned to show that to the court because he is the man who

has knowledge of such things. Those who are carrying out the investigation have not the same personal knowledge. My proposal is one way in which prima facie proof might be made easier from the point of view of the investigators without imposing hardship on the individual concerned. In my opinion that could be done by a provision to the effect that where in any legal proceedings it was material to prove that a person was on any particular date a director of a company, evidence that he appears on a return of directors filed with the Registrar-General under the provisions of sub-section (2) of section 144 of the Companies Act could be admitted and, if no notification under the said section had been forwarded to the Registrar-General stating that he had ceased to be a director, that would constitute prima facie evidence that on the date in question he was a director of the company. Then a case could be launched against a man who was alleged to have been a director on a particular date. If in fact the documents at the Registrar-General's Office were wrong because the secretary or some other officer of the company had failed in his duty to file proper returns, there would be no difficulty in the man himself proving that they were wrong and that he was not a director at the particular date.

That is the only new matter which I desire to add to the material which I placed before the Committee last week. Again I would stress what I endeavoured to stress last week, that the main practical difficulty in these cases is that of proof. Although it is not very difficult to frame an offence which would cover the type of evil which we have encountered, that in itself would not be of much practical assistance unless there were some ancillary provision enabling matters which can be clearly demonstrated in the investigation of a company to be proved for the purposes of a court of law. It was mainly with that idea in my mind that I have spent so much time on the question of these evidentiary provisions.

The Chairman.—It has been suggested to the Committee that the provisions of section 12 of the *Prevention of Fraud (Investments) Act* 1939 of England should be introduced here to assist in prosecuting in connexion with company frauds. Would Your Honour like to comment on that suggestion?

His Honour.—I think section 12 of the English Act could be used as a basis for our legislation and be of real practical value. In its present form I do not think it would add very much to what we already have because the type of matter with which it deals is not the type of matter on which in my experience there has been any necessity for any criminal action. I am referring now to the type of agreement mentioned in section 12. It has certain advantages. It does deal with the question of false promises which our present law does not provide for. It goes a little further than a promise and deals with any knowingly misleading forecast which falls short of a promise. It is in very wide terms. There is always a certain reluctance to introduce penal provisions in wide terms, but the Committee may feel that it is justified, in view of the scope of the evil in company cases, to recommend the introduction of stringent provisions. The introductory portion of section 12 describes the type of conduct which would be treated as criminal; that is to say, inducing people by either false statements, false promises or false forecasts to enter into contracts. The inclusion of that provision would be an improvement in our law. The remainder of the section does not meet the problems with which we are faced here of inducing people to enter into contracts for the construction of homes, for example.

Section 12 of the English Act is in terms inappropriate for that purpose, and it does not appear to me that the section is directed to that purpose at all. The Committee will observe that it refers first of all to agreements for or with a view to acquiring, disposing of, subscribing for or underwriting securities, or lending or depositing money to or with any industrial and provident society or building society. I am not quite certain what those words mean, but they do not seem to me to cover the case of a company which induces a customer to enter into an agreement with it for the erection of a home or for the supply of a prefabricated home. Those are the problems with which we have had to deal. The section appears to be directed more to the question of subscribing for securities or lending money to a company, and the other provisions of the section appear to be directed to investment companies to some extent—people are induced to lend money on the basis that it will be invested in other securities. I think considerable alteration in respect of the type of agreement referred to in section 12 would be required to meet our problem at the present time, but that would not be an insuperable difficulty by any means.

The Chairman.—There is a problem in connexion with this business of inducing investment in shares by false statements as to prospective profits. It has occurred in connexion with olive companies and the primary oil type of company and other strange ventures, which are hawked around the country perhaps more than the city.

His Honour.—I did not mean to suggest that there would be no scope for the operation of the section even in its present form. There may be such cases, but I have not encountered such a problem from the point of view of a prosecution. The problems I have encountered in the last four years are those which I recounted to the Committee last week.

His Honour.—On the question of a provision in the law creating an offence, our problem has been to deal with the company, or the officer of the company who has induced people to enter into contract with it, when the person concerned must have known perfectly well that the company had no possible chance of carrying out the contracts.

Mr. Brennan.—Does Your Honour feel that it would be practicable or efficacious to devise some scheme of licensing share hawkers who offer shares for sale? It seems to me that an indiscriminate class of persons go around, particularly in the country without any apparent display of authority, making specious promises which, of course, are later repudiated by the officials of the company.

His Honour.—As to the practicability of it, I would not like to express an opinion. I think that it is a matter on which the Committee might to greater advantage get the opinion of those who are concerned with the actual business of the selling of shares in the company organizations. I might say that we in the Crown Law Department have not struck any real trouble in relation to share hawking for some years. Possibly, the Business Investigations Act had a salutary effect in that respect, but our problems have not been in relation to share hawking. It would appear to me that at present share hawking is fairly well controlled by the provisions of the Business Investigations Act. One previously existing difficulty, which I think is not covered by the provisions of that Act, is in relation to the interpolation of trustees. Instead of share hawkers selling interests in the company direct to the persons who subscribe the money, they

interpolate a set of so-called trustees, and the people who subscribe the money receive a notification that the trustees are holding for those subscribers certain interests in the company. I have not looked into the matter for some time, but my impression is that this type of thing does not come within the provisions of the Business Investigations Act. However, that is a matter that might very well be considered and, if necessary, the Act could be amended to cover it, because we did deal with several cases where that had been done.

The Chairman.—Do you know of any one in the Law Department who has had occasion to investigate the activities of any company where, as you put it, trustees had been interpolated between the company and the shareholders?

His Honour.—I am unable to say whether any such investigations have been made. Investigations of companies have been made from other aspects, for instance, on the question whether the particular interests were dutiable under the Stamps Act. I know that Mr. Mornane, the Assistant Crown Solicitor, has had a good deal to do with these company matters, and he may be able to assist you.

Mr. Hollway.—Is there any branch of the Law Department whose duty it is to watch newspaper advertisements and the activities of people with a view to preventing frauds from taking place? For instance, I recently brought to the notice of the Committee the case of a company that was operating in connexion with an olives plantation. Shares in the company were not being sold, but olive trees were being traded. The company undertook to tend the trees, and at some future time—goodness knows when—a person would perhaps make his fortune from the sale of the product of the olive trees. In connexion with that activity a big advertisement appeared on the financial page of the *Age.* It seems to me that it might well be the duty of a section of the Law Department to investigate such activities.

His Honour.—I am not sure what precisely is done by the Law Department in that respect; it would be better for the Committee to hear the evidence of some one who knows exactly what the Department does. The only matters in which I have been concerned are those that were referred to me, as Counsel.

Mr. Hollway.—It seems to me that all that we can do at this stage is to look for ways and means of punishing people for something they have already done, but that would be of no benefit to the persons who have been defrauded.

Mr. Randles.—We are looking for means of punishing offenders rather than of means of preventing the committing of offences. There was an instance last year of a person who had been receiving payments of interest on second mortgages, but he had never advanced any money. Apparently, that person is still operating.

The Chairman.—We need not worry His Honour with that matter at present. There is one other point on which I should like Your Honour to comment. Reference was made last week to a provision in the South Australian Police Act which prescribed a new offence in connexion with the passing of valueless cheques. I notice that a similar provision has been adopted in New South Wales. Your Honour might indicate whether you think the adoption of a similar provision in Victorian legislation is desirable.

His Honour.—I do not know whether it has any particular reference to companies.

The Chairman.—The provision was inserted in the legislation at the time a section was included in relation to the offence of false promises. I thought it might be relevant to the present inquiry.

His Honour.—I do not think it has any particular significance in the matter of company scandals of the type with which the Committee is concerned. The provision was considered necessary in New South Wales and South Australia to meet the case of a man who opened a bank account with, say, a deposit of £10 and then proceeded to draw cheques, none being for more than £10. Such a man can be prosecuted only in regard to one cheque at a time. If he is prosecuted for passing a cheque for £7, he says, "I had £10 in my account and I expected the cheque to be met." We have not been worried about the matter because we have proceeded to prove that the cheque was part of a scheme, and that other cheques had been drawn. On occasions, the police have had difficulty in convincing the Court that a particular cheque was valueless and could not have been met on presentation. If a man had £10 in his bank account and drew a cheque for £7, there would be nothing wrong with that cheque and there must be a prosecution in respect of each individual cheque that has been issued. I do not think there is great need for the provision because we have not found any practical difficulty in demonstrating that all such cheques were valueless.

The Chairman.—In the course of a series of articles published by a leading accountant in the *Herald,* the suggestion was made that it should be obligatory to file a return as to the secretary and the public officer of a company as well as its directorate. Have you met problems in proving that a certain person was the secretary and public officer of a company at a stated time?

His Honour.—No, but if such a problem did arise, we would need a provision similar to that which I have cited regarding returns that a man was a director of a company. It would also have to be provided that the return was to be accepted as prima facie evidence of the fact that the man was secretary and public officer at a specified time. In certain cases, it might be possible to obtain proof from the documents lodged with the Registrar-General without the evidentiary provisions I have mentioned, by arguing that the documents were public documents and came within the ordinary rule of evidence as to public documents. I am regarding these questions from the point of view of a prosecutor, and prosecutions should not be jeopardized by the possible non-acceptance by the court of a doubtful argument. That is why I suggest that the matter can be placed beyond doubt by a simple evidentiary provision.

Mr. Thomas.—You do not think such a provision would be too harsh?

His Honour.—There would be nothing harsh in saying that a man was the director of a company and appeared as such in the documents lodged with the Registrar-General, and that that should be prima facie proof of the fact in court proceedings. That would leave it open to the man to prove that he was not a director at the specified time and that a mistake had been made by the officer filing the documents.

Mr. Pettiona.—If the money of one company is put into another concern, do you suggest that provision should be made to follow the money through?

His Honour.—The trouble is that money is usually lost in these cases.

Mr. Pettiona.—The money goes somewhere, and after the person misappropriating the company's money has served a gaol sentence, he can carry on again.

His Honour.—Apart from being criminally liable, the man would be civilly liable for the misappropriation of the money and a judgement could be obtained against him. Possibly, Mr. Pettiona has in mind a provision similar to that covering trust funds. Under that provision the disposal of the funds can be followed through. There may be room for the investigation of that aspect, but I could not give an opinion on the matter off-hand.

Mr. Pettiona.—There is a provision either in the English or the New South Wales law by which the disposal of the money can be followed through.

His Honour.—I am not familiar with the provision.

Mr. Randles.—You have mentioned the need of an evidentiary provision. Would it assist in these cases if the degree of proof accepted in civil actions was made applicable to criminal prosecutions?

His Honour.—It would help, but it would be unwise to alter the fundamental structure of our criminal procedure, one principle of which is that an offence must be proved beyond reasonable doubt. I can see no objection to an evidentiary provision simplifying the question of proof of matters about which there is no real argument. Every one may know that a company was insolvent at a particular time and that a certain man was a director, but it is practically impossible to prove those facts in court in a criminal case. I repeat that it would be unwise to interfere with any of the fundamentals of our criminal procedure.

Mr. Randles.—It is a fact that after a company has failed the directors can still carry on under false pretences yet they are not criminally liable. If a shareholder takes action in a civil court he may be able to recover, but many people who have been defrauded are unwilling to take civil action because of the cost and so on; therefore these rogues go scot free.

His Honour.—That is so, but at the same time I think it would be unwise to have any different standard applying to the criminal who is a company director from that applying to the criminal who is a housebreaker or a murderer.

Mr. Thomas.—I take it that in court it must be established beyond all reasonable doubt that there was intent to defraud?

His Honour.—It must be established beyond reasonable doubt.

Mr. Thomas.—Could that be modified in any way?

His Honour.—I do not think it can be altered. If there is any doubt as to a man's guilt he should get the benefit, whether he is a fraudulent company director or any one else.

Mr. Pettiona.—Could Your Honour inform the Committee of the name of the inspector who carried out the investigation referred to on page 2 of your evidence which was submitted last week?

His Honour.—I was not referring to any specific case, but was giving a general outline. In a number of cases, inspectors have been appointed by the Attorney-General and reports have been furnished. The names of those inspectors could be supplied by the Law Department.

The Committee adjourned.

WEDNESDAY, 10TH FEBRUARY, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon. H. C. Ludbrook	Mr. Pettiona
The Hon. F. M. Thomas	Mr. Randles
	Mr. R. T. White.

Mr. W. H. Garvey, Senior Detective in Charge of the Fraud, Special Investigation and Companies Squad of the Criminal Investigation Branch, Melbourne, was in attendance.

The Chairman.—I extend a welcome to Mr. Garvey, who has had considerable experience in instituting proceedings against persons who appear to be involved in fraudulent activities concerning companies. He has been requested to furnish information to this Committee and to make suggestions, on behalf of his department, for the emendation of the law so as to facilitate and make more effective those prosecutions which at present do not succeed because of defects in the legislation. I request Mr. Garvey to proceed in his own way.

Mr. Garvey.—I shall not attempt to go into detail concerning past investigations, except to say that, over the years, convictions have not been obtained in certain instances because of the fact that, in our humble opinion, the law neither protects the community nor does it permit the police to protect it. For that reason, we have been forced to almost abandon the Companies Act in favour of some other remedy under the Crimes Act. Unfortunately, however we have found that the *Crimes Act* 1928, even as amended, falls far short of any instrument that would give us real power to protect members of the public, more particularly those who, perhaps, have neither the requisite education to understand company law nor the intelligence to deal with "go-getter" organizations and high-pressure salesmen.

There are certain necessary amendments of the Companies Act which appear to be obvious. The first is to extend the time for taking proceedings. At present, when making an inquiry under the Companies Act, it is necessary to take proceedings within twelve months. That is frequently impossible because of the character of the transactions. Generally, there is no complaint until a person who has put his life savings into a bogus company finds that he is getting no return. Then, perhaps, he asks a solicitor to inquire, and subsequently it is found that the company concerned has no substance. The promises that have been made are just a salesman's promises—frequently made by a criminal with a long criminal history. Unfortunately, a percentage of the salesmen acting for "go-getter" companies are criminals with long records. I do not wish to give names at this stage, but I shall quote chapter and verse, if required. Some directors of those companies also are criminals with long histories. Therefore, I suggest that the time within which action may be taken should be anything up to three years. Some persons go to a solicitor immediately they ascertain that they are hurt. They are those who have the requisite money and intelligence. But many people who are robbed by these companies are not equipped mentally or financially to protect themselves, and they "tail along" to us a couple of years after the event.

Mr. Hollway.—Is there any particular reason why there should be a time limit of any sort?

Mr. Garvey.—Not so far as the police are concerned. If an indictable offence is committed, there is no limit. I can imagine few felonies more serious

than robbing the wife of a worker who has saved a few shillings from the housekeeping money to provide her husband with a surprise at Christmas time.

Mr. Brennan.—Is there any reason for the imposition of the time limit of twelve months?

Mr. Garvey.—Might I suggest that, as most offences are dealt with summarily, twelve months is the ordinary period for summary proceedings.

The Chairman.—We are trying to ascertain whether there is any reason for these matters being treated as summary offences.

Mr. Garvey.—With regard to the Companies Act, there are provisions made for special investigations. They stem from section 136 of the Companies Act of 1938, the Companies (Special Investigations) Act of 1940, and the Business Investigations Act of 1949. All of these enactments are ineffective beyond the borders of this State. Recently, I was appointed to conduct an investigation, after the persons concerned had left Victoria. I then found that any power I had as an inspector under the Companies Act stopped a little short of Albury and that any summons provided for under Victorian legislation requiring an officer or an agent of a company to appear in court for the purpose of giving evidence had no force whatever outside the boundaries of this State. In other words, the persons concerned may "thumb their noses" at the court, and one almost did so. Recently, I journeyed to Brisbane to interview a certain gentleman concerning company matters in Victoria. I could only suggest strongly to him that he should present himself in this State for examination, but, needless to say, he was not impressed.

Mr. Brennan.—If you had instituted proceedings against him, you would have had the appropriate remedy under the interstate reciprocal arrangements in relation to the service and execution of process, as a police officer.

Mr. Garvey.—If I had instituted criminal proceedings, I would have had that redress, but while investigating a company, as a competent inspector, before taking such proceedings, I have no such power.

Mr. Brennan.—I was thinking of some offence, indictable or otherwise, which would enable you to pursue future offenders.

Mr. Garvey.—Quite. I was merely doing an investigation, as provided for under the Act, but the remedy available in this State would be of no use if the person concerned did not present himself. If he just disappeared, that would be the end of it.

The Chairman.—In other words, you had no doubt about your right to take proceedings?

Mr. Garvey.—Certainly not. If I should take proceedings, the person concerned could be extradited. It is anomalous that a man may merely cross the border of the two States, and then be able to wave his hands to his pursuer.

The Chairman.—Is there any reciprocal legislation in the other States that would assist you in your investigations?

Mr. Garvey.—Not to my knowledge, and I have made inquiries on the point. Reverting to the Companies Act, I suggest that the provisions of section 142 should be extended to cover a business. There is power under that section to prevent an undischarged bankrupt from managing a company—for obvious reasons. The section relating to the special investigation of companies was recently extended to cover any business. If that was necessary, I suggest that it is equally necessary to extend the provisions of section 142 to cover a business. At the present time an undischarged bankrupt—who tried even to evade examination as such—is managing various businesses and getting thousands of pounds from members of the public. On the face of it, other persons own those businesses. One of them is an unsuccessful housebreaker with a long criminal history, but those persons are thought to be purely and simply dummies. One business which this undischarged bankrupt managed until he could no longer collect any money from the dupes trading with the concern is, on the face of it, owned by a person who is apparently subnormal. This person states that he receives a few pounds a week from the business, but otherwise knows little about it. He is prepared to give sworn evidence to that effect. The man who is conducting the business stated, when interviewed, that he was only "managing" the establishment. Yesterday, we received another complaint regarding his activities.

Mr. Brennan.—Does the Business Names Act help you in cases of that kind?

Mr. Garvey.—The persons shown as connected with the business were duly registered under the Business Names Act. Those persons, who registered, appear to receive only a few pounds for their services.

The Chairman.—Have you instituted proceedings under section 142?

Mr. Garvey.—Not yet, but that may be done shortly.

The Chairman.—Have you any indication as to the attitude which the court takes to offences under section 142?

Mr. Garvey.—No.

The Chairman.—Substantial penalties are provided for offences?

Mr. Garvey.—Yes, but while such penalties are provided for, there is also ample protection for any decent man who wishes to try to rehabilitate himself, and that is available in the form of the permission of the Court. There is no necessity for any person who has been properly investigated to be damaged by the provisions of section 142. He may get a permit from the Court under the proper conditions, and doubtless that fact would be taken into consideration by the Court in its attitude in applying the section, which, after all, is statute law.

The Chairman.—For the benefit of members who have not a copy of the Act before them, section 142 of the Companies Act provides—

(1) Every person who being an undischarged or uncertificated bankrupt or insolvent acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the Court shall be liable on conviction on indictment to imprisonment for a term of not more than two years or on summary conviction to imprisonment for a term of not more than six months or to a penalty of not more than Five hundred pounds or to both such imprisonment and penalty.

Mr. Brennan.—I take it that Mr. Garvey is suggesting that after the words "any company" there should be inserted the words "or business" or "enterprises" or "business undertaking"?

Mr. Garvey.—Yes; it would be a simple matter to cover it.

The Chairman.—There is also provision later in that section in regard to obtaining the leave of the Court. "Company" is defined as including "an unregistered company"—whatever that means—"and a company incorporated outside Victoria which has an established place of business within Victoria."

Mr. Garvey.—I have in mind another person with whom we dealt recently. After he became insolvent he immediately registered another business in his wife's name. Of course, his wife might know nothing whatever of the details of the business. Again, he was the "manager" of that establishment. I also suggest, with a view to preventing share hawking as it is known under section 356 of the Act and the disposal of interests in a business under the Business Investigation Act of 1949, that higher penalties be provided.

Mr. Brennan.—Do you think the registration of share hawkers would be of any advantage?

Mr. Garvey.—The provisions of the *Prevention of Fraud (Investments) Act* 1939 of England cover the disposal of shares. If a man has anything good to sell, he does not need to have it hawked from door to door throughout the country, paying a high rate of commission to a high-pressure salesman. For instance, section 1 of that English Act provides for the licensing of persons carrying on the business of dealing in securities.

Mr. Brennan.—It is something like that which I had in mind.

Mr. Garvey.—Of course, the term "securities" includes shares and debentures and all that sort of thing. The particular provision I have mentioned covers the subject very well.

The Chairman.—Later the Committee will have before it a solicitor who wishes to give evidence as to the desirability of adopting the English provisions in that regard. The Committee will then consider that aspect in more detail.

Mr. Garvey.—I suppose every law is a restriction upon someone, but I agree that dealing in any shares should be strictly controlled. My colleagues and I have found the Companies Act to be of little assistance in respect of criminal offences. Indeed, we are somewhat hamstrung by the provisions of the Crimes Act of this State. The Solicitor-General has, I understand, been kind enough to approve of certain amendments which I suggested and which I take it are now under consideration. We have found that section 181 of the Victorian Crimes Act is incomplete in the matter of dealing with high-pressure salesmen. I understand that false pretences was first made a statutory offence by King Henry the Eighth. The fact is that although some efforts have been made to add to the original provision since that time, what we call the straightout "spiel" has never been covered. A man can take another man's money by making lying promises as often as he likes, and it is not an offence. During the time I have been in charge of the companies squad we have had to discuss such matters with housewives and all types of persons, including returned servicemen. Often they have given their life's savings to some unscrupulous scoundrel, but we have had to tell them that under the law they can only have recourse to civil action. Recently there was an instance of a widow who had brought her family out from England and who lost her savings to a gentleman who sold or purported to sell timber. We had to tell her that there was no redress under the law. That is not a satisfactory state of affairs.

The Chairman.—Have you many cases of this type of thing?

Mr. Garvey.—We have hundreds of cases. Frequently we receive telephone calls from solicitors saying that they have a client who has no money to throw after the money which she has already lost, and asking whether we can do anything for her. Then we have to question the aggrieved person to ascertain whether anything was said to her which might prove to be a breach of the law. These false pretences men know the law as well as we do, and possibly very much better. Furthermore, once they have obtained a large amount of money they are able to obtain the services of gentlemen who have prostituted themselves intellectually and who know the law better still. I am not casting any aspersions upon the legal profession. I think it has been clearly established that a legal man is quite free to advise his client on how to stay outside the provisions of the law. The fact remains, strangely enough, that there are certain people who seem to have a number of shady clients; that, of course, is purely coincidence. To commit false pretences, as the legal gentlemen present know, one must make some false pretence as to an existing fact. One can lie as long as one says, "I will do it in the future." We had the case of a man quite recently who took deposits for about 80 houses from returned servicemen, saying, in effect, "I will build them within ten weeks." He appeared to have no intention and no resources with which to build those houses, and he did not build them, but we could take no action against him. Since then, we have had the pleasure of giving him eighteen months on another charge, but that does not punish him for the business in relation to houses which he did not build, although all the people concerned lost their money.

Mr. R. T. White.—You say you cannot charge this man?

Mr. Garvey.—That is so. Had this man told anyone that he had 50 bricks in his backyard, and we could have proved that he did not have that quantity, he would have been a criminal, whereas he was merely an unsuccessful business man. Persons offering to sell timber say, "I will supply this timber within a week." One man is doing that now.

Mr. Randles.—There was a glaring case of that description at Moonee Ponds.

Mr. Garvey.—Yes, and that man is still carrying on, under another name.

Mr. Brennan.—Although you point out that these defrauded people can proceed under the civil law, "go-getters" have no estate and to proceed against them is like trying to squeeze a dry orange.

Mr. Garvey.—That is so. Most of these business men do not obtain, say, £20,000 and disappear. They live like lords in a lavish fashion, until the funds are exhausted.

Mr. Brennan.—Do not the criminal provisions of the Bankruptcy Act cover these men?

Mr. Garvey.—The last man I have mentioned went bankrupt, was sentenced to six months' imprisonment for making unlawful preferences, but that did not assist the people he had defrauded. He was charged on two counts of fraud, but he was found not guilty by a Judge, sitting without a jury.

I have suggested that in sub-section (1) of section 181 of the Crimes Act, after the words "false pretence" the words "or wilfully false promises" should be inserted. The suggestion is not revolutionary, because it has been adopted in other States and is the modern way of dealing with people of this type. I have also suggested a further amendment to make "cheque" men responsible for cheques that they "fly." A man who issues a cheque on a non-existent account or forges the signature of another person is caught easily, but throughout the years many criminals have lived on the issuing of cheques.

Recently, we arrested a man who had gone from State to State with cheque books. He opened an account in one town and then went by taxi all over Victoria, passing cheques in different towns. He did the same thing interstate. It is easy to carry out such a scheme, because business is run on credit. Very often traders will not risk offending a person of decent appearance, particularly if he is a visitor to their town.

Mr. Pettiona.—With reference to dealing with false promises, do you think it would be wise to adopt section 12 of the English Prevention of Fraud Act?

Mr. Garvey.—The terms of that section are wide, but I suggest that consideration should be given to including a similar provision in our legislation.

Mr. Pettiona.—Do you think such a section would be dangerous in that it might lead to injustice?

Mr. Garvey.—No. Under our present set-up, every case that goes before a court is closely scrutinized. Of course, justice must be done to an individual, but it is reasonable to suggest that justice should also be done to the other 2,000,000 people in the State. Often we bend over backwards to protect an individual, but a section similar to section 12 of the English Act could be drafted in an acceptable form.

Mr. Pettiona.—Mr. Winneke referred to the section and said he wondered if the time was ripe to cover a similar field in this State, as he feared it might give rise to injustice.

The Chairman.—What steps are taken to scrutinize proceedings?

Mr. Garvey.—In Victoria, most charges are dealt with by our company squad, and any officer who arrests a man does so on his own initiative. He is not instructed to do so. Any person wrongly arrested has redress under the civil law. That right has been availed of often in the past, although not with much success. Some criminals say, "I always report a policeman because it does not cost me anything." Persons suspected of crime under a provision similar to section 12 of the English Act could be amply protected.

The Chairman.—It was suggested that if the provisions of our Act are to be widened to provide for prosecution on the lines of section 12 of the English Act, it might be desirable also to provide that no prosecution should be launched without the authority of an officer of the Law Department.

Mr. Garvey.—That provision appears in various Acts and I think it is a good suggestion.

The Chairman.—Under that procedure, a case would be submitted to the Law Department and the authority of the Crown Solicitor or the Solicitor-General would be obtained before a prosecution was launched.

Mr. Garvey.—Yes. I fear that there would not be many prosecutions under the section because of the delay in obtaining the necessary approval. Provision could be made for arrest pending the obtaining of approval. I suggest that any amendment to section 181 of the Crimes Act should not be subject to such a provision.

The Chairman.—Your suggestion is that in section 181 of the Crimes Act there should be added the offence of a wilfully false promise, and also a special provision covering the passing of valueless cheques on lines similar to New South Wales and South Australian legislation.

Mr. Garvey.—That is so. Recently, we caught a man who had lived for many years on passing bad cheques. He would open an account and pass about twenty cheques on it. Then he would stop. He would then open an account in another bank and follow the same procedure. The cheques were all marked "Refer to Drawer" and we had to prove a course of conduct. That procedure involved enormous expense in bringing witnesses to court.

Apparently no attempt has been made to remove the criminal element from the field of company promotion, and that is absolutely essential. At present, many criminals are actively engaged in promoting companies and starting businesses in Melbourne. Those operations are going on all the time. Recently a report appeared in the press that a company which had collected a lot of money from the public had folded up. I know that one director of that company has a criminal history. He started as a salesman in an equally successful company, and when he saw how easy it was he himself started a company. It is unfortunate that he has a blot on his character, but the fact remains that he was not born with it, therefore he must accept the responsibility.

Mr. Pettiona.—Was that person convicted for a similar offence?

Mr. Garvey.—No, but he has been convicted for dishonesty. Section 211 of the Bankruptcy Act provides that undischarged bankrupts shall not seek credit without disclosing the fact that they are bankrupts, and under section 142 of the Companies Act an undischarged bankrupt is not permitted to manage businesses or companies.

Mr. Brennan.—At present only companies are mentioned. Do you suggest that businesses should also be included?

Mr. Garvey.—Yes. Section 33 of the *Firearms Act* 1951 provides that any person who has been convicted of an indictable offence within the past five years and sentenced to a term of imprisonment is not permitted to carry a firearm, other than a shot gun or a pea rifle, which are not, of course, considered as firearms. For a second offence, the offender is liable to imprisonment for a term of not less than one year and not more than two years.

Mr. Brennan.—That would be an unregistered firearm.

Mr. Garvey.—He is not permitted to register a firearm, nor to carry a firearm registered in the name of another person. It can be seen that the trend has been to protect people. I suggest that any person who has been convicted of a felony or misdemeanour involving dishonesty should not be permitted to own or manage a company or business which collects money from the public in any way, by lay-by or otherwise, without the permission of a court, as is provided in section 142 of the Companies Act. Under that provision, any person who is honestly trying to rehabilitate himself can apply to the proper authority, and doubtless due consideration will be given to his application.

Mr. Brennan.—You are trying to prevent any person from operating behind the facade of a company or business which does not reveal the person himself.

Mr. Garvey.—That is so. There is nothing to prevent persons who have been convicted of serious offences involving dishonesty in connection with companies registering ten companies. We have to look to the future; the past is unfortunate enough. Last year, the Victorian Parliament accepted the principle that the money of the public should be protected. Because of certain investigations that had been made, I submitted a report last year on the advisability of some control being exercised over the operations of bookmakers, and I understand that legislation has been passed which is designed to control the accounting of those people who collect millions of pounds of public money.

Many companies collect, in the aggregate, hundreds of thousands of pounds, by one organization swallowing another, so to speak. Many of those organizations are run by former salesmen. One company commences a group-selling business, which subsequently gets into financial difficulty. It side-steps its obligations by arranging for another company, perhaps operated by friends and supporters or perhaps by the original promoters, to take over the liabilities. This has happened time and time again. Some of the men concerned are persons with criminal records.

Mr. Thomas.—Do you know of any persons with bad records—perhaps undischarged bankrupts—who have promoted companies with the object of rehabilitating themselves?

Mr. Garvey.—No. Immediately after leaving gaol, any criminal may register one company or ten companies if he chooses, merely by paying the requisite fees at the office of the Registrar-General.

Mr. Thomas.—Do you desire to stop that practice?

Mr. Garvey.—Yes, subject to protection.

Mr. White.—What is the position in other States concerning these matters?

Mr. Garvey.—South Australia and New South Wales have restrictive legislation concerning false pretences and cheques. That is not so in Victoria. Consequently, many dishonest persons operate in this State.

The Chairman.—Is there any similar legislation in other States in respect to your latest suggestion?

Mr. Garvey.—I do not know of any.

The Chairman.—Section 211 of the Bankruptcy Act applies throughout the Commonwealth?

Mr. Garvey.—Yes, it is a Commonwealth Act.

Mr. Pettiona.—Do you believe it would be beneficial if reciprocal legislation were enacted to prevent company promoters from operating in one State, while located in another, with the object of evading the provisions of the law in certain States?

Mr. Garvey.—Yes. In New South Wales there is on the statute-book the *Lay-by Sales Act* 1943, which affords almost complete protection to the public concerning lay-by sales. Recently, there have been thousands of complaints in this State about malpractices under the lay-by scheme. Under the New South Wales legislation, it is necessary for a firm to actually have the goods in stock, issue a numbered docket to the client, and place the goods aside, properly labelled with the number of the contract. If the goods are not in the vendor's possession, a deposit of 20 per cent. only may be accepted. If the goods are not available at the time, the deposit must be paid into a trust account until the goods are available and they have been viewed and approved by the client. There is another provision under which, with respect to certain classes of goods, action may be taken under a fidelity bond.

Mr. White.—Is it an "open go" in Victoria?

Mr. Garvey.—Yes, and certain people know it. They have set up business in Victoria and have sold goods in New South Wales without registering in that State. Had they so registered they would have committed a breach of the New South Wales legislation. I think it could be argued successfully that, under section 92 of the Commonwealth Constitution, they are entitled to continue to trade in that way, basing their business in Melbourne, and that the fact of it being conducted from Melbourne would be a good defence to any suggestion that they were guilty of any offence in New South Wales.

The Committee adjourned.

THURSDAY, 11TH FEBRUARY, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon. H. C. Ludbrook	Mr. Pettiona
The Hon. F. M. Thomas.	Mr. Randles
	Mr. R. T. White.

Mr. W. H. Garvey, Senior Detective in Charge of the Fraud, Special Investigation and Companies Squad of the Criminal Investigation Branch, Melbourne, was in attendance.

Mr. Garvey.—I wish to submit further evidence of the necessity to amend the Companies Act to include provisions similar to sections 1 and 12 of the 1939 English Prevention of Fraud Act. There is in Victoria at present a man who is a perfect example of the type of person such a provision would tend to control. Recently, two men from New Zealand have been persuading holders of good shares and bonds to hand over those securities for disposal so that the proceeds might be invested in a concern operated by them.

Mr. Brennan.—Are they New Zealand forest shares and so on?

Mr. Garvey.—Yes.

Mr. White.—Have they met with much success?

Mr. Garvey.—Yes. A short time ago a widow of advanced years was induced to hand over for disposal scrip worth approximately £4,000 so that she might invest in a so-called invention.

Mr. Thomas.—Was that £4,000 in actual cash or scrip to that value?

Mr. Garvey.—She handed over scrip and bonds to the value of about £4,000. Actually, she could not itemize the stock for us, but she thought that they had taken more than she had intended. Fortunately, those persons did not get the £4,000, but that was not as a result of the law, but because other people in the community co-operated with the police.

Mr. Brennan.—Of course, it is most difficult to protect such people even with laws.

Mr. Garvey.—It is practically impossible, but we must do everything possible to prevent their exploitation.

Mr. White.—At present there is no way of dealing with the problem?

Mr. Garvey.—That is so. In this case, the widow was assigned an interest in an existing invention, not that the person concerned intended to exploit its use, but he wanted something which would make his operations legal. The two men to whom I have been referring used two methods. They would give an interest in what was termed, I think, "a perpetual spark plug", or, if their victim appeared to be a steady churchgoer, they would offer to sell an interest in a business manufacturing miniatures of the grotto at Lourdes.

Mr. White.—Are those persons operating now?

Mr. Garvey.—Recently, one of them was sentenced to imprisonment for a term of two years, and a charge has been made against the other man, although not in connection with this matter.

Mr. Pettiona.—Has a company called "Securities and Equities Proprietary Limited", which is registered in New South Wales, come under your notice?

Mr. Garvey.—Yes. Reverting to the matter, which I mentioned yesterday, of vast sums of money being obtained by men who sold timber and undertook to build houses, there is in force in Queensland the Trust Accounts Act of 1923-25. That enactment has the effect of making certain persons trustees of the moneys of other people. The Queensland Parliament has since placed on the statute-book the *Trust Accounts Act (Amendment) Act* 1952, which has the effect of making trustees of building contractors.

Mr. Brennan.—Is that legislation applicable to all persons who accept money on deposit?

Mr. Garvey.—There are certain exceptions, as covered by other Acts. For instance, members of the legal profession and real estate agents are excepted. The *Trust Accounts Act (Amendment) Act* 1952 is retrospective insofar as it requires any person who is appointed a trustee to give an account, as at that time, of moneys which he holds on behalf of other persons or which he has accepted as a trustee from other persons.

Section 6 of the *Trust Accounts Act (Amendment) Act* 1952 requires a contractor who receives any money on terms to apply it in or towards defraying the price of any contract and to pay forthwith that money into an office or branch situated in Queensland of a bank carrying on business under the authority of a statute of the Parliament of that State or of the Commonwealth to the credit of a general or separate trust account. Unfortunately, however, this Act does not provide that the contractor shall notify any one as to the name of the trust account or the particular bank with which the account has been opened. In effect, the Act merely requires him to open a trust account with a bank in Queensland; it does not stipulate that he shall tell any one the name of that account or its location. That defect could be simply overcome by providing that the trustee shall inform the Registrar that he has opened a trust account in a certain name at a specific bank. When the money has been deposited in the trust account, withdrawals are properly controlled; they can be made only with the consent of the client and the builder.

Another matter that I should like to discuss is one concerning which arguments pro and con might be submitted. Provision is made in the *Companies (Special Investigations) Act* 1940 and the *Business Investigations Act* 1949 for the investigation of the affairs of companies under certain circumstances, but it seems that all of those investigations are more or less in the character of a post-mortem. Elaborate provisions have been enacted for "digging up the body" and examining it. A decision is then reached that death was due to a certain cause. Unfortunately, however, no one gets any money back as a result of that process which, incidentally, can prove to be an expensive one. I have always held the opinion that provision should be made for the viewing of the body while there is still life in it, so to speak. Any attempt to do so would be successful only as a result of action by and with the protection of the Attorney-General.

Recently, there has been much discussion in the city concerning this matter. On the last occasion when I spoke to some one who was keenly interested in it, he stated that he intended to interview the Prime Minister. I suggested that that would be a good idea so long as he did not come back to me about it, because there was no provision in the Victorian legislation which would enable action to be taken to deal with his complaint. I am led to believe that, a long time ago, reports were circulating that could be interpreted only as suggesting that some of the companies whose affairs are now under discussion and investigation were crooked. Usually, it is the householder who pays when these companies fail.

I have discussed the matter with members of the Stock Exchange and have formed the opinion that an investigation, under the control of the Attorney-General, should be commenced if a complaint about the dealings of a company is made by reputable persons. If that action were taken, the Government could, perhaps, act as a physician or surgeon, as it were, instead of assuming the role of a pathologist. In certain instances, possibly the administration of a good "laxative" would be the means of shaking a considerable sum of public moneys from the coffers of a fraudulent company before it was squandered by criminals who are permitted to control such an organization. I have no doubt that there are many groups of people who would do their best to ensure that such a proposal would be stillborn. I have personal knowledge of one man who was running a business and was handling hundreds of thousands of pounds of public money. When he called at our office on one occasion, we convinced him that he had no possible hope of supplying the goods which he had contracted to sell. He said, "I will stop selling to-morrow", which I think he did. However, he continued to collect money from the public—from people who could not afford it—and his affairs are now being investigated.

Mr. White.—It is now too late.

Mr. Garvey.—That is so. A member of the Police Force cannot stick his head out too far. He must always speak in Parliamentary language, otherwise he might find that he is acting outside the law. After all, members of the Police Force can only apply the law, and therefore in the course of their duties they must keep within it.

Mr. Hollway.—Your idea is that some sort of organization should be provided with power to investigate companies, on complaint?

Mr. Garvey.—Yes, on proper complaint. A panel of accountants might be appointed for the purpose, with any assistance that the Attorney-General might think necessary.

Mr. Brennan.—To investigate the trust accounts of the company about which a complaint has been made?

Mr. Hollway.—An investigation could be made of any aspect of a company's activities.

Mr. Garvey.—Yes. Allegations are being made at the present time concerning the operations of certain companies. There may be no justification for the complaints, but there could be some substance in them. Certain people are very sure that there are good grounds for the allegations.

Mr. White.—Yet, no remedial action can be taken?

Mr. Garvey.—None that I know of.

Mr. Brennan.—Complaints might be justified, but it could be possible that unscrupulous competitors might be spreading untruthful tales about other businesses.

Mr. Garvey.—That is so, and that gives point to the suggestion that action might be taken by the Attorney-General where the circumstances justified it. Many business men run particular shows. When inquiries are made, after a complaint has been lodged, it will frequently be found that the business exists all right. Usually these men base their activities on some undertaking that is actually in existence. I inquired into the activities of certain men concerning

a coal mine, and later I charged them with share-hawking. I made further investigations concerning the operations of another person and later I launched prosecutions in respect of that undertaking. I was asked, "Is that right, that there is coal in the mine?" It was a fact that there was plenty of coal in that mine—hundreds of thousands of tons of it. Generally, there is some substance in these shows, as there was in the case of this coal mine, but the promoters did not intend to exploit that angle of it. What they wanted was easy money from the sale of shares. I have in mind the case of another man who sold 54,000 shares through high-pressure salesmen, and that was done perfectly legally. The people to whom the shares were sold thought, in their foolishness, that the money would be devoted to the development of the coal mine but that was not so; it was one of the men convicted—not the company—who actually owned the shares. If the high-pressure boys tell the public that the business is all right, the principals cannot always be blamed for what happens. Where salesmen of the high-pressure type are operating, there is always that gap in which they improve on the ideas of the principals of the company, because many of them are even less scrupulous than are the principals. Usually there is in the contract a clause to the effect that "nothing except what is mentioned in this contract has had any force whatsoever in inducing me to invest . . ." That clause is readily pointed out by the salesmen to any person who complains after having purchased shares.

Mr. Pettiona.—Would you say, from your experience, that if allegations of the crookedness of these undertakings had come to light early enough, and if it had been possible under the law to take appropriate action, something could have been saved from the wreck?

Mr. Garvey.—Yes. It is essential to start remedial action early. Many of these company men live like fighting cocks. They do not worry about expenses; they live all their lives in that manner, although they do not necessarily grab £20,000 out of the funds of the company. In connexion with one company, into the activities of which I inquired, the man who was in charge of that undertaking was given an open order by the people behind the show.

Mr. Brennan.—For expenses?

Mr. Garvey.—Yes. Those who run these businesses often claim that they must stay at Menzies Hotel, otherwise the tone of the show would go down and prospective shareholders would not be impressed. One of the shareholders in this business was an ex-magistrate who said to me, "You cannot do anything about it; we gave him an open ticket. What fools we were."

The Chairman.—There is some parallel with the suggestions Mr. Garvey has made in the power of debenture holders over the assets of the company to appoint a receiver.

Mr. Garvey.—Yes.

The Chairman.—There are many instances in which that power has been exercised, and in which the inefficient manager has been "turfed" out and the company rehabilitated.

Mr. Garvey.—That has been done. I might reiterate the point mentioned by Mr. Brennan that certain unscrupulous parties do make allegations about their competitors. A certain allegation is being made at the present time, which has at least two sides.

The Committee continued its proceedings in camera.

TUESDAY, 16TH FEBRUARY, 1954.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. H. C. Ludbrook,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles,
	Mr. R. T. White.

In attendance was Mr. E. T. Spackman, F.C.A. (Aust.), F.A.S.A., F.C.I.S., Chairman of the Companies Auditors Board, Member of the State Council of the Australian Society of Accountants, past Secretary of the Australasian Institute of Secretaries, Licensed Company Auditor, and Official Liquidator of the Supreme Court of Victoria.

The Chairman.—On behalf of the Committee I welcome Mr. Spackman to its deliberations. Mr. Spackman has had extensive experience as an accountant and auditor and has been Secretary of the Australasian Institute of Secretaries. In addition, he has been an investigating officer under the Companies (Special Investigations) Act of 1940, and therefore is in a position to give the Committee some first-hand knowledge of the problems which face an investigating officer looking into the activities of some of these doubtful companies. Mr. Spackman has given a lot of thought to the subject of amending the law to prevent the occurrence of such fraudulent activities in the future, and the Committee will be very interested to hear his suggestions. Perhaps, Mr. Spackman might start by relating some of his experiences in connexion with the investigations he has carried out in general terms.

Mr. Spackman.—In the first place, when commencing an investigation it is very unusual to find that proper books of account, share registers, and minute books have been kept. The investigator therefore starts with the initial handicap of having no proper material on which to work. Investigations take a long period of time to accomplish, and one does not receive much help from the parties concerned. The first essential requirement for the prevention of fraudulent practices in connexion with proprietary companies is to ensure that proper books of account are kept, and the law must be tightened up to force directors to carry out their duties properly. At present directors can plead in their defence a reasonable excuse.

In one case which I had brought before the court, the directors of the company were charged with failure to keep a register of members as required by section 95 of the Companies Act, and failure to keep minutes of proceedings of general meetings and directors' meetings. No secretary of the company had been appointed, and there was no register of directors and managers. The defence was that the directors had no knowledge of the Companies Act and had not read the company's articles of association, they employed a solicitor to advise them of all legal requirements and he had not informed them of the requirements of the law with which they had not complied; therefore, the directors concerned certainly had not knowingly and wilfully contravened any provision of the Companies Act by default or otherwise. Of course, the expression "knowingly and wilfully contravened" is included in the Act. In my opinion the directors of a company should be compelled to take reasonable steps to ensure that the provisions of the Act are complied with. Under the present terms of the Act it is very difficult to obtain a conviction against them.

Section 381 of the Companies Act provides default penalties, and mentions directors, secretaries, managers, and other officers. In the case I have mentioned, a minute book was kept, and the minutes of one meeting were recorded in it. The director who acted as secretary at that meeting was found guilty of knowingly and wilfully defaulting in not carrying out the provisions of the Act because he had acted as secretary and recorded the minutes of one meeting. It was said that he knew that a secretary should have been appointed, and he was fined.

Mr. Thomas.—Can you cite other similar cases?

Mr. Spackman.—I know of other similar cases, but that was the only case that I brought before the court. It occurred within the last two years. The first point I make is that the law should be tightened up to ensure that proper books of account are kept, and that the other statutory provisions relating to books are obeyed.

In one case that came under my notice, a mother-in-law was made a director by her son-in-law and notice of the appointment was filed. When I questioned her, she denied having been appointed as a director. She accused her son-in-law of being a criminal. Later, she left the State. In another case a husband and his wife were involved. The minutes recorded the holding of a directors' meeting, at which were present the husband and the girl in the office. Resolutions were passed. When I asked "Is this girl a director?" he said, "No, my wife is a director." When I pointed out that the minutes did not record that his wife was present at the meeting, he said, "She has been present at all meetings." I did not believe that the wife had been present at any meeting. That illustrates the need to ensure that a qualified secretary is appointed to companies so that meetings will be held and recorded in the proper form. The secretary should be a person who has passed the examinations of the Institute of Secretaries. There is a distinction between a secretary and an accountant, although in some cases the positions are combined. An accountant works largely in the past, recording the transactions, whereas the secretary is more concerned with the policy of the concern, and has to consider future transactions. One cannot always be guided by what has happened in the past, and risks must be taken with some future dealings.

The Chairman.—You consider that the secretary and the accountant of a company should be different persons?

Mr. Spackman.—Yes, where practicable. Of course, much depends upon the size of the concern.

The Chairman.—Would you apply that rule to all companies or only to those that take money from the public?

Mr. Spackman.—Most public companies appoint qualified secretaries.

Mr. Brennan.—Would you regard the accountant as being the officer qualified to advise as to the financial policy of the company?

Mr. Spackman.—A man who has been employed by one company only might not have sufficient experience to advise on financial projects, and doubtless outside assistance would be sought. The secretary holds an important office in seeing that the correct forms are followed in relation to directors' meetings and other company meetings.

The Chairman.—In some cases, the secretary tries to evade personal responsibility by claiming that he was told to take certain action by the directors?

Mr. Spackman.—Yes, but there are certain responsibilities that he cannot evade.

The Chairman.—Possibly the Act should place more positive duties upon the secretary of a company?

Mr. Spackman.—That would be of assistance.

Mr. Thomas.—Is not the secretary the officer who has the right to sue on behalf of his company?

Mr. Spackman.—Yes, and the secretary is the officer upon whom all legal notices are served.

Mr. Brennan.—Do you regard the secretary as being the office manager?

Mr. Spackman.—The secretary has more important duties to perform than an office manager, who may, more or less, be a glorified clerk. Again, it all depends upon the size of the concern. I think it is essential that all the books of a proprietary company should be audited annually by an auditor licensed under the Companies Act, and a certificate or report filed with the Registrar-General that the books have been audited up to a date.

Mr. Pettiona.—If people were out to commit fraud the books could be kept in such a way as to make it difficult for the auditor.

Mr. Spackman.—If the audit report was not filed at the Registrar-General's office by the prescribed time there would be an investigation into the affairs of the company. At present if an auditor will not give a certificate on a trust account he reports the matter to the Law Institute, and there is an immediate investigation.

The Chairman.—It might be of assistance if you explained who licensed company auditors are, how they are licensed, and how they are delicensed if necessary.

Mr. Spackman.—Persons who wish to act as auditors of public companies must pass an examination conducted by the Companies' Auditors Board. If adverse reports of the conduct of any company auditor are received, the Board looks into the matter and may take disciplinary action.

The Chairman.—Has the Board power to withdraw a licence on disciplinary grounds?

Mr. Spackman.—Yes.

Mr. Ludbrook.—If there was a running audit there would be less opportunity for any malpractices, and no undue hardship would be imposed upon the companies.

Mr. Spackman.—That is so, but as most proprietary companies are small, an annual audit would probably be sufficient.

Mr. Brennan.—I suggested to a previous witness before the Committee that there should be such an audit and that a report should be filed with the Registrar-General, but he was inclined to think that such a method would not necessarily uncover some of the major frauds. He seemed to think there might be a danger of only a perfunctory examination being made.

Mr. Spackman.—If the audit was carried out by a licensed company auditor and his work was unsatisfactory a report could be made to the Board, which would deal with him.

The Chairman.—Have you any idea of the cost of an annual audit of a proprietary company operating in a small way?

Mr. Spackman.—Of course, the cost varies with the size of the company, but for a small company the charge might be £26 5s. or perhaps a little lower.

The Chairman.—What would be the cost of a running audit?

Mr. Spackman.—It would probably be 25 or 50 per cent. more.

Mr. Ludbrook.—If a running audit were conducted a qualified accountant could ascertain whether correct books and minutes were kept, and if they were not, an investigation could be made.

Mr. Spackman.—I suggest that by means of an annual levy on all companies registered in the Registrar-General's Office a trust fund should be established for investigation of companies and for research into company law and procedure. In the legal profession there is a fund known as "The Solicitors' Guarantee Fund" to which the members make an annual contribution. Out of the fund are paid all legal and other expenses incurred in the investigation of the affairs of a solicitor where there is an irregularity in his trust accounts. Further, the fund is applied for the purpose of compensating persons who have suffered any pecuniary loss. Apart from the compensation clauses, there does not seem to be any reason why a similar provision should not be made in regard to companies. At various times the Governor in Council has ordered investigations into the affairs of companies which have had no assets, and the costs of the investigations have been defrayed by the Government. I think that the people who obtain the advantages of company formation should be prepared to bear that expense and should not expect the people as a whole to meet it. Of course, research into company law and procedure would be advantageous to companies and all concerned. I stress that if a small levy were made each year for the purposes of investigation and research no hardship would be created. In Victoria there are 2,750 registered public companies; 11,000 registered proprietary companies; 400 registered guaranteed companies; 200 registered gold mining companies, and 1,260 registered foreign companies, a total of 15,610. A levy on each company of £1 would produce £15,610 and a levy of 10s. would produce £7,805 annually. That should be sufficient to meet the costs of investigations and provide money for research into company activities. I repeat that the cost would be very small and there would be no hardship on companies as a whole.

Mr. Pettiona.—I take it you are not suggesting that the fund should be used to pay "suckers" who lose their money.

Mr. Spackman.—That is so. Such a proposal would be impracticable.

Mr. White.—Do you recommend that there should be an inquiry into the affairs of doubtful companies?

Mr. Spackman.—Yes. I think the Government must consider what the cost of investigation will be. In my view, it will be heavy. Information must be forced out of people who are unprepared to assist, and that takes time. Some companies in the past have got away with fraudulent dealings because it would have been useless to pursue the matter, in view of the fact that all of their funds had been expended and nothing could be recovered to repay those persons who had suffered loss.

The Chairman.—Do you think that, if this fund were created, there would be more likelihood of an investigation being ordered into a doubtful company than there is at present?

Mr. Spackman.—Yes.

Mr. Brennan.—Why should there be an indemnity fund for one section of the business community and none for another?

Mr. Spackman.—The proposed fund would not be an indemnity fund, because provision would not be made for the payment of compensation.

Mr. Brennan.—At present it costs me, as a solicitor, £7 10s. a year as a contribution to a guarantee fund—for some one else's possible defalcations.

Mr. Spackman.—The legal profession enjoys an extremely high status in the community, especially because of the new laws relating to the audit of trust accounts. Citizens know that solicitors will have their books investigated if they are not kept correctly. In my view, the number of frauds perpetrated by solicitors will not be as great as in the past.

The Chairman.—I take it, at this stage, you suggest that a fund be created for the purpose of investigation, but you do not go so far as to recommend that it should carry a guarantee.

Mr. Spackman.—That is so. The fund should be used for investigation and research. The matter of guarantee could be submitted to the new research committee.

The Chairman.—Do you believe that if there were in existence a body that had control over companies, it might later make a recommendation in that regard?

Mr. Spackman.—It is quite possible that a research committee might do so.

Mr. Hollway.—Would you propose to include all registered companies?

Mr. Spackman.—Yes. I think it is questionable whether accountants, riding schools, beauty salons, taxation services, secretarial agencies, dental mechanics, and detective agencies should be permitted to form companies. Many of those companies have a paid-up capital of only £2 or £5. How much could a person hope to receive if he were successful in a claim for damages against such an organization? This is an aspect which might be investigated by a research committee.

The Chairman.—Would you propose to include real estate agents?

Mr. Spackman.—No; they are already controlled. I believe they have a bond.

The Chairman.—I understand that the bond is not particularly effective.

Mr. Spackman.—My information on that aspect is insufficient to enable me to discuss it. The minimum number of shareholders for a public company is five. Many such companies are registered and, almost simultaneously, they are converted into proprietary companies, the minimum membership for which is two. During the year 1950, 97 companies were registered with a paid-up capital of £10 or less. During 1951, the number was 236, and, during 1952, it was 313. The total number for the period of three years was 646. Some of those companies have since been struck off the register.

Mr. White.—The registrations during the second and third years were not additional registrations? It is not a question of the re-registration of the companies?

Mr. Spackman.—No; it is an annual registration. As I said before, 646 companies were registered during a period of three years, with a capital of less than £10 in each case. That raises the question of a

proprietary company or a public company for that matter, being required to have a reasonable amount of paid-up capital and not a mere nominal capital. In most cases in which the capital is small the directors, as creditors, advance money to the company or they guarantee an overdraft. If the company goes into liquidation the directors rank equally with the other creditors in the distribution of the assets. If the payment is 10s. in the £1, the directors get their payments, which actually come from the other creditors, because the money which the directors advanced as loans was really necessary to run the business.

Mr. Thomas.—What was the amount of capital in the case of the 646 companies which you mentioned?

Mr. Spackman.—They were all registered with a capital of less than £10.

Mr. Thomas.—That was the amount of the paid-up capital?

Mr. Spackman.—Yes.

Mr. Thomas.—What was the nominal capital specified for those companies?

Mr. Spackman.—I do not know. It could have been any sum—£10,000 or £100,000.

Mr. Pettiona.—At what stage do you enter into the investigation of these companies?

Mr. Spackman.—I come into the investigation after the shareholders, or 10 per cent. of the shareholders, pass a resolution and approach the Attorney-General with a request that I be appointed to make an inquiry. I might cite the case of a company which was operating in connexion with scientific instruments. I made an investigation of its accounts and as a result the business was wound up. In that instance it was the shareholders who acted initially, but in some cases, perhaps where there is no money in the business, the Governor in Council might appoint me to make an investigation.

Mr. Pettiona.—It is not possible to take action against anyone for fraud or embezzlement until a business has been wound up, or the exact state of its affairs has been disclosed?

Mr. Spackman.—Usually action is withheld until the report of the investigator is submitted. In the case of the instrument company I did not have enough material to establish a case of fraud. The shareholders received a copy of my report on that company for which they paid, but sometimes I would report direct to the Attorney-General, and if he thought fit, he would take action, such as in the case of fraud, and the shareholders might not come into the picture at all.

Mr. Pettiona.—Some time ago in an article in the *Herald,* you suggested ways in which the Act might be amended, and there was some criticism of your proposals by company directors. I think you raised questions concerning the amount of capital and the appointment of only one director.

Mr. Spackman.—In some cases there is only one director and he appoints himself secretary of the company. Under the English Act that could not be done.

From the point of view of the shareholders I think it is a bad practice to have only one director, as he has complete power and there is no check on what he does. The Stock Exchange stipulates that for public companies there shall be three directors, and I think that would be an advantage. If, for instance, the directors of a company consist of a husband and his wife, and if one of them should be ill, no annual meeting could be held. In my opinion every proprietary company needs three members to facilitate the holding of an annual meeting. I have in mind a case in which there were two directors—and only two shareholders for that matter. One of the directors was in England. The time for the annual meeting came, but, of course, no meeting could be held. When the director returned from England, the other one went to Western Australia and consequently no annual meeting was held. Later, this company improved in status, and it desired to get a debenture from the bank. The solicitor pointed out that no persons had been qualified to act as directors of the company's affairs. So, a number of resolutions were passed to try to make the position legal. Action was taken on the basis of the cases of Buckley, under the English Act of 1948 (12th edition, *Morris* v. *Kanssen* 46, A.C. 459, pages 375-882) and of *O'Dowd and Menzies, Victorian Company Law and Practice,* page 746, Second Schedule, Table A, Rotation of Directors, clause 73.

The Chairman.—You mentioned the problem of companies being formed with an actual capital of £10 or less. Can you suggest a practical solution of that difficulty?

Mr. Spackman.—My suggestion is that the paid-up capital should be registered at £1,000. I do not think it should be permissible to purchase limited liability for a nominal amount of £2; a greater sum should be stipulated.

Mr. Pettiona.—If a person produces an invention which requires £1,000 for its development and does not possess that sum, is the only course open to him that of approaching a financier, who will draw up articles of association or a contract by which the financier will obtain the greatest benefits from the invention?

Mr. Spackman.—The obvious action to be taken by a "back-yarder," for example, who builds up a profitable small business and desires assistance in the formation of a company, is to borrow money from his relations and friends. Persons who trust a man who carries out good work will usually subscribe a small sum, say, £100.

Mr. Pettiona.—What can the investor do if nobody but himself has confidence in the idea?

Mr. Spackman.—In my opinion, a person should not have protection in working out a scheme if nobody but himself has confidence in it; he should take full responsibility for its development.

Mr. Pettiona.—If the inventor has insufficient funds, he will be unable to do so.

Mr. Spackman.—If he formed a company, he must still raise money for the development of the project. The cost of drawing up articles of association and of fulfilling other legal obligations might be £60. If a company was formed, it would still be necessary for money to be raised. The fact that a company is formed does not mean that funds flow in.

The Chairman.—Do you wish to place before the Committee any other comments?

Mr. Spackman.—I made a suggestion that one qualification of a director of a company should be the ownership of 100 shares. In a number of instances I have ascertained that directors have owned only one share each. Such a person sometimes appears to consider that he is not subject to the legal responsibilities of a director, as he is a director only in name to suit the convenience of the proprietor of the company. In my experience, such a belief is quite

general with people owning only one share. If a director was required to own 100 shares, he might take his position seriously.

Mr. Pettiona.—In a letter published in the press, Mr. J. Wallace Ross strongly criticized the suggestion to which you have just referred. What is his standing in the business world?

Mr. Spackman.—He is an auditor.

Mr. Pettiona.—Mr. Ross stated, *inter alia,* "It seems odd that a director should be compelled to own in his own right shares of the value of 'at least £100 cash,' whatever that might mean."

Mr. Spackman.—It means that he pays for them, that they are given to him straight out, that he is not a nominee.

Mr. Pettiona.—How much greater would be the responsibility of a director who was given 100 shares than that of a director who was presented with only one share?

Mr. Spackman.—It is a matter of psychology. Possession of 100 shares means much more than ownership of only one share, and in my view it inspires greater appreciation of his responsibility. A director having 100 shares has something tangible compared with a person who has only one share for the convenience of the proprietor of the company.

Mr. Randles.—The value of the shares is important. A share in one company might be worth £50, whereas a share in another concern might be valued at only one shilling.

The Chairman.—Do you suggest that a director should own 100 shares or £100 worth?

Mr. Spackman.—I consider that his investment should amount to at least £100. Concerning the question of notice of intention to register as a proprietary company, the following figures are interesting. In the year 1939, the number of public companies registered in Victoria was 50, and the number of proprietary companies was 476. For later years, the figures were:—

Year.	*Public Companies.*	*Proprietary Companies.*
1949 ..	670 ..	44
1950 ..	802 ..	42
1951 ..	1,011 ..	18
1952 ..	773 ..	11

Of the 773 public companies registered during the year 1952, 737 have been converted to proprietary companies—more than 95 per cent. The proportion for the year 1951 would be similar. It is necessary to give notice of intention to register as a proprietary company. To avoid expense, many persons register as a public company and almost immediately convert to a proprietary company. The legislation dealing with this question is ineffective; in fact, the situation that has developed is farcical.

Mr. Pettiona.—How many members are required in the formation of a public company?

Mr. Spackman.—Five.

Mr. Thomas.—And for a proprietary company?

Mr. Spackman.—Two. In the formation of a public company, clerks in the office could be given one share each, and then it could be converted into a proprietary company almost immediately. In the year 1952, eleven companies registered as proprietary companies were entirely new. There was no object in notice of intention to register as proprietary companies being given in those instances; there was unnecessary delay as well as expense in advertising and other directions.

Mr. Thomas.—Later some one might become interested.

Mr. Spackman.—Nobody is interested in the actual formation. In my opinion, companies registered to take over existing businesses should be required to file with the Registrar-General an auditor's statement of their assets and liabilities. The assets should be valued by a competent valuator.

Mr. Randles.—People starting up a public company in which the liabilities far exceed the assets are doing so in order to protect their own assets, are they not?

Mr. Spackman.—That is so. In addition, they might value their assets at a ridiculously high figure and include an amount for goodwill. I shall cite an instance of that sort of thing. I was winding up a certain company, which had been formed to take over an existing business. When I visited the company's premises I saw a large amount of machinery. The manager stated that the machinery did not belong to the company, although I knew that machinery had been taken over when the company was formed. I looked up the books, but no details of the plant and machinery were shown. Most of the plant and machinery at the premises was in the name of the mother of one of the interested parties. She produced receipts for it which bore a date prior to the date of formation of the company. Therefore, I could not tell whether that was in fact the machinery which was sold to the company and taken over from an existing business. In that case the value of the plant and machinery purchased by the company on formation amounted to thousands of pounds. I could not find machinery equivalent to that value, nor could I prove that the machinery at the company's premises was that which had been taken over from the former business. My suggestion is that in the case of a partnership or business taken over by a company, it should be compulsory to have prepared an auditor's statement of the assets and liabilities taken over by the company, which should be filed at the Registrar-General's office.

The Committee adjourned.

WEDNESDAY, 17TH FEBRUARY, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon. H. C. Ludbrook	Mr. Pettiona
The Hon. F. M. Thomas	Mr. Randles
The Hon. I. A. Swinburne.	Mr. R. T. White.

Mr. E. T. Spackman was in attendance.

The Chairman.—Do you wish to make any further suggestions?

Mr. Spackman.—My first suggestion is that all auditors should be able to act independently. I dealt with this matter fully in an article appearing in *The Australian Accountant* of December, 1953, and in the article I pointed out that—

> Public companies are required to appoint qualified auditors, briefly, to examine the accounts and report to the members whether the balance sheet is a true statement of the affairs of the company according to the books. The audit, to be of value,

must be an independent check and this is assured by the following persons being disqualified for appointment:—

Companies Act 132 (7)—

(*a*) A director of the company;

(*b*) a partner or employee of a director;

(*c*) an employee of the company;

(*d*) a person who is a partner of or in the employment of an employee of the company;

(*e*) a person who is or becomes indebted to the company in an amount exceeding £250.

In Victoria, unlike the other States, the Companies Act does not require a proprietary company to appoint an auditor, except a proprietary company which is a subsidiary company in relation to a holding company (within the meaning of section 125) which is not itself a proprietary company.

A large proportion of Victorian proprietary companies, in accordance with their Articles of Association, do have their accounts audited. Unfortunately, there is no legal restriction as to the person appointed. It is possible to appoint as auditor, a person who is a partner of a director or a partner of the secretary of the company or any such person disqualified from acting as auditor of a public company. The audit in these cases can hardly be deemed an independent check on the directorate and management.

Australian Associated Stock Exchanges have some strong views on auditing. They do not rely on statute law. If a company wants to be listed on the Exchanges, it must make application for official Listing and comply with all the Official List Requirements. The agreement is under seal and signed by the chairman and a director and secretary of the parent company and provides for the following in relation to the auditing of accounts of subsidiary companies:—

(*a*) that all present and future subsidiary companies shall be audited,

(*b*) that no person shall be appointed or act as auditor for the subsidiary company unless his qualifications would permit of his appointment as auditor for the parent company,

(*c*) that a director or officer of the parent company or of the subsidiary company or a partner in any business with or an employer or employee of any such director or officer shall not be capable of being appointed or of acting as auditor of the subsidiary company.

These requirements go beyond the present statutory provisions as affecting public companies and subsidiaries of public companies.

The Stock Exchange appears determined that accounts of every proprietary company over which it has any control, by reason of the parent company being listed on 'Change, shall be audited. Further, it disqualifies some persons in addition to those barred by the Act from acting as auditors for public companies and it applies all the disqualifications for appointment as auditor to proprietary companies with which it is concerned. Evidently, the Exchange is of opinion that company legislation is out of date as regards auditing of accounts of companies.

I repeat that an auditor should be independent of all officials of a company. He should not be the secretary or the accountant of a concern, and there should be no circumstances likely to cloud his judgment. In the past, auditors have been bluffed into signing balance-sheets. Probably they placed too much reliance on the people with whom they were closely connected, or they might not have been sufficiently strong-willed to withstand the temptation.

The Chairman.—Sometimes that happens with independent auditors?

Mr. Spackman.—It does, but safeguards against such practices would be helpful.

Mr. Brennan.—Would it assist if the Act provided that an auditor should not audit the books of a company for more than two years in succession?

Mr. Spackman.—That is doubtful because an auditor must become accustomed to the bookkeeping system and learn how a business is conducted. As to disciplining auditors, the Auditors Board cannot inquire into the general work of an auditor. A man may have much ability but his work may be shocking. The suggestion is that the Board should be empowered to inquire into the professional work of a licensed company auditor. In one case, the work of an auditor in connexion with partnership accounts was shocking, and it was said of the man "He is licensed only to audit the accounts of public companies; what he did in connexion with partnership accounts should not be taken into consideration." The Board's power should be extended to enable it to inquire into the work generally. The Law Institute can inquire into the work and conduct of solicitors, and the Auditors Board should be able to inquire into the accountancy work and auditing work of any person holding an auditor's licence. Whatever action was taken by the Board would be subject to appeal to the court, so that would safeguard members of the profession. The standard of work should be reasonable, and in many cases it would be improved if it was known that the Board had this additional power to review the work. I could relate many instances to illustrate the need for this power being given the Board.

At present, the Act provides for the filing of a private balance-sheet. I do not know the reason, and I contend that the provision is useless. The private balance-sheet is the balance-sheet upon which the published balance-sheet is based. In fact, the published balance-sheet is really a condensed private balance-sheet. The private balance-sheet is certified as is the balance-sheet that is published. The private balance-sheet is placed in an envelope and filed with the Registrar-General; presumably, it remains there forever because it can be opened only by direction of the court in the event of fraud being suspected. In the case of a fire occurring and a firm's records being destroyed, they may need access to the private balance-sheet in order to start again, but that is not provided for in the Act. In the case of suspected fraud, an order is made by the court for the private balance-sheet to be examined, but what appears there already appears in the books and in the published balance-sheet which, I repeat, is a condensation of the private balance-sheet. I do not know of what use is the private balance-sheet. The subject is dealt with in *The Australian Accountant* of November, 1953, at page 462, and I refer the Committee to that article.

The Chairman.—Do you wish to make any recommendation concerning private balance-sheets?

Mr. Spackman.—I think the provision relating to private balance-sheets should be deleted from the Act, as it serves no useful purpose. In my opinion, sub-section (9) of section 132 of the Companies Act,

which deals with disqualification for appointment as auditors, could with advantage be redrafted because there is some doubt as to its meaning. For instance, an employee of a holding company cannot audit the books of that holding company or of subsidiary companies. An employee of one of the subsidiary companies cannot audit the books of either of the subsidiary companies, but there seems to be some doubt as to whether he can audit the books of the holding company.

Mr. Brennan.—Do you consider that if a person is a shareholder in a company he should be disqualified from auditing the books of that company?

Mr. Spackman.—I do not think so.

Mr. White.—Have you had any experience that has caused you to entertain a doubt concerning the appointment of auditors?

Mr. Spackman.—Yes.

Mr. Ludbrook.—A shareholder is likely to have a definite interest in a company.

Mr. Spackman.—A shareholder is more likely to be critical of the management than otherwise.

Mr. Randles.—Unless he holds 51 per cent. of the shares.

Mr. Spackman.—In that case he would be on the management. I am not in favour of the Commonwealth and the States between them producing uniform company legislation. In my opinion, uniformity can be obtained by each State adopting the English Act and altering it to suit its own needs.

Mr. Hollway.—Where that is done uniformity is not obtained.

Mr. Spackman.—It is. Even now the company legislation of each State is based on the English Act. It takes time to get the Commonwealth and the States to agree to anything, and if any amendment is desired a further long period elapses. In the past, most of the advances in company law have emanated from Victoria.

The Committee continued its proceedings in camera.

TUESDAY, 9TH MARCH, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon. P. T. Byrnes	Mr. Pettiona
The Hon. H. C. Ludbrook	Mr. Randles
The Hon. F. M. Thomas	Mr. R. T. White

Mr. Oswald Burt, Solicitor, of Melbourne, was in attendance.

The Chairman.—Gentlemen, on your behalf I welcome Mr. Oswald Burt to the deliberations of this Committee. Mr. Burt has submitted to us a number of suggestions regarding the proposed revision of the Companies Act, particularly with respect to the activities of fraudulent companies. That letter has been circulated and a copy is in the possession of every member of the Committee. We would now ask Mr. Burt, for the purposes of the record, to explain those suggestions verbally and to amplify them to the Committee.

Mr. Burt.—As a matter of fact, the suggestions I have made are rather of a general nature, one only being in relation to fraudulent companies. Every practising lawyer knows that, when dealing with a company, the first thing to be done is to look at the memorandum of association to ascertain whether that particular company has the power to enter into the transaction proposed to be undertaken. Concerning companies that have been successful and have been in existence for many years, it is sometimes suddenly found that, through a defect in the drafting of the original memorandum, they are unable to enter into a particular contract, and that could be a serious matter. A case in point is the International Harvester Company of Australia Proprietory Limited, whose memorandum was drawn by a leading firm of solicitors and contained provisions which were regarded as usual. Although that company had been functioning for many years, it was recently ascertained that it did not have power to borrow money in a particular way. On account of that defect in the memorandum, a great deal of trouble was occasioned, and it was necessary for a special application to be made to the court to amend the memorandum. That sort of thing is a danger in commercial life. I had experience recently of a company which was formed in 1882. It had been guaranteeing the accounts of its customers as the principal part of its business, but recently one of the banks raised the question whether the company had power, within the scope of its memorandum, to guarantee those accounts, as it had been doing since its formation in 1882. I then scrutinized the memorandum and discovered that there was no express power contained therein to enable the company to guarantee accounts. As a result of this disclosure there was a regular flutter among all concerned, and very serious trouble could have been caused. It could have created difficulties for the banks concerned and upset the whole of the bacon trade, which was the industry involved. My suggestion to overcome this state of uncertainty is that the Act should be amended as proposed in my circular letter, the relevant part of which reads as follows:—

> (*a*) All companies (except where personal professional qualifications are necessary) shall be entitled notwithstanding the provisions of the memorandum to carry on all such businesses and objects and exercise all such powers as an adult person not under any legal disability may carry on or perform.

If the shareholders did not wish to give a company completely wide powers, they could limit them by special resolution, which would be filed in the office of the Registrar-General, where it could be seen by everybody.

Mr. White.—Would that make easier in any way the operations of companies which engaged in fraudulent activities?

Mr. Burt.—I do not think so. I shall have something more to say concerning fraudulent companies at a later stage.

The Chairman.—It is true that a company memorandum can be drawn in such a way that a company may do practically anything.

Mr. Burt.—That is so. As any legal practitioner knows, there is a danger in particularizing. If an attempt is made to define too minutely what a company may do, and if particularizing is carried too far, the effect might be to limit its powers too drastically. In South Australia they have gone part of the way in the direction I have indicated. Much work on the South Australian Companies Act of 1936, was done by Mr. Frisby-Smith who had in mind something

like the point I have raised. However, he attacked the problem from another angle by providing what he considered to be a complete memorandum, enabling a company to do almost anything, and by a simple reference in the memorandum or in the articles, all those powers were automatically included. With all due respect to Mr. Frisby-Smith, who was an eminent company lawyer, I do not think the legal practitioner has yet been born who could draft documents that would provide for every eventuality likely to arise. I have been told by South Australian practitioners that, good as the South Australian legislation may be, it still does not completely cover the field I have suggested. I am not indicating the exact manner in which I consider the Victorian Act should be amended, because the actual amendment would be a mechanical or drafting matter. However, I think the principle should be that every company ought to be permitted or regarded as being able to perform almost any function or carry out any business transaction which any individual may perform, except where special qualifications are necessary. For example, a company could not be given power to undertake business as a pharmaceutical chemist, or as a medical practitioner, or as a lawyer, or an auctioneer. All those activities would have to be excluded from the special powers which would ordinarily apply in the case of an adult person.

Mr. Thomas.—Certain companies engage in special lines of manufacture. What would be the position if a company endeavoured to trespass on the rights of anybody else?

Mr. Burt.—There is nothing to prevent any person from applying to the Registrar-General to register a company to undertake a particular activity.

Mr. Thomas.—Other than to engage in business which would affect the patent rights of any other person or company?

The Chairman.—Patent rights are protected by other laws.

Mr. Burt.—I am speaking in reference to the powers of a company to carry on a particular business. For instance, there would be no difficulty about registering as many companies as desired to carry on grocery businesses. My next point relates to proprietary companies which, shortly, are companies consisting of fewer than 50 members and which do not intend to file balance sheets. Very often such companies consist of the members of a family who carry on a small business. The Act provides that notice of intention must be filed and must be published in a newspaper. If it is proposed to take over another business, creditors or other persons who object may prevent the proposed new company from being registered.

That is a farce, because the present practice is to form a company, for which notice is not necessary, and convert it into a proprietary company on the day of registration.

I was a member of a voluntary committee which tendered advice to the then Statute Law Revision Committee prior to the passing of the 1938 Companies Act, and I know the origin of the procedure relating to notice, which was included is a previous Act of Parliament and later repealed. On the committee of which I was a member, there were representatives of certain commercial agencies who were anxious that notice should be given because it would furnish extra material for publication in their journals which they thought would enable them to give to the public more information about proposed company flotation. I pointed out at the time that the provision had failed previously and had been repealed, but as a result of representations from certain quarters the notice of intention was inserted. In my opinion, it is an undesirable provision. It is not now being used and is being avoided very simply. I consider that as it is a dead letter it should again be eliminated from the Act. Speaking from memory, the provision relating to notice was included in the 1910 Companies Act and was repealed in 1915.

The Chairman.—It was inserted in the 1938 Companies Act?

Mr. Burt.—Yes.

Mr. White.—Is the voluntary committee of which you spoke still functioning?

Mr. Burt.—The reports of the committee are available.

Mr. White.—You have not discussed the question of notice of intention since 1938?

Mr. Burt.—No, but it is commonly regarded among lawyers as being nonsense. It does not achieve any purpose. I now wish to direct attention to redeemable preference shares, which are becoming more and more a matter of interest to the commercial world. This type of activity is covered by sections 46 and 47 of the Act, which were copied into the 1938 Companies Act from the 1928 English Act. Sub-section (1) of section 46 provides, *inter alia*—

> Subject to the provisions of this section, a company limited by shares may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

The word "issue" has caused a great deal of trouble. My view is that there are three operations in connexion with shares. A company first creates shares, then it allots them to shareholders on application, and then it physically issues the certificate. In my opinion, the word "allot" should be used instead of "issue", and, further, that is the word used in previous sections.

Mr. Byrnes.—Is it not a question of a company having power to create shares rather than power to allot them?

Mr. Burt.—There is something in that contention. If one desired to be precise, the term to be used would be "create and allot." Shares are first created, then they are allotted, and then they are issued. I consider that the word "issue" in sub-section (1) of section 46 is quite inapt. That word was copied from the English Act, but I venture to suggest that it went so far as to say that the shares should first be allotted as ordinary shares, and then by some act of conversion, which is not specified in the Act, they should be converted into redeemable preference shares and then issued.

I overlooked the decision of *In re St. James' Court Estate, Limited,* (1944), 1 *Ch.,* page 6, in which it was held that the conversion of issued preference shares into redeemable preference shares was not authorized by the corresponding section of the English Act. In other words, a company was prohibited from issuing shares as ordinary or preference shares and then converting them by resolution. The suggestion I made in the latter part of paragraph 3 of my letter is rendered impossible by this decision.

The Chairman.—You suggest that the word "issue" should be clarified?

Mr. Burt.—Yes. In *Mosely* v. *Koffyfontein Mines,* (1911), A.C., 409, there is a general discussion about various acts of creation and allotment of issue. I consider that we have merely followed the bad example set by the English Act. There seems to be no reason why this matter, which is the subject of some doubt in the legal profession, should not be clarified.

Paragraph 4 of my letter refers to the conversion of shares to stock units. I am now discussing section 51 of the *Companies Act* 1938. The *Statutes Amendment Act* 1953, amended section 62 of the *Companies Act* 1938, but I do not think it goes quite far enough. In practice, companies with a big share register, need to employ a considerable staff to control it. The Myer Emporium Limited, the Broken Hill Proprietary Company Limited, and companies of a similar size have a huge staff of scrip clerks handling and controlling transfers, attending to the issue of new shares, and so on.

Under the Act until recently every share was required to have a number. It can be imagined how muddled things would become eventually. There may be a block of 10,000 shares issued, and over the years this would be broken up into all sorts of parcels. This has become a serious matter for big business concerns. Most of them converted their shares, under section 51 of the Companies Act, into stock units. A stock unit is merely a proportional part, with a nominal value of, say, 5s., 10s., or £1, but a stock unit does not require to have a number on it. It is not a share but a fraction. An amendment effected by the *Statutes Amendment Act* 1953, has endeavoured, following the English Act, to overcome that difficulty by providing that shares should not have to be numbered. Section 12 of the *Statutes Amendment Act* 1953 (No. 5757), inserted at the end of sub-section (2) of section 62 of the *Companies Act* 1938, the following proviso:—

"Provided that if at any time all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up."

In my opinion, that amendment does not achieve the result desired by the commercial world. I consider that all the shares of a particular class which are fully paid up should be allowed to go without a number. In this section it is provided that all the issued shares of a class must be paid up before a number can be dispensed with, and that is a different matter.

Paragraph 5 of my letter is headed "Statement in lieu of prospectus in certain cases", and relates to section 40 of the Companies Act. This matter has been brought under my notice by the staff in my office. I have always felt that there is some confusion.

The Chairman.—It may assist the Committee if you explain what is a statement in lieu of a prospectus.

Mr. Burt.—In connexion with public companies, there are provisions elsewhere in the Companies Act which provide, shortly, that if a company does not issue a prospectus inviting the public to take up shares, it should file a document in the office of the Registrar-General which will be open to inspection by anyone and which virtually sets out all the matters that should be stated in a prospectus. That seems to be a wise provision. Many companies daily set out openly to issue shares to the public and circulate a prospectus, and the Act states that the prospectus must contain a great deal of material information, which every intending investor should know. That is a very desirable provision. In my view, section 40 of the *Companies Act* 1938, does not fully protect the public. Sub-section (1) of section 40 states, *inter alia*—

"A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscripton, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been filed with the Registrar-General a statement in lieu of prospectus."

This is what is intended and expected to protect the public: If a public company is formed and has no intention of issuing shares to the public, but merely to, say, 50 or 60 friends or people who get together, the company must file a statement in lieu of the prospectus. If the company intends to issue shares to the public at large, it must publish an ordinary prospectus. There are cases between the two examples I have cited for which no adequate provision seems to be made. I can state two examples. A company for which I act, recently purchased about £250,000 worth of plant and buildings and paid for them with 1,000,000 shares valued at 5s. each. These shares were held by the vendor of the plant and buildings for six months, and then were placed through a well known broker. I do not contend that there is anything wrong with this procedure. There could be a lack of information so far as concerns the general public. In this instance, the vendor handed to the broker 1,000,000 shares and said, in effect, "Sell them to your clients." The records of the company disclose that the last prospectus or statement in lieu of prospectus was filed 10, 15, or 20 years ago, and as the Act provides that one shall be filed at least three days before the allotment of shares, this requirement was complied with.

That is one instance of a large parcel of shares having been allotted. The distribution of those shares could have been arranged through a broker. In those circumstances, a company should be required to file a statement in lieu of a prospectus or to issue something more than a mere broker's circular.

The other case that I had in mind is indicative of what is happening every day. Let us assume that there are 1,000 shareholders in a company and that a decision is made by the company to issue 1,000 shares. It says, in effect, to the shareholders, "The shares will be offered to you, and you may take them up if you like." The offer is not made to the public but merely to the shareholders in the company; consequently, the company is not required to issue a prospectus or a statement in lieu of a prospectus. Probably a prospectus had been filed from ten to fifteen years previously. Each one of the 1,000 shareholders is entitled to one share, which he may either take up or sell to a member of the public.

If a member of the public, who bought a share from one of the shareholders of the company by what is known as "renunciation", was sufficiently curious to want to ascertain something about the affairs of the company and went to the office of the Registrar-General for that purpose, the most he would find would be either a prospectus or a statement in lieu of a prospectus which had been filed from 10 to 20 years previously. If there is to be anything which, in the last analysis, will amount to a sale of shares to the public, there should, at some reasonable time before that sale, be filed either a prospectus or a statement in lieu of a prospectus, so that the public may ascertain precisely the state of affairs of the organization concerned.

The Chairman.—The second example given by you, Mr. Burt, represents what is happening every day?

Mr. Burt.—Yes. Recently, someone called at my office concerning a company that was engaged in this practice. The person concerned had been offered shares on renunciation. My staff searched the records in the Registrar-General's office, but could obtain only the most meagre information from a prospectus that had been issued from two to three years previously. That document would give to intending purchasers of shares a completely wrong picture of the affairs of the company.

Mr. Thomas.—What remedy do you suggest?

Mr. Burt.—My suggestion is that a provision should be enacted which would require the filing of either a statement in lieu of a prospectus or a full prospectus on every occasion when there is an allotment of shares or an offer of shares to the public. That requirement would have the effect of enabling the intending investor to acquire some reasonably up-to-date information concerning the affairs of the organization. Possibly I am assuming a somewhat theoretical approach to the matter because persons who buy shares rarely go to the office of the Registrar-General to ascertain particulars of the affairs of the company concerned. However, they do make inquiries of brokers, bankers, and other investors. I have always had some doubt as to the scope of the relevant section of the Act and I believe that, at the present time, the public is not being afforded the full measure of protection to which it is entitled.

I shall now discuss the matter of dividends. Subsection (1) of section 367 of the *Companies Act* 1938, provides that—

> No dividend shall be payable to the shareholders of any company except out of profits.

An old dodge which was resorted to by fraudulent promoters before the enactment of the 1938 legislation was to accept subscriptions for shares from investors and to pay them dividends out of their own capital. That is what happened during the South Sea Bubble and other more recent bubbles. Under section 367 of the 1938 legislation it is an offence to pay dividends except out of profits.

Mr. Brennan.—You consider that the provision should be extended so as to prohibit a company from paying dividends out of estimated profits?

Mr. Burt.—The profits must be actually in hand before they are paid out. I have in mind one particular company that is incorporated in South Australia. That organization has a number of shareholders and it is engaged in growing pine forests. Each year experts are employed by the company to inspect the plantations and they say, in effect, "Well, yes, these trees have put on so much growth in the last 12 months. Notionally, the company has made a profit of so much for the year." No thought seems to be given to the possibility of a bush fire or some other calamity.

Mr. Brennan.—The company concerned might have the plantations insured.

Mr. Burt.—No, the plantations cannot be insured. That particular company pays dividends regularly based upon periodical inspections of the pine forests and the determination that notionally the company has made so much money during the year. The position is supported by certificates of experts so that the directors will be protected when they state that the dividends are being paid out of profits.

Mr. Brennan.—Actually, in those circumstances, the dividends are being paid out of capital.

Mr. Burt.—I think so. Consideration must be given to the fact that so many unpredictable things might happen. My view is that unless a profit has actually been realized and the money is in the bank or has been put back into the enterprise the company concerned should not be permitted to pay a dividend. Of course, there are exceptions. There seems to be no harm in paying a dividend *pro rata* in shares, but not in cash.

Mr. Thomas.—Why?

Mr. Burt.—If a dividend is paid in shares *pro rata,* no one is any better off and the company is no worse off than previously. If, at one period of time, there are 100 persons each holding 100 shares in a company and, five minutes later, each of those 100 shareholders becomes possessed of 150 shares, the shareholders are no better off and the company is not affected detrimentally.

Mr. Thomas.—Is not that tantamount to watering of shares?

Mr. Burt.—Yes, but as I said before, no one is better off because the shares are still represented by the same assets. The increase in the number of shares merely means so many more pieces of paper. My contention is that if a company desires to pay dividends in the circumstances I have mentioned, the payment should be effected by the issue of shares and not by the payment of cash.

Mr. Pettiona.—Do not companies pay dividends in cash for the purpose of making their shareholders feel a little happier about the affairs of the organization?

Mr. Burt.—Yes, but I regard that practice as a potential danger. If the reason for paying dividends in cash is that advanced by Mr. Pettiona, there will be an ever increasing urge on the part of directors to resort to that practice.

Mr. Pettiona.—How much difference would there be between paying the shareholders in cash and giving them an issue of shares?

Mr. Burt.—There would be no difference.

The Chairman.—Except that the share held has a greater value for sale or transfer purposes.

Mr. Burt.—No, I think it would have a lower value on the stock exchange. After every issue of shares by a company, the value of the original shares falls because the same assets are represented by a larger number of pieces of paper. If the shareholders or the investing public do not realize that fact immediately, it will not be long before they do so.

The Chairman.—Your suggestion, Mr. Burt, that unless profit has actually been realized it should not be paid out by way of cash dividends seems to be a particularly good one.

Mr. Burt.—There is much case law on the subject. Although no definite decision has been made on the subject, I think it will be found that the courts have taken the view that it is highly imprudent to pay dividends unless they have actually been realized. Directors may find themselves eventually in a very sad state if they do so. Suppose that the directors of a company that owns a line of steamships decide, for some reason or other, to increase the value of those vessels without having sold any of them or without having realized on them in any way. The directors might say, "Those ships are worth twice as much as previously; we will pay a dividend." However, the ships may be lost or the anticipated profits may never be realized. In such circumstances the directors would be guilty of having, in reality, paid a dividend out of capital, in breach of section 367.

Mr. Thomas.—How could the directors create those dividends?

Mr. Burt.—What is done, as a matter of accounting, is to revalue the ships or the assets, as the case may be, and to create what is known as a capital assets appreciation account, the value of which is converted into shares and distributed as a dividend.

Mr. Pettiona.—Whence is the cash derived for the payment of the dividend?

Mr. Burt.—That depends on the company concerned. It may be that the shareholders' own money is used for the purpose.

Mr. Randles.—In other words, all the money subscribed has not been used for the purchase of capital.

Mr. Burt.—The stocks of the company might have been reduced. There are many ways of getting ready money in the bank, and it is a great temptation to some directors to hand that money out to shareholders.

The Chairman.—It is possible for the directors to inform the bankers of the company concerned that its assets have been revalued and to seek an extension of overdraft facilities because of that happening.

Mr. Burt.—That is so.

The Chairman.—Your suggestion is that, although the case law may suggest that it is imprudent for directors to pay dividends in these circumstances, there should be a specific provision in the Act that dividends shall not be paid to shareholders except out of profits that have been realized?

Mr. Burt.—Yes. I know of one well-known and long established company in South Australia which, I understand, is paying dividends out of unrealized profits. If that is happening in a sister State, it may also be happening in Victoria.

The Chairman.—We shall pass now to the matter of directors' remuneration.

Mr. Burt.—I know the history of the relevant section—section 127. There was considerable disagreement in Committee when this provision was under consideration, before it became law. Many companies did not desire a section to be incorporated in the 1938 Act which would make it obligatory for the remuneration of directors to be disclosed. There was no objection to the revealing of the remuneration of ordinary directors who receive only in the region of £200 or £300 annually, but there was objection to the disclosure of the remuneration of some directors who occupied executive positions in public companies. I think Mr. Essington Lewis was the first person to complain in that regard. He resigned his directorship from the Broken Hill Proprietary Company Limited when the 1938 Act was passed, but his action was due largely to a misconception of what section 127 of that Act really meant. Section 127 states, in effect, that the accounts of a company shall contain particulars showing the total of the amount paid to the directors as remuneration for their services inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company, and inclusive of commission paid within the preceding two years or payable for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in or debentures of the company or any such holding company or any such subsidiary company. Sub-section (5) of this section states—

> In this section the expression "emoluments" includes fees percentages and other payments made or consideration given directly or indirectly to a director as such of the company or of any such holding company or subsidiary company and the money value of any allowances or perquisites belonging to his office.

If one reads the words of the section carefully one finds that it comes down to this. At the present time a company has to set out in its balance-sheet only the small sums which are paid to each director in that capacity. Some directors are also employees of the company and may be receiving other fees as managers, advisers, and in other capacities. I am a director of fifteen or sixteen companies. I do not mind the shareholders knowing how much I receive, and if they think I am receiving too much, I think they should be given an opportunity of saying so at the annual meeting.

In section 148 power is given to a coterie of shareholders, those holding not less than one-fourth of the aggregate number of votes, to demand a statement of directors' earnings. Unless there are some very special circumstances it is very difficult to get the holders of one-fourth of the shares to come along to a meeting and exercise that right.

The Chairman.—That would apply particularly if it were a fraudulent company and the shareholders were spread throughout the country, would it not?

Mr. Burt.—That is so. There is another reason why there should be no objection to disclosing total earnings. Now the Stock Exchange will not list a company or its shares for quotation unless the company sets out this information in its balance-sheet. In my opinion the attitude of the Stock Exchange is justifiable.

Mr. Thomas.—Some directors are performing two sets of duties; they have a dual occupation.

Mr. Burt.—That is so. No one wishes to tell the world what his income is, although I think most people have a fair idea of the incomes of other people. Where a man is occupying a position of trust in a public company there should be no objection to the amount of his remuneration being published.

Mr. White.—Is that why the Stock Exchange requires the information?

Mr. Burt.—I think so. It arose out of a feud a few years ago in respect of the Coles Company. I think the directors were drawing a percentage on turnover.

The Chairman.—Your suggestion is that if the words "as such" were deleted from section 127 there would be a full disclosure of the directors' receipts, is it?

Mr. Burt.—Yes. As far as section 148 is concerned, it would be almost impossible to get shareholders holding one-fourth of the votes in the company to demand the information. In the case of a well-known company such action would be tantamount to a personal attack on the directors. My advice to the Committee is to compel companies to include particulars of directors' receipts in the balance-sheet. Most companies do it, but some companies, if they are large enough, defy the Stock Exchange.

Paragraph 8 of my circular letter deals with the consolidated profit and loss account of a holding company, which is referred to in section 125. I cannot find any lawyer or accountant who is able to tell me what this very important section means. A holding company is a company which holds shares in a number of other companies. Section 125 (1) (*a*) provides—

> (*a*) there shall be annexed to the profit and loss account of the holding company required by section one hundred and twenty-three of this Act—
>
> (i) a separate profit and loss account for each subsidary company drawn up in the manner hereinbefore prescribed for a profit and loss account; or

In other words, the assets and liabilities of the holding company and of all the subsidiary companies are consolidated and brought together so as to form one balance-sheet. That is regarded as being a very fair means of showing the over-all position of the operations of the company.

As an additional protection sub-paragraph (ii) of paragraph (*a*) of section 125 goes on to say—

> (ii) a consolidated profit and loss account of the holding company and of its subsidiary companies drawn up as nearly as may be in the manner hereinbefore prescribed for such an account and eliminating all inter-company transactions—

That is to say the holding company and all subsidiary companies are treated as one—all the assets are shown on one side and the liabilities on the other side, thus indicating the net position.

Mr. Thomas.—That would not overcome the position in respect of the Rubinstein companies, would it?

Mr. Burt.—I do not think there were any holding companies in that case. I think they were mostly independent companies conducting inter-company transactions.

In addition to the consolidated account, certain words were inserted by the late Mr. Bernard O'Dowd, Parliamentary Draftsman, one afternoon. I remember coming away from his office in Lonsdale-street, saying, "I do not know what these words mean," and Mr. O'Dowd saying, "They are quite clear." The words added to section 125 (1) (*a*) (ii) were—

> —and in addition a statement showing the total losses (if any) of the subsidary company or companies; and

I repeat that I cannot understand the expression "total losses." Company A. may have three subsidiaries—B., C., and D. B. makes a loss of £100; C. makes a profit of £200; and D. makes a profit of £200. In that case, there are no total losses, but a total profit of £300. I think the section was intended to ensure that any losses should be disclosed to the public, and I have been informed that the accepted view of the accountancy profession is that there are no total losses in the example I have cited.

Mr. Pettiona.—Would the trading account disclose a loss in the case of company B.?

Mr. Burt.—The trading accounts would be consolidated. The answer to the problem is that the loss or profit of each subsidiary company must be set out separately.

The Committee adjourned.

WEDNESDAY, 10TH MARCH, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon. P. T. Byrnes	Mr. Pettiona
The Hon. H. C. Ludbrook	Mr. Randles
The Hon. F. M. Thomas	Mr. R. T. White.

Mr. Oswald Burt, solicitor, of Melbourne, was in attendance.

Mr. Burt.—Paragraph (9) of my circular letter directs attention to section 366 (1) (*d*) of the *Companies Act* 1938, in which there appears to be a drafting error. Paragraph (*d*) states—

> "every company and every person, who is or has been engaged or interested in the formation of a proposed company, which or who allots shares or debentures to the public on the basis of a prospectus published more than six months before the date of allotment specified in the prospectus, shall be guilty of an offence against this Part."

In my opinion, the words "specified in the prospectus" are redundant. As I understand it, the purpose of the section is to prohibit companies and promoters of companies from canvassing for shares on a prospectus which is more than six months old. I suggest that the Committee should consider whether the section really effects that purpose, as to which there is considerable doubt amongst members of the legal profession.

The next matter which I wish to bring to the notice of the Committee concerns share hawking and fraudulent sales of securities, on which I have set out some notes in paragraph 10 of my circular letter. In my opinion the provisions contained in these two sections lock the door after the horse has bolted by providing fines and penalties after the damage is done. Broadly, that is the main objection to these sections. In England, since 1939 they have had an Act known as the Prevention of Fraud (Investments) Act.

Mr. White.—Have any of the other States passed similar legislation?

Mr. Burt.—I am not aware of any. If they have it would be very recently. The English Act provides for the licensing of persons whose main business object is dealing in securities. "Securities" is a wide term which includes shares, debentures, and all sorts of things, and there is no need for me to elaborate on that. The English scheme provides that licences shall be issued to brokers and to assistants or representatives or employees of brokers, in the same way as licences are issued to estate agents.

Mr. Thomas.—Are not brokers licensed at the present time?

Mr. Burt.—No. A number of brokers are members of the recognized Stock Exchange. In England such brokers are exempt from the provisions of the Act I have mentioned because the Stock Exchange has its own system of discipline with penalties provided.

Mr. Pettiona.—What are your views on section 12 of that Act?

Mr. Burt.—Perhaps I could deal with some general principles and then get down to detail. My suggestion is that, as in England, a man who is not a member of the Stock Exchange, or who is not specially exempted by some other authority, should be licensed. In England the licensing system is handled by a Board. In Victoria estate agents apply to the court for registration and a registrar administers their registration. In order to obtain an employer or employee certificate applicants must provide a bond of £500 or put up a similar amount.

Mr. Thomas.—Does that limit the extent of their activities?

Mr. Burt.—No. That is one of the objections. The sum of £500 is not a very large amount for a man who wishes to perpetrate a fraud to put up. One of the weaknesses in the English Act was made fairly evident to me in connexion with a company which I brought under the notice of the Attorney-General about four or five years ago. In that instance two men acquired a mining lease for a few pounds and formed a company. The company allotted them about 100,000 shares and they proceeded to Gippsland and sold all the shares within a period of about a week. All that the shareholders in Gippsland possessed was shares in a company which owned a lease that had been bought for a few pounds. Such a case is not covered by the English Act, which only requires brokers to be registered where the object of their business is to sell shares. A man who sells his own shares is not necessarily carrying on such a business. In fact, I do not think the legislation was designed to prevent a man from selling his own shares. It appears to me that there should be a provision in the Act designed to prevent the sort of thing I have just described. Some middle course should be adopted which will,

on the one hand, control the man who carries on the business of selling shares, but which, on the other hand, will not prevent a man from selling his own shares in the ordinary course of business in a bona fide and proper manner.

Then there is the third case, which is not covered by the English Act, namely, that of a man who sells his own shares fraudulently. That is one of the weaknesses of the English Act.

The Chairman.—That type of man would not be caught by our own shareholding provisions.

Mr. Burt.—Not effectively. After having " cleaned up " about £100,000 in Gippsland, one man of this description was fined only £25 for share hawking. The penalty imposed revealed the inadequacy of the current legislation, which seems to be aimed at curing the evil after it has happened.

Another weakness of the present law is that, immediately after being convicted of share hawking, a man may obtain a licence to sell shares, and he may have erected over his window a notice in these terms: " Sharebroker, licensed by the Government of Victoria." He will be given a certificate or receipt to that effect, and members of the public will conclude that his dealings will be conducted honestly. That aspect needs to be taken into consideration in the drafting of amending legislation.

Mr. Brennan.—The notice erected by a licensed sharebroker might be construed as indicating that he is guaranteed by the Government of Victoria.

Mr. Burt.—That is so. I cannot suggest a remedy at the moment, other than that if the word " sharebroker " is used, it should be made clear that neither the broker concerned nor the Government guarantees anything. Certain brokers who possess a receipt for the payment of their registration fee would have no compunction about using it and any relevant correspondence to their own personal advantage. That represents a real danger.

Mr. Randles.—A similar difficulty arises concerning architects. Once they are registered, they cannot be de-registered.

Mr. Burt.—I am not familiar with that aspect. There is, of course, an advantage in registration, but I regard the sum of £500 as hopelessly inadequate. If it is to be deposited as a sum of money or in the form of a bond, dishonest brokers may have difficulty in arranging for anyone to issue a bond on their behalf. I am a legal adviser to the Fire and Accident Underwriters Association of Victoria and the Marine Underwriters Association which jointly consist of 125 companies. I know that they would be glad not to be asked to undertake the business of issuing bonds for estate agents. They contend that it is not insurance business and that they receive only a small premium for it; consequently, they would sooner not handle it. It is exceedingly difficult for a new man entering the real estate business to secure a bond, irrespective of how well recommended he may be. Although I have had no definite instructions from the underwriters, I know their attitude well enough to be able to say that they would not welcome the enactment of legislation under which they would be asked to issue bonds to sharebrokers.

Mr. Hollway.—What would the bond cover?

Mr. Burt.—Its form is prescribed in the English Act. I have not reviewed those regulations completely.

The Chairman.—I suppose that the bond would be somewhat similar to that required by real estate agents.

Mr. Burt.—I should think it would be somewhat similar. It would cover defalcations, fraud, and any other misdemeanour which might be committed. I, personally, have recovered quite a lot of money under bonds, not so much in recent years, but during the depression period.

The Chairman.—Would you say, from your experience, that the £500 bond in the case of a real estate agent is inadequate where there is fraudulent dealing?

Mr. Burt.—Yes. If a man wanted to engage in fraudulent practices, he would soon find a deposit of £500. I think the insurance companies might well say that they do not want to undertake the business of issuing bonds for sharebrokers and that they will have nothing to do with it. In my view, it is a dangerous practice for a sharebroker to be permitted to go from place to place saying that he is registered or authorized by the Government of Victoria. I think the definition of securities in the English Act could be widened. I prepared for the Stock Exchange of Melbourne the original draft of the *Business Investigations Act* 1949, which contains a definition of business and business interest. That legislation also contains a prohibition against the sale of shares in certain circumstances. That is an aspect that should be considered by this Committee.

Still dealing with general principles, the next matter to be considered is that of penalties. In England, the penalty for non-registration and for selling shares though not registered to do so, and for doing various other acts is two years' imprisonment or a fine of £500 or both. When proceedings are by indictment, followed by summary conviction, the penalty is six months' imprisonment or a fine of £100 or both. My personal view is that the imposition of a fine does not matter very much. It is the imprisonment penalty that counts.

Mr. Thomas.—Elimination of the provision relating to fines would suit your purpose?

Mr. Burt.—Yes. There are principles involved in the adoption of this course.

Mr. Byrnes.—It is difficult to have such legislation enacted by Parliament.

Mr. Burt.—I should think so. There are certain inherent objections to the passing of an Act empowering a court to inflict a penalty of imprisonment only.

Mr. White.—What is the difference between the penalties contained in the English *Prevention of Fraud (Investments) Act* 1939 and those provided for in the Victorian legislation?

Mr. Burt.—There are no similar penalties provided in the legislation of this State. Penalties relating to the sale of shares in companies with illegal objects are contained in section 357 of the *Companies Act* 1938.

The Chairman.—Sub-section (3) of section 357 of the Companies Act states—

" Every person who acts, or incites causes or procures any person to act, in contravention of this section, shall be liable to a penalty of not more than Fifty pounds or to imprisonment or to a term of not more than one month or to both such penalty and imprisonment, and in the case of second or subsequent offence to a penalty of not more than One hundred pounds or to imprisonment for a term of not more than two months or to both such penalty and imprisonment."

Mr. Burt.—There are a number of dealings in securities which should be protected, as they are in the English Act. There are half a dozen highly reputable companies, both in Sydney and in Melbourne, which undertake work of the nature I have in mind. I do not act for any of them, although I know the persons conducting them. These companies sell

units. Persons with small savings sometimes desire to spread their investments over a number of companies, and, not having any knowledge about exchange procedure, they wish to have some reputable firm to act for them. There are two very fine companies in Melbourne and two in Sydney which conduct this type of business, and both do an excellent job. They advertise over the radio, and issue circulars and booklets.

Young and Outhwaite, a well-known firm of chartered accountants, has one company which carries out splendid work for small investors.

The Chairman.—In the English Act there are exemptions under the provisions of paragraph (*c*) of sub-section (1) of section 2.

Mr. Burt.—Another method of dealing with the problem is to provide that any sales of shares made in contravention of the provisions of the Act should be voidable, at the option of the purchaser, at any time afterwards. A buyer should be enabled to ask for the return of his money, not only from the real owner of the securities, but also from the so-called broker who effected the sale, and the purchaser should have the right to sue either of them.

Mr. Thomas.—How does Mr. Burt view the question of false promises?

Mr. Burt.—That matter is provided for in the English Act.

The Chairman.—Mr. Thomas refers to the provisions of section 12, which have only a limited application in England to industrial corporations and provident societies. It has been suggested to the committee that an offence of making a false promise should be introduced into the Victorian legislation.

Mr. Burt.—That suggestion raises questions of fact and intention. A man may honestly make an estimate of future prospects. Such calculations are made daily by accountants and other specialists. An expert might be asked to examine a mining field, and after consideration of the data at his disposal, he might supply an estimate of its extent and of the length of time it would take to work out the field. That would be an honest estimate. He might even make a representation concerning the sale of shares.

Another matter I should like to mention is sub-section (5) of section 123 of the Companies Act, which states—

"The directors shall cause to be made out in every calendar year (other than the year of incorporation) and to be laid before the company in general meeting, a duly audited balance-sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up,".

This is the important part—

"and there shall be attached to every such balance-sheet a report by the directors with respect to the state of the company's affairs,".

I refer particularly to the following words—

"including information as to whether or not the results of the year's operations (as disclosed in the profit and loss account or the income and expenditure account) have in the opinion of the directors been materially affected by items . . . ."

The word "item" has been interpreted by many companies as meaning "circumstances." For instance, they think they are complying with the provisions of the section if they say, "We had a bit of bad luck during the year because of the occurrence of a flood." I do not think that was intended. I consider that "item" means losses, payments, or special receipts—whether the profits during the year were affected by items of an abnormal character. I was connected with one company that in one year incurred a bed debt of £20,000. When I was asked whether reference should be made to that item, I said, "Yes, because that is an unusual item of loss, one that will not recur, and the shareholders should be told about it."

Mr. Byrnes.—Many balance-sheets do not show any abnormal items.

Mr. Burt.—That is so.

Mr. Byrnes.—If something of an abnormal character occurred during the year, and no reference was made to it in the balance-sheet, what liability would there be on the directors, and how could the ordinary shareholders prove that anything abnormal occurred?

Mr. Burt.—I realize that a difficult position arises, but I submit that the word "item" requires amplification or that the term "extraordinary losses or payments or extraordinary or special receipts" should be substituted.

Mr. Brennan.—It refers primarily to figures appearing in the balance-sheet?

Mr. Burt.—I think it does.

Mr. Brennan.—Those abnormal figures have to be explained by what has happened.

Mr. Burt.—Yes. For instance, if the company incurred a bad debt during the year that fact should be disclosed.

Mr. Pettiona.—The following year that debt might be recovered and there would be an increased profit.

Mr. Burt.—That is so, but I am stressing that directors should be obliged to mention something of that nature in a report.

Mr. Byrnes.—I think that is important, because I have found that the tendency is to make only a broad statement, such as that a flood or a drought has caused a loss.

Mr. Burt.—That is not sufficient, because every shareholder would know of that fact.

Mr. Byrnes.—The losses should be specified.

Mr. Burt.—Yes. The next matter I wish to refer to is contained in sub-section (3) of section 124, which sets out the list of assets and the list of liabilities that must be set out under separate headings in the balance-sheet of a company so that the shareholders will get a correct and faithful view of the company's position. I consider that sub-section (3) should be widened to provide that the provision for payment of income tax in respect of the year covered by the balance-sheet should also be set out under a separate heading. Income tax is a most important outgoing in connexion with a company, and each year the balance-sheet should disclose what the company has paid the previous year and what it has set aside out of profits for the current year, otherwise the profits disclosed in the balance-sheet may give a completely wrong impression to the public. Further, if that information is included, an experienced person who studies the balance-sheet will know whether the amount of the provisional tax is adequate or whether the amount of profit disclosed in the balance-sheet is wrong.

Mr. Thomas.—You think the amount should be specifically stated?

Mr. Burt.—Yes, even if it is not paid.

Mr. Byrnes.—Taxation is paid not only on the dividends but also on the reserves.

Mr. Burt.—Taxation is paid on the profits whether or not they are distributed. Yesterday the Chairman mentioned to me that the Committee had under consideration the question of proprietary companies being compelled to have an audit undertaken each year and to lodge the balance-sheet in a sealed envelope in the office of the Registrar-General, to be opened only on an order of the court. I think there is something in that suggestion. After all, company legislation is intended to protect the shareholders on the one hand and the creditors on the other. Primarily, an audit protects the shareholders of the company. However, many small companies are formed by members of families, and no good purpose would be achieved by forcing upon them an expensive audit by a specially licensed auditor.

Mr. Brennan.—Would not a compulsory audit have the effect of ensuring that people who engaged in business with other people's money had some business preparation and orderly method in their work.

Mr. Burt.—Probably it would have that moral effect. My suggestion is that where a proprietary company consists of, say, fewer than ten members and all agree in writing in a prescribed form to be filed annually in the office of the Registrar-General no audit or lodgment of a balance-sheet is necessary and should be dispensed with.

If any member of a family company desires an audit to be conducted, all he or she need do is refuse to sign the return. Of course, if such a company is not prepared to give the trade evidence of its financial position, it will not be given credit; the word "proprietary" is a red light to the trade.

The Chairman.—A proprietary company is not usually given a bank overdraft unless security is provided by the directors?

Mr. Burt.—That is so. A merchant asked to supply goods to these companies says, "I will not do so unless you give me evidence of your stability." Of course, it is difficult to cover all questions that arise.

I have had experience of fraudulent companies. In one instance, a salesman operated throughout Sunday in a country town. He picked up a large parcel of scrip, with signed orders on a Melbourne broker to sell it. The people concerned had agreed to buy shares in a company of doubtful bona fides. They rang me on the Sunday night, and on Monday morning I sat in the broker's office, awaiting the arrival of the salesman. When I told him that his authority had been revoked, he said there had been a misunderstanding. The broker sent the shares back. The salesman returned to the town and not only got back the shares in question but also another big parcel.

In other cases, when I have pressed a concern to return money, a representative has interviewed the client, from whom I have received a letter saying that I am no longer to act on his behalf, and he has been sold a further block of shares.

The Chairman.—Will you give the Committee information as to soft-wood companies, and the procedure adopted to safeguard the rights of lot holders?

Mr. Burt.—Much of the criticism of these companies has been based on misconception. I act for a group of companies that were acquired recently by clients of mine. I was not interested in the initial stages of these concerns, but I know that they are operating satisfactorily from the point of view of the lot holders. The contract provides that on the payment of a specified sum by the lot holder, to the forestry company, the latter will provide the land, plant it with soft-wood trees, and maintain the plantation until the trees mature, when it will sell the trees standing or in the log, for a royalty. The net proceeds are to be handed to a trustee; 10 per cent. of the proceeds are to go to the company and the balance distributed among the lot holders.

One company has started to sell logs for milling. I think lot holders paid in £38,000 and they have so far been paid £117,000. This group owns from 15,000 to 20,000 acres of forest land in South Australia—it is a Victorian concern. A separate company was formed and it has spent £100,000 on the erection of a modern milling plant.

Soon we hope to issue an invitation to the Minister of Forests to inspect the forests and mill at Mt. Gambier. There are a number of companies operating in the district. The company of which I am speaking is installing what is probably the most up-to-date mill in Australia if not in the southern hemisphere.

Mr. Pettiona.—Why is it that various Melbourne legal firms which have written to either yourself, Mr. Oswald Barnett, or other persons associated with these companies have not been able to obtain replies on behalf of their clients?

Mr. Burt.—In every case a very comprehensive report has gone out each year.

Mr. Pettiona.—We have copies of those reports. Each report made by Mr. Dundas Smith is letter perfect insofar as each company is concerned. Does each of these companies own separate lands?

Mr. Burt.—Yes. The lands are not held in the name of the company but in the name of separate trustees, in order to see that the terms and conditions of the lot contracts are carried out.

Mr. White.—Can the lot holders interview those trustees?

Mr. Burt.—Yes.

Mr. Brennan.—Could a sample trust deed be obtained?

Mr. Burt.—Yes.

Mr. Pettiona.—Do not most contracts bind the person contracting with the firm to agree to the appointment of Mr. Dundas Smith as trustee?

Mr. Burt.—I believe they do, speaking from memory.

Mr. Pettiona.—Would the titles held by each of the companies be available for perusal by the Committee?

Mr. Burt.—Yes. We have already delivered a certificate by an independent firm of solicitors in regard to those titles. They are all in the name of a trustee company called "Consolidated Trusts Corporation Ltd."

Mr. Randles.—Does Mr. McKenzie, the solicitor, still hold those titles?

Mr. Burt.—I could find that out for the Committee.

Mr. Pettiona.—Certain monies in the form of Government bonds were placed in the hands of Mr. McKenzie, were they not?

Mr. Burt.—That is so.

Mr. Pettiona.—What rights have the lot holders, portion holders, and concession holders other than those given to them by the contract?

Mr. Burt.—I think the contract contains particulars of all their rights.

Mr. Randles.—You mentioned that all these companies own land in the same area in their own right. Apparently all the companies dovetail in together. The reports from Mr. Dundas Smith concerning each company are identical. As far as I know none of the companies has produced a balance-sheet. I have seen some copies of contracts made by lot holders with the companies. They have accepted Mr. Dundas Smith as trustee.

Mr. Burt.—That is so. He is not a shareholder in any of the companies. He is a retired bank manager.

Mr. Randles.—The point is that although the original contract was signed in 1930, on which a return from the investment was due in 1946, lot holders have not received any return or dividend.

Mr. Burt.—I do not know that any particular undertaking is given in the contract concerning when a return is due.

Mr. Pettiona.—There is a condition provided.

Mr. Burt.—If a certain sum is returned by a certain date—that is all that the lot holder is entitled to. After that he is entitled to 90 per cent.

Mr. Randles.—When I examined the plans of the subdivisions I noted that all these companies have lands in the same area. Have all the companies sold the same land?

Mr. Burt.—They are all in and around Mt. Gambier. There are plans in existence showing precisely what land belongs to each company and which land is planted.

Mr. Thomas.—Does it set out what belongs to each individual lot holder?

Mr. Burt.—No. If there are 50 lot holders entitled to 50 acres, one cannot say that any one lot holder is entitled to any particular acre of land.

Mr. White.—Could a lot holder inspect that 50 acres?

Mr. Burt.—Yes.

Mr. Pettiona.—Various files submitted to the Committee show that offers have been made by companies to persons to inspect their land. Why have Messrs. Corr and Corr received no reply to requests for information made by them? If the Committee asks for this information, can it be supplied?

Mr. Burt.—Yes. As a matter of fact, I thought I had satisfied Messrs. Corr and Corr. I informed their representative that I would make any further information they desired available.

The Chairman.—Would you be good enough to prepare some information for the Committee?

Mr. Burt.—Certainly.

The Chairman.—The Committee would appreciate evidence on the following points:—Names of the companies in the group for which you are acting, the location of their registered offices and particulars of their shareholders and directors; the lands which each of those companies are holding or which are held for them by Consolidated Trust Corporation Ltd. or any other company, and from whom each company or firm purchased such lands, together with a detailed plan of all the land; the number of lots sold in each area and the area of each lot; a copy of one of the contracts, if they are identical, otherwise a copy of a contract in the case of each firm or company; a copy of the trust deed; and a copy of the accounts and reports which are available.

Mr. Burt.—I do not think the contracts differ in principle.

Mr. Byrnes.—Do you consider there would be any advantage or disadvantage in having lot holders registered similarly to shareholders?

Mr. Burt.—That would raise difficulties. In the case of one company there would be perhaps a dozen or twenty plantings at different times. People who are in series No. 1 are entitled to have that cutting and the benefit of it. There might not be a planting for two years in respect of series No. 2 and No. 3, and so on. One cannot say that they all have equal entitlements. The people who came in in the early stages possessed advantages over those who came in later.

Mr. Pettiona.—Would Mr. Burt supply the Committee with answers to the following questions:—

What is the average size of each lot in the following plantations:—Special 5A, Special 8A, Special 8B, 11C, 12A, and 14C?

What is the average cost of planting pine tree seedlings on these lands?

What is the precise location of the land on which the above plantations have been established?

What is the age of the oldest plantation in which Mr. W. J. King is a lot holder?

Has any money been paid, and if so, what sums, to the trustee for disbursement among the lot holders of the plantations in which Mr. W. J. King is interested, namely, Softwood (Aust.) Milling Products, C.A.P. Softwood Industries, and C.A.P. Treatment Company?

Is there any relationship between any of the foregoing companies and Securities and Equities Pty. Ltd., which is registered in New South Wales.

Is there any relationship between the companies mentioned and Vatubula Pty. Ltd., of Suva, Fiji, and have any lots been sold as far north as Fiji?

Is Mr. Burt prepared to state that each lot, portion, and concession holder will receive a just return on his investment?

Mr. Burt.—I think it should be comparatively easy to answer those questions.

Mr. Randles.—In 1947, I think, certain moneys were deposited with Mr. Dundas Smith, as trustee. Those moneys were to be used if, in the event of certain happenings, the interests of block holders were not protected. Mr. Dundas Smith was given £1,200, which sum I believe was deposited in a trust account at the State Savings Bank, Elizabeth-street, Melbourne. It was ascertained that the sum of money was insufficient to cover the position should anything go wrong. A sum of £5,010 approximately, in Treasury bonds, was deposited with a solicitor named McKenzie. I am interested to know where Mr. Dundas Smith obtained the money that was given to him, considering that the paid-up capital of the various companies was only £52. It appears that the lot holders were, in effect, guaranteeing themselves.

Mr. Burt.—That is not altogether the position. I think the nature of the contract was that the lot holders bought the right to participate as the money belonged to the company. I shall prepare replies to the questions submitted by Mr. Pettiona and that stated by Mr. Randles.

The Chairman.—On behalf of the Committee, I thank Mr. Burt for the assistance he has rendered so far. He will be notified of the date when it will be convenient for the Committee to receive the further information which he will prepare.

The Committee adjourned.

TUESDAY, 16TH MARCH, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon. F. M. Thomas	Mr. Pettiona
	Mr. Randles
	Mr. R. T. White.

Mr. W. J. Taylor, LL.B., Registrar-General and Registrar of Titles; Mr. J. E. Quinlivan, and Mr. T. S. Welsh, Deputy Registrars-General, were in attendance.

The Chairman.—The purpose of the inquiry is to consider any revision of the law which may be necessary to curb the activities of persons who promote and administer fraudulent companies. One aspect that has already been canvassed during the taking of evidence has been the failure of certain companies to file returns with the office of the Registrar-General, and members of the Committee would be pleased to learn what steps have been and are being taken to ensure that those returns are filed.

Mr. Taylor.—I would prefer that Mr. Quinlivan discuss that aspect, because he is in charge of the branch which is responsible, and that branch is more or less a self-contained unit.

Mr. Quinlivan.—I have prepared a statement which reveals the number of companies registered in Victoria from 1938 to 1953 inclusive. It is as follows:—

	Proprietary	Public	Guarantee	Mining	Foreign	Total
1938	649	47	17	26	53	792
1939	476	50	11	28	37	602
1940	183	95	14	34	25	351
1941	64	26	10	8	22	130
1942	19	5	4	1	17	46
1943	14	8	7	1	16	46
1944	24	8	11	—	11	54
1945	99	51	20	2	28	200
1946	364	398	22	10	68	862
1947	196	615	33	12	69	925
1948	109	898	37	7	70	1,121
1949	44	670	23	10	78	825
1950	42	802	25	5	72	946
1951	18	1,148	17	4	98	1,285
1952	11	773	24	4	97	909
1953	23	1,068	18	8	107	1,224

Notice of Intention to Apply for Certificate of Incorporation of Proprietary Companies:—

Number of Notices Lodged	1,494
Number of Caveats Lodged	28
Number of Companies Affected	19

Number of Notices Lodged *re* Debentures and Charges:—

Number of Notices Lodged	2,011
Number of Caveats Lodged	93
Number of Companies Affected	47

From this statement it will be observed that the number of company registrations declined during the war years and that the peak of 1,224 was reached during 1953. Another interesting aspect is that the registrations of proprietary companies have declined but the registrations of public companies have increased. In 1953, 23 proprietary companies were registered, as compared with 1,068 public companies. Approximately 1,020 of the public companies registered in that year were converted into proprietary companies after their incorporation so as to dodge the provision in the law with respect to notice of intention. The main faults concerning most companies are those of under-capitalization, bad management and lack of proper audits. The organizations get into a bad state and the creditors are left lamenting. Many companies notify the office of the Registrar-General that they are no longer carrying on business and make a request for the removal of their name from the records under section 295 of the Companies Act. Subsequently creditors make inquiries concerning the defunct company and ascertain that there are no tangible assets to which they have recourse.

Mr. R. T. White.—Have you a record of the companies that have asked for the removal of their names from the register?

Mr. Quinlivan.—The names of the companies concerned are published from time to time in the *Government Gazette.* A comparatively large list was published as recently as the 10th March of this year.

Mr. R. T. White.—Have you any record of the number of companies concerned in previous years?

Mr. Quinlivan.—No, but the information can be obtained from the *Government Gazette,* if desired. I should say that about 150 companies a year would be affected. One trouble that I have found in dealing with these crooked organizations is that they are lax in the filing of returns. We usually give them a notice under the hand of the Crown Solicitor intimating that a return has not been filed with the Registrar-General. Such notice is addressed to the secretary of the company. If the requisite return is not filed within 21 days, a notification is addressed to each director to the effect that the return has not been filed. If the matter is not attended to by the directors, the police are delegated to interview them and request that a reason be stated for the return not having been filed, at the same time requesting that it be filed. Moreover, the police officer notifies the directors concerned that it is their liability to ensure that the return is filed. Frequently, filing takes place after a police interview. After the police officer interviews the directors, he writes a report which is sent to Mr. Taylor, the Registrar-General, who in turn refers it to the Attorney-General. If the return has not been filed in the meantime, the Attorney-General issues instructions for proceedings to be taken.

The Chairman.—How long does that procedure take?

Mr. Quinlivan.—Probably about two months. Generally, a period of 21 days is allowed for the first notice and a similar period for the second notice. After the police interview another period of 21 days is allowed.

Mr. R. T. White.—The directors concerned have ample time within which to file the requisite returns?

Mr. Quinlivan.—That is so. If the directors are prosecuted, a fine of so much per day is usually imposed for the period during which the returns have not been filed. For instance, if there was a delay of twenty days and a fine of £5 a day was imposed, the directors would be called upon to pay £100.

Mr. Thomas.—Is such a fine ever imposed?

Mr. Quinlivan.—Yes, frequently.

Mr. Pettiona.—Whom do you fine?

Mr. Quinlivan.—The directors of the company. It is practically useless to institute proceedings against the company concerned because it is devoid of assets. The companies affected most are those that import and export saleable goods under contract and sell them on a time-payment basis. Frequently, complaints are received that the goods purported to be sold are not available. If we have any suspicions as to the bona fides of a particular organization, we refer the matter to Mr. Garvey, Senior Detective in Charge of the Fraud, Special Investigation and Companies Squad of the Criminal Investigation Branch, for inquiry.

Mr. R. T. White.—Does that happen frequently?

Mr. Quinlivan.—Yes, fairly often. Some organizations make a commencement in one line of business and then discontinue it. At Dandenong a man formed a dairy company and began manufacturing boxes from chaff and straw. Later, he converted the business into a dry cleaning concern, which went bankrupt. This man disappeared, but he received certain moneys which have all gone.

Many persons establish companies solely for the purpose of defrauding investors. Apparently, they have no knowledge of the management and control of businesses; they take out far too much money, and their expenses are a great deal too high. The result is that some one must suffer, and the shareholders lose.

The debenture aspect does not enter into the matter so much. In some instances a debenture is given to one of the directors. When the financial position of the company becomes bad, a receiver is appointed; he takes possession and the company fails. No preparation is made even to wind up the company. These things must be counteracted.

Since the new Act came into operation, a total of 2,011 notices of intention to register debentures was lodged, and only 93 caveats were lodged against them. They affected only 47 companies of the 2,011. Most debentures are given to the bank. Concerning proprietary companies, notice of intention was lodged in 1,494 instances and only 28 caveats were lodged.

The Chairman.—Do you consider that the provisions regarding the formation of a proprietary company are of any value in view of the procedure usually adopted of converting from a proprietary company to a limited company?

Mr. Quinlivan.—In my opinion, they are useless. I regard a proprietary company subject to the provisions of section 26 of the Companies Act as an honest company. Only 23 of them were registered in the year 1953. For a considerable time Mr. Welsh conducted what we call the diary. Every company which is registered in Victoria is allocated a number, and particulars of proprietary, public, and guarantee companies are entered in the one book. Foreign companies, mining companies, and information concerning receivers and managers are placed in separate diaries. Mr. Welsh used to run through the diaries. When an annual return is filed, an entry is made in the appropriate diary. There are now more than 31,000 numbers. As companies cease operation, or are struck out or liquidated, they are taken out of the list. Continual reference is made to the book, from one end to the other. From 100 to 500 documents are received daily, and particulars of them are entered in the diary. When an officer is entering a document, such as an annual return, he checks back on the figures of returns filed previously; they are all entered in the register. The names of the directors are shown in the register, also the number of shares allotted for cash or other than cash. If any variation is noted, information is entered on a separate card. Such matters are dealt with by an officer who gives notice to the company concerned to file whichever return is outstanding. In some instances mistakes are made inadvertently, such as the omission of the name of a director. An officer examines the file, amends the return, and the matter is struck from the list.

It was proposed some time ago that an hotel company could not appoint directors without the approval of the Licensing Court or of the Licensing Inspector for the district, and it was intended that a provision of this nature should be included in the Articles of Association. A draft of the proposed alteration was sent to me for perusal. I expressed the view that it would be valueless to have this stipulation contained in the Articles because, by passing a special resolution, a company could nullify it in 21 days. I suggested that the provision be incorporated in the Memorandum of Association, as it would then be unalterable without an order of a court being obtained, and if an amendment were sought the court would probably inquire whether the consent of the Licensing Court had been obtained. It was decided to include this stipulation in the Memorandum, and since then every company which has applied for a wine and spirit licence or a hotel licence has been required to submit its Memorandum of Association to the Licensing Court to show that the provision has been included before a licence has been granted.

Mr. Pettiona.—Of the companies that first register as public companies and then convert to proprietary companies, is there an average number that could be considered as suspicious if not thoroughly fraudulent?

Mr. Quinlivan.—Some companies with only a small capital—for example, £5—are as solid as a rock; they have money from the shareholders that keeps them sound. Many cheques drawn on behalf of one firm of car dealers and auctioneers "bounce." I refer to a company that has not long been registered.

Mr. Welsh.—Practically every company that circumvents the provisions of the Act relating to expenses is first registered as a public company.

Mr. Thomas.—Mr. Quinlivan mentioned the question of under-capitalization. If it was compulsory for a financial guarantee to be lodged at the Titles Office, would greater protection be afforded to the public?

Mr. Quinlivan.—I think so.

Mr. Brennan.—If it were made compulsory for a company to file annually an audited balance sheet, would it be helpful?

Mr. Quinlivan.—It would disclose the position of the company to the creditors.

Mr. White.—That could be done after twelve months or after a longer period of time?

Mr. Quinlivan.—Yes. Similar action to that taken by a public company could be required. A public company is required to lodge a balance sheet. The balance sheet should be audited by a properly qualified auditor and accompanied by his report.

Mr. Pettiona.—It has been represented to the Committee that the suggested requirement to submit to a public audit could become a burden on a small family company.

Mr. Quinlivan.—Under section 130 of the Companies Act, any shareholder can demand the production of a balance sheet.

Mr. Welsh.—But not a balance sheet audited by a licensed company auditor.

Mr. Quinlivan.—They do not get a profit and loss account.

Mr. White.—In other words, they need not receive a true statement?

Mr. Quinlivan.—That is so.

Mr. Pettiona.—Have you had many dealings with proprietary companies concerned with softwoods?

Mr. Quinlivan.—We have not had much to do with them, because generally the reports from those companies are filed at the proper time, but there are complaints from outsiders and many searches are conducted concerning those companies.

Mr. Thomas.—Do you examine the returns submitted by such companies?

Mr. Quinlivan.—Yes. Of course, the returns give only the names of the directors and the shareholders.

Mr. Thomas.—No balance sheets are supplied?

Mr. Quinlivan.—No. Only public companies are required to submit balance sheets.

Mr. White.—Are many complaints received concerning the companies associated with softwoods?

Mr. Quinlivan.—Many people undertake searches connected with them.

Mr. Brennan.—The public has access to the documents?

Mr. Quinlivan.—Yes. On a payment of 2s., any one can search the necessary document. Of course, when that stage is reached it is generally too late.

Mr. Pettiona.—What do you mean by that?

Mr. Quinlivan.—There is nothing for the shareholders to get. The directors are usually quite willing for the company to be closed down.

Mr. Brennan.—Have you had frequent instances of such companies in connexion with pine forests?

Mr. Quinlivan.—We do not get many of them. Some of those companies are registered under the Business Names Act; they are registered as partnerships.

Mr. Thomas.—What is the advantage in that?

Mr. Quinlivan.—The persons concerned sell units. For example, a man named Abrahams has twelve or fourteen gold-mining syndicates registered in the Northern Territory, and he sells option units in those syndicates.

Mr. Thomas.—What would be the value of such a unit?

Mr. Quinlivan.—It entitles the holder to 1/50,000th part of a share in the profits.

The Chairman.—I shall now ask Mr. Welsh to give the Committee the benefit of his experience.

Mr. Welsh.—I consider that something should be done to widen the scope of the Companies Act to prevent persons from hawking units. There is a prohibition on the hawking of shares in a company, but there is nothing to stop high-powered salesmen selling units in what are, in effect, firms or businesses, each unit entitling the holder to 1/50,000th part of the profits. That was the method of operation of Bristo Plastics Industries, which was written up by the *Truth* newspaper. I understand that the promoter of that undertaking collected £250,000 from the public, and when it was finally converted into a public company only about £60,000 worth of assets could be recovered. That is only hearsay, but I understand that information is correct. I think something should be done to prohibit the hawking of any sort of security. That type of activity might be quiet at present, but undoubtedly it will crop up again. At the time Bristo Plastics Industries were operating pressure was exerted on the Government of the day to do something.

I also wish to direct the attention of the Committee to Part VI. of the Companies Act, which deals with investment companies. At present certain restrictions designed to protect the public are placed on proclaimed investment companies, but there is a way of circumventing those provisions. A proprietary company which is registered in New South Wales and operating in Victoria is advertising extensively and inviting the public to purchase certificates. Presumably, the company invests money in shares in Broken Hill Proprietary Company Limited, Myers, General Motors (Holden) Limited, and other well-known companies. Having collected the dividends from those companies, the proprietary company then pay the dividends on the unit certificates which the investors have obtained. By selling units instead of shares they get over completely the provisions of Part VI. of the Companies Act, which is designed to protect investors in investment companies.

Further, the company to which I am referring uses as part of its name the word "Trust," but no company inviting the public to subscribe for shares is entitled to do so. That is only a small point. I think the company concerned is quite reputable.

Mr. White.—Has it developed since share hawking was stopped?

Mr. Welsh.—The company was registered in New South Wales after share hawking was stopped. I do not know whether or not it was actually designed to circumvent that provision.

Mr. White.—But it does do so?

Mr. Welsh.—Yes. Being a proprietary company no audited accounts are filed for the protection of investors and so on.

Mr. Brennan.—Are there many such companies?

Mr. Welsh.—This is the only one of which I have heard, and, so far as I know, it is reputable. However, the principle is there and bogus promoters could register similar companies, obtain money from investors and buy no shares at all or only a token number. They could continue operating by paying dividend out of new investments. However, if there was a depression and investors wanted their money it would be discovered that there were no funds.

The Chairman.—You suggest an amendment of the Act to provide that no company shall invite the public to subscribe for shares or units in any form?

Mr. Welsh.—Companies or persons. It is hard to legislate without making it difficult for the public, but it seems to me that most frauds are perpetrated not under but outside the Companies Act.

The Chairman.—There are really two problems. One relates to an amendment of the Companies Act to prevent a proprietary company from inviting the public to subscribe for units, and the other to control the ordinary person?

Mr. Welsh.—Yes.

Mr. Thomas.—Would not section 8 of the Business Investigations Act 1949 have a bearing on that matter?

Mr. Welsh.—That legislation is very useful, but generally speaking it is not a contravention of any Act to invite the public to subscribe. For instance, apparently nothing can be done in the case of Bristo Plastics Industries. I presume that the shareholders have looked into the legal angle to ascertain if it is possible to recover their money, but there does not seem to be anything they can do. The person who promoted that company is still operating in the city.

The Chairman.—If you are notified that a company has ceased business, are the directors relieved of responsibility to lodge returns?

Mr. Welsh.—No statutory provision covers that aspect. So long as the name of a company remains on the register, we insist on returns being filed. If we are notified that a company has ceased business, we strike its name off the register. If it ceased operating in 1952, no returns from the company after that year need be filed, and that is a reasonable attitude to adopt towards companies ceasing business in the ordinary way.

Mr. Hollway.—Have you power to request such a company to furnish a statement of assets, liabilities, and so on?

Mr. Welsh.—No.

The Chairman.—A company that did not in fact cease business in 1952, but wished to evade the obligation of lodging returns in 1954, could put forward a case suggesting that business had ceased in 1952, and you would be prepared to strike its name off the register?

Mr. Welsh.—Yes. The striking of a name off the register takes time, and so long as a name appears on the register a return must be furnished.

The Chairman.—Have you power to put the name of a company back on the register in order to obtain returns from it?

Mr. Welsh.—No. To have that done, an application would have to be made to the court.

Mr. Quinlivan.—When a company is in the process of going out of business, we receive a request to stay our hands, and we make a note of that fact in the register. At the end of a period, we inquire of the solicitors acting for the concern if they wish its name to remain on the register.

Mr. Hollway.—Before the name of a company is taken off the register, would it be any protection to the public to compel the concern to lodge its books as in the case of a liquidation?

Mr. Welsh.—That would be a protection. A number of companies whose names are struck off the register under section 295 of the Act write in informing the office that they intend to cease business. A number of companies that we are chasing to lodge returns say that they did not file their returns because they were not operating. They cease business and distribute their assets among their shareholders. They announce that they are not carrying on business and we strike their names off the register. Technically speaking, they are not entitled to distribute their assets in that way.

Mr. R. T. White.—Can you suggest a method to cover the points that you have raised?

Mr. Welsh.—No. Provision for striking off the register the names of defunct companies appears in every Companies Act, and it is being availed of in a way that circumvents the provisions relating to the winding up of companies. A company with assets desiring to have its name taken off the register should go into liquidation and be wound up by a liquidator. Directors came to us and say, "We have paid our debts and what we have left we will distribute among our shareholders." There does not seem to be any harm in their doing so.

Mr. Brennan.—Are those companies wound up under a special resolution of the company?

Mr. Welsh.—No. They inform us that they are ceasing to operate and we take their names off the register. There does not seem to be any great harm done by an honest company acting in that way. Other companies have numerous creditors and decide that they cannot continue in business. They distribute their assets among their shareholders, and then the creditors find that these companies do not exist.

Mr. R. T. White.—Do many companies inform you that they intend to cease their operations?

Mr. Welsh.—Yes. The average would be one each day.

The Chairman.—In most cases they are legitimate concerns?

Mr. Welsh.—That is so. Bernco Products—the company was mentioned in *Truth*—attempted to follow that procedure, but the matter is being held up pending an investigation. Mr. Quinlivan mentioned a used car company, which apparently buys a motor car by cheque, but the cheque does not appear to be honoured. Possibly something could be done about the officers of companies signing cheques that they know will be dishonoured.

Mr. Pettiona.—If these people are defeating the object of the law, cannot they be proceeded against?

Mr. Welsh.—The issuing of a bad cheque is not covered by the Act; the company is liable, not the individual. The paid up capital of that concern is only £5. Of course, we get the idea that something is wrong when a company's bag becomes tattered through people searching.

Mr. Pettiona.—Do you register searches?

Mr. Welsh.—No. The fee is paid and a book has to be signed.

Mr. Pettiona.—The number of the file does not appear alongside the fee?

Mr. Welsh.—No.

Mr. Taylor.—The tickets are sent to the Comptroller of Stamps, but no record of them is kept. The information is available to the public.

Mr. Pettiona.—Can you give us any information regarding softwood companies?

Mr. Welsh.—It appears to me that activities of those concerns to the detriment of the public are not covered by the Act. I have not received complaints about these companies, but I understand that the shareholders had the impression that the company would handle the wood when it matured. Now that stage has been reached and another company has been formed to handle the timber. Shareholders in the original company are being asked to take up shares in the new concern. There does not appear to have been a breach of the Act, but the original investors thought that when the trees matured they would merely have to collect the money due to them. Now it appears that they cannot collect their money and they must take shares in a new company which is formed to cut the timber and sell it. The directors of the new company might collect a little for themselves in the process of handling the timber, but there does not appear to be any breach of the Companies Act involved in what they are doing.

Mr. R. T. White.—Have you had many inquiries regarding the softwood companies?

Mr. Welsh.—Their records are searched more frequently than those of the average company, but no one appears to have a specific complaint to make. People seem to think that they are being "got at", but they cannot say how and where.

Mr. R. T. White.—Have any inquiries been made recently?

Mr. Welsh.—I cannot think of any new registrations of companies formed to plant forests. The most recent one was the firm formed to mill the timber already grown.

Mr. Pettiona.—Is that company registered here?

Mr. Welsh.—Yes. It is called Pine Bach Limited.

Mr. Hollway.—You have no investigatory staff, have you?

Mr. Welsh.—No. I think it would be a very good thing if we did have such staff. Our companies staff consists on an average of six to eight men. They handle all the company activities of the State. It does not permit men to be sent out in order to make investigations.

Mr. Hollway.—In your opinion it would be an improvement if the Registrar-General did have an inspector or investigating officer, would it?

Mr. Welsh.—Yes.

Mr. Hollway.—At present, when application is made the Registrar-General's office is compelled to register a company which complies with all the requirements, is it not?

Mr. Welsh.—Yes.

Mr. Hollway.—You cannot refuse to register a company on the ground that you think it is "crook", can you?

Mr. Welsh.—No.

Mr. Quinlivan.—If it had an illegal object, we could object to registering it. The Registrar-General in New South Wales has an inspector who travels around the State.

Mr. Welsh.—Of course, in Victoria, there is the Company Squad of the Police Department.

Mr. Hollway.—It seems to me that you are too far separated from that squad.

The Chairman.—When it comes to asking a director why returns have not been filed, that is done by the local police officer, who is not in possession of full information as to the requirements of your office, is it not?

Mr. Welsh.—That is so. We had great difficulty in designing a form so that the policeman would ask the right questions.

Mr. Hollway.—You have made a recommendation that there should be closer liaison or, better still, an investigating officer appointed at the Registrar-General's office. Would you consider the placing of police staff in your office?

Mr. Welsh.—We have a member of the Police Force in the room at present, but he is not confined exclusively to our work. The Law Department uses him for other duties. Under the Act he would have no power to make inquiries.

The Chairman.—What does he do?

Mr. Welsh.—In our case, he is technically the informant when we are prosecuting a company for not filing returns. When inquiries are made by the Law Department in connection with any matter, that police officer makes an investigation.

Mr. R. T. White.—Has the counterpart of your office in New South Wales an inspector?

Mr. Quinlivan.—Yes. He travels all over the State.

The Chairman.—Do you know what powers that inspector has under the New South Wales Act?

Mr. Quinlivan.—I do not know exactly. He has power to investigate the filing of returns, and to compel the company to put up a sign at the location of its registered office. He also has power to inspect companies' share registers, but not their books of account. Frequently, we receive complaints from the Comptroller of Stamps. His officers visit certain companies and cannot find the share register. As a matter of fact, some of the companies do not have one. They might have a piece of paper on which the information is shown, but some of them have never issued a certificate of shares. That is one point on which an inspector could ensure that action was taken.

Mr. Pettiona.—In other words, the company has the register, but does not make it available to your officers?

Mr. Quinlivan.—The Comptroller of Stamps has power to examine them.

The Chairman.—But when he gets there he finds there are none to examine.

Mr. Quinlivan.—That is so. We used to send the policeman and one of our officers to inspect a register in a company's office. They would be told that the register was with the accountant. The accountant would say that he had sent it back, and on further inquiry the firm would say that Mr. So-and-so must have it, and suggest calling back after a couple of days. Then they would have one written up in an exercise book.

The Chairman.—There seems to be need for the Registrar-General's office to have some general power to inspect these records.

Mr. Taylor.—At present the Registrar-General's office is, in effect, a filing office. I am sure Mr. Quinlivan does all in his power to peruse memoranda and articles and advise accountants and solicitors.

The Chairman.—Which he was never intended to do under the Act.

Mr. Taylor.—That is so. He renders magnificent service to the two professions, but in a way we are just filing papers.

Mr. Hollway.—You have practically no judicial functions at all, have you?

Mr. Taylor.—No.

Mr. Pettiona.—Would any difficulties be created if this Committee suggested an amendment of the law to provide that the Registrar-General must receive a copy of the list of shareholders?

Mr. Welsh.—We do receive a list of shareholders.

Mr. Hollway.—But you do not receive lists of lot holders or unit holders, do you?

Mr. Welsh.—No.

Mr. Pettiona.—Would it cause any great administrative difficulties if those were included?

Mr. Quinlivan.—No. It would only require a little more spacing. I am concerned with the firms which have lots and so on. I think they should be debarred. In Queensland there is a man who ran about 25 of those concerns. Probably he will soon be back dealing with uranium.

The Chairman.—Mr. Taylor, I think it would assist the Committee if you could arrange to ascertain from your counterpart in New South Wales what statutory powers their inspector has. Then perhaps you might think it worth while to make a recommendation to this Committee in writing as to the value of an inspector and the powers he should be given.

Mr. Hollway.—Mr. Taylor could go further and, irrespective of what the position is in New South Wales, make a recommendation as to what further powers the Victorian officer should have.

Mr. Taylor.—As we have to confer the powers on the officer concerned we need not necessarily limit them to the powers granted in New South Wales.

Mr. Hollway.—Would you go so far as to say that the inspectors should have power to inspect books of account?

Mr. Taylor.—It is one of the corner stones of a proprietary company that its books of account are not open to inspection by any persons other than the directors of the firm. I do not know why they should not be open to inspection by other persons.

Mr. Pettiona.—Suggestions have been made that a balance sheet should be placed in a sealed envelope.

The Chairman.—That suggestion is to the effect that an audit should be conducted annually of the books of proprietary companies and that a copy of a properly audited balance sheet should be filed in a sealed envelope at the Registrar-General's office. Such envelope could be opened only by direction of the court.

Mr. Taylor.—If proprietary companies were compelled to file a copy of an audited balance sheet in such a manner, it might serve to curb any fraudulent activities.

Mr. Quinlivan.—In the de Bernales case, an investigator was appointed and an order of the court was obtained to open certain private balance sheets. It was ascertained, however, that those balance sheets were useless and more information could be obtained from the ordinary published balance sheets than from the private ones. To my knowledge, there have been only two orders of the court for the opening of private balance sheets; one was before the year 1910 and the other was in the de Bernales case about six or seven years ago. In neither case was the opening of private balance sheets of advantage.

The Chairman.—That is not quite the point. The suggestion has been advanced that all proprietary companies should be compelled to have an audit conducted by a licensed company auditor and to file an audited balance sheet with the Registrar-General. Mr. Mornane of the Law Department pointed out that if that were done it would ensure at least that there was a proper examination of the books of proprietary companies and that some record would exist of the state of affairs of the organization at the time of the examination. The procedure assumes necessarily that the audit would be properly conducted.

Mr. Quinlivan.—The audited balance sheet of a proprietary company would then be in the same form as a public company. The only difference would be that the document relating to a proprietary company would be placed in a sealed envelope and could be inspected only by an order of the court.

Mr. Thomas.—Would you suggest tightening the provisions relating to Memorandum of Association?

Mr. Quinlivan.—If the Committee is of the opinion that there should be any restriction concerning Memorandum of Association, I think the desired provisions should be incorporated in the Act.

Mr. Thomas.—The Memorandum of Association relates to the whole of the activities of a company.

Mr. Quinlivan.—The Memorandum of Association sets out the object of a company. In the case of some organizations, practically every conceivable object is covered. In some instances, however, only one or two objects are stated.

Mr. Thomas.—Is there any difference between the Memorandum and Articles of Association?

Mr. Quinlivan.—Yes, the Articles of Association comprise only the rules and regulations that govern the company, such as those relating to meetings, election of directors, transfer of shares, and so on. The Articles of Association may be altered by special resolution. Normally, 21 days' notice is necessary, but alterations may be effected in certain circumstances within a shorter period. It may be that written consent is given for the calling of a meeting at, say, 2 o'clock on a certain day. The company is registered in the morning of the appointed day and the meeting is held in the afternoon to convert it into a proprietary company.

Mr. Thomas.—Have you power, in the initial stages, to inspect the Memorandum and Articles of Association?

Mr. Quinlivan.—Yes.

Mr. Pettiona.—Would it be of advantage if the Companies Act were amended so as to give lot holders or unit certificate holders the same rights as shareholders?

Mr. Quinlivan.—I think it might be. Their interests would then be safeguarded. One aspect that occurs to me is that certain firms accept deposits on goods which they are subsequently unable to deliver. In my view, those firms should be compelled to pay the deposits into a trust fund.

The Chairman.—A recommendation has been submitted to this Committee to the effect that the provisions of the Lay By Act of New South Wales and the Trust Accounts Act of Queensland should be incorporated into the Victorian Companies Act. The purport of that legislation is to provide that goods cannot be sold on lay-by unless they are set aside and a bond provided to secure the moneys that are paid by way of deposits.

Mr. Thomas.—Is Mr. Quinlivan familiar with the provisions of the New South Wales Lay By Act?

Mr. Quinlivan.—No, I am not.

The Chairman.—I think this Committee can make a copy of that legislation available to Mr. Quinlivan. Subsequently, he may care to comment upon it.

Mr. Quinlivan.—I shall be pleased to do so.

Mr. Taylor.—As to the suggestion concerning the appointment of inspectorial staff, perhaps it would be of advantage if Mr. Quinlivan or Mr. Welsh were to proceed to Sydney to investigate the matter personally.

Mr. Hollway.—Probably that would be advantageous, because the responsible officer in New South Wales might have some suggestions to offer as to what the powers of the inspectorial staff should be.

Mr. Taylor.—It may be that the New South Wales inspector has some suggestions to offer for the enlargement or extension of the inspectorial powers.

Mr. Quinlivan.—In 1931 I submitted a report in which I suggested the appointment of an inspector in Victoria. My suggestion was to the effect that a police officer should be appointed for the purpose of ensuring that the various requirements of the Companies Act were complied with. This Committee possesses power to go much further than that and to ensure that all faults and defects arising from the present legislation are corrected. Generally speaking, the 1938 Companies Act is a good one.

The Chairman.—It would help the Committee if Mr. Quinlivan were enabled to report on the duties of the inspector in New South Wales, and probably it would assist Mr. Taylor in preparing his memorandum to the Committee when he makes recommendations concerning the powers and duties of the proposed inspectors here.

Mr. Pettiona.—Can Mr. Taylor say whether his office has issued titles relating to pine or other softwood plantations?

Mr. Taylor.—If the names of the companies concerned were supplied, a search could be made of the index and it could be ascertained whether any titles have been issued.

Mr. Pettiona.—As far as I know, the companies are registered in South Australia.

Mr. Hollway.—There would not be any record of those here?

Mr. Taylor.—No. Only companies holding land in Victoria are recorded in the index.

Mr. Quinlivan.—I have a record of all the Livingstone companies. Mr. Lauer, of Temple Court, Melbourne, is secretary of them. The operations of some of the companies extend over the Victorian border slightly, but most of them are in South Australia. Those companies are well looked after. I cannot say as much of the Victorian company which conducts the plantation at Dartmoor.

Mr. Welsh.—Some plantations are in the names of individual lot holders.

Mr. Pettiona.—Mr. Dundas Smith is trustee of a number of companies, and his reports concerning all plantations are identical. We have examined the plans of subdivisions of all these companies. In one area there might be 50 acres, and it has been ascertained that each company owns portion of it. In another plantation there might be 500 acres and each company again owns portion of it. This has brought to my mind a suspicion that each of the companies has sold the same lots twice or three times. One lot holder with whom I have been in contact has, on more than one occasion, visited a plantation at the invitation of one of the companies in which he is interested, and each time he has been shown a different lot which has purported to be the lot on which his pines are growing. I desire to clarify the question of titles.

The Chairman.—If Mr. Pettiona furnished the names of the companies, can Mr. Taylor supply the information required?

Mr. Taylor.—Yes. Records are kept. If Mr. Pettiona has in mind particular companies, it would be easy to search the titles, provided that the land comes under the provisions of the Transfer of Land Act, which probably it would.

Mr. Pettiona.—I should like Mr. Taylor to advise the Committee of Victorian lands occupied by the Livingstone companies.

Mr. Taylor.—Searches can be made to furnish that information.

The Chairman.—On behalf of the Committee, I thank Mr. Taylor, Mr. Quinlivan, and Mr. Welsh for their assistance. We await with interest Mr. Taylor's report concerning the proposed appointment of inspectors.

The Committee adjourned.

WEDNESDAY, 17th MARCH, 1953.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon. H. C. Ludbrook	Mr. Pettiona
The Hon. F. M. Thomas.	Mr. Randles
	Mr. R. T. White.

Mr. G. E. Fitzgerald and Mr. J. Wallace Ross, members of the Australian Society of Accountants, and of the Company Law Revision Committee of the Society, were in attendance.

The Chairman.—In welcoming Mr. Fitzgerald and Mr. Ross, I apologize to them for not giving as much notice to them as they might have wished. If they desire, the proceedings this morning can be in the nature of a preliminary talk and if there are any matters which are raised on which they are not fully instructed or would like further time to consider an opportunity will be given to them to submit evidence at a later date.

Mr. Fitzgerald.—Thank you, Mr. Chairman. I think that is the way we would like to proceed to-day.

The Chairman.—First, the Committee would like to know who the Australian Society of Accountants represents and its relation to the Institute of Chartered Accountants.

Mr. Fitzgerald.—The Australian Society of Accountants is comprised of men in public practice, in the commercial and industrial world, and also a number of men in the Public Service. For instance, the Victorian Auditor-General is a member of the council of the Society. The membership of the Society in Victoria is approximately 6,000 and in Australia about 17,000, including a number of country practitioners. The Society is concerned mainly with the audit and accounting provisions of the Companies Act. For some years after the introduction of the English legislation a committee, of which Mr. Ross and I are members, has been examining the Australian Companies Acts and comparing them with the English Act and endeavouring to formulate its views as to any alterations required in the Victorian Companies Act. The committee has been going through all the audit provisions, redrafting certain sections and making annotations as to the reasons for the alterations.

The Chairman.—The Committee is not concerned with the whole of the Victorian Companies Act. Our terms of reference are directed towards an amendment of the law, whether it be the Companies Act or any other legislation, which will serve to protect the public and the shareholders and creditors against the activities of fraudulent companies. If there are any specific matters you would like to raise on that aspect of our inquiry, we would be pleased to hear you now. If you are not ready to raise any such matters, the Committee has several aspects to refer to you.

Mr. Fitzgerald.—At this stage I do not think we are ready to raise any matters. The only thing we are concerned about is that some amendments may be made hastily to meet specific cases without considering the repercussions of such amendments. The Victorian Companies Act is a very good one, and in practice has worked satisfactorily. We would not like to see many of the English provisions introduced into the Victorian legislation because they are not suitable for Victorian conditions; in other cases they are cumbersome and unworkable.

Mr. White.—Are you conversant with the Acts operating in other States?

Mr. Fitzgerald.—Yes.

Mr. White.—In your opinion, how do they compare with the Victorian Companies Act?

Mr. Fitzgerald.—They are a long way behind the Victorian legislation.

The Chairman.—It might be of assistance if at this stage I indicated some of the principal suggestions that have been made to the Committee, and perhaps you would like to comment upon them. The first one of importance, I think, is related to the problem that apparently arises in the Law Department when efforts are being made to prove the state of affairs of a " crook " company's accounts following an investigation. Two suggestions, which are being seriously considered, have been made to the Committee. The first suggestion is that the opinion of a competent investigator of the state of affairs of a company's accounts at a particular date in the investigation, which is relevant to the proceedings, should be prima facie evidence of the state of the company's finances at that date. The alternative suggestion is that all companies, whether they be limited liability or proprietary limited companies, should be subject to an audit and that audited balance sheets of all proprietary companies should be lodged in sealed envelopes in the Registrar General's office. The balance sheet of any proprietary company would then be available for inspection on an order of the court, following an investigation of the company's affairs which disclosed irregularities.

Mr. Fitzgerald.—We have certain views on the second suggestion, and I shall ask Mr. Ross to expound them.

Mr. Ross.—First, I would like to make some general observations on the subject of rushing in to make reforms on the say-so of people who will frequently advocate them without fully comprehending the problem. Many members of our Society are strong advocates of the provisions that have recently been introduced in Queensland. I have no doubt that the views of one member have been placed before the Committee, I refer to Mr. Spackman whose ideas I shall discuss later.

Since the introduction of the " Bubble " Act in Great Britain in 1720, much legislation has been brought down to suppress alleged illegalities and irregularities. Some of these Acts have had harsh repercussions on the business life of the community. If Parliament introduces legislation to cover particular cases, we contend that bad law is made. In 1895, a Bill was introduced into the Victorian Parliament. It had a stormy passage through the Assembly and finally it was held up in the Council. Later it was referred to a Select Committee and many of its original proposals —they could be described only as " panic proposals " —were eliminated.

Mr. Thomas.—Did not legislation at that time apply only to banking companies?

Mr. Ross.—No. Legislation covering proprietary companies also was introduced. The then Attorney General had radical ideas that he proposed to put into force, but as the outcome of the investigation of the Select Committee, the proposals were watered down considerably. The reason stated for the introduction of Bills that resulted in the 1938 Act was the intention of the Legislature to protect the investing public. That was the predominant thought behind the amending legislation. I do not suggest that certain amendments are not necessary, but care must be exercised when Parliament is dealing with any forms of control intended to cover alleged frauds and irregularities.

Early in the 1930's, a group of companies, known as the MacArthur Companies, commenced operations in New Zealand, with branches in New South Wales and Victoria. The reckless manner in which the funds were being dissipated to the personal advantage of MacArthur, the man behind the scheme, led to the constitution of a Royal Commission in New Zealand to investigate the affairs of the concern and to make recommendations to tighten the company law. The New South Wales Parliament also set up a Royal Commission and appointed Mr. Justice Halse-Rogers as the Royal Commissioner. The then Attorney-General of New South Wales tried to persuade the Victorian Attorney-General to have a Royal Commission appointed in Victoria but the latter exercised commendable caution and introduced the first Companies (Special Investigations) Act, which had a life of nine months. It was general in its effect and enabled the appointment of inspectors to investigate the affairs of such companies.

The late Mr. Lance Cleveland and I were appointed to investigate the MacArthur Companies in Victoria. Before submitting our report we interviewed the Attorney-General because we knew he would feel disappointed at our conclusions; that is to say, we could not pinpoint any rogues in Victoria. The scheme was intricate and the real villains were not located in this State. We submitted a series of recommendations to overcome the weaknesses we had discovered in the Companies Act. I emphasize the following extract, which was included because the New Zealand Royal Commission had issued its report, recommending the creation of a body to be called the Corporate Investments Bureau.

Its functions were set out as follows:—

" Supervising prospectuses; investigating complaints; demand candid disclosure; prosecute breaches of the Act; apply for injunction against unconscionable and specious schemes and representations; power within statutory limits to relax rigid provisions of the Act; registration of promoters, directors, brokers, salesmen, and valuers with power to strike off register, none to operate save when registered, full powers to search and inquiry such as those given by the Companies (Special Investigations) Act 1934."

Arising out of that we stated in our report to the Attorney-General—

" We very definitely do not recommend the establishment of an office or body with power to supervise prospectuses, investigate complaints regarding company promotion and conduct after their establishment or to vest any such powers in the Registrar of Companies or any other official, though such a form of specific approval is advocated by some writers and has to a greater or less extent been adopted in several States of America. In some of these States the heights of paternal financial control reached are such as to become intolerable, while in others the strict observance of all the requirements has been found to be so difficult and productive of so much delay that the system has practically broken down. Apart from the American experience there are many other objections to a system of specific official approval of prospectuses and investigation of complaints.

" Apart from the recommendations made herein which aim at fuller information being disclosed in prospectuses, prevention of 'stale' prospectuses being used as the basis of a contract to take shares, debentures or bonds, civil and criminal responsibility for false statements made in prospectuses, definite information as to finances and assets of the companies issuing debentures and bonds being made

available to debenture and bond holders and appointment of trustees for debenture and bond holders, and the elimination or curtailment of share-hawking, we feel that it is undesirable to go further in the matter of official supervision over the issue of prospectuses than to place such statutory obligations upon directors and promoters as would inculcate into their minds the necessity for a larger measure of cautionary reserve and practical responsibility than at present prevails. In making this recommendation we do not overlook our recommendations in regard to amendment to Section 34 of Sir Leo Cussen's draft Bill."

Our report then proceeded a little further: As a result of some press publicity which was given to those recommendations at the time, I subsequently learned that the New South Wales Royal Commissioner applied to the Victorian Crown Law Department for a copy of this report. The Commissioner himself stated in his report—

"It will probably be generally conceded that in passing legislation for the protection of those who subscribe for debentures and shares in public companies there should be an endeavour to interfere as little as possible with the internal management of companies and with the conduct of the ordinary business affairs of the community. The New Zealand Commission has recommended the creation of a body to be called 'The Corporate Investments Bureau,' whose general functions are set out as under:—"

I have already quoted those functions. The late Sir Percival Halse-Rogers then went on to say—

"With all respect to the gentlemen who made the recommendation, I must say that in my view the reasons against the establishment of such a body are very strong. I say nothing as to the wisdom or otherwise of creating another Government Department with very extensive powers. It appears to me, however, that all the desired results can be obtained by legislative provisions such as I have suggested without the creation of another department to operate in a business world in which already complaints are often heard of over much departmental interference. I am in entire agreement with the passage in the report of the Victorian Committee:—"

His Honour then quoted the portion of our report to the Attorney-General which I have already read. Following that the Royal Commissioner went on to say—

"In concluding this part of my report I desire to say that I have been very considerably assisted by the report of the Victorian Committee to which I have made several references.

"Generally the recommendations which I have made are in accord with the recommendations of that Committee. As the document may not be generally available I propose to conclude by including in this report a brief summary of some of the objects aimed at, which is to be found in an Appendix to the report."

Mr. White.—What is the date of that report?

Mr. Ross.—It was ordered by the Legislative Assembly to be printed on 22nd January, 1935. The report of the late Mr. Cleveland and myself, and the views of the late Sir Percival Halse-Rogers, indicate generally the stand that the present committee of the Australian Society of Accountants takes respecting the action which should be taken in relation to those types of fraud which arise. The *Herald* published an article on 15th January, 1953, by Mr. E. T. Spackman, who is one of the members of our own Divisional Council, in which it is stated that audit is urged for private companies. I have no doubt that the Committee has heard views expressed in similar terms to those enunciated by Mr. Spackman, who wants to make all proprietary companies subject to audit and so forth. Mr. Spackman argues that when private companies get into difficulties it is frequently found that there is no proper record of assets and liabilities, no proper register of members, inadequate minutes, if any, of meetings of shareholders, and no secretary. Mr. Spackman stated in his article—

"A solicitor is required by the Legal Professions Practice Act to keep proper trust accounts and have them audited by a qualified auditor, who makes a report to the Law Institute each year before the institute grants a practising certificate enabling the solicitor to continue practising as such. There is some similarity between clients entrusting solicitors with their funds and creditors supplying goods on credit. Credit is, of course, trust in a person's ability and intention to pay for the goods."

He advances much more of that sort of argument.

The Chairman.—I do not think you need worry the Committee with your views on Mr. Spackman's arguments in favour of this proposal. The Committee would like to hear your views of the proposal. As a matter of fact, the proposal that I mentioned to you is not put up by Mr. Spackman at all. It is put up by the Assistant Crown Solicitor, seeking ways and means of enabling evidence to be brought in order to prove frauds which have occurred in respect of proprietary companies. The Committee would appreciate your comments on that aspect.

Mr. Ross.—I do not know that the question of audit is quite relevant. I have here a long opinion of the Assistant Crown Solicitor in preliminary draft form on the subject of taking proceedings against former directors of certain of the Rubinstein group of companies of which I am liquidator.

He has been engaged on this matter for some fifteen months. I admit that there are many difficulties, but I do not think that insistence on a compulsory audit would help in any way toward the solution of problems of the particular type that have arisen concerning that group of companies.

If I might digress for a moment, the learned inspector who investigated the first of these companies suggested that action should be taken against the directors under section 275 of the Companies Act which, as members of this Committee know, requires the liquidator first to form the opinion that there has been fraud. The inspector cited authority for his opinion, namely, the case of in *re William C. Leitch Bros. Ltd.* (1932) 2 Ch. 71. That placed me in considerable difficulty because, while I could say that there was much reckless optimism and mis-management, I could not say that there was any fraud.

Mr. Justice Maugham, who decided the case in *re* William C. Leitch Bros. Ltd., in a case during the following year, namely, in *re Patrick and Lyon Ltd.,* 1 Ch. 786, adverted to his decision in the earlier case and stated that, irrespective of who the party was that alleged the fraud, whether it be the liquidator, a creditor, a shareholder, or anyone else, he had to prove it to the hilt before the section could apply.

Subsequently, the matter was referred to counsel. I have no objection to stating that the counsel was Mr. John Bloomfield, who had much to do with the investigation of these companies. I submitted to him my peculiar difficulty as the result of a learned Queen's Counsel having suggested that there was a certain line of action to be taken when dealing with directors of these companies, and I could not find that the facts supported it. Mr. Bloomfield finally agreed with me that, as there was no fraud that could be established—although there was reckless optimism and mismanagement—no action could be taken under section 275 of the Companies Act.

The Chairman.—I think the deliberations of the Committee would be assisted if the matter were treated generally rather than a particular case being discussed. It is desired to obtain the views of Mr. Ross and Mr. Fitzgerald concerning the difficulty that repeatedly confronts the Crown, namely, that certain companies keep no proper books, or proper records of their transactions. In those circumstances, it is practically impossible to prove the position of a company at a particular time. Consequently, prosecutions which

should be successful in cases of fraud fail for the very reason that either the requisite information is not available, or, if it is available, the quantity of evidence necessary to enable the case to be brought to a satisfactory conclusion makes the task of proving it virtually impossible.

Mr. White.—Might I suggest that possibly Mr. Ross and Mr. Fitzgerald have not had sufficient time to prepare the evidence desired by the Committee.

The Chairman.—That may well be so. If Mr. Ross and Mr. Fitzgerald desire a further period of time to prepare their evidence, the Committee will be delighted to give it to them.

Mr. Fitzgerald.—Mr. Ross and I would appreciate that opportunity. I might say that both Mr. Ross and I hold particularly strong views against the proposal for a compulsory audit of the books of proprietary companies.

The Chairman.—Why?

Mr. Fitzgerald.—Our reasons will be given in detail later, but, briefly, I would say that we consider the matter of conducting an audit is entirely one for the shareholders who are members of the companies concerned. There could be many instances where compulsory audit would impose an unnecessary burden on members of a company. I believe that the matter should be left entirely to the discretion of the members of each individual company. If they desire to have an audit conducted, it should be their responsibility to appoint an auditor.

Mr. Ludbrook.—Do you not think that the minority of shareholders would be entitled to an audit?

Mr. Fitzgerald.—They can get it, if they so desire.

Mr. Ludbrook.—That may not be so, because the conduct of an audit would have to be decided upon by a resolution of the shareholders.

Mr. Fitzgerald.—The auditors would be appointed at the annual meeting of the company.

The Chairman.—If the problem merely concerned the defrauding of shareholders, it would be comparatively easy to say that the persons affected went into the matter with their eyes open and that, if they did not desire to appoint an auditor, that was their affair. The matter, however, goes further than that because a proprietary company is an instrument which is set up with certain protection and certain obligations under the law. It is capable of obtaining credit by misleading the public and, if the directors are inclined to be dishonest, they might easily mislead shareholders as to their intentions for the future operations of the company. That is the problem with which this Committee is concerned.

Mr. Hollway.—I suggest that a list of interrogatories be prepared and submitted to Mr. Fitzgerald and Mr. Ross and that the information desired be prepared by those gentlemen and submitted to the Committee at a later date.

The Chairman.—That will have to be during the second or third week in April.

Mr. Ross.—I should like to quote the opinion of Mr. E. L. Piesse, a former member of the Council of the Law Institute of Victoria, who wrote a series of articles which appeared in the Melbourne *Herald* some time ago. Referring to the subject of proprietary companies, Mr. Piesse stated—

"A proprietary company is often a partnership with less than half a dozen members, who for various reasons of safety or convenience desire to carry on business or to own property as an incorporated body. The law has for 40 years encouraged the formation of such companies. Some safeguards are necessary in the interests of the public, who may have voluntary or involuntary dealings with such a company. Some provisions as to amendment are necessary; but it is not clear that experience requires any great change in the present law.

Two or three persons who own investments in common, or who carry on some business, would often find that the simplest form of annual account met their needs, and frequently they would not consider that an auditor could render them services that would justify his fee. If they form a company, why should they be required to do more in these respects than they did as individuals?"

I submit that the statement cited is the crux of the matter regarding the audited accounts of proprietary companies. As Mr. Piesse suggested, many of them are merely bodies which consist of two or three members. A number give effect to family arrangements and trusts which do not trade. They implement schemes and arrangements for the conduct of a business under supervision, for exercising remote control over other companies, and perhaps policing licensing agreements when no trading is really carried out; contact with the public is negligible. We will certainly consider those questions.

I consider that the establishment of a case with a view to taking proceedings against directors of proprietary companies is no different from the preparation of one in the case of a public company. There is the instance of the public company which is subject to audit, and I maintain that it is equally difficult to prove irregularities or misfeasances in public companies as it is in private companies. I adverted to the Rubinstein group of companies. One of them was a public company, and two of the others, of which I am the liquidator and am concerned with in the opinion that Mr. Mornane has been preparing, were proprietary companies. The matter is just as difficult in the case of a public company as it is in the case of a proprietary company, so the mere fact that accounts are audited adds nothing to the files that are available when the question of taking proceedings arises.

The Chairman.—Surely, if there is an auditor, proper books of account will be kept by a company?

Mr. Fitzgerald.—Not necessarily.

The Chairman.—If proper books of account are not kept, is not the licensed company auditor failing in his duty?

Mr. Fitzgerald.—The auditor does not keep the books, but merely reports on their contents.

The Chairman.—An auditor will not issue a certificate that he has been supplied with all the information he requires to audit a balance-sheet unless books of account are kept.

Mr. Ross.—Even if there is in existence the most perfect set of books possible, problems still arise in proving particular things.

The Chairman.—We entirely agree with that statement and need not discuss the question further. Evidence submitted to the Committee on this subject so far has been on the basis that this suggestion, if implemented, will assist. I take it that both Mr. Fitzgerald and Mr. Ross agree that if a fraud has been perpetrated, every step should be taken to make the responsible person account for his fraud?

Mr. Ross.—That is so.

The Chairman.—A number of suggestions have been submitted to the Committee on how to make it possible to bring to book persons who commit fraud. A memorandum outlining the principal suggestions made will be prepared.

Mr. White.—Does the Australian Society of Accountants meet on an interstate basis?

Mr. Fitzgerald.—Yes, it is an Australia-wide body.

Mr. White.—Has the Society discussed the matters which form the terms of reference of this inquiry? I presume that the question of fraudulent companies has come before the federal body.

Mr. Ross.—I know—unfortunately, too well—the intimate details of the Rubinstein companies. In the press, we have read of the affairs of the Corio investment company, including the fact that a sensational report has been prepared by a Mr. Opas, but we do not know the contents of the report or what he alleges, other than the broad assertion that there has been fraud. Consequently, although the Society has a special committee dealing with all these company matters, it has not discussed them in detail because it has not information that would enable it properly to consider the subject.

Mr. White.—Have you any suggestions to make with a view to improving the Companies Act on the question of fraudulent companies?

Mr. Ross.—We have none to make at this stage. As Mr. Fitzgerald stated, we have been concentrating on the annual audit provisions, which we have considered to be extremely important. The Companies Act is one of the biggest acts on the statute-book. It abounds with complexities, and it will take us a long time to consider every phase of the matter, but we have a number of notes to consider when we have an opportunity to examine all these questions. Broadly, we have considered that the number of frauds perpetrated in the community in relation to companies is comparatively small, and that there has been no outstanding necessity for hasty amendment of the law.

Mr. Ludbrook.—If there were only one instance of a fraudulent company, that fact would not support a contention that amendment of the legislation is not necessary.

Mr. Fitzgerald.—The Tasmanian law provides for a compulsory audit. I act for a small company that has two shareholders, and there are no creditors. The company has ceased operations and the shareholders have lost their capital in trading. The company is being pressed to appoint an auditor because of the provisions of the Tasmanian Companies Act.

Mr. Ludbrook.—In some proprietary companies, that is all right while the shareholders, of whom there may be six, for example, work together amicably.

Mr. Fitzgerald.—The majority of private companies come into that category.

Mr. Ludbrook.—There are exceptions. It was reported in the press recently that one set of shareholders were spending all the capital of the company against the wishes of the other section.

Mr. Fitzgerald.—I was consulted concerning that company before the war, and I know that one should not believe everything one reads in the press.

Mr. Thomas—What would be the cost of an audit?

Mr. Ross.—It depends on the amount of work, and how well the work is done. The cost might range from a few pounds to thousands of pounds.

Mr. Fitzgerald.—It depends on the operations of the company and the manner in which the records of the company are being kept. If the records are in a bad state, the cost can be considerable.

Mr. Thomas.—The fact that the books are in a bad state is a reason why an audit is required. That state of affairs proves conclusively that somebody is being "jinked."

Mr. Ross.—Not necessarily.

The Chairman.—On that basis you would say that the better the company keeps its books, the cheaper the audit will be.

Mr. Fitzgerald.—That is so.

The Committee adjourned.

THURSDAY, 18TH MARCH, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. H. C. Ludbrook,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. N. L. Colbran, of the firm of Messrs. Corr and Corr, Solicitors, of 104 Queen-street, Melbourne, was in attendance.

The Chairman.—Mr. Colbran is present at our invitation following a letter which the Committee received from the firm of Messrs. Corr & Corr, Solicitors, stating that it was in possession of certain files containing information about softwood companies which have been under consideration by the Committee. The firm has offered to make the files available to the Committee, and it was felt that if a representative of Messrs. Corr and Corr could attend a meeting and not only produce the files, but also give some indication of the action they had taken to seek information in this matter, the Committee would be assisted in its deliberations.

Mr. Colbran.—Two clients of my firm are Mr. W. J. King, of 11 Summit-drive, Heidelberg, and Mrs. E. M. King, his wife, of the same address, who, in about the year 1943, entered into a number of contracts with certain companies, namely, Softwood (Australia) Milling Products, C.A.P. Treatment Co. Pty. Ltd., and C.A.P. Softwood Industries. There was an agreement, dated the 22nd August, 1941, between William John King and Softwood (Australia) Milling Products, of 422 Collins-street, Melbourne.

The Chairman.—That is the firm of Softwood (Australia) Milling Products, not a company?

Mr. Colbran.—Yes. Mr. King is described as a lot-holder and, under the contract, he purchased one lot for £60. Another agreement between the same parties was dated the 10th June, 1941, and covered two lots, each for the price of £70.

The agreement, dated 22nd August, 1941, relates to certain lots known collectively as Issue No. 12A, and Mr. F. Dundas Smith is the trustee for the lot holders. The agreement, dated 10th June, 1941, relates to lots collectively known as Issue No. 14C, and Mr. F. Dundas Smith is again the trustee.

The next agreement I produce is dated 18th June, 1943, and covers three lots, each of £65, known collectively as Issue No. Special 8B, of which Mr. F. Dundas Smith is the trustee. That agreement was made between Mr. King and C.A.P. Softwood Industries, again a firm and not a company.

A further one of 30th June, 1943, between William John King and C.A.P. Softwood Industries covered five lots, each valued at £65, and known collectively as Issue No. Special 8A, of which F. Dundas Smith is the trustee.

A further agreement dated 3rd February, 1941, between William John King and Softwood (Australia) Milling Products covered two lots, each valued at £60, and known collectively as Issue No. 14C, of which F. Dundas Smith is again the trustee for the lot holders.

Mr. Brennan.—Is there any indication of the total number of lots in any one issue?

Mr. Colbran.—No. A further agreement, dated 6th November, 1940, between William John King and Softwood (Australia) Milling Products covered two lots, each valued at £60, and known collectively as Issue No. 14C, of which again F. Dundas Smith is the trustee.

An agreement, dated the 10th April, 1942, between William John King and C.A.P. Softwood Industries covered five lots, each valued at £65, and known collectively as Issue No. 11c, of which F. Dundas Smith is again the trustee for the lot holders.

There is an agreement, dated 26th November, 1945, between Eileen May King and C.A.P. Treatment Co. Pty. Ltd., of 422 Collins-street, Melbourne. This agreement covered the purchase of five lots or portions, each valued at £70. Collectively, they are known as Plantation No. Special 5A. Mr. F. Dundas Smith is trustee for the lot holder.

Mr. Pettiona.—Can they be referred to strictly as portions?

Mr. Colbran.—The agreement refers to "five portions of the timber produced." A further agreement of the 26th November, 1945, is between William John King and C.A.P. Treatment Co. Pty. Ltd., covering the purchase of five portions, each valued at £70, in Plantation No. Special 5A. Mr. F. Dundas Smith is again the trustee.

The Chairman.—It appears that the seven contracts printed on blue paper are all made with firms and substantially are in a similar form?

Mr. Colbran.—Yes.

The Chairman.—The two contracts printed on white paper are made with a proprietary company and are in a similar form, but different from the contracts printed on blue paper.

Mr. Colbran.—That is true, yes.

Mr. Pettiona.—Did not some of the contracts printed on the blue paper refer to concessions and not to lots?

The Chairman.—In the third and fourth contracts, dated the 18th June, 1943, and the 30th January, 1943, made with C.A.P. Softwood Industries, Mr. King is referred to as a concession holder and not as a lot holder. The seventh contract mentioned by Mr. Colbran made with C.A.P. Softwood Industries also refers to Mr. King as a concession holder. There seems to be very little difference in the wording of the agreements except as to the description of Mr. King as a concession holder or a lot holder.

Mr. Pettiona.—Where the person is mentioned as being a lot holder, he paid £60; when he became a concession holder, he paid £65; and when he became a portion holder, he paid £70 for each portion.

The Chairman.—I do not think that is correct. Actually, in the first agreement, where Mr. King is stated to be a lot holder, he paid £60, although £70 was printed in the contract and reduced to £60. In the second contract, as a lot holder, he paid £70; in the third, as a concession holder, he paid £65; in the fourth, as a concession holder, he paid £65; in the fifth, as a lot holder, he paid £60, but the amount was reduced from £70; the same position existed concerning the sixth contract; and in the seventh contract, as a concession holder, he is shown as paying £65. There seems to be no consistent pattern.

Mr. Colbran.—Apparently, Mr. and Mrs. King did not receive reports as to the progress of the plantations in which they had lots or portions, and they consulted us to see if we could obtain some information from the companies concerned as to when they were likely to receive a distribution. I think it might assist if I read the first letter which we sent to the Secretary of C.A.P. Softwood Industries on the 8th February, 1951.

It reads—

Dear Sir,

We are acting for Mr. W. J. King, of 326 Bell-street, Preston, who is the lot holder named in a number of contracts with your company. Mr. W. J. King also is the holder of two contracts with an allied company, the Softwood (Australia) Milling Products. We are also acting for Mrs. E. M. King, who is the holder of a contract with another allied undertaking, C.A.P. Treatment Co. Pty. Ltd.

It would appear from a perusal of the documents that our clients should have received from your undertakings before this payments on account or in settlement of the produce grown upon the lots, but, up to date, our clients have received nothing.

We shall be pleased if you will advise us of the precise position in respect of the various contracts entered into by our clients and as to approximately when our clients can expect to receive some payments in accordance with their rights under the contracts.

We received the following letter from the acting secretary of C.A.P. Treatment Co. Pty. Ltd., Mr. F. K. Berner, dated 14th February, 1951:—

Dear Sirs,

re W. J. and Mrs. E. M. King:

We duly received your letter of 8th instant wherein you refer to sundry agreements which were entered into between William John King and the firm, C.A.P. Softwood Industries, which firm, acting under a clause in the agreements, exercised its option and transferred all its rights and obligations to this company, C.A.P. Treatment Company Pty. Ltd., who duly gave notice in writing to the concession holder and the trustee accepting such rights and obligations.

In reply to your inquires, we would inform you that, although the plantations have made satisfactory progress, no marketing has yet taken place in connexion with the areas in which your clients are interested and it will, therefore, be appreciated that no payments are yet due to them in connexion with their holdings, but in due course milling operations will be undertaken and the proceeds therefrom distributed by the trustee for concession holders in accordance with the conditions of the contracts. It is not anticipated, however, that this will be undertaken in the immediate future.

The contracts which refer to Issues Special 8A, Special 8B and 11c provide (inter alia) that concession holders of the issues are now entitled to their proportion of 90 per cent. of the full net amount of realization of the produce from concession area or areas, notwithstanding that the total sums received by the concession holder shall exceed the amount per concession previously referred to.

It will be appreciated that the 90 per cent. referred to becomes payable only after there is realization of the produce from concession area or areas, after which the proceeds therefrom will be distributed by the trustee for concession-holders as set out in the contracts.

The plantations are continuing to make satisfactory progress and have been subject to regular inspections by the trustee for concession holders, who has advised that he anticipates forwarding a further report to investors within the coming month.

Then appears a most interesting statement from our point of view—

A company in Sydney has advised us that they are willing to consider the purchase of a limited number of concessions and portions at face value and if your clients feel that this would interest them we will be pleased to write to the Sydney company asking if they would place these investments or some of them on the list for sale.

We will therefore be glad to have your further advice in due course in order that we might communicate with the company in Sydney.

We immediately asked them to put our clients' lots and concessions on the list for sale with the Sydney company. We have received no further information on that aspect, and no sale has taken place. The file proves that we have made repeated requests to Mr. F. Dundas Smith, the trustee for the lot holders and concession holders, to supply further information. It is only when money is paid to him as the result of milling operations that lot holders are entitled to receive anything. As I have stated, the first letter in connexion with this matter was written early in 1951, and on the 31st January, 1952, we wrote to Mr. F. Dundas Smith as follows:—

We thank you for your letter of the 25th January and for your advice.

Would you kindly advise us as to when, in the ordinary course of events, the plantations will be sufficiently advanced in growth to enable milling operations to commence and as to when approximately in your opinion our clients may expect to receive some return from their investments.

We realize that the answers to these questions may be difficult, but we would like to obtain some indications in the matter.

We note that certain of our clients' contracts are with a firm known as Softwood Australia Milling Products and certain with another firm known as C.A.P. Softwood Industries. The remaining contracts are with C.A.P. Treatment Co. Pty. Ltd. Neither of the above-mentioned firms appear to be registered at the Office of the Registrar-General at Melbourne. We assume that the assets of the firm have been taken over by C.A.P. Treatment Co. Pty. Ltd. and Softwood Products Treatment Co. Pty. Ltd., but we would like to confirm this fact and to have your advice as to how this transfer of assets was effected and your assurance that the transfers are in order.

Please also advise us who were the proprietors of the firms known as Softwood Australia Milling Products and C.A.P. Softwood Industries.

On the 8th February we received a formal acknowledgement, and on the 29th February, 1952, this reply came from Mr. Dundas Smith:—

Further to your letter of 31st ultimo, I appreciate that you realize that it is not easy to estimate as to when the plantations will be sufficiently advanced to enable a milling programme to be undertaken.

The firms known as the Softwood (Australia) Milling Products and C.A.P. Softwood Industries were owned by the late Albert George McDonald. The contracts between the firms and the lot holders provided (inter alia) that the firms could by reason of assignment transfer their rights and obligations under the contracts to the proprietary limited companies, respectively Softwood Products Treatment Company Pty. Ltd. and C.A.P. Treatment Company Pty. Ltd. Notice of the assignment was duly given to the lot-holders and myself as set out in the contracts.

From time to time the company receives inquiries for a limited number of lots at face value and this permits clients who are unable to hold their lots until maturity to dispose of them.

It will be seen that the issue was side-stepped.

The Chairman.—There was no assurance that everything was in order?

Mr. Colbran.—That is so. On the 4th March, 1952, we addressed Mr. Dundas Smith in these terms—

We have your letter of the 20th ultimo.

Whilst we appreciate that it is not easy to estimate as to when the plantations will be sufficiently advanced to enable milling operations to be undertaken, we feel that, as trustee for the lot-holders, you should be able to give some indication as to approximately when this stage of advancement has been reached.

Would you kindly give the matter some further consideration so that our clients can have some idea as to when they are likely to receive some return from their investment.

Referring to the ultimate paragraph of your letter under reply, would you kindly include our clients amongst the lot-holders who are desirous of disposing of their interests in the plantations.

This reply was received from Mr. Dundas Smith on the 28th March, 1952:—

I have to hand your letter of 4th instant and in reply thereto would advise that I will inform the company that it is desired that your clients be included amongst the lot holders who are desirous of disposing their interests in the plantations. In due course I presume they will be disposed of, and I therefore see no point in answering the first paragraph of your letter.

Then, on the 4th April, 1952, we wrote to Mr. Dundas Smith—

We have your letter of the 28th ultimo and thank you for your letter and the advice therein contained.

However, we do not agree with your presumption that there is no point in answering the first paragraph of our letter of the 1st ultimo. It is most material for lot holders to have some idea as to when the forests will reach maturity and be capable of milling.

We must, therefore, request that you let us have the answer to this inquiry at your earliest possible convenience.

A formal reply to that letter was received on 19th April, 1952. The following letter, dated 19th May, 1952, was sent to us by Mr. F. Dundas Smith:—

Further to your letter of 4th ultimo, I would advise that it is not part of my duty to make estimates, but my private opinion is that thinning can be undertaken about the age of fifteen years and final milling at about the age of 25 years.

I have informed you that I have asked the company to include your clients amongst the lot holders who are desirous of disposing of their interests in the plantations and have no doubt that, if it had not been for the difficult times, some of the lots would have been disposed of by now, but I am informed that there are buyers occasionally and that the prospect of eventually finding a buyer is quite good.

The letter was signed by Mr. F. Dundas Smith as Trustee for Lot Holders, Softwood Products Treatment Co. Pty. Ltd. and C.A.P. Treatment Co. Pty. Ltd. On 30th May, 1952, we wrote as follows to Mr. F. Dundas Smith:—

Re Mr. W. J. and Mrs. E. M. King and Softwood Products Treatment Company Pty. Ltd. and Ors.

We thank you for your letter of the 19th instant.

We note that you stated as your information that thinning of the trees can be undertaken about the age of fifteen years and final milling at the age of 25 years. We take it that each of these periods commences from the date of planting of the trees, but would like your confirmation on this point.

If this is so, would you kindly advise us the date upon which the trees were planted.

We did not receive a reply to that letter. On 19th August, 1952, we followed that up with a further letter to Mr. F. Dundas Smith—

We refer to our letter of the 30th May last to which we have had no reply.

We have been compelled to advise our clients that we can obtain no satisfaction in this matter, and they have instructed us to the effect that, unless within fourteen days from date our specific questions are answered, the matter is to be referred to the Attorney-General for his investigation.

No reply was received to that letter. On 24th September, 1952, the following letter was addressed by us to the Honorable the Attorney-General:—

We desire to bring under your notice the activities of the companies known as Softwood Products Treatment Co. Pty. Ltd., C.A.P. Softwood Industries and C.A.P. Treatment Co. Pty. Ltd.

We are acting for Mr. W. J. and Mrs. E. M. King, both of the Eyrie, Eaglemont, who are considerable lot holders in respect of each company.

For some very considerable time past we have been endeavouring to obtain some satisfaction from the companies as to their general position and, more particularly, as to when the companies expect to start milling operations in order that the lot holders may receive some return from their investments, which were made a considerable number of years ago.

We have been unable to obtain any satisfaction whatsoever from the reputed trustee for lot holders, who continually, in our opinion, evades the questions that have been asked him, and is not prepared apparently to accept any responsibility in the matter.

We have had the opportunity of perusing a letter written by the Secretary of the Crown Law Department, and the Honorable T. T. Hollway, setting out the position. The solicitor for the companies has also told us that we can obtain nothing by approaching the Honorable the Attorney-General as the companies are protected by certain advice tendered by learned senior Counsel. Notwithstanding this advice, we are of the strong opinion that in the interests of lot holders and of the general public, that the operations of these companies should again be investigated by the Attorney-General. We should be pleased to make our file available for the officers of your Department if need be.

Would you kindly give the matter your further consideration.

The Attorney-General replied as follows in a letter dated 26th September, 1952.—

I have your letter of the 24th instant in which your urge that an investigation be conducted under the provisions of the Companies (Special Investigations) Act and the Business Investigations Act 1949 of the above-mentioned companies and firm, and desire to indicate, that as stated by you, an investigation commenced in the same matters in 1948 was discontinued on the ground that strictly the provisions of the first-mentioned Act were not applicable to the circumstances of these particular companies in that there were no "creditors" or "shareholders" in whose interests the investigation could be carried out. Learned King's Counsel through the companies' solicitors tendered advice on the matter which was accepted by the Attorney-General for the time being (The Honorable T. D. Oldham).

It would therefore seem that the legal position being as it is I would have no power to act under the statutes mentioned but will be glad to know if you can point to anything that should influence me in taking a decision in this matter for as at present advised neither the trustee for the lot holders or the lot holders themselves can in any way be regarded as creditors and possibly could only become so after judgment has been obtained by them against the company.

It would seem from a perusal of the file that the trust deed entered into by the company and the trustee for the lot holders gives to lot holders certain remedies in circumstances such as set out by you and perhaps a perusal of the trust deed may present a means whereby your client can obtain the satisfaction he seeks.

That letter was formally answered by us on 3rd October, 1952. Early in 1953 I attended at the Crown Law Offices with a view to having a look at the trust deed to see how we could take up the Attorney-General's suggestion of taking action against the trustee for the lot holders. They have a most voluminous file in the Crown Law Offices on the subject, and this was made available to me, but there was no trust deed in the file nor a copy of it.

The Chairman.—There is no suggestion that they had a copy of the trust deed and that they were keeping it from you, is there?

Mr. Colbran.—No. They made the whole file available to me. I was able to take extracts from an opinion of Mr. E. R. Reynolds, Q.C., which was apparently confirmed by Mr. R. G. Menzies, Q.C.

I telephoned Mr. Oswald Burt in an endeavour to obtain a copy of the trust deed. Mr. Burt talked at great length and assured me that he could not see what our clients were worrying about, that these companies had been repeatedly inquired into, that questions had been asked in the Legislative Assembly concerning them, and that everything was perfectly in order. He stated that there was a report from the trustee which had just recently come to hand and that he would forward a copy of it to me.

The Chairman.—When did this conversation take place approximately?

Mr. Colbran.—I have no exact note, but I would say about February or March, 1953. Mr. Burt also advised me that most of the records relating to the titles to the land on which these plantations are situated were in the hands of the secretary of a new company which had been formed, Consolidated Trusts Corporation Limited care of F. Oswald Barnett, 422 Collins-street, Melbourne. Mr. Backholer is the secretary of that company. I was completely fobbed off on the point of having a look at the trust deed. I have never seen the trust deed, and I am not able to say what rights the lot holders have against the trustee.

The Chairman.—Subsequently, you exchanged correspondence with the secretary of the new company?

Mr. Colbran.—Yes. Before that, I had written to Mr. Doube, M.L.A.

The Chairman.—Did you examine the correspondence which is on the files of the Crown Law Office?

Mr. Colbran.—Yes.

The Chairman.—From your examination of that information, would you say that it was given on instructions supplied to counsel by Mr. Oswald Burt?

Mr. Colbran.—Yes.

The Chairman.—It did not purport to be a complete review of the position?

Mr. Colbran.—No, it did not. Early in May, 1953, I attended at the office of Mr. Backholer, who is a partner in the firm of F. Oswald Barnett and Company and, from the conversation I had with him, I gained the impression that he was, to use a term, sweet reasonableness itself. He was extremely pleasant and ostensibly helpful about the matter. He pointed out to me, however, in a somewhat rambling dissertation, that many years ago he had purchased certain lots in a New Zealand pine forest and that he had not received much satisfaction from them for a considerable period of time. He also stated that a formidable difficulty concerning these forests was that, although adequate provision was made for planting of the trees and growing of the timber, apparently no provision was made for the milling of the timber when it reached maturity. Therefore, it was entirely at the discretion of the trustee to determine when and how the timber would be milled. I understand that, at one stage, the New Zealand Government intervened, but that is now a matter of history.

As to the forests in South Australia, Mr. Backholer stated that Mr. Oswald Barnett had made an on the spot investigation in company with the ranger in charge and had identified each particular concession—not each individual lot but each collective issue—and satisfied himself that the timber was in good condition and was being adequately protected by fire breaks, thinning out and general attention. Mr. Barnett also satisfied himself that the titles to the property were in order.

Much of the conversation that I had with Mr. Backholer was off the record. He intimated that he was sympathetically disposed toward the lot holders, but he rather felt that they were in the category of speculators. He expressed himself as being quite sure that the value was in the plantations and in the land itself, but he could not state precisely when the lot holders would receive a return from their investment.

Mr. Brennan.—Did Mr. Backholer say that he had inspected the forests personally?

Mr. Colbran.—He did not inspect any of the forests himself, but his partner, Mr. Oswald Barnett, had done so and had made a report. I perused Mr. Oswald Barnett's report, a comprehensive document, which stated that he had seen the forests, had inspected the titles, and was quite satisfied.

Mr. Brennan.—Did he identify any of the land?

Mr. Colbran.—He identified the particular issues.

Mr. Brennan.—With certain land?

Mr. Colbran.—Yes.

Mr. Brennan.—Legally described?

Mr. Colbran.—No. Mr. Backholer also advised that Mr. Barnett had informed the trustee—and, apparently, the companies—that he was of the opinion that, for the further protection of lot holders, the titles to the land should be vested in a separate company altogether. Consequently, Consolidated Trusts Corporation Limited was incorporated and the titles to the land were transferred to it.

The Chairman.—Mr. Oswald Barnett's partner was the secretary of that organization?

Mr. Colbran.—Yes.

Mr. Randles.—Who were the shareholders?

Mr. Colbran.—I do not know.

Mr. Randles.—It seems as though the same people are in control of both the plantations and Consolidated Trusts Corporation Limited.

Mr. Colbran.—I should think so.

Mr. Pettiona.—Have you in your possession, at this moment, a copy of the report of the trustee with respect to Consolidated Trusts Corporation Limited?

Mr. Colbran.—No. I have with me a report of C.A.P. Treatment Company, which is dated February, 1951. In the course of the conversation I had with Mr. Backholer, I indicated that I intended to ask him certain specific questions, and he undertook to endeavour to obtain the desired information and reply in due course. On the 18th May, 1953—within a week or two of our conversation, I should say—I addressed the following letter to the secretary of Consolidated Trusts Corporation Limited, care of F. Oswald Barnett, 422 Collins-street, Melbourne:—

Further to our telephone conversation herein, we would be pleased if you could advise us on the following matters:—

1. What is the average size of each Lot in the following Plantations:—

Special 5A
Special 8A
Special 8B
11C
12A
14C.

2. What was the average cost of planting pine tree seedlings on these Lots?

3. What is the precise location of the land on which the above Plantations have been established?

4. What is the age of the oldest Plantation in which our above client is a Lot Holder?

5. Has any money been paid and if so what sums to the Trustee for disbursement amongst the Lot Holders of the Plantations in which our client is interested?

We fully appreciate that it may take you some time in which to provide us with answers to some of these questions. We are particularly anxious however, to know whether the Trustee for the Lot Holders has received any payments from the Companies for disbursement to the Lot Holders as it would appear that our client is not entitled to receive any money whatsoever until it has been paid to the Trustee.

Under date the 29th May, 1953, I received a formal reply to that letter, in the following terms:—

Referring to your recent letter in the above matter, we have to advise that Mr. Backholer is away in Sydney, but that your letter will receive his early attention when he returns towards the end of next week.

On the 26th June, 1953, I forwarded another letter to the Secretary of Consolidated Trusts Corporation Limited. It was as follows:—

We refer to our letter to you of the 18th May last and to the reply which we received from your firm on the 29th ultimo.

We would be pleased to receive the information requested in our letter of the 18th May.

No reply was received to that letter. On the 23rd September, 1953, I forwarded a further letter to the secretary, Consolidated Trusts Corporation Limited, stating:—

We refer to our letters to you of the 18th of May last and the 26th June last and note that we have not received a reply to them. We are sure that your failure to supply the answers requested in our letter of the 18th of May is due entirely to an oversight on your part

We would appreciate it therefore if you would look into this matter and let us have the further information requested within the course of the next few days.

I have had no further correspondence with Consolidated Trusts Corporation Limited; I have received no reply to the letter of the 18th May, 1953.

The Chairman.—Have you had a recent conversation with Mr. Oswald Burt?

Mr. Colbran.—No.

The Chairman.—Has Mr. Oswald Burt at any times suggested to you that he would be pleased to supply all the information you desired concerning this matter if you contacted him?

Mr. Colbran.—No; there was no such suggestion made. Mr. Burt stated that he would make a copy of the trustee's latest report available to me, and he did so. It had to be returned to him.

Mr. Randles.—Neither you nor the clients have ever seen a copy of a balance-sheet prepared by any one of these companies?

Mr. Colbran.—No.

Mr. Pettiona.—The names of the directors of Consolidated Trusts Corporation Limited are Frederick Dundas Smith, chairman; Walter Oswald Burt, solicitor; and Arthur H. Andrew, investor; and the registered office of the company is 24 Weymouth-street, Adelaide, South Australia. Apparently the trustee's report for 1951 was forwarded to Consolidated Trusts Corporation Limited a long time ago.

The Chairman.—At a meeting of this Committee, Mr. Burt was asked:—

"Why have Messrs. Corr and Corr received no reply to requests for information made by them? If the Committee asks for this information, can it be supplied?"

Mr. Burt replied—

"Yes. As a matter of fact, I thought I had satisfied Messrs. Corr and Corr. I informed their representative that I would make any further information they desired available."

Have you any recollection of any conversation of that sort taking place?

Mr. Colbran.—No. I suppose it would depend entirely on what he meant by "further information." The information which he gave and which he was willing to give was limited entirely to the trustee's report.

Mr. Brennan.—Was any suggestion made by Mr. Burt or anybody else on behalf of these undertakings that your clients had only an interest, not any definable right, in the matter?

Mr. Colbran.—That is quite possible. It could have been mentioned either by Mr. Burt or by Mr. Backholer. Certainly that has been in my mind ever since I considered the Law Department file relating to the matter.

Mr. Brennan.—They did not state that your clients owned a particular acre of land?

Mr. Colbran.—No; there has been no suggestion that they owned particular acres.

Mr. Randles.—The trustee's report is a secret document—if there is in existence such a document—between the various companies and Mr. Dundas Smith?

Mr. Colbran.—I have never seen such a document.

Mr. Randles.—So far as you know, your clients have never seen a copy of it?

Mr. Colbran.—That is so.

Mr. Randles.—They do not know whether they are protected or not?

Mr. Colbran.—That is the position.

Mr. Thomas.—Has anyone else in your firm had any dealings in this matter?

Mr. Colbran.—Yes, Mr. Alan Corr, until the letter to the Attorney-General was sent.

The Chairman.—Has anyone in your firm recently had any conversations on the subject with Mr. Oswald Burt?

Mr. Colbran.—Not to my knowledge

Mr. Randles.—For two or three years you have been writing to these companies and have never received a satisfactory reply?

Mr. Colbran.—That is so.

Mr. Brennan.—The Sydney company did not write to you?

Mr. Colbran.—No.

Mr. Pettiona.—Did you ascertain the name of the company?

Mr. Colbran.—No.

Mr. Brennan.—Was any report on the age of the trees made to your clients when they bought the shares?

Mr. Colbran.—Not to my knowledge.

Mr. Pettiona.—The contracts state that pines shall be planted for them; there is no time of planting stipulated.

Mr. Colbran.—Concerning any amendments of the Companies (Special Investigations) Act, I have raised this matter with our Mr. Bunny, and he has informed me that he will look into the matter from his point of view.

Mr. Pettiona.—What would be your view if the Committee recommended that lot, concession, or portion holders should be placed upon the same footing as shareholders?

Mr. Colbran.—Personally, I think that would be most desirable.

Mr. Brennan.—What is the total amount of investment made by Mr. and Mrs. King in these firms?

Mr. Colbran.—About £1,950.

Mr. Randles.—Are they the only two people who have made complaints to you about these concerns?

Mr. Colbran.—They are the only ones who have been to see me; I have no knowledge of any other clients in the same position.

Mr. Pettiona.—Has Mr. King ever tried to inspect his particular lots?

Mr. Colbran.—No, not to my knowledge.

The Chairman.—On the information available to him at present, probably you would not advise him to do so?

Mr. Colbran.—I should not think so.

The Committee adjourned.

TUESDAY, 23RD MARCH, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. H. C. Ludbrook,	Mr. Hollway,
The Hon. F. M. Thomas,	Mr. Pettiona,
The Hon. T. W. Brennan.	Mr. Randles,
	Mr. White.

Mr. J. Opas, A.F.I.A., Public Accountant, was in attendance.

The Chairman.—On behalf of members of the Committee, I welcome Mr. Opas to its deliberations. Mr. Opas is aware of the Committee's terms of reference. He is an accountant who has had a good deal of experience investigating companies, both as a special investigator appointed by the Attorney-General and as an investigator appointed by companies which have got into difficulties and felt that they needed a complete investigation of their affairs in order to clear up the sins of the past. Mr. Opas has brought with him a large volume of documentary data and proposes to give the Committee information concerning the types of frauds that he has discovered and how they were perpetrated and, no doubt, some suggestions as to how they can be prevented in the future.

Mr. Opas.—With your permission, I propose to give the Committee factual data which I have compiled over the years. Then I propose to make one or two recommendations as a result of my experience. Firstly, I shall put before the Committee my experience in relation to bogus companies. Then I shall deal with trust certificates and the like, followed by a discussion on standards of auditing. Fourthly, I shall mention trustees of option certificates and their remuneration. Then I shall describe files which I have accumulated and left with the Police Department, designating the different police officers who have handled them. My sixth reference will be to Stock Exchange limitations and the necessity for the Stock Exchange to properly co-operate with regard to the examination and surveying of different companies which are on their lists.

The first item I wish to put before the Committee is an article headed "This is How You are Robbed!", by the Finance Editor of the *Argus*, which appeared in that newspaper on 5th October, 1949:—

More than £1 million worth of valueless "trust certificates" have been sold to unsuspecting persons in Australia since the 1939-45 war by high-pressure teams of smart men and women. They have not been operating for the benefit of the buyers.

Behind the announcement on Monday that the State Government was considering legislation to deal with "share hawking" lies a practice of selling "trust certificates" which is believed to have begun on a big scale through endeavours of promoters to take advantage of the deferred pay of ex-service men and women since the war ended.

"Trust certificates" are documents which purport to give holders rights to receive from a trustee a share of profits which may accrue at some future date from the "commercial operations" of a business undertaking.

But a "trust certificate" does not legally give the holder a share in the undertaking. Upon a trustee rests the responsibility for distributing on behalf of the proprietor of the firm profits made.

The name of the undertaking usually appears on the certificate, together with the terms on which the trustees undertake to distribute any profits made.

Sellers of "trust certificates" usually work on the basis of 30 per cent. commission, which enables promoters to hand pick their agents from a wide field.

Teams of salesmen usually canvass from door to door, chiefly in country towns.

They tell prospects that only five or six certificates are allotted to that particular town. If they are not taken by 4.30 p.m. that day the opportunity will be gone forever, as the next town will certainly take the balance in addition to its own allotment.

On being pressed in this way many a waverer has made a snap decision in the salesman's favour, which he has regretted later at leisure.

To such an awkward question as: "Why is it necessary to hawk a gilt-edged 10 per cent. proposition?", the usual reply is:

"This is a post-war industry, which will be owned by the people as a whole in what, we hope, will be the post-war manner of business proprietorship. We don't want the business barons of Collins-street."

The hawker, having effected a sale, usually obtains from the victim names of friends who might also be interested. This gives a field of personal contacts which grows in chain-letter proportions.

Sometimes a dividend is paid on these investments—presumably out of capital. There is, however, no general distribution to certificate holders.

Victims have come from every walk of life, the notable exceptions being business men with some knowledge of legitimate investment practice.

Hawking of shares has been forbidden in Victoria since 1938, when legislation on the lines of British law was introduced.

The prohibitions in the Act are technically evaded, not by selling shares, but by selling "certificates of trust," giving rights to unspecified profits at some future date.

The Act applies only to companies, associations, or clubs, and not to syndicates or private firms.

Hawking of certificates has come under the notice of the Stock Exchange because many people have sold first-class securities to take up this worthless paper.

Brokers have, in many cases, been able to save their clients serious loss when the propositions quoted have been referred to them.

The Stock Exchange has always been unequivocally opposed to any form of "share hawking." It would welcome legislation to prohibit the sale of worthless "trust certificates", which on the surface have the appearance of shares.

It is the height of folly for people to part with money for investment in such enterprises without advice from a member of the Stock Exchange, banker, or business man.

The following paragraph appeared separately in bold print:—

"Trust certificates have been tested in the highest appeal court in England, and reported in Volume 30 of the Law Journal, Chancery Division, page 39. The judges held these certificates did not offend against the Companies Act and they were an entirely legal association." This is the type of circular which has been sent out to purchasers of trust certificates to assure them that such transactions are within the law.

Now I should like to submit to the Committee a statement which was prepared by Mr. Hanfield, late of *Smith's Weekly,* and myself, some time ago on behalf of Mr. Galvin, M.L.A., for use in his speech on the Business Investigations Bill.

The Chairman.—Perhaps this statement, which deals with Bristo Plastics and the formation of a public company, Century Industries, to take over that firm, could best be dealt with by a reference to the *Hansard* report of Mr. Galvin's speech—Vol. 231, page 3750.

Mr. Opas.—The next thing I want to put in is my file relating to Bristo Plastics. Due to the fact that Bristo Plastics had as trustees Messrs. A. M. Cameron and S. O. Morrison, the undertaking, since its inception, collected something like £500,000 from unsuspecting investors, and got away with it. After the proprietors—Cameron and Morrison—got practically all of the substance from the business, and had left assets which then, at best, would be valued at only £120,000 approximately, a new company was formed. Every unit holder had to take shares in the new company, which meant that, for every £100 unit, shares worth £5 in the reconstructed company—New Century Industries Ltd.—had to be taken up. That company has had a very chequered existence and I doubt whether the investors have received or will receive any return whatsoever from it.

Mr. Thomas.—Had those units any value in terms of money?

Mr. Opas.—To my way of thinking, they are absolutely valueless and they always were so. In the first place, there was never any market for them. Secondly, it was a long-range proposition, something like the song "Kathleen Mavourneen," inasmuch as it may be for years and it may be forever. When the unit holders wanted to realize, there was practically nothing left, even if a buyer could be found.

Mr. Pettiona.—Do you suggest that, because investors were compelled to take a £5 share for every £100 share, Cameron got away with virtually £95 in every £100?

Mr. Opas.—Yes. Bristo Plastics formed a subsidiary company which was known as Academy Plastics. That organization was run by Cameron, Morrison, and Pomeroy, the same men as those who conducted Bristo Plastics. The stage was reached that an offer was made by Bristo Plastics to the shareholders of Academy Plastics to take the latter organization into the former and to give to the shareholders in Academy Plastics units in Bristo Plastics. When the shareholders in Academy Plastics were called together, they voted out Cameron and Morrison, took over control of the company, and started their own investigation. They then issued a writ against Cameron out of the Supreme Court. Messrs. Smith and Emmerton were the instructing solicitors, and Dr. Woinarski was engaged as counsel. At the court, Cameron would not fight the action, but paid the writ in full, with costs.

Mr. Thomas.—To what extent was the writ?

Mr. Opas.—In excess of £3,000. Details could be obtained, if desired, from Mr. Hamer of Messrs. Smith and Emmerton.

Mr. Randles.—The writ was taken out for a very small sum of money, having in mind the comparative fortune that was made by Cameron out of his fraudulent dealings.

Mr. Opas.—The firm concerned on that occasion was Academy Plastics, which was a small organization, a subsidiary of Bristo Plastics. It was, however, an independent unit which was not connected with the main company. The shareholders out-voted Cameron and Morrison and took complete control of the organization. The event can be regarded as being in the category of poetic justice. Cameron actually reached the court door before he gave in. I assisted in that investigation and, to some degree, I was responsible for the success of the action.

The Chairman.—Perhaps it would be convenient if I referred to the documents on the file, and if Mr. Opas has any points concerning them which he would like to discuss, he may do so. The first document is a report by the management of Bristo Plastic Industries, dated 28th July, 1945, and signed by Cameron as proprietor and Morrison as manager. It contains a certificate by Daniel A. White, chartered accountant, that Bristo Plastic Industries has, from the profits earned by its investments during the year ended 30th June, 1945, paid a dividend at the rate of 10 per cent. per annum on all fully-paid certificates of ownership, as per a certified schedule thereof.

Mr. Thomas.—May I ask Mr. Opas whether the dividend of 10 per cent. was paid in cash or by a further advancement of shares?

Mr. Opas.—The *modus operandi* of persons of the character of Mr. Cameron when wanting more money is to declare a dividend. It does not matter whence it comes. The dividend is paid by cheques issued by the trustees.

Mr. Thomas.—To whom?

Mr. Opas.—To those persons who are registered as unit holders. The first dividend is always 10 per cent. to facilitate the efforts of the hawkers and salesmen, and to enable them to inform persons whom they approach, "This company is paying 10 per cent." The fact that a company is paying a dividend is a very strong inducement to victims to invest money. The salesmen say, in effect, "This is a good thing and you should encourage your relations and friends to participate." So the process begins to snowball.

Mr. Randles.—Do you think the dividend was paid from the capital subscribed by the shareholders?

Mr. Opas.—Yes.

Mr. Randles.—What standing has Mr. White, the chartered accountant, to whom reference was made?

Mr. Opas.—He would be a "Yes" man for them. I should not think he would investigate the merits of the proposition and ascertain whether the profits were genuine; he would merely say, "A sum of money, which I have been informed is a dividend, has been given to me to distribute among different persons, and I will do so."

Mr. Randles.—Mr. White affirmed on a certificate, "I certify that Bristo Plastic Industries has, from the profits earned from the investments, paid this dividend." Have you seen a copy of any balance-sheet of Bristo Plastic Industries?

Mr. Opas.—No balance-sheets were issued.

Mr. Randles.—Then Mr. White, if he is a chartered accountant, has broken his oath?

Mr. Opas.—The genesis of my investigations was really the assistance these racketeers received from professional men in perpetrating frauds on the public.

Mr. Randles.—Surely the Institute of Chartered Accountants could take action against Mr. White?

Mr. Opas.—The institute could raise the standard of auditing considerably.

Mr. White.—Is Mr. White still operating?

Mr. Opas.—I do not know. Power Fuel Industries prepared a remarkable document when Dr. Turnbull, Minister of Health in Tasmania, was creating trouble in denouncing mainland concerns for their operations in Tasmania.

The Chairman.—The next document submitted is a circular from Bristo Holding Company, which is said to be controlling Bristo Plastic Industries, Bristow Engineering Proprietary Limited, and subsidiaries. It is dated the 21st December, 1945, and is signed by A. M. Cameron. Annexed to it is a statement which was published in view of certain articles that appeared in *Smith's Weekly*. There is another circular, dated the 12th April, 1946, from Bristo Holding Company, signed by S. O. Morrison, as manager, and again apparently it was an attempt to answer statements contained in certain articles which appeared in *Smith's Weekly*.

Mr. Opas.—The next document is a list of names which came to me in a very peculiar way; I do not proposed to state it here. Kevin Mulhall was a super salesman for Amalgamated Plastics (Australasia) Ltd. and Bristo Plastic Industries. At one time the commission he received was so great that he had in the luggage boot of his motor car the sum of £26,000; he did not know where else to put it to hide it. I had the assistance in this matter of Detective Graham Davidson, who also travelled through Gippsland with Detective Crowley collecting evidence from persons who had invested in Bristo Plastic Industries, Amalgamated Plastics (Australasia) Ltd., and the Tanbark Development Syndicate. Signed statements of the victims are in the files of the Criminal Investigation Branch and they can be produced to this Committee if required. They disclose who approached different persons, how they were approached, and the representations made.

Moule, Hamilton, and Derham, solicitors, of Melbourne, were engaged by a group of about 40 Tasmanian investors in the city of Launceston, for whom I then acted. Those investors subscribed more than £40,000 to Power Fuel Industries, Bristo Plastic Industries, and other companies. Each of them made for me a declaration giving a recital of how they came to invest and the representations made. I think those statements could be obtained from Moule, Hamilton, and Derham. A Dr. Ferris, who lives in Tasmania, must have invested about the sum of £8,000 in the different companies when I met him, and I am sure he would not receive back one penny.

The Chairman.—One list that you have produced contains the names of persons to whom Mulhall issued signed share or trust certificates?

Mr. Opas.—Yes.

Mr. Randles.—What is the value of each certificate?

Mr. Opas.—Each had a face value of £100, but they were sold for varying amounts, depending upon the skill of the salesman in obtaining the top price or a lesser price.

Mr. Randles.—Would the salesman sometimes sell a £100 certificate for £20 or £30?

Mr. Opas.—Yes. The salesman received a very high commission, which worked out at about 30 per cent. That was illegal, but the difficulty was overcome by the payment of 10 per cent. as commission, which was lawful, and the rest as "expenses." In every case, the provisions of the Companies Act were evaded in this manner. They could not surmount the fact that share hawking was illegal.

Mr. Pettiona.—In the Tasmanian group for which you acted, there was a Mrs. Graham, who was one of the "leading lights"?

Mr. Opas.—Yes. I did not realize until afterwards that I was used to prepare a case against Lee and Robertson, who controlled Power Fuel Industries, and against the other company that they formed, Amalgamated Plastics (Australasia) Ltd. We worked up the case, and Moule, Hamilton, and Derham were to proceed immediately, but did not do so. Lee had been a solicitor, who had been struck off the rolls in Sydney. Tas. Robertson was a salesman who, I believe, had a police record in Western Australia, although I do not know whether this is a fact. The case having reached a certain stage, they refunded the money to Mrs. Graham. In other words, she blackmailed them into the position, and that is why the case was dropped.

Mr. Randles.—Do you think "blackmailed" is the proper term? Was she an innocent investor who, when she learned that she would receive nothing, threatened legal action?

Mr. Opas.—I do not want to split straws; I think I am using it in the right sense. Mrs. Graham was acting for 40 people.

Mr. Randles.—She got paid and the others got nothing.

Mr. Opas.—That is so. I choose to believe that I was used as an instrument and that Mrs. Graham used the other people, getting them to put up certain money for legal expenses and so on, and then she dumped them because she was paid.

Mr. Pettiona.—When do you think she was paid?

Mr. Opas.—In about 1946.

Mr. Pettiona.—She had not been paid in 1953.

Mr. Opas.—I formed the opinion that she had been.

Mr. Pettiona.—In 1953, she was still looking for £2,500.

Mr. Opas.—It was not her own money. I had the impression that she had been paid; I am sorry if I am wrong. I still believe that she used me for a particular purpose.

The Chairman.—Other documents on the file are: A circular from Bristo Holding Company, dated 15th August, 1947; a trustee's report dated 16th August, 1948; a circular letter from the Bristo Holding Co., signed by Cameron, dated 16th August, 1948; a circular letter dated 20th September, 1948, signed by Cameron on behalf of the trustees, setting out the details of the transfer of Bristo Plastic Industries to a public company; a statutory report of Century Industries Ltd.; a letter from Century Industries Ltd. to a Mrs. A. B. Gray, signed by N. V. Anderson, chairman of directors; notice of a statutory meeting of shareholders of Century Industries Ltd., dated 25th November, 1949; a letter to Mr. Opas dated 3rd November, 1949, from H. A. Verey, including a copy of the circular letter to shareholders; notice of a

statutory meeting of shareholders of Century Industries Ltd., dated 6th December, 1949, and signed by Anderson; an undated incomplete printed circular, which apparently was issued at the stage when there was some dispute as to the control of Century Industries Ltd., by a man named Broussard, president and chairman of the Century Industries Shareholders Association; the general report of an adjourned meeting at Box Hill on Wednesday, 31st January, 1951—presumably a meeting of the Association; and the anual report of Century Industries Ltd., dated 18th September, 1952. Is there anything further on the file to which you would like to refer?

Mr. Opas.—No, I think there is sufficient material to show what could happen under present conditions with a proprietary company and a trustee acting for a number of investors.

Mr. Randles.—I take it that Century Industries Ltd. took over Bristo Plastic Industries?

Mr. Opas.—That is so.

Mr. Randles.—Were the people who now control Century Industries Ltd. connected with Bristo Plastic Industries?

Mr. Opas.—No. Cameron and Morrison handed control over to the investors who formed their own board to run what was left.

Mr. Randles.—The people who now control Century Industries Ltd. are "clean skins"?

Mr. Opas.—Yes, definitely.

Mr. Randles.—How did the shareholders get rid of the trustee so as to take action against the directors?

Mr. Opas.—An anomaly in the Act allows a proprietary company limited to fifty members to appoint a trustee for unit holders, who may number 1,200.

Mr. Randles.—How was it made possible for the shareholders to form a new company?

Mr. Opas.—That occurred when Cameron said, "Do what you like."

Mr. Pettiona.—If Cameron had not acted in that way, the unit holders would not have had power to form a new company?

Mr. Opas.—That is so. The same thing happened with Matured Pines. The people concerned were left with the logging and marketing of the timber, which would have cost them between £300,000 and £500,000. They could not afford the money. If they sold the timber on a royalty basis they would not receive sufficient to make the scheme pay. They will have to get over the difficulty as best they can.

Mr. White.—Is Cameron in Century Industries Ltd?

Mr. Opas.—No. He has become active with Australian Primary Oils, at Geegeela, South Australia.

Mr. White.—He has not thrown in the sponge there?

Mr. Opas.—No, because this game is too good. Cameron and Morrison are running Australian Primary Oils, which is another swindle. From Bristo Plastics, they got away with £400,000 and now they are going for their lives with Australian Primary Oils. They have not to account to anyone, and I would not be surprised if they have not duplicated there. The set-up is the same, but there is a different trustee.

Mr. Pettiona.—Previously were they concerned with Woodlands?

Mr. Opas.—No. That was Dr. Newton's setup. He prepared the brochure that was distributed by the salesmen. He was the instructor at the school for salesmen; they were trained to give the proper answer to any question that was asked.

Mr. Randles.—In what subject did Newton obtain the degree of doctor?

Mr. Opas.—He said that he was a Doctor of Philosophy and had attended the Dublin University. Later he admitted that he obtained his degree in America. I asked him if he paid 10 dollars, and he said, "About that." He was associated with Primary Oils from the inception, but complained that he did not obtain as much as he should have received.

Mr. Pettiona.—He switched to Woodlands in 1952.

Mr. Opas.—Yes.

The Chairman.—Mr. Opas has submitted the following documents relating to Australian Primary Oils: A letter from Mr. Opas to Mr. W. C. Haworth, M.H.R., directing attention to a news item heard over the national broadcasting stations, giving a flattering report of Australian Primary Oils; the letter points out that the directors were the same as those controlling Bristo Plastics. A statement was made in the House of Representatives by Mr. Haworth, and a *Hansard* report of his speech is attached. Then follows a letter from the Australian Broadcasting Commission to Sir Earle Page in connexion with the news item mentioned above. There is also an extract from the Adelaide *News*, being an article by Joan Bishop, headed "The Biggest Olive Growing Project in Australia." Then appears an extract from Melbourne *Truth* of the 8th October, 1949, commenting on doubtful companies.

Mr. Opas.—A Mr. Kelly, in the office of Molomby and Molomby, solicitors, Melbourne, informed me that he had been approached to act as trustee of Australian Primary Oils in place of a man named Walsh, whose name appeared quite a lot in the early stages. He resigned or was dismissed. I suggested to Kelly that he should give me all the information he could about the concern, and advised him to keep out of it. So far as I know, he did not become the trustee.

Mr. Brennan.—Perhaps Mr. Kelly, whom Mr. Opas has mentioned, might be able to give the Committee some interesting information.

The Chairman.—Mr. Opas has raised a number of these matters. I suggest that when he has completed his submissions the Committee should consider whether or not certain other persons should be called before it.

Mr. Opas.—The next file I wish to submit relates to Power Fuel Industries of Australia. Firstly. I tender an opinion of my son, P. H. Opas, dated 10th October, 1949, on the legality or otherwise of option certificates and similar certificates, and dealing with the question of whether it is legal for a trustee to act for 1,000 or 1,200 option certificate holders, as under section 358 of the Companies Act a set-up with more than twenty members is an unregistered company in relation to which certain penalties are prescribed. The opinion reads as follows:—

I have advised previously on various types of certificates, called sometimes option certificates or unit certificates or similar names, issued for value usually by firms and proprietary companies.

The schemes follow a familiar and almost identical pattern. They consist of the raising of large amounts of capital from investors in a manner which the promoters of the schemes fondly hope is outside the scope of the Companies Acts. The firm or company concerned enters into a deed of trust with one or more trustees for certificate holders. The trustees are usually registered as

the proprietors of the certificates and give a certificate to each certificate holder acknowledging the holding on his behalf of a certain certificate designated by number and undertaking to pay to such holder some ridiculous percentage of net profits earned by the undertaking, such as one twenty-thousandth share, if and when such net profits are paid by the firm or company to the trustee.

The trust deeds are normally empty pacts under which the trustee has no control whatever over the conduct of the enterprise, and is in no position to query expenditure, or sometimes even to inspect books. Usually his only duty is to receive such amounts of net profit as are paid to him by the firm or company and then distribute same in set proportions to certificate holders. If the firm or company directors care to raise their salaries or "expenses" so that there is no net profit, that is no concern of the trustee, and of course, the certificate holder has even less say. A typical example of an empty trust deed is that entered into by Australian Primary Oils Pty. Ltd. with its trustee Thomas Walsh even called J.P. in its deed as though those much overworked initials stand out as the badge of probity and honesty for the complete protection of the investor.

Invariably the investor loses his money. There is no real protection for him. The firm does not have to publish balance-sheets, and the proprietary company is likewise not compelled to do so. The unit certificates cannot be sold on the Stock Exchange or anywhere else and as the firm or company gradually slides into bankruptcy or litigation the investor is left with his certificates which are as valuable as a betting ticket on an unplaced horse.

How are the gullible to be protected against unscrupulous operators? Usually they cannot recover their money on the ground that they have been induced to purchase by fraudulent misrepresentation. The salesmen are too clever to leave themselves open to this and the prospects are usually too anxious to throw their money away to render this necessary.

In my opinion, the only way in which these investors can be protected is for a court to hold these schemes illegal as contravening section 358 of the Companies Act. The promoters of these schemes rely on the well-worked case of Smith v. Anderson (1880) 50 LJ Ch. 39 which decided that, in an investment company which issued somewhat similar certificates to those under review, the only persons actually carrying on business were the trustees, and as they were less than twenty in number, there was no need for the certificate holders to be registered as a company.

In my opinion, for reasons which I am prepared to elaborate if desired, Smith's case can be distinguished from the present crop of cases. In the latter it is clear the trustees are not in any way carrying on business. They merely act as bankers. The real persons who carry on business are the people who put up the money to carry on the business, namely the certificate holders. They carry on business just as much as shareholders in a regularly-conducted company. If my view is correct, then they being more numerous than twenty, require registration under section 358, and if, there is no registration, the certificates are void for illegality. From this result the investor can recover in most instances as money had and received, the consideration for which has wholly failed. Where some return has been made to the investor by way of dividend (out of capital in all cases within my knowledge and paid only as "sucker-bait" to induce further investment) this ground may not be open because there has not been a total failure of consideration. In any event a claim should lie for damages for breach of warranty express or implied that the scheme is legal. The success of this claim should re-imburse the investor.

Cases in which illegality has been held to apply in similar circumstances are the Tasmanian Timber Case 1932 Tas. LR. 15, and the Sunkissed Bananas Case.

A speedy way to test this matter in the public interest would be the launching of a prosecution against, for example, Cameron the promoter of Bristo Plastics, a one-man firm, for contravening section 358. This could be a test case for all the others.

These cases, in my opinion are such obvious attempts to evade the provisions of the Companies Acts and the Commonwealth war-time legislation relating to capital issues, that a court would strive to reach the conclusion that the certificates are void for illegality. I believe a prosecution as suggested would have a reasonable chance of success, and, if successful, it follows that certificate-holders in many enterprises would be presented with ready-made causes of action. Whether the individuals or companies concerned would be able to pay back all the money which I believe they have unlawfully received is probably doubtful but at least they would be amenable to due process of law

I recommend that a test prosecution be undertaken.

Dr. Turnbull, the Tasmanian Minister of Health, was very active on my behalf with reference to this subject, and he forced Alan Wainwright. the solicitor for Power Fuel Industries of Australia, to produce a remarkable document, a balance-sheet of the concern as at 30th June, 1948, which is about the only document of that nature in existence. I am quite satisfied that the following balance-sheet does not include half of the money collected—

JAMES H. CROWTHER,
Licensed Auditor for Companies under the Companies Act.

POWER FUEL INDUSTRIES OF AUSTRALIA.
BALANCE SHEET AS AT 30TH JUNE, 1948.

LIABILITIES AND CAPITAL.				ASSETS.					
Subscribers' Funds and Capital Reserves ..	£180,488	14	5	Barigan works, including catalyst conversion refinery	£99,354	0	0		
Sundry Creditors	368	6	8	Stock at site	201	16	8		
Barigan Works, Berrima Plant, Emu Plains plant, interest in Wollar open-cut black coal mine, and share in "Fly-off Oil," are all shown in the books of Power Fuel Industries of Australia at amounts less than the valuation made by A. A. Summerhayes, consulting engineer, and dated 31st December, 1945.								£99,555	16	8
				Berrima plant	48,606	0	0			
				Stock at site	3,500	0	0			
								52,106	0	0
				Emu Plains plant				21,754	0	0
				Interest in "Fly-off Oil" ..				3,900	0	0
				Interest in Wollar open-cut black coal mine ..				2,500	0	0
				Furniture and office fittings ..	288	0	0			
				Motor car	300	0	0			
								588	0	0
				Insurance claim	60	0	0			
				Sundry debtors	166	13	0			
				Union Bank of A'sia. Ltd. ..	26	11	5			
								253	4	5
				Company formation account				200	0	0
	£180,857	1	1					£180,857	1	1

I have compared the above balance sheet with the ledger balances of Power Fuel Industries of Australia, and I certify that it is in accordance therewith.

(Signed) J. H. CROWTHER, L.C.A. Public Accountant.

Melbourne 15th October 1948

The Chairman.—I think it would be fair to say that it is a limited audit certificate which accompanies the balance-sheet.

Mr. Opas.—Dr. Turnbull asked me for my opinion on that particular balance-sheet. My views are expressed in the following two letters which I wrote to Dr. Turnbull:—

21st October, 1948.

The Hon. the Minister for Health,
Office of Minister for Health,
Hobart, Tasmania.
Dear Sir,

Many thanks for your letter on the 20th inst., with what purports to be a balance-sheet of the Power Fuel Industries of Australia as at 30th June, 1948, and I am entirely in accord with your view as to its negative value. I would go as far as to say that it is an insult to any one's intelligence to expect acceptance of its certification, and the absence of the two vital statements, viz. Trading and Profit and Loss Account, and detailed items of Receipts and Expenditure respectively, definitely suggests suppression of material facts and information which they, at this or any juncture are unwilling, or dare not disclose.

My first criticism is, that the certification J. B. Crowther, L.C.A., Public Accountant, Melbourne, is not from a recognized public accountant in public practice. I am not impugning his status or honesty, but obviously it can carry no weight—it is curious—and significant that an auditor without qualification in a concern specifying alleged assets of over £180,000 is content to certify that the respective items on the balance-sheet agree with the book values and leave it at that, whereas the outstanding requisite from a responsible auditor would be—

(1) To show what the specific assets cost as apart from arbitrary valuation.

(2) What money by way of profit in trading has been earned, or alternatively, what money has been lost through trading or absence of trading.

(3) The Subscribers' Funds and Capital Reserves £180,488 would be separated clearly, showing the subscribers' funds at its proper account and reserves likewise. The lumping of the two under one heading is deliberately intended to mislead and confuse the true issue. The only way the reserves could be created in my considered opinion are—

(*a*) From trading profits earned;

(*b*) from premiums received above par value;

(*c*) From writing up assets above cost value and discarding the writing off of depreciation.

It is definitely clear that the assets are inflated so as to balance off the £180,488 of subscribers' funds and capital reserves. I personally consider the balance-sheet in its form an impudent and reckless creation for purposes of concealment of the desperate position of the undertaking and is of no worth whatsoever. It does open the door for the necessity of an independent investigation of the whole of the records, documents, vouchers and books *ab initio* to date. I could elaborate on this *ad nauseam* but I have gone far enough at this juncture.

The net is rapidly being drawn both in civil and criminal possibilities of procedure, and to this end, your official co-operation has been to date, and will be in the future, of tremendous advantage. Need I say now, that it is no exaggeration to put the amount of these swindlers in the many independent and inter-dependent rackets, at about £2,000,000 (two million), and that it is time full exposure be made and retributive justice meted.

P.S. At break-up value the assets in the first six items on balance sheet would realize very little, especially if shale deposits and conversion to petrol are not a commercial proposition, i.e., unpayable. There is no real evidence of proved profit earning.

. . . . . .

24th February, 1949.

Dr. Turnbull,
Minister for Health,
Parliament House,
Hobart, Tasmania.
Dear Doctor,

Re POWER FUEL INDUSTRIES AND OTHER ORGANIZATIONS.

It is some time since I have communicated with you herein and I do not want you to think I have been inactive. For reasons which I will explain personally when I see you, I have had to dis-associate myself from the nominal Secretary of the Tasmanian Group and am not prepared to act for them on the nebulous terms that were suggested to me. Furthermore I was not prepared to bargain, so that, consistent with my duty as I see it, to people on this side and others, I have pursued the investigation in my own way.

Messrs. Moule, Hamilton and Derham, a certain newspaper, and the C.I.B. are closely in touch with me. The action launched by an investor in Power Fuel Industries is in hand. If the Trust Certificates are deemed to be illegal and in contravention of the Victorian Companies Acts, then the promoters are responsible for the return of moneys had and received, and this will put every other one of the "bogus" companies, by way of precedent, in the same category.

The trustee is now being called upon to account and within a few days discovery will be asked for, of the company.

To show the shallow fabric, I am enclosing herewith a copy of search made of South Pacific Oil Products Limited which speaks for itself. This company, so far as surrender was made of the trust certificates held in Power Fuel Industries, issued shares in South Pacific Oil Products Ltd., and that is as far as they have gone, leaving still to be accounted for, what moneys actually were received from the investors and the true disposition of these moneys by way of disbursements. You will remember that Alan Wainright sent you what purported to be a balance-sheet in which it was stated that money received from investors and reserves to be £185,000.

From now on, I will keep you advised of the developments as they occur.

Mr. Brennan.—Have you seen a copy of the trust deeds in connexion with any of these firms?

Mr. Opas.—No.

Mr. Randles.—Whose were the brains behind Power Fuel Industries?

Mr. Opas.—In the case of all these concerns, Murray Cameron was a "gold medallist" salesman for Woolcott Forbes. It is purely a theory of mine—I am not always wrong—but I say that Woolcott Forbes is still the hidden "brains" behind all these rackets which have been going on.

Mr. Pettiona.—If he is not the "brains" behind them, his policies and thoughts have been carried on, you suggest?

Mr. Opas.—That is so. I still believe that he has a remarkable legal brains trust to protect him. It does not appear in the open but it is always present as a shield. I do not propose to mention the name at this stage, but I may do so later.

Mr. White.—Do I take it that in your opinion Woolcott Forbes is still operating?

Mr. Opas.—Definitely.

Mr. White.—And these men are under his control?

Mr. Opas.—That is so. It can be likened to a large racket in America with a "big chief" who is never seen but whose hand shows definitely throughout. I am positive and definite about that, and would require strong evidence to convince me otherwise.

Mr. White.—Do you intend later to elaborate on that statement?

Mr. Opas.—I may do so.

The Committee adjourned.

WEDNESDAY, 24TH MARCH, 1954.

Members Present:

Mr. Rylah in the chair;

Council.	*Assembly.*
The Hon. T. W. Brennan	Mr. Hollway
The Hon. H. C. Ludbrook	Mr. Pettiona
The Hon. F. M. Thomas.	Mr. Randles.

Mr. J. Opas, A.F.I.A., Public Accountant, was in attendance.

Mr. Opas.—I now tender, for the information of the Committee, my file on Power Fuel Industries.

The Chairman.—For how long may the Committee retain these documents?

Mr. Opas.—For as long as is desired. They represent the result of my collection for the past 14 to 15 years of instances of persons who had come to me for protection. These documents proved to be of great assistance to me when I wrote certain articles for *Smith's Weekly* and *Truth*. The Committee is at liberty to make practical and constructive use of the documents.

The Chairman.—The first document on the file is an extract from the *Herald,* dated Friday, 12 November, 1948, referring to certain statements by Dr. Turnbull in the Tasmanian House of Parliament concerning Power Fuel Industries.

There is also on the file a memorandum of advice from Mr. P. H. Opas of counsel, dated 10th October, 1948, concerning Bristo Plastics and a man named Howard. I think this document has been produced previously.

Mr. Brennan.—Would that opinion of Mr. Opas have been tendered in response to the request of a particular client, or as a general observation?

Mr. Opas.—It was his advice as to the validity of certain certificates.

Mr. Brennan.—Was that with respect to a particular case?

Mr. Opas.—The name of Howard was used purely as an example.

The Chairman.—There is on the file correspondence between Messrs. Moule, Hamilton, and Derham and Mr. Opas concerning Power Fuel Industries. Is there anything about that correspondence, Mr. Opas, upon which you desire to comment?

Mr. Opas.—Yes. Power Fuel Industries subsequently became South Pacific Oil Projects Limited. That company could not be registered in Australia, or it was considered undesirable to do so. Accordingly, it was registered at Port Moresby. Although the Balance Sheet revealed that the sum of £185,000 was received by that organization, in my view, approximately twice that amount was received. From £300,000 to £400,000; investors have received back not one penny of the money that they placed into the venture. The whole matter is in a state of suspense, waiting for some one to take action. I am sufficiently optimistic to hope that the deliberations of this Committee may result in the passage of retrospective legislation. I hope that the parties who received the money from investors will be called upon to account for it.

The Chairman.—Power Fuel Industries was another trust securities scheme?

Mr. Opas.—Yes, it was conducted by Robertson and Lee, with Mr. Gunton Cooper as Trustee. He acted in that capacity until his death. I do not know what happened after that.

The Chairman.—Did Mr. Cooper come within the ambit of your investigations?

Mr. Opas.—Yes, but when I was ready to spring a trap on him, he "ducked." As soon as I was ready to take similar action in the case of John Murray, he died.

Mr. Brennan.—Registration of the company in Port Moresby would make it subject only to the jurisdiction of the High Court of Australia?

Mr. Opas.—I do not know.

Mr. Brennan.—The object of registering the company in Port Moresby would be so that it would escape the ambit of State legislation?

Mr. Opas.—Yes.

The Chairman.—Moule, Hamilton, and Derham, in their report of the 7th January, 1949, state, "This company is registered as a foreign company in New South Wales, the date of registration being the 6th October, 1948. The company was incorporated in the territory of Papua, New Guinea. Its agent, appointed on the 22nd September, 1948, is Aubrey Felix Thomas, of 185 Pitt-street, Sydney." The directors are shown as Frank Scott Nurse, of East Malvern; Victor George Bissi, of St. Kilda; and Howard Kirby Ingham, of East Malvern. There appear to be no resident directors in New Guinea.

Mr. Opas.—The supposed Balance Sheet of Power Fuel Industries, submitted yesterday, was certified by a man named Crowther, who was clerk employed by Howard Ingham. I should like that fact noted particularly, because they wanted a "Yes" man to sign it, and nobody better than a clerk in the employ of Howard Ingham could be obtained, particularly as he had after his name the magic letters "L.G.A.", which stand for "Licensed Government Auditor."

The Chairman.—Was he in fact a licensed government auditor?

Mr. Opas.—I think he must have been; I would not question that matter.

Mr. Randles.—What did Power Fuel Industries promise to do?

Mr. Opas.—The company purchased a second-hand colliery lease, for which it did not pay, at Glen Innes and declared that it would produce from shale petrol to be called petrolene. A well-known racketeer named Field was concerned in this matter, and also in Riverina Collieries Limited. Field could sell the sun dial in the Flagstaff Gardens and get away with it.

The Chairman.—There appear in this file sundry circulars and copies of letters. There is a telegram from "Leonard Tanbark, Melbourne" addressed to Dr. Turnbull, Minister for Health, Department of Public Health, Murray-street, Hobart, Tasmania, stating:—

Melbourne *Herald* Saturday 13th November reported you linked Tanbark and North Tanbark Development companies with Power Fuel Industries seeking capital stop Both those companies are privately owned and have no necessity for seeking capital and are not connected with Power Fuel Industries or any other organization stop Your statement as reported is mis-representative and damaging to us therefore we look to you to have it corrected.

Have you any comment to make regarding that telegram?

Mr. Opas.—I shall refer to this gentleman when discussing Tanbark Development Syndicate, Sister Williams (Babycraft) Limited, the Braund cancer cure, and several other concerns of a similar nature. Recently, through Davis Cooke and Cussen, solicitors, bookmakers were defrauded of the sum of £40,000.

The Chairman.—There is a letter in your handwriting, Mr. Opas, addressed to Mr. Burt.

Mr. Opas.—That letter was written when I first discussed this matter of Power Fuel Industries with Oswald Burt and Company. Mr. Burt listened carefully to everything that I had to say, and then stated that, as he was acting for Gunton Cooper, there was a conflict of interests. It was for that reason that I approached Moule, Hamilton, and Derham.

The Chairman.—Is this a copy of a letter that you wrote?

Mr. Opas.—Apparently I prepared a draft. I do not know what I did with the carbon copy of the typed letter. I submit that for what it is worth.

The next document has been included because it refers to a subsidiary of Power Fuel Industries.

The Chairman.—You refer to an advertisement headed, " Special Notice to Primary Producers. Power Fuel Industries of Australia have pleasure in announcing that ' Fly-Off ' Sheep-Dressing Oil is now available in quantity."

Mr. Opas.—Yes.

Mr. Pettiona.—Has Mr. Bishop any connexion still with Power Fuel Industries?

Mr. Opas.—Mr. Bishop furnished me with much information. I think he has a police record. He was co-trustee in the first place with Howard Ingham, who had him kicked out, so to speak, and Bishop has been very bitter ever since. He is not connected with it now.

Mr. Pettiona.—He did not sever his connexion voluntarily?

Mr. Opas.—No, he was pushed out. I wish to refer now to Tanbark Development Syndicate.

Mr. Randles.—What was the purpose of this company?

Mr. Opas.—It was to grow wattle trees, which would produce bark for sale to tanners. According to the beautiful brochure produced, which took the place of a prospectus, in six years time the return to the investors would be about 685 per cent. The Syndicate purchased a place called Sunday Island. Leonard bought it and sold it to the Syndicate at a very large profit. Seedlings of the wattle trees were planted, but were eaten by rabbits. The Syndicate then planted potatoes, but they were eaten by grubs. An attempt was made to grow peas but it also proved unsuccessful. An imported stallion was purchased to breed draught horses.

They then grazed sheep on the land, but, unfortunately, when the sheep were being shipped to the mainland the vessel sank and the sheep were lost. I produce draft copies of the balance sheets of the Tanbark Development Syndicate up to the end of 1945. They show that option units applied for and accepted at that date amounted to approximately £50,000. The original copies of the reports that were issued, together with statements made by persons who had invested in the syndicate, can be obtained from Detective Inspector Garvey, Detective Tannahill or Detective Graham Davidson of the Civil Investigation Bureau. The reports all show the consistent build up of the Development account.

This case will prove to be a repetition of what happened concerning the Comely Park Sand and Gravel Company. Leonard will contend that the syndicate owes him money; he will have a dummy debenture holder and he will take over, if he has not already done so, all the assets. In the early stages of the syndicate Leonard received great assistance because a Mr. Cartledge of Norman and Cartledge, who were the auditors of the Tanbark Syndicate, rather foolishly and outside his functions as an auditor, gave one or two glowing reports of Leonard's management. He ultimately saw the light when pressure was brought to bear, and he resigned.

The Chairman.—This was another option unit scheme, but it was organized by a syndicate and not by a proprietary company?

Mr. Opas.—Yes, with Leonard getting all the proceeds. In effect, he was the accounting party.

Mr. Brennan.—Was any action taken by the police against the parties concerned?

Mr. Opas.—The police obtained plenty of evidence, but when Mr. Aird went into the matter it appeared as though an English decision relating to option unit certificates prevented action being taken. At some future time approach may be made from a different angle.

The Chairman.—The figures in the draft balance sheets show that option units applied for and accepted amounted to £19,602 at the 30th June, 1945; that H. V. Leonard's advance account was £111 and his land account totalled £3,191. A further figure shows that the sum of £2,420 was received from H. V. Leonard.

Mr. Opas.—A later report was issued, in about 1953, when Mr. Doube, M.L.A., made an attack in Parliament. Leonard then sent out another circular to the Tanbark investors in which he stated that he had advanced considerable moneys to them and naturally he would have to protect his own rights but he stated that the plantation was looking very well at that time. At my instigation, Mr. Ron. Stephens, one of the star reporters of *Truth,* and a photographer, recently made a visit to Sunday Island. According to Mr. Stephens he has never seen such a scene of desolation and ruin, and he has photographs to support his statements. When the report was ready to be published the decision in the case of Leonard against Cook, Prince, and certain other bookmakers had not been given and the matter was *sub judice.* The present position is that as it is not known whether or not Leonard intends to appeal and three or four other cases are to be decided the story cannot be published.

Mr. Brennan.—Where is the island?

Mr. Opas.—Just off Western Port.

Mr. Thomas.—What would be the value of each unit?

Mr. Opas.—The salesmen or share hawkers were allowed such a liberal commission that at times they were able to give inducements so the value of the units varies. The crux of the position is that these people are in a sense removed from the responsibility of being accounting parties. Leonard received moneys he could use in any way he chose. There would be nothing to prevent him from granting to himself further option certificates not in the original intention and to tell his salesmen to sell them. These people can hide a considerable sum of the receipts because there is no independent verification or control; there is a complete lack of control in every sense of the word.

The Chairman.—The file contained copies of accounts and balance sheets in connexion with the Tanbark Development Syndicate.

Mr. Opas.—I think it is important that I should refer to the Committee a copy of a letter on the file addressed to Mr. R. A. Rowe of F. W. Holst and Company, 395 Collins-street, Melbourne, dated 3rd November, 1943.

The Chairman.—The letter reads:—

3rd November, 1943.

Mr. R. A. Rowe,
F. W. Holst and Company,
395 Collins-street.

Dear Sir,

TANBARK DEVELOPMENT SYNDICATE.

I have just had an opportunity of reading a letter sent to one of the Option Unit Holders herein, which states *inter alia*, that being the holder of five Option Units, the addressee is entitled to two and a half Certificates in North Tanbark and that on payment of £40 for one further Option Unit in the Fourth Series, he would receive three Certificates, in lieu of the two and a half to which he now is entitled.

The Unit Holder has called on H. V. Leonard, giving him notice that unless he be given his money back, he will institute legal proceedings without further notice on the grounds of misrepresentation. The time limit is three days.

There are two other Holders, who have sent Leonard an A. R. letter demanding an interview.

Mr. Opas.—Before sending that letter I saw Mr. Rowe, Chairman of the Stock Exchange, pointed out to him the iniquity of these operations and suggested that the Stock Exchange should take some action. I particularly directed Mr. Rowe's attention to the strong limitations imposed by Capital Issues Control on the amount of capital which could be raised. I stated that under the system in operation it was of great detriment to the economy and to the legitimate investment field of the Stock Exchange that these undertakings were apparently immune from the authority of the Capital Issues Control Board. Indeed, I pointed out that if hundreds of thousands of pounds could be raised in this irregular way, there was no reason why millions of pounds should not be raised in the same way.

As far as I know the Stock Exchange took no action. The practice has continued unchecked for years, despite the fact that until recently any one wishing to raise more than £10,000 had to apply for approval to do so. There may be wars or economic crises in the future and there is nothing to prevent similar rackets being worked.

My next file deals with Sister Williams (Babycraft) Proprietary Limited, another Leonard set-up. The idea was to conduct a creche called "Peter Pan" or "Sister Williams (Babycraft)", where mothers could leave their children during the day. At the outset Leonard was able to use the names of two prominent people, Matron Sage of the Army Nursing Service, and Dr. Burgess, a well-known radiologist, in connexion with the creche. Matron Sage received 200 shares, but later indignantly repudiated connexion with the concern. I, acting for Betty Paterson, a well-known artist who had invested £200 in the firm, exposed the scheme. I was not able to regain my client's £200, but did obtain payment for some murals which she carried out at the creche. Money received as fees at the creche did not go into the "kitty." It was all lost, and the creditors did not receive anything. Ron. Smail of the firm of Kennedy, Smail, and Middlemiss was appointed liquidator of the company. A couple of attempts were made to reconstruct the company. At one of the meetings which I attended Leonard stated that I had vowed to "get" him by any means, and that I had used other than proper methods in an endeavour to do so, but I suggested to him that we had different standards of propriety. Leonard had a long lease of the premises in which the creche was operating, and, according to the records, all or the bulk of the money received as fees did not go into legitimate channels.

Mr. Randles.—How much did he raise?

Mr. Opas.—I think the amount raised was £12,505.

Mr. Brennan.—Was the business carried on profitably as far as service was concerned?

Mr. Opas.—He carried it on efficiently for a while in respect of the babies, but did not put the money into the company funds. The full amount of £12,505 was lost.

The Chairman.—Was that amount raised by way of unit certificates or shares?

Mr. Opas.—Straight-out shares. I submit in the file a list of the victims. Having taken all the juice from the orange Leonard was in touch with Braund of the "Braund cancer cure." The exposure of Sister Williams (Babycraft) Proprietary Limited by *Truth* and myself prevented Leonard from proceeding with a £1,000,000 venture in connexion with Braund's "cure."

The Chairman.—The file tendered by Mr. Opas contains an undated copy of the share register of Sister Williams (Babycraft) Proprietary Limited and several documents prepared and signed by Mr. E. R. Smail of Kennedy, Smail, and Middlemiss in connexion with the liquidation of the company and attempts to reconstruct it.

Mr. Opas.—Mr. Smail informed me that Leonard put to him a proposition in connexion with the books of several companies which were in a mess, but after looking into them Mr. Smail would not have anything to do with them. The losses of the various companies amounted in that year to approximately £54,000. I believe Mr. Smail would confirm that if he were approached by the Committee.

The Chairman.—There is also in the file a copy of an article headed "Cancer Cure Claimant Braund Goes to Work" in the *Truth* of 7th February, 1948.

Mr. Opas.—I forgot to mention yesterday when referring to Bristo Plastics that recently when Woolcott Forbes was examined in bankruptcy proceedings, pressure in the way of a possible contempt of Court charge was brought on him to disclose what he had done with a cheque for £6,000 drawn by him. Mr. Woolcott Forbes finally disclosed that the £6,000 was used to purchase Bristo Plastics, over which concern he was taking a mortgage.

The Chairman.—When was that?

Mr. Opas.—About September or October, 1953.

The Chairman.—That was when he made the admission?

Mr. Opas.—Yes.

The Chairman.—When did the purchase relate to?

Mr. Opas.—To when the Bristo organization originally started here. That gave me the missing link, at that particular time, between Morrison and Cameron and Mr. Woolcott Forbes. I believe that Woolcott Forbes is still connected with the other two men.

I now tender a file concerning Comely Park Sand and Gravel Company, which was the first organization in respect of which I became acquainted with the activities of Mr. H. V. Leonard. My file contains particulars of searches and comments as well as a balance sheet and list of shareholders. The sum of approximately £8,000 was subscribed by shareholders. I acted on behalf of Mr. Grant, a former coroner. The organization subsequently went into liquidation and Messrs. Edward Graham and Sons, Chartered Accountants, were appointed liquidators. I do not know whether all the relevant papers are available but I do know that all the shareholders lost all the money they invested and that the creditors received no dividend. The remaining assets were valued at only £2,000 approximately. Miss Seymour, a dummy for Leonard, had a mortgage over all the assets, under the terms of which she foreclosed, and once again the cupboard was bare. No one but Mr. Leonard received anything.

The Chairman.—The file tendered by Mr. Opas consists of a notebook containing particulars of searches made by him, as well as correspondence exchanged between Mr. R. A. Hall and Edward Graham and Sons in 1940.

Mr. Opas.—I have with me a file concerning Essential Food Industries, which organization went into liquidation.

The Chairman.—When was that?

Mr. Opas.—Within the last twelve months; I have not the exact date. I am submitting this file because a man named Carter was the first Sales Manager for Bristo Plastics, and he told me, with his tongue in his cheek that, much to his regret, he had sold in excess of £80,000 of Unit Certificates in Bristo Plastics for Mr. Murray Cameron.

Mr. Randles.—I suppose his cut would be about £20,000.

Mr. Opas.—Very likely. I acted for Messrs. Birdsey and Sly, who were the proprietors of a cleansing soap compound. Carter was the Managing Director of Essential Food Industries Limited, which was to float a £25,000 company to absorb the soap produced by Birdsey and Sly.

The Chairman.—Was cleansing soap regarded as an essential food?

Mr. Opas.—Names did not matter in that regard. Originally it was intended that Essential Food Industries Limited would grow vegetables when that commodity was scarce. A most promising prospectus was prepared, in which fantastic results were forecast. I said to Carter, "What is your background and that of this company, and how long have you been connected with it?" He said, "Fifteen months." I replied, "That is not much of a history to enable me to make a recommendation to my company concerning your bona fides, unless you can tell me something about yourself." It was then that he informed me that he had sold £80,000 of certificates for Murray Cameron. I said, "That is quite enough. We need not go any further. My company will supply you with goods only if you produce cash with the order —not a cheque." He did not look at me kindly when he departed. Subsequently, this company went into liquidation and Carter was appointed Sales Manager for Australian Primary Oils Proprietary Limited, which was formed to establish an olive plantation at Geegeela. Many of the same persons appear to be involved in the affairs of fraudulent companies.

The Committee adjourned.

THURSDAY, 25TH MARCH, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. F. M. Thomas,	Mr. Pettiona,
The Hon. H. C. Ludbrook.	Mr. Randles.

Mr. J. Opas, A.F.I.A., Public Accountant, was in attendance.

Mr. Opas.—I now tender a file relating to Amalgamated Plastics (A'sia) Pty. Ltd. The case is *sub judice* because Maddock, Lonie and Chisholm, acting for the certificate holders, took out a writ in the Supreme Court against Robertson and Lee, who were concerned also in Power Fuel Industries, to test the general set-up of the option certificates. Mr. P. D. Phillips, Q.C., Mr. P. H. Opas and Mr. Coldhan, of counsel, have been engaged, and the action may take place within the next few months. A special report was obtained from Mr. Harding of Wilson, Danby and Giddy, and it gives independent views of the conduct of the affairs of the company, and refers particularly to the illegality of a 10 per cent. dividend that was paid. In justification of the payment of that dividend, it was said that it was declared out of the sale of patent rights to themselves under their dummy name of Craig Douglas and Co. The full report should be available from the solicitors. The secretary of Amalgamated Plastics (A'sia) Pty. Ltd., Mr. L. M. Hickman, and the auditor, Morris Cohen, who formerly was a partner of Howard Ingham, are still flourishing, and will continue to do so until their iniquities are sheeted home to them.

The Chairman.—Is this a case of option certificates of some type?

Mr. Opas.—Yes.

The Chairman.—Who is the trustee?

Mr. Opas.—The trustee originally was D. Claude Robertson. I might say that he always received his fee in advance—one hundred and fifty guineas per annum. The solicitors for the company were Allan Wainwright and Co., and when I was making my investigation they gave me their private files, which showed their instructions from the principals. They, too, are in the hands of the solicitors Maddock, Lonie and Chisholm.

The Chairman.—This file consists of a brochure issued by Amalgamated Plastics (A'sia) Pty. Ltd., an agenda for the general meeting of the company to be held on the 7th December, 1949, some sundry correspondence from Amalgamated Plastics and Craig Douglas and Co., and a copy letter written by Mr. Opas to Maddock, Lonie and Chisholm, dated 14th March, 1951, which appears to be in the nature of a report, or portion of a report, on the company.

Mr. Pettiona.—Would Allan Wainwright be any relation to a man named Francis Wainwright?

Mr. Opas.—I do not know.

Mr. Hollway.—Does he act for many of these companies?

Mr. Opas.—Yes, he has acted for several of them, particularly in the early stages. Oswald Burt and Co. were always behind him.

Mr. Hollway.—Do you think there is any community of legal advice in these matters ?

Mr. Opas.—There is, definitely. Oswald Burt keeps out by putting up people like Newton Francis, Lewis Wilks and Wainwright. In the early stages, Wainwright was the principal legal man handling most of these concerns.

Mr. Pettiona.—Did you ever come across a man named Wainwright acting as a salesman for any of these concerns?

Mr. Opas.—No. At one stage in the case of Australian Primary Oils they had a staff of 35 salesmen, including women, out in the field.

Mr. Pettiona.—One of them happened to be named Wainwright?

Mr. Opas.—That is possible.

Mr. Thomas.—Do they manage to evade any of their responsibilities by issuing a brochure instead of a prospectus?

Mr. Opas.—It is a pernicious system. They are not shareholders; they are trust certificate holders, and avoid the necessity of issuing a prospectus as provided for in the Companies Act. One trustee can act for 1,200 certificate holders.

The Chairman.—As far as you know, they are not committing any breach of the law by being a proprietary company and issuing trust certificates?

Mr. Opas.—That is so. The next file is a further one connected with Amalgamated Plastics. The same people, Hickman and Morris Cohen, were involved. Southern Isle Canneries was a " side " company which they formed. The shareholders lost between £26,000 and £30,000 and the creditors received nothing. I think the Bank of New South Wales had a debenture. This is another one of those cases in which the substance was taken away and there was nothing left. The company was put into liquidation.

Mr. Randles.—What was Southern Isle Canneries supposed to do?

Mr. Opas.—They were to buy all the berry fruits on the West Coast of Tasmania, process them, can them and ship them abroad. They took over a factory. Hickman and a couple of others, including Robertson and Lee, were interested. They obtained the factory for next to nothing and sold it to the company for a large price.

Mr. Randles.—They took over an existing plant, did they?

Mr. Opas.—Yes.

Mr. Randles.—Did they sell share certificates?

Mr. Opas.—They had their salesmen out selling shares.

The Chairman.—Was it a company registered under the Victorian Act?

Mr. Opas.—Yes. It operated in Tasmania with the same group of people who were connected with Amalgamated Plastics and Power Fuel Industries.

Mr. Randles.—Would they not have been evading the provisions of the Companies Act by canvassing in respect of a proprietary company?

Mr. Opas.—Yes. They have done that right through, but it cannot be sheeted home against them.

Mr. Brennan.—Is that factory still operating at Dandenong-road, Oakleigh?

Mr. Opas.—Yes. Ultimately, investors in Amalgamated Plastics received £10 for each £100 invested. Amalgamated Plastics was sold to Moulded Products. It was a useful arrangement to Moulded Products because, by taking over the accumulated losses, they were able to benefit in their own taxation payments.

The Chairman.—In other words, Moulded Products found it worth while to buy Amalgamated Plastics, not for its assets, but for its accumulated losses?

Mr. Opas.—That is so. I do not think they could have got a buyer under other circumstances.

Mr. Randles.—Is Moulded Products linked up with these other companies?

Mr. Opas.—No. Moulded Products is a genuine company in every sense of the word. As with other activities of Warner's companies, they were out to buy companies with accumulated losses for taxation purposes.

The Chairman.—This file consists of the following documents: A letter from Mr. Opas to Mr. Cain, dated 7th February, 1950, reporting on a shareholders' meeting of the company; two letters from the secretary of the company, Hickman, to Mr. Opas, dated 21st December, 1949, and 3rd February, 1950, respectively; and an approximate statement of affairs of Southern Isle Canneries Ltd. as at 11th January, 1950. The company describes itself as processors and manufacturers of " Red Robin " Foods.

Mr. Randles.—How much did they raise in Southern Canneries?

Mr. Opas.—Roughly between £25,000 and £26,000.

Mr. Randles.—Did the company ever operate whilst under their control?

Mr. Opas.—Yes, but it made losses until it could not carry on. In the meantime, the Bank of New South Wales had a debenture over it and the creditors and shareholders were shut out.

Mr. Randles.—If they were making accumulated losses, how would the promoters make any profit out of it unless they were receiving very high directors' fees?

Mr. Opas.—All of the takings of this type of company were not kept in legitimate channels. The practice was to divert funds into unauthorized channels for the benefit of certain people.

Mr. Randles.—In other words, all of the capital raised did not go into the business, but rather into their own pockets.

Mr. Opas.—That is so. Intermediate profits were made on assets that were taken over and generally the funds were milked by the promoters so that the shareholders received very little.

The Chairman.—Frequently, excessively heavy preliminary expenses were charged?

Mr. Opas.—Yes. At this stage, I desire to make a general observation. In my considered opinion, there has been a deterioration in auditing standards in recent years, as compared with those of former years. To-day, a complacent auditor is prepared to put the telescope to his blind eye, so to speak, and he fails to do those things that a prudent auditor ought to do if he carries out his task conscientiously.

Mr. Randles.—Has not the institute of accountants power to deregister those of their members who fail to discharge their duties properly?

Mr. Opas.—I am reaching the twilight of my career and I submit that, for the most part, students in accountancy receive their tuition from correspondence schools, which equip students for examination in a manner akin to turning sausages out of a machine. Moreover, those who satisfy the examiners receive a diploma from an accountancy institute without having to serve a probationary period in the office of a public accountant. When I was awarded a diploma which entitled me to audit the accounts of public utilities, public companies, banks, and so on, I was incompetent to perform the task. For some considerable time past, I have maintained that the standard of auditing in all cases should be raised, and that it should be based, to a degree, on practical experience.

Mr. Ludbrook.—How many accountancy institutes are functioning at present?

Mr. Opas.—There are two or three only. I might state that I was called upon to audit certain accounts that had already been audited and when I saw the standard of the work of some persons who claimed to be auditors and who had sufficient initials after their names to form an alphabet, I was amazed. I then decided that I would not use letters after my name, and would merely sign as "J. H. Opas, public accountant." I advanced the hard way in the accountancy profession and I claim that, unless other aspirants do likewise, they are not fitted in the highest sense to audit the books of public companies.

Incidentally, I was largely responsible for the introduction of the 40-hour week. I was engaged by the Australian Council of Trade Unions to prepare a case, in the course of which I had the opportunity of analysing the accounts of approximately 240 companies that were listed on the Stock Exchange from 1939 to 1945. It is on record that I stated to the Full Arbitration Court that personally I would not sign most of the balance-sheets of the listed companies, without qualification. Judge Foster, who, I believe, is a substantial investor, questioned me in that regard. He asked me what I meant, and I replied, "The basic requirement of a balance-sheet is that it must be full and fair. The assets must be fairly stated and the liabilities fully included." Judge Foster said, "What about your qualification?" I said, "I will show you the *Herald* balance-sheet." I then presented to His Honour the relevant balance-sheet, which included plant at approximately £91,000. I then remarked that if I were given £1,000,000, I doubted whether I could place that plant in its present position. I next pointed out to His Honour that the balance-sheet of the Temperance and General Mutual Life Assurance Society Ltd., operating all over Australia and New Zealand, included office furniture and equipment at £10. Knowing the cost of bookkeeping machines and other items of office equipment, I knew very well that the valuation of £10 was incorrect.

I referred next to the Carlton and United Breweries Ltd., the ramifications of which organization are fairly well known. I said to His Honour, "The stocks are put down at £337,000. If I know anything of the business requirements of this company, the sum of £337,000 for stock would be insufficient to keep it going for a week." "That," I continued, "is my warrant for saying that I would not accept the balance-sheets of most of the listed companies without qualification." I added, "If I had my way, I would make it a definite obligation on all listed public companies to have a triennial valuation of their assets." I realize the difficulties involved, but I cannot concede that there are any greater difficulties to be surmounted than those associated with life assurance companies, which are compelled to have made an actuarial survey of their policies every three years. I claim that if it were made mandatory for public companies to have a triennial valuation of their assets, a way of doing it could be found.

I then intimated that I knew that the Colonial Sugar Refining Co. Ltd., at one stage, made a start at revaluating its assets. The management reached a figure of a little in excess of £20,000,000 and then thought that a stop should be made because they had already gone too far. I do not know whether it is practicable to implement the proposal; I merely submit my observation for what it is worth. My definite conviction, however, is that the Stock Exchange should have an ethics committee or some sort of panel which could attend to these matters because the Stock Exchange acts for the public and the public in turn looks to it for guidance. One of the functions of that panel should be to determine who are acceptable as auditors of public companies.

Mr. Randles.—Reverting to my original question, I did not have in mind the younger accountants entering business, but men who at present enjoy a very high professional reputation in the accountancy world. Apparently, they are prepared to sign bogus balance-sheets knowing that companies are defrauding the public. Has not the Institute of Chartered Accountants any power over these persons?

Mr. Opas.—In my opinion, the accountancy institute, through the Stock Exchange, and its ethics committee, if it has one, should demand adherence by accountants to a standard of proficiency and experience to justify their certification of balance-sheets. In lodging annual returns at the Titles Office, many unscrupulous officials of companies omit what I consider to be the most important requisite, namely, a statement of the mortgage, debenture, or charge over the undertakings.

Mr. Ludbrook.—Have you known of an accountant to be expelled from membership of the institute, as a solicitor is sometimes struck off the rolls?

Mr. Opas.—I do not know of any who have been, but I know a few who should be treated in that manner.

Mr. Ludbrook.—That fact strengthens your argument for the establishment of an ethics committee.

Mr. Opas.—Exactly. The Stock Exchange should take action in this matter.

The Chairman.—Section 134 of the Companies Act provides for the appointment by the Governor in Council of a Companies' Auditors Board. Certain conditions stipulated there must be met before an auditor is licensed. The Board is also empowered to inquire into the conduct and character, as well as the abilities of the holder of a licence, and to cancel the licence.

Mr. Opas.—That provision is honoured more in the breach than in the observance. In my view, penalties should be prescribed.

The Chairman.—Mr. Ludbrook asked a question referring to debentures. Do you assert, Mr. Opas, that, although there is provision in the Act for these returns to be lodged with the Registrar-General, in many instances it is not complied with?

Mr. Opas.—That is so.

The Chairman.—Do you know of any action that is taken to ensure that returns are lodged?

Mr. Opas.—The only step that can be taken is to draw the attention of the Registrar-General to the fact and ask him to take the necessary action.

The Chairman—There is provision for charges and debentures to be registered separately?

Mr. Opas.—Yes.

The Chairman.—Do you contend that frequently an annual return is lodged, but the question relating to charges is left blank, although there may be registered in another part of the office a charge over the company?

Mr. Opas.—Yes. Assume that a member of the public has the right to make a search at the office of the Registrar-General. It is incumbent upon a company to include the information required in the annual return, and the secretary or a director must certify that its contents are correct. If the information is omitted, it cannot be accurate. There is no provision whereby, if the information is not stated, it can be obtained elsewhere.

Mr. Thomas.—For what purpose is it omitted?

Mr. Opas.—Suppose I make an inquiry to obtain information concerning whether credit should be granted. I ascertain who are the responsible parties and whether there is a charge over the undertaking or the assets. If I discover that there is a debenture, mortage or charge, I report that credit should not be granted and that personal guarantees ought to be obtained.

Mr. Brennan.—That goes right to the credit of the company.

Mr. Opas.—Absolutely. I consider that the provision would not have been included except for a purpose, and if that purpose is evaded those responsible cannot truthfully say that they have acted in ignorance. It is a fair assumption that it has been done deliberately to mislead anybody making an inquiry. I shall now submit my notes on the Livingstone set-up.

The Chairman.—This file contains a contract between Softwood (Australia) Milling Products, dated the 30th November, 1942, and Arthur Keith Tadgell, with two letters from that firm, signed by Lauer, as secretary, to Tadgell, and an extract from *Truth* headed "Windfall mooted for Plantation Investors."

Other documents are a letter from C.A.P. Treatment Co. Pty. Ltd., dated 16th August, 1948, to W. J. Merry, of Launceston, signed by Lauer, as secretary; some notes made by Mr. Opas; an undated trustee's report of Softwood Products Treatment Co. Pty. Ltd., issued by Dundas Smith; a copy letter from Mr. Opas, dated 30th July, 1952, to Mr. Dundas Smith; a formal reply from Dundas Smith to Mr. Opas, dated 8th August, 1952; a further copy letter written by Mr. Opas to Dundas Smith, dated 6th August, 1952, and another, dated 22nd August, 1952.

Mr. Opas.—I received a letter from Oswald Burt and Co. in connexion with that matter, which Dundas Smith got them to write. It was a non-committal communication.

The Chairman.—There is a further contract between Afforestation (Australia) Pty. Ltd. and Agnes Barbour Gray, attached to which is an offer to lot holders. On the front of the document is printed—

> This offer is not a prospectus and is for the private and confidential consideration of persons herein mentioned in sections (*a*), (*b*), (*c*) and (*h*).

There is also a letter dated 5th October, 1949, to Mrs. Gray from Afforestation (Australia) Pty. Ltd., and some application forms which were attached to that letter.

Mr. Pettiona.—Has Mr. Opas any comments to make on that file?

Mr. Opas.—I think the documents speak for themselves. I gave to Mr. Ron Stephens, of *Truth,* a report outlining the full set-up of the Livingstone group. I can obtain the return of that information if the Committee desires it.

Mr. Thomas.—Do those concerns ever function?

Mr. Opas.—They are functioning all the time. There is a plantation and trees have been planted. It is a long-range proposition and is expected to give a return to the investors in twenty years, during which time the trees are growing. However, when the trees mature the timber has to be marketed, and money has to be found to establish milling plants and so on. The iniquity is that salesmen are selling units in these companies all the time.

The Chairman.—Would you obtain from Mr. Stephens the report that you made on the softwood milling set-up and produce it to the Committee?

Mr. Opas.—I shall endeavour to obtain it.

Mr. Randles.—Are they continuing to plant trees?

Mr. Opas.—They are supposed to. I tender two letters relating to Grampian Olive Plantations Co. Ltd., which has a very imposing board of directors.

Mr. Brennan.—Are any olives being grown by that company?

Mr. Opas.—Yes. According to the latest report approximately 2,000 acres of land are planted under olives, but it is interesting to note that that area was planted two or three years ago. The company has also grown other crops and has run a few sheep, and pays to unit holders or option certificate holders 3 per cent. per annum. They missed paying that interest in 1952 and undertook to make it up in 1953. Prior to Christmas of 1953, the certificate holders received 3 per cent., therefore the company is in arrears of 3 per cent. Of course, the vital point is that they do not show where the 3 per cent. comes from.

Mr. Randles.—You think it could be coming out of capital?

Mr. Opas.—That is what the *modus operandi* is; they are selling all the time.

Mr. Brennan.—Could the interest payments be coming from the other developments?

Mr. Opas.—I consider that those developments are on too small a portion of the land to enable that to be done. The directors of that proprietary company are, in my opinion, accounting parties who do not account, and under their contracts they are not obliged to account. Mr. D. Claude Robertson was the first trustee, and later he was replaced by the former Deputy Commissioner of Taxation, Mr. Chenoweth, who is still trustee. If a unit holder is pressed for money, the directors are not obliged to find a buyer, nor will they do so; they are interested in selling new units. The salesmen are on a most liberal commission. It is safe to say that originally the cost of the land did not exceed £2 an acre, whereas a unit certificate comprises a sale at £200 an acre.

According to the contract, the obligation is to grow olives on land covered by the option certificate. In my considered opinion, the venture can be described as a racket because the lot holders or unit holders have no control over the money which they have invested in the plantation, and only those who do control such money know what becomes of it. Unless this

pernicious system, which may be likened to a cancerous growth on the economy of the State, is stopped, such concerns will collapse of their own rottenness.

The Chairman.—This file contains a circular letter, dated 17th December, 1952, issued by B. Cowen, Managing Director of Grampian Olive Plantations Co. Ltd., in these terms—

Dear Sir/Madam,

From the inception of our company, our consultant, Mr. H. J. Kemp, has visited the plantation in November of each year, and as a result of such visit issued a report on the progress made, which was posted out to unit holders during December.

This year, however, owing to Mr. Kemp's trip overseas (he has only just returned), his visit cannot take place before the New Year.

As soon as he inspects the property, his comments will be passed on to unit holders.

Yours faithfully,

Grampian Olive Plantations Co. Ltd.,
B. Cowen, Managing Director.

There is also on the file the following letter received by Mr. John A. Hipworth, of Kerang, who is a unit holder in the company:—

Dear Sir,

I have to inform you that units at the present time are selling at £70, but we have no means of selling units in the hands of unit holders,

Yours faithfully,

J. W. Gandy, Secretary.

Mr. Opas.—It was a friend of mine, Mr. William Garnet Newton, of Omar Constructions, who drew up the original brochure for this company. He complained bitterly that he was not properly treated by either Cowen or, at an earlier stage, Murray Cameron.

The Chairman.—Was Murray Cameron in this?

Mr. Opas.—No. Apparently, on the strength of his reputation, Mr. Newton was borrowed by Grampian Olives to do this particular work.

The next file concerns Selected Securities. That was a racket started by Murray Cameron, who evidently abandoned it. When Newton was pleading with me to give him a chance to pay his creditors off by using this scheme, I discovered that Selected Securities was originally in the hands of Murray Cameron. I think the information contained in the file will be of use to the Committee. Do members of the Committee think I have given enough data by way of background?

Mr. Hollway.—I think so, but I shall be glad to hear your ideas on methods of preventing the operation of such rackets.

Mr. Opas.—I cannot give legal advice, but I intend to make some practical suggestions to the Committee. For many years I have been crying in the wilderness on this subject, assisted by Mr. Hanfield, of *Smith's Weekly,* certain politicians and *Truth* newspaper. My son, Mr. P. H. Opas, may have some practical suggestions on the legal side to offer to the Committee. Unfortunately, some sort of retrospective legislation, making option certificates shares under the Act, would be required to give some people redress in respect of £5,000,000 or £6,000,000 which has been invested. I submit these further files to the Committee.

The Chairman.—These files relate to Woodtex (Victoria) Pty. Ltd., Riverina Collieries Pty. Ltd., Matured Pine Trees Ltd. and Highway Laundry Pty. Ltd. There is also tendered a publication entitled *The Record* which was sent to Miss Kerwan Walker in connexion with Undersea Farming.

The Committee adjourned.

TUESDAY, 30th MARCH, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. I. A. Swinburne,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Messrs. R. J. McArthur, J. M. Rodd and R. N. Vroland, members of the Council of the Law Institute of Victoria, were in attendance.

The Chairman.—On behalf of the Committee, I welcome Messrs. McArthur, Rodd and Vroland. It was previously agreed that this Committee would make available to the Council of the Law Institute of Victoria a list of suggestions that had been prepared concerning matters raised before the Committee, so that the Law Institute would have some idea of the lines which the inquiry was taking. That was done, and we now expect to hear from members of the Council on such of those matters as they desire to raise and, in addition, any remarks they have to offer in respect of other matters which they believe come within the scope of the inquiry. I understand that the spokesman is Mr. McArthur, and I ask him now to proceed.

Mr. McArthur.—My committee is an *ad hoc* committee of the Law Institute of Victoria, and as such, is unable to speak with complete authority on behalf of the Council. We believe that we can be of assistance to this Committee, however, despite the fact that some of the views that we express will be our own personal ones.

We are unable to comment generally on those matters which have very briefly been indicated to us in the suggestions that were submitted for the reason that we do not know exactly what is in the minds of the persons who made the suggestions. The first suggestion offered is to the effect that there should be introduced a new offence of false promise. Expressing my own view, and I think it is that of the other members of my sub-committee, I would view this proposal with great caution. I would want to know the precise lines of the legislation, and I would be eager also to know what wrong exists that requires to be remedied. Generally, I do not approach any suggestion to introduce a new offence with other than a very cautious mind.

The Chairman.—Perhaps we might help you with regard to the false promise aspect. The suggestion made to this Committee follows the lines of the 1951 amendment of the Crimes Act in New South Wales, which had the effect of simply adding to the false pretences section of their Crimes Act—which corresponds to our Crimes Act—the words "or for any wilfully false promise" after the words "false pretences."

Mr. McArthur.—I should like to have an opportunity to review that particular provision.

The Chairman.—Perhaps that would be desirable. As to your further inquiry as to the matter to which this suggestion is directed, I desire to say that it is directed specifically to the problems which arise with regard to proving the crime of false pretences. To prove such a case it must be shown that there was false representation of an existing fact. Consequently, when it comes to prosecuting share hawkers, and directors of companies who publish glowing

prospectuses which they know cannot be substantiated, the prosecution usually falls down. I might say that this Committee is thinking along the lines that if such an offence were introduced, no prosecutions should be launched without the certificate of a law officer first being obtained. The intention of that precaution would be to ensure that prosecution for false promise was not used wrongfully in proceedings for breach of contract.

Mr. McArthur.—I would prefer to review that aspect before submitting any comments.

The Chairman.—I think we could make available to Mr. McArthur a copy of the evidence given before this Committee by His Honor Judge Nelson.

Mr. McArthur.—That would be of considerable assistance.

Mr. Brennan.—Mr. McArthur has raised the matter of false promise; consequently, he must have been thinking somewhat on that matter.

Mr. McArthur.—I think I was passing rather to the second matter, namely, the English legislation known as the Prevention of Fraud (Investments) Act, 1939. Frankly, I myself am very much against the adoption of legislation on the lines of the English enactment.

Mr. Pettiona.—Why?

Mr. McArthur.—Because it is too sweeping.

The Chairman.—May I ask you, Mr. McArthur, whether you are considering the Act as a whole or section 12 only?

Mr. McArthur.—I am giving consideration primarily to section 12, but I must of necessity consider the whole of the Act.

Mr. Pettiona.—Has the English Act, or section 12 of it, acted harshly in any way in England?

Mr. McArthur.—I cannot answer that question. Looking at the matter broadly, the English enactment seemed to be in such sweeping terms that it could prove to be a grave injustice to honest men who could be attacked under its provisions.

Mr. Randles.—There are no recorded decisions in England with respect to that legislation?

Mr. McArthur.—Not that I am aware of.

The Chairman.—Perhaps you, Mr. McArthur, could assist the Committee by indicating the extent to which you believe section 12 is too sweeping.

Mr. McArthur.—I have hardly prepared my mind sufficiently to discuss that aspect adequately.

Mr. Byrnes.—Perhaps we should hear Mr. McArthur first in general terms and then revert to specific points.

Mr. McArthur.—At this stage I do not think I can add much to what I have already said. That sweeping section—section 12—provides, *inter alia*—

> Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—
>
> (*a*) to enter into or offer to enter into—

Then follow definitions relating to agreements with respect to securities lending or depositing money, and so on. The terms of this provision are particularly wide and sub-section (1) ends with the words " shall be guilty of an offence, and liable to penal servitude for a term not exceeding seven years."

Mr. Pettiona.—Does not the word " knows " in section 12 indicate a false promise?

Mr. McArthur.—I accept that.

Mr. Pettiona.—Does not that have to be proved?

Mr. McArthur.—There are great difficulties of proof in any prosecution under this section. Nevertheless, I strongly suggest to the Committee that the matter should be examined with great caution. Section 12 appears to me to be seeking a sledge-hammer to crack a nut. Is there such an evil that such drastic legislation is really necessary?

I pass to the third suggestion. I should have thought that application of the evidentiary provisions regarding the state of a company's affairs based on the certificate of an investigating officer would be desirable. I assume that it is intended merely to make such a certificate *prima facie* evidence.

The Chairman.—That was the suggestion.

Mr. McArthur.—Also that it is to be limited to the state of a company's affairs. If so, my committee is in accordance with the suggestion.

The Chairman.—That suggestion was made by two witnesses, who stated that to ascertain the position of the affairs of a company at a particular time an investigating officer should be permitted to submit a certificate setting out the result of his investigations and his opinion of the state of the company at that stage, and that would be *prima facie* evidence against the accused in any prosecution.

Mr. McArthur.—My colleagues are concerned to ensure that this evidentiary provision should not go beyond the state of the company's financial affairs.

The Chairman.—That was intended.

Mr. McArthur.—Mr. Rodd will comment on the fourth suggestion.

The Chairman.—This is the proposal made by His Honor Judge Nelson that section 123 of the Companies Act should be amended to extend the offence in sub-section (1) to persons connected with companies other than directors.

Mr. Rodd.—I do not clearly understand this suggestion. Sub-section (1) places an obligation on every company and the directors and manager thereof to cause to be kept proper books of account in which shall be kept full true and complete accounts of the affairs and transactions of the company. There is an offence provision in sub-section (6), which refers to " Every person being a director of a company."

The Chairman.—That is the point. There is an obligation imposed by sub-section (1) of section 123 on the company, the directors, and the manager. But if that is not complied with the only persons who can be prosecuted under this provision are the directors. The suggestion is that sub-section (6) be brought into line with sub-section (1).

Mr. Rodd.—It is to be noted that in section 3 of the Companies Act, " Manager " includes managing director, secretary, or principal executive officer for the time being by whatever designation he is styled. We do not have any objection to making the persons responsible for keeping the books liable for penalties if they do not keep them.

Mr. McArthur.—I pass to the fifth suggestion, which is designed to clarify the offence in sub-section (6) of section 123 of the Companies Act. I do not know in what way it is intended to be clarified.

Mr. Pettiona.—Is that the question of time?

The Chairman.—The question of time is one point involved. At present it is a summary offence only, and a prosecution must be launched within twelve months of the offence having been committed. Mr. Eggleston, Q.C., who has been an investigating officer under the Companies Act on a number of occasions, pointed out that as a result of his investigations he found that usually nothing was heard about the offence for twelve months after it had been committed, and it was impracticable to prosecute within that period of time. The other point is fairly technical. If you could comment on the second aspect, Mr. McArthur, and leave the other one in abeyance, I will obtain the relevant documents.

Mr. McArthur.—I see no objection to the suggestion, if I have correctly understood the background, but only on the point that the Chairman has made. I thought it was probably desirable that this should be made an indictable offence, but I do not quite know in what other direction clarification is sought. Therefore, I am not able to comment.

The Chairman.—Later, we will give you the benefit of Mr. Eggleston's opinion on that matter.

Mr. McArthur.—Mr. Rodd has drawn attention to paragraph (*a*) of sub-section (4) of section 147 of the *Companies Act* 1948, of the United Kingdom, which provides a ground of defence for an accused person. I do not know whether this matter has been brought to the notice of the Committee. That section provides that it shall be a defence to prove that the person concerned had ground to believe and did believe that a competent, reliable person was charged with the duty of seeing that these requirements were complied with, and was in a position to discharge that duty.

Mr. Rodd.—In a large complex corporate organization one could not expect the managing director and each individual member of the board to have any direct responsibility for the keeping of all the intimate financial records. That work could be carried out only by proper delegation. It would be worthwhile examining the proviso to sub-section (4) of section 147 of the *Companies Act* 1948, of the United Kingdom.

Mr. McArthur.—I ask Mr. Rodd to comment on the sixth suggestion.

Mr. Rodd.—I do not know which provision of Part I. it is intended to apply to Part II.

The Chairman.—In a memorandum dated the 27th February, 1951, concerning the *Companies (Special Investigations) Act*, 1940, Mr. Eggleston, Q.C., stated:—

> As pointed out in my report on Whippet Gold Mine No Liability, the provisions of the Companies Act 1938 relating to fraudulent preferences are not applicable to companies registered under Part II. of the Act. There is much to be said for the view that Part II. of the Act, which was originally intended to provide a cheap and expeditious method of registering mining partnerships and syndicates and of enabling them to avoid personal liability for the debts of the venture, ought now to be brought more closely into line with the provisions of Part I. of the Act, while still retaining the "No Liability" principle. For example, such companies are wound up by the Court of Mines for the district in which the last office of the company registered in Victoria was or is situate (sections 399 and 451). It might well be argued that the provision of the Act of 1940 whereby the Attorney-General may petition for the winding up of a company investigated under that Act are inapplicable to no-liability companies, although I do not think such an argument would be successful. In any event, it is clear that mining companies, some of which are incorporated with very large authorized capital, are free from any of the provisions applicable to ordinary companies.

Mr. Rodd.—I agree that there could be some tidying up of Part II. of the Companies Act, and also that the no-liability system, which provides a convenient and well known method of investment in speculative ventures, should in principle be retained. The suggestion to apply the fraudulent provisions of the Companies Act to Part II. of that Act seems to me to be unobjectionable.

The Chairman.—Have you any comment to make on Mr. Eggleston's sugestion that it is undesirable for mining companies to be wound up by the Court of Mines?

Mr. Rodd.—I have never heard of a mining company being wound up by that Court. There is a convenient and, I think, unobjectionable fading away procedure provided in Part II. of the Act, but that also could be tidied up. On the other hand, I do not think the mere altering of that winding up procedure would necessarily prevent fraud.

The Chairman.—At this stage, the Committee is concerned only with the fraudulent practice aspect of the matter. Probably you have covered all that is required by saying that you can see no objection to the fraudulent provisions of the Act being applied to mining companies.

Mr. Rodd.—I can see no objection, either, to the prospectus provisions of Part I. being applied to companies covered by Part II. of the Act. In fact, when many of those companies issue prospectuses in other States they come within and have to comply with the prospectus provisions of legislation in those States.

Mr. McArthur.—It has always seemed to me that Victoria led the world in the formation of this very convenient means of embarking upon speculative ventures. In my opinion, it is most desirable that we should retain these very elastic no-liability provisions, which are well understood in Victoria.

Mr. Thomas.—Do you think they have been very effective?

Mr. McArthur.—Yes, and they have had a good deal to do with the advancement of this State.

Mr. White.—Do you suggest that if provisions similar to those applying in other countries were included in our legislation it would become restrictive?

Mr. McArthur.—No. I am by no means disagreeing with Mr. Rodd's view that the no-liability sections could be tidied up and that certain provisions of Part I. of the Companies Act could be made applicable to Part II. of that Act. However, I do not think the law should be altered more than is necessary.

Mr. Rodd.—I did not suggest that Part II. of the Act should be tidied up because as at present drafted it left any great avenues for fraud or that under Part II. more opportunities for fraud exist than under Part I.

The Chairman.—The Committee has received ample evidence of the opportunities that exist under Part I.

Mr. Rodd.—Yes. If anything, Part II. provides a greater safeguard because a shareholder is not obliged to pay any further calls; he can cut out at any time he likes and allow his shares to be forfeited.

Mr. Thomas.—At his own disadvantage?

Mr. McArthur.—He loses his money, but he is under no further liability.

Mr. Rodd.—If a person pays only 1s. on a £1 share in a company under Part I., he has a 19s. obligation throughout the life of the company and when it is in liquidation, but if he pays 1s. on a £1 share in a no-liability company he can refuse to pay any more at any time.

Mr. Thomas.—Have you given consideration to the question of companies issuing units instead of shares?

The Chairman.—Are you referring to mining companies?

Mr. Thomas.—I understand that there is a tendency for such a practice to develop.

Mr. Rodd.—I have not heard of that practice being adopted with regard to mining companies.

The Chairman.—If that is being done it is a rather interesting development. The Committee have received some evidence concerning the issue of unit certificates by proprietary companies, with a trustee interposed between the directors of the company and the unit holders, with the result that the directors have no obligation to account to the unit holders. Is that type of operation feasible with regard to a mining company, because if it is it seems to me that it would destroy the no-liability principle?

Mr. Rodd.—In such a case a man would not be taking up a share in a no-liability mining company.

The Chairman.—That is so, he would be agreeing to buy a unit in a trust, which would be the property of the mining company.

Mr. Rodd.—If that is an evil, and I have not heard of it, I consider that the remedy is not to amend Part II. of the Companies Act but to legislate directly with reference to unit trusts.

The Chairman.—I agree with that contention. The Committee have under consideration the question of legislation which would provide that unit certificates issued by proprietary companies would be deemed to be shares for the purpose of the Act. If that provision was applied to companies under Part II., it would mean that unit certificates would then be in the same position as shares in a no-liability company.

Mr. Rodd.—That would be desirable.

Mr. Vroland.—Part II. sets up machinery to control speculative investment. One important aspect is that speculative investment of the nature that has been undertaken has been a great help in the development of the various aspects of this country. Any interference would be directed towards a known and definite evil and should not annihilate the relevant provisions.

The Chairman.—The only suggestions we have had in regard to mining companies are on the lines I have read out to you.

Mr. McArthur.—The seventh question relates to proprietary companies. We are very strongly opposed to the suggestion made. Broadly, the proprietary company fulfils the need for a private company, which should be capable of being managed by the individual or individuals who have formed that company in any manner they like. If they want an audit they can have an audit, but if they do not want an audit why should they have an audit?

Mr. Thomas.—For the protection of others.

Mr. Pettiona.—What are your views concerning a proprietary company in which some individuals, by the sale of unit certificates, for example, amass the sum of £1,000,000? At present they are not compelled by law to present a balance sheet or have an audit carried out. Should not the interests of the public generally be protected?

Mr. McArthur.—I see no evil to be remedied. I do not know why it is suggested that the proprietary company is an instrument of fraud, and I have never been able to understand the suggestion. Whatever could be done with a proprietary company as an instrument could equally well be done by a limited company. I see no reason why an audit should be compulsory in proprietary companies. An audit would not be for the protection of outsiders but for the protection of shareholders in the company. If shareholders want to form their own small private companies, it is for them to say whether they want protection by way of audit or not. It has nothing to do with the people with whom the company is dealing.

Mr. Brennan.—What about the case of the transfer of funds from one company to another in which shareholders' money is involved? Say, for example, that subscriptions to a public company are transferred to another company which is thus made a preferential reservoir of the shareholders' capital in the other company?

Mr. McArthur.—That raises a different question.

Mr. Brennan.—You have said that you could not see any reason why there should be an audit or check. Is it not important to know what becomes of these moneys transferred from one company to another?

Mr. McArthur.—Only in relation to subsidiary companies.

Mr. Brennan.—But there are some companies in which certain people hold the majority of shares, and what they say goes. The rights of the minority in relation to their capital should be protected.

The Chairman.—Perhaps we might let Mr. McArthur answer the question in his own way.

Mr. McArthur.—I do not appreciate why you should single out the proprietary company. The proprietary company, like the no-liability company, performs a specific service. I suggest that the way to tackle fraud is not to tackle proprietary companies, if I may say so with respect. If there is fraud through the use of proprietary companies as subsidiaries, the way to tackle the problem is through the provision respecting subsidiary companies. It may be that we have not efficient protection in relation to the acceptance of deposits by proprietary companies from the public. I would quite understand a suggestion that there should be clearer definition given to the provisions governing the qualification of a company as a proprietary company, but I do not think there is merit in the suggestion that a proprietary company should be regimented. It is a private company.

Mr. Pettiona.—Perhaps I could frame my question in another way. Do you think there should be legislation covering proprietary companies where such companies act under a trust and issue unit certificates or lot portions and so on?

Mr. McArthur.—I heard of that aspect for the first time this morning from the Chairman. I am sure the correct answer was then given, namely, that you legislate against such trusts and not against the proprietary companies.

The Chairman.—Perhaps I might amplify the point a little. There are three types of proprietary companies in respect of which there have been cases of fraud or apparent cases of fraud, and in which the Crown Law authorities have not been able to prosecute. The first is the type of company which issues unit certificates or similar types of devices in order to get over the provision in the Act that a proprietary company will only have 50 members, and that it will not invite the public to subscribe. The second problem is the subsidiary company which is used by a doubtful limited company as a means of getting rid of shareholders' funds. Mr. McArthur has suggested that perhaps the answer is to legislate in respect of subsidiary companies.

The other case is the straight out fraud of the proprietary company which is formed with not more than 50 members and proceeds to milk those members fairly effectively to the tune of big money, by putting forward an attractive idea. An example of that is the Sister Williams (Babycraft) Pty. Ltd. which, on the evidence before this Committee, was a Leonard company formed for the purpose of extracting some £26,000 to £28,000 from a limited number of subscribers. In the case of all these companies the Crown Law authorities have found that they cannot obtain any evidence as to the company's financial records for the purposes of prosecution. Usually books have not been kept. If they have been kept they are in such a condition that they are unsuitable as evidence.

Two alternative suggestions have been submitted to this Committee. The first concerned certification by investigating officers as to the state of the accounts; you have agreed with that proposal. The second suggestion was that proprietary companies should be subject to an audit and that an audited balance sheet should be filed in a sealed envelope in the Registrar-General's office but not be available for public inspection except on order of the court where a *prima facie* case of fraud has been established. The advantage of that suggestion is that there would be an auditor to see that accounts were kept. The disadvantage, which you have already pointed out, is the regimentation of private companies. You would probably amplify that by saying that there are very many companies which do not need an audit anyway; they are properly conducted and the shareholders' interests are protected. A further suggestion put to the Committee is that a proprietary company should be subject to audit unless the shareholders annually agree that it should not.

Mr. McArthur.—I think there is some merit in the suggestion that a balance sheet should be filed. My criminal mind leads me to wonder who would check to see that there is a balance sheet in the sealed envelope.

The Chairman.—If a provision of this sort were introduced it would have to be provided that the name of the auditor appointed must be filed at the Registrar-General's office, so that there would be a reasonable guarantee that an auditor's name did appear on the records.

Mr. McArthur.—It would have to be endorsed on the outside of the sealed envolope by the auditor who made out the balance sheet.

Mr. Rodd.—The basic requirement of section 123 of the *Companies Act* 1938 is to keep books of account. The mere requirement of an audit would not necessarily result in compliance with that section.

The Chairman.—The Committee agree with you in that regard, Mr. Rodd, but they also believe that if a licensed company auditor was appointed there would be a better chance of books of account being kept than if one was not appointed.

Mr. Rodd.—There may be an evil with the unit trust method, where there are more than 50 members of a company. In that regard, direct legislation might be desirable. Perhaps it could be said that there might be fraud in the case of a proprietary company with 50 " suckers."

The Chairman.—That, in my view, adequately describes the situation. It is the sort of thing that happens.

Mr. Rodd.—Nevertheless there is a smaller type of proprietary company, namely, the family group, which is a convenient vehicle for the running of small businesses. It might be imposing an undue burden on those companies to provide that their accounts must be audited.

The Chairman.—Do not you, Mr. Rodd, think that in these days of complicated taxation, most compaines have something fairly closely approximating an audit for the purpose of preparing income tax returns?

Mr. Rodd.—Yes, I agree.

Mr. Vroland.—It is going a step further, however, to compel those companies to conduct an audit. There are thousands of such companies that are established to suit the personal convenience of families, small businesses and the like.

Mr. Thomas.—They exploit no one.

Mr. Vroland.—That is so. The evidence available is to the effect that extremely few companies of that description indulge in fraudulent activities. Personally, I would prefer an attempt at legislation directed at the particular fraud itself, rather than legislation directed at proprietary companies in general.

The Chairman.—Mr. Mornane tendered evidence to this Committee to the effect that the Law Department could indicate a series of proprietary companies in respect of whose activities fraud was obvious; no books of account were kept, and there was no way of determining the state of the company's affairs at the time the fraud was committed.

Mr. Vroland.—There are not many proprietary companies, the number of members of which exceeds ten. Perhaps it might help to reduce the number of members permissible in a proprietary company and thus narrow down the field of fraud.

Mr. Hollway.—A reduction could be made in the number of members permissible before an audit was required.

Mr. Vroland.—That would be better. Limitation of membership of proprietary companies would not prevent fraud, but a small number of members would limit the opportunity to perpetrate it.

Mr. Brennan.—If one of the members of a proprietary company comprising a small family group were to die, questions of trust money and fiduciary relationship would arise with respect to the holdings of the deceased person. As a practising solicitor, I am wondering whether it would not be desirable to have some enunciation concerning fiduciary responsibility.

Mr. Vroland.—Our experience indicates that, in such circumstances, all the members of the proprietary company are generally very much alive to the interests of the deceased person, and there is no evil to be remedied.

Mr. Brennan.—Many solicitors have been in difficulties as a result of fraudulent practices. There has been no suggestion that the drastic provisions relating to the keeping of accounts should be relaxed. In my view no one is better qualified to handle trust accounts than an accountant.

Mr. Vroland.—The capital of the companies concerned—not the matter of trust accounts—is under discussion. I repeat that, speaking for myself, I believe it would be imposing an undue burden on thousands of companies that are being conducted honestly and which create no evil, to call upon the legislature to step in. I favour Mr. Hollway's suggestion that, if the membership of a proprietary company exceeds a specific number—say, 10 or 12—an audit should be compulsory. It is usually in instances where the membership reaches 50 approximately that trouble arises.

Mr. Pettiona.—The fraudulent companies in which this Committee is interested frequently have a registered share holding of two or three persons only.

The Chairman.—I think the answer is that Mr. Vroland agrees that any legislation of the character foreshadowed would have to be complementary to that forbidding the issue of unit certificates.

Mr. McArthur.—I have been shocked at the revelations concerning fraudulent activities of certain companies. I fear that, if the number of shareholders is limited to ten, they will become trustees for the unfortunate persons who have invested their money in the undertaking. I think that if legislation were enacted to make it obligatory to file an audited balance sheet at the office of the Registrar-General, in a sealed envelope which would be opened only in certain eventualities, that would be the solution to the problem of finding evidence.

Mr. Randles.—Was not a provision making it obligatory for proprietary companies to file with the Registrar-General a balance sheet in a sealed envelope contained in the 1928, but omitted from the 1938 legislation?

Mr. McArthur.—I think Mr. Randles is confusing the issue with the provisions relating to the private balance sheet of a limited company.

The Chairman.—Section 133 of the *Companies Act* 1938 states, *inter alia,* that a duplicate of the private balance sheet is to be deposited with the Registrar-General in a sealed envelope. That requirement applies to a public company. It goes without saying that the private balance sheet will contain much more information than that which is in the published document.

Mr. Vroland.—I would be unhappy about requiring that an audited balance sheet of a proprietary company be filed in a sealed envelope, but I would not object to a provision that a balance sheet—not necessarily audited—must be filed, accompanied by a certificate of the directors to the effect that, contained in the envelope, was a balance sheet in respect of the year in question, and a certification that it correctly reflected the financial position of the company.

Mr. McArthur.—There is something to be said for that suggestion. Why should a small company be forced to employ a licensed company auditor?

The Chairman.—That does not overcome the evil, because in the case of most of the companies whose affairs the Committee has considered, each has already published a balance sheet certified to by the directors that it is correct in every particular, and the balance sheet has proved to be completely fraudulent. The problem of the Law Department authorities is that they have a balance sheet of a company, which they know is fraudulent, but they are unable to prove that fact because there are no books of account, there has been no audit, and there is no evidence available as to the state of the affairs of the company when the balance sheet was published.

Mr. Rodd.—Most of the better organized proprietary companies have their affairs audited. The two classes that would feel concern at this suggestion are, first, the type of company which wants to perpetrate a fraud, and, secondly, the small family business. I cannot offer any objection to an audit provision except perhaps from the point of view of the latter class. One can visualize a man and his wife conducting a farm as a company in a remote locality and having their books kept by a man who does not qualify as an auditor under the Companies Act. I consider that an exception should be made to permit such honest persons to manage their own affairs. There is merit in the suggestion aimed at permitting the members of a proprietary company to waive this provision by voting at a meeting.

The Chairman.—In the case of small companies, there would be no great hardship if the shareholders annually signed a certificate, to be lodged at the office of the Registrar-General, stating that they did not desire an audit to be carried out.

Mr. McArthur.—There is merit in that suggestion.

Mr. Rodd.—I agree. The draftsman would have to be careful when providing for the position of deceased shareholders.

Mr. Vroland.—Do the shareholders sign a certificate?

Mr. Rodd.—It is suggested that they sign a statement that they do not require an audit.

The Chairman.—A difficulty is that if a company is doubtful, and the shareholders have some reason for not disclosing its state of affairs, they will sign such a certificate.

Mr. McArthur.—May I ask whether the Committee have considered the provisions of the Queensland Companies Act applying to the audit of the books of companies?

The Chairman.—They have been mentioned, but not in detail.

Mr. McArthur.—We can examine them in the light of this discussion.

The Chairman.—Yes. There are provisions relating to the compulsory audit of the books of proprietary companies in both Queensland and Tasmania.

Mr. Vroland.—Lawyers generally, and particularly the Council of the Law Institute of Victoria, would deplore a suggestion that an audit is the answer to fraud. Some of the greatest frauds that have ever been perpetrated have been committed despite the fact that the auditor has been completely honest.

Mr. Randles.—I thoroughly agree with that statement because evidence has been given to the Committee that highly reputable persons in the accountancy profession have signed audits of fraudulent companies; they could not have known that the organizations were bogus.

The Chairman.—The Committee is fully seised of that position.

The Committee adjourned.

WEDNESDAY, 31ST MARCH, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes	Mr. Hollway
The Hon. H. C. Ludbrook	Mr. Pettiona
The Hon. I. A. Swinburne	Mr. Randles
The Hon. F. M. Thomas.	Mr. R. T. White.

Messrs. R. J. McArthur, J. M. Rodd and R. N. Vroland, members of the Council of the Law Institute of Victoria, were in attendance.

The Chairman.—Yesterday, some confusion arose concerning section 123 of the Companies Act, but I think I was able to clear up the matter with Mr. McArthur after the meeting. When submitting evidence, he dealt with two suggestions, one with regard to sub-section (1) and the other with regard to sub-section (6). There has been a suggestion that sub-section (1), as it stands, is unsatisfactory; it reads—

> Every company and the directors and manager thereof shall cause to be kept proper books of account in which shall be kept full true and complete accounts of the affairs and transactions of the company.

The point made by Senior Detective Garvey was that the provision relating to directors and manager was not wide enough and that it was desirable to impose such an obligation upon the secretary, accountant or other person to whom the books of account were entrusted.

The second point was that however sub-section (1) of section 123 was amended, the offence provision in sub-section (6) should be wide enough to catch all persons who have an audit imposed upon them under sub-section (1). I think that probably clears up the matter.

Mr. McArthur.—Yes, I agree with that.

The Chairman.—Have you any comments to make?

Mr. McArthur.—Mr. Rodd is troubled as to the alteration the Committee had in mind concerning sub-section (1), but I understood that it was concerned simply with some sort of drafting which would show that the persons who were charged with the audit of the books of a company should be under the obligation of keeping such books.

The Chairman.—That is correct.

Mr. McArthur.—I wish to refer back to the discussion that took place yesterday concerning the audit of proprietary companies. I started by saying that we felt that we had to oppose such a suggestion, but in the course of the discussion cogent reasons were advanced by members of the Committee in favour of an audit by proprietary companies and the filing of an audited balance-sheet in a sealed envelope in the office of the Registrar-General. I was inclined to think there was some merit in that suggestion—I still think there is merit in it—but upon reflection I feel that it would be too drastic a change in our law to be undertaken without much closer scrutiny than we have been able to give so far to the implications of such a change.

I do not know how many hundreds or thousands of proprietary companies there are in Victoria, but there is a large number covering all sorts of ventures. Many of those companies rely quite properly upon the privilege of the law that they do not have to publish their balance-sheets. I consider that overseas capital has been attracted to this State as a result of the possibility of operating in Victoria through proprietary companies. There are many other aspects of the matter. We cannot visualize what a sweeping change it would mean if all proprietary companies were forced to have their books audited. If the Committee decided to recommend some provision in relation to an audit, I think it must consider most seriously giving some reasonable outlet to honest companies which do not want to file copies of balance-sheets.

Mr. Rodd had directed my attention to section 137 of the Companies Act of Western Australia, under which proprietary companies are under an obligation concerning an audit of their books. Sub-section (7) of section 137 of that Act provides—

> Notwithstanding anything to the contrary contained in this section it shall not be necessary for a proprietary company to appoint an auditor if and when a majority in number of the members of the company and irrespective of their shareholding voting in person or by proxy at the statutory meeting or at the annual general meeting of the company carry a resolution directing that the company shall not appoint an auditor or auditors and when such a resolution is carried and whilst such resolution remains unrescinded by a subsequent resolution similarly carried the provisions of this section shall not apply.

Mr. Randles.—Does that apply to the persons present at the meeting or to a majority of the shareholders?

Mr. McArthur.—I take it that it means the majority in number of the shareholders.

Mr. Byrnes.—It would be a majority of those persons entitled to vote?

Mr. McArthur.—That is so.

Mr. Vroland.—It is irrespective of shareholding; it is one man-one vote.

Mr. Ludbrook.—Lack of audit is all right where the members of a proprietary company work amicably, but not where a domineering senior partner wants to run the whole show. The provision to which you have referred gives power to a percentage of the shareholders to require an audit, if they think that is necessary?

Mr. Rodd.—There must be an audit unless the shareholders vote against it.

Mr. Pettiona.—A resolution requiring that no audit should be held could last for twenty years?

Mr. McArthur.—Yes.

Mr. Thomas.—How does that overcome the difficulty of one man holding a majority of shares and acting to the detriment of others?

Mr. Vroland.—Sub-section (7) of section 137 of the Western Australian Companies Act does not provide for a vote according to shareholding, but on the basis of one man-one vote.

Mr. Hollway—That is a somewhat unusual departure in company law.

Mr. McArthur.—Yes, very unusual.

Mr. Hollway.—Has any reason been advanced for that provision?

Mr. Rodd.—I do not know the background of it.

Mr. Hollway.—It seems to run contrary to company law to have a vote of shareholders irrespective of shareholding.

Mr. McArthur.—I imagine that it was designed to prevent a person with a large number of shares dominating a number of small shareholders. For instance, the circumstances could arise where one person held most of the shares and eleven others held only a few shares.

Mr. Hollway.—That appears to be wrong, because a man with the majority of shares in the company can be deprived of an audit by those persons holding only a few shares.

Mr. McArthur.—As I understand it, the primary object of this Committee's investigation is the prevention of fraud. It is obvious that the legislature in in Western Australia has deliberately tried to protect the small shareholders.

The Chairman.—Mr. Hollway has raised the other angle. The small shareholders could come along and say that the expense of an audit is unjustified. Thus, they could deprive the person possessing the main interests in the company of an audit. I suppose that would be unlikely because it would not make very much difference to them whether they had an audit or not.

Mr. Hollway.—I can understand that the small shareholders could demand an audit, but I cannot see the reason for the small shareholders being able to deny an audit.

Mr. McArthur.—The majority of shareholders, by carrying an appropriate resolution, could alter the articles to require an audit.

Mr. Rodd.—That would be an audit required under the articles of a proprietary company independent of the statute. I think it is quite clear that a three-quarters majority could so alter the articles.

Mr. Randles.—So that the person who held the majority of shares could be protected by altering the articles of association.

The Chairman.—Have you considered the legislation of Queensland or Tasmania?

Mr. McArthur.—I have not been able to find time in which to do so.

Mr. Vroland.—The desire of proprietary companies not to have an audit is not necessarily sinister. There are personal reasons why individuals wish to keep their affairs to themselves. For example, it may place them at a disadvantage in business if their competitors possessed details of their affairs. That is a reason why they should not be compelled to have an audit.

Mr. Rodd.—I could speak on the Queensland legislation if the Committee wishes to hear me now.

The Chairman.—It would assist the Committee.

Mr. Rodd.—The Queensland Companies Acts Amendment Act of 1953 amends the Companies Acts by inserting the following sub-section in section 120 of the principal Act:—

(3A.) A private company shall when filing its annual return tender to the registrar for filing an envelope or container suitable for sealing and a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance-sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and shall otherwise comply with the requirements in respect of a last balance-sheet required to be included in the annual return of a public company, and such copy balance-sheet, documents so required to be annexed thereto, and copy of the report of the auditors shall be placed by the registrar in the envelope or container which he shall thereupon seal and file:

Provided that a Crown Law Officer may at his discretion, in writing, direct that a private company be exempted from the requirements of this sub-section, which exemption may in the case of any private company be granted subject to such terms and conditions as the Crown Law Officer thinks fit.

A private company granted exemption as aforesaid subject to terms and conditions shall comply in every respect with those terms and conditions.

An exemption as aforesaid may be cancelled by the Crown Law Officer and thereupon the private company in question shall cease to be exempted from the requirements of this sub-section.

Except by order of a Judge of the Supreme Court or of the President of the Industrial Court, no person shall be entitled to inspect or take copies of or extracts from any copy of a balance-sheet of a private company or of the documents required by law to be annexed thereto or of the report of the auditors so filed with the registrar.

Certain of the other States require an audit to be made, but they do not require filing. It is important to note that in Queensland the obligations as to the filing of balance-sheets are rather differently imposed in respect of foreign private companies. There is an absolute obligation on a foreign company to file a balance-sheet, not sealed, unless it is exempted. From my experience, that has proved embarrassing to certain foreign companies which so far do not appear to have been able to find out on what ground, if any, exemption will be granted.

The Chairman.—A foreign company for the purposes of that legislation could be one formed in another State, could it?

Mr. Rodd.—Yes. The provision is causing embarrassment to Victorian companies.

Mr. Randles.—That is a balance-sheet showing the whole position of the company, not just the portion of the business operating in Queensland, is it?

Mr. Rodd.—That is so.

Mr. Thomas.—The section of the Queensland Act which you have quoted mentioned "the last balance-sheet." That could have been prepared five years before.

Mr. Rodd.—As I understand it, there are other provisions in the Act making it an annual requirement. It is tied in with the normal provisions of the Companies Act requiring publication of a balance-sheet annually.

Mr. Thomas.—Is that mandatory?

Mr. Rodd.—I have not the complete Queensland Companies Acts with me, but I am reasonably certain that that is the position.

Mr. McArthur.—My next note is to clarify the position in relation to statements in lieu of prospectuses. I have never understood why a statement in lieu of prospectus was either desirable or necessary. If a company is going to the public for money it must issue a prospectus in order to comply with the law. If a company is not going to the public for money, I am unable to see what good a statement in lieu of prospectus can do. I do not understand the purpose of it. Say, for example, that a perfectly legitimate company is seeking money from the public. It is forced because of the incidence of taxation to form a holding company. It is going to issue a prospectus, which is being carefully and properly prepared, but to form the holding company it must go through the unnecessary folly of filing a statement—in lieu of prospectus—which cannot give the proper information The proper information is in the prospectus, which comes out immediately after the company is formed. Thus, companies are forced into the ridiculous position of having to file a statement in lieu of prospectus which does not by any means give the true picture of what the company is about to do. In my opinion that provision should be abolished.

I am sorry to say that I do not understand the next subject, which is the suggestion that stricter control over the payment of dividends should be effected.

The Chairman.—The point is that, under section 367 of the Companies Act, a company is not permitted to pay dividends except out of profits. The suggestion is that a company should not be able to pay dividends except out of profits realized. The example quoted was a softwood company. Prior to the 30th June in a particular year the company makes an appraisement of its trees and says, "The trees have grown 2 feet more this year. Therefore, we have made a profit of 2 feet, and we will declare a dividend."

Mr. Rodd.—On the authorities, I think the declaration of a dividend in those circumstances is of most doubtful validity.

Mr. McArthur.—I should like to make one comment, namely, that, under the Commonwealth Income Tax Assessment Acts, inflationary increases in the value of stock in trade are assessable income and come down to taxable income. Under that legislation, unrealized profits are regarded as profits nevertheless, and that is one of the fundamentals that strikes at the root of of our economy. I should regard with great concern any suggestion that dividends may be paid only out of realized profits. Such a practice would interfere with the due and proper carrying on of business by many public companies. My colleagues and I know much about the legal definitions of profits and the difference between capital profits and income profits. It should be noted by this Committee that it is possible to pay dividends quite properly out of capital profits and that is being done constantly. In our Australian set-up it is quite common for dividends to be declared from the profit arising from a revaluation of assets and for those dividends to be satisfied by the issue of bonus shares. I am certain that all members of this Committee are familiar with that practice, and if they are as cautious as I am, they will view with diffidence the suggestion that is now under discussion.

The Chairman.—In fairness to Mr. Burt, perhaps I should mention that he suggested that dividends should be paid in cash out of unrealized profits; he raised no objection to the issue of bonus shares.

Mr. McArthur.—That was my second illustration; the first one was equally valid.

The Chairman.—That the Income Tax Commissioner will regard them as profits?

Mr. McArthur.—They are profits.

The Chairman.—Therefore, why should they not be paid out by way of dividends?

Mr. McArthur.—That depends upon the internal strength of the company concerned.

Mr. Rodd.—A major difficulty in any suggestion such as this is that the courts in England and Australia have for many years given consideration to the question of what are profits, and we now have general clarity on that matter. To alter what is a basic principle with respect to the payment of company dividends would, I think, result in the loss of the advantage of many years of mature consideration by the courts, and also throw commerce generally into a state of confusion.

The Chairman.—Are you able, Mr. Rodd, to inform the Committee whether section 367 of the Companies Act follows generally the lines of the English legislation?

Mr. Rodd.—I shall review that aspect and comment later.

The Chairman.—The next point that arises concerns directors' remuneration, which matter is dealt with in section 127 of the Companies Act. Mr. Burt's submission was in these terms—

> The real intention and purpose of this section has been taken away by the words "as such" in sub-section (5). Those words should be deleted as executive directors may receive large payments in some other capacity. Those payments in another capacity are not payable to the director "as such."

This relates to the obligation of a company to disclose the money paid to directors. Mr. Burt's submission continued—

> There can be no hardship in cutting out the words "as such" as section 148 gives a coterie of shareholders a right to demand the information. That being so, the information should be given in the accounts.

Mr. McArthur.—I can only express my own view that it will cause a considerable upset in perfectly legitimate businesses and it is at least open to question whether the purpose of section 127 was not as indicated, that only those payments made to the directors in their capacity as directors should be disclosed. I can imagine much embarrassment being caused to many legitimate companies in which men and women occupy positions as executive officers and in addition are directors, if they are compelled to make a complete disclosure of all the emoluments received by those persons in their capacity as executive officers.

The Chairman.—Of course, Mr. McArthur, you will appreciate the other aspect that, in the case of a limited public company which has been formed for the purpose of "taking down" either the shareholders or the creditors, it is most convenient for the directors to be able to show in the published balance-sheet that a sum of £150 only was drawn during the year as directors' fees, while, under the item "salaries and administration charges" some thousands of pounds represent moneys paid to the directors by way of travelling expenses, special salaries, and even, in some cases, management fees.

Mr. McArthur.—I am familiar with that aspect. Nevertheless, it is impossible to make a man honest by Act of Parliament. If a director is employed as an executive officer of a company, there is no reason why he should not be properly remunerated in that capacity, and the board of directors is probably empowered to fix the salaries and emoluments. I would hesitate indeed to interfere with that established practice.

The Chairman.—Do you agree that, under section 148 of the Companies Act, the shareholders can obtain that information?

Mr. McArthur.—Yes, that is true.

Mr. Rodd.—There is the protection, also, under the general provisions of the law, that a director cannot make a profit out of his own office.

The Chairman.—This Committee appreciate that fact, but, unfortunately, in most of the cases that have been reviewed so far, the directors have been making profits out of their own offices to a large extent and the shareholders are confronted with all sorts of difficulties in ascertaining what has occurred until it is too late.

Mr. Rodd.—It is impossible to prevent a director who has particular knowledge from utilizing that knowledge improperly. Fortunately, the vast majority of directors are not only honest, but "terribly" honest. From my own experience, I would say that by far the greater number of directors err on the side of being too correct.

Mr. Thomas.—Heavier penalties might be imposed.

Mr. Rodd.—I do not quarrel with any proposal aimed at putting a delinquent director "on the spot."

Mr. Pettiona.—That is what we want to do.

Mr. Rodd.—I do not want the honest man to be hurt.

Mr. Pettiona.—The Committee has no intention of doing that.

The Chairman.—We are seeking to clarify the position as far as possible.

Mr. Vroland.—I fear that, because of two or three rogues, thousands of honest persons will be embarrassed.

The Chairman.—This Committee has had the advantage of hearing evidence for some weeks past, which privilege has not been shared by Mr. Vroland.

Mr. Vroland.—I should say that a very small percentage of the directors of companies is dishonest.

The Chairman.—Unfortunately, that small percentage seems to be able to deal in fairly big money.

Mr. Vroland.—I appreciate that.

The Chairman.—The next point raised by Mr. Burt was the question of when a prospectus becomes "stale." He pointed out that, in paragraph (*d*) of sub-section (1) of section 366 of the Companies Act, the words "specified in the prospectus" seemed to produce an absurdity and accordingly it would seem that there may be no offence. This is a technical matter and I do not think we need worry Mr. McArthur about it unless he cares to make some comment.

Mr. McArthur.—I have no comment to offer.

The Chairman.—It is desirable that the law should be clear on the question of when a prospectus becomes stale.

Mr. McArthur.—Although I have had considerable experience in big allotments, I do not know whether a period of six months is sufficient.

Mr. Hollway.—A prospectus could become stale overnight.

Mr. McArthur.—It might be difficult to complete the necessary work in six months.

Mr. Hollway.—It is possible for a prospectus to be completely disproved in a matter of a day or so.

Mr. McArthur.—That is true.

Mr. Pettiona.—I have noticed in the newspapers this week advertisements by the Rootes group of companies, in which a prospectus is mentioned. At the foot of the advertisement appears a statement to the effect that it is not an invitation to the public to subscribe capital. For my own information, I should like to learn whether there is any explanation of that position.

Mr. Rodd.—From those advertisements it is clear that the company concerned is pointing out that there is to be an issue of shares and that, if any person is interested, he can obtain a prospectus at a certain address and, from that document, ascertain in full detail the terms upon which the shares will be issued.

The Chairman.—The endorsement at the foot of the advertisement is to prevent the public from being led to believe that the advertisement itself is a prospectus.

Mr. Rodd.—That is so. Applicants will not act on the basis of the advertisement, but on the basis of the prospectus that is available to them.

The Chairman.—The twelfth suggestion relates to share hawking and the fraudulent sale of securities. Mr. Burt commented—

> Sections 354 and 357 are hopelessly inadequate and in England have been superseded by the Prevention of Fraud (Investments) Act 1939.
>
> Consideration should be given to adopting that Act in Victoria. It might not be entirely acceptable to the members of the Stock Exchange as it would set up a special class of licensed share brokers.
>
> Experience in England suggests that the adoption of the Act has been worth while.

Mr. McArthur.—I am unable to add to my statement that one should look with great caution at the sweeping legislation contained in the English Prevention of Fraud (Investments) Act. I am not aware that there has been any great difficulty in Victoria concerning share hawking. I can understand that some legislation might be contemplated relating to the sale of units. A better definition of "unit" than now appears in section 3 of the Companies Act is required. The present definition is—

> "Unit" of a share or debenture means any right or interest (by whatever term called) therein.

In my opinion, a wider definition would materially assist to remove the evils which I understand have caused this Committee much concern regarding the hawking of units of a trust.

The Chairman.—Mr. Burt amplified his suggestion thus—

> My suggestion is that, as in England, a man who is not a member of the Stock Exchange, or who is not specially exempted by some other authority, should be licensed.

He drew an analogy with estate agents, who must apply for a licence and deposit a bond before they may pursue their calling, and suggested that there might be merit in placing a similar provision in the Companies Act.

Mr. McArthur.—I do not know whether it is necessary.

The Chairman.—Mr. Burt stated—

> One of the weaknesses in the English Act was made fairly evident to me in connexion with a company which I brought under the notice of the Attorney-General about four or five years ago. In that instance two men acquired a mining lease for a few pounds and formed a company. The company allotted them about 100,000 shares and they proceeded to Gippsland and sold all the shares within a period of about a week. All that the shareholders in Gippsland possessed was shares in a company which owned a lease that had been bought for a few pounds. Such a case is not covered by the English Act, which only requires brokers to be registered where the object of their business is to sell shares. A man who sells his own shares is not necessarily carrying on such a business. In fact, I do not think the legislation was designed to prevent a man from selling his own shares.

Mr. McArthur.—It is impossible to legislate adequately to prevent people from being utterly foolish.

Mr. Pettiona.—What is your attitude, Mr. McArthur, to the suggestion that unit certificate holders be given similar rights to those possessed by shareholders?

Mr. McArthur.—I should think that would be a good move. His Honour Judge Nelson suggested that the return of directors should be *prima facie* evidence of a person being a director for the period of the return. Such a provision would be desirable.

Mr. Rodd.—If a section to that effect were inserted in the Act, I suggest that there should also be provision enabling a retiring director himself to file with

the Registrar-General notice of his having ceased to be a director. At present, it is the company which is under the obligation to file the notice. A man might cease to be a director and desire notice of that fact to be placed on the register, but the officials of the company might refuse to do so.

Mr. McArthur.—That is a very good point.

The Chairman.—It has also been suggested that the name of the secretary of the company should be filed in the office of the Registrar-General and that that return should be *prima facie* evidence of his being the secretary.

Mr. McArthur.—I agree with that suggestion.

The Chairman.—At present there are no provisions relating to the secretary and public officer, who, in many companies, is the most important person. Returns are accepted at the office of the Registrar-General signed by anyone as secretary.

Mr. Rodd.—It is only the secretary with whom the Companies Act is concerned.

Mr. McArthur.—The next suggestion is that all serious offences under the Companies Act should become indictable offences. In my view, this is right in essence, the difficulty being to define "serious offence."

The Chairman.—Members of the Committee appreciate that problem. From the evidence submitted, I am inclined to think that practically every offence provided for under the Companies Act is serious.

Mr. McArthur.—I need not do other than agree that a serious offence should become an indictable offence. The fifteenth suggestion is that section 142 of the Companies Act be extended to prevent undischarged bankrupts from managing firms. This is a matter which should properly be dealt with by amendment of the Commonwealth Bankruptcy Act, and is not a question for company legislation in the States. If provisions are necessary concerning undischarged bankrupts managing firms, surely this is a subject for general legislation covering the whole of Australia.

The Chairman.—The Companies Act prevents an undischarged bankrupt from managing a company without obtaining leave of the court. Two suggestions have been made. First, that the legislation should be extended to cover any person who has been convicted of any of certain offences, such as embezzlement. Secondly, that the whole provision should be extended to embrace firms.

Mr. McArthur.—I do not wish to add to my suggestion that the matter should be covered by the Commonwealth Bankruptcy Act.

The Chairman.—Your suggestion would be satisfactory regarding the extension of section 142 to firms, but it would be scarcely a matter for the Bankruptcy Act to provide that a person convicted of dishonesty should not be the manager of a company without securing leave of the court.

Mr. McArthur.—I had not referred to that aspect. Generally, I consider that persons convicted of serious offences should be debarred as proposed, and this question would be a proper subject for legislation in the Companies Act.

Mr. Randles.—In most instances, it has been impossible to sheet home anything to persons who act fraudulently.

Mr. Rodd.—It is not only the person convicted of dishonesty who is concerned, but the unconvicted dishonest person.

The Chairman.—Evidence has been given to the Committee that in a number of cases a person who has been convicted of dishonesty has made a practice of forming companies, bleeding them, and going elsewhere. A recommendation has been made that a provision similar to that dealing with undischarged bankrupts should be included in the Companies Act.

Mr. Rodd.—It is suggested that, although a man may serve a gaol sentence for a dishonest act, he should be forever afterwards debarred as proposed?

The Chairman.—Except by obtaining leave of the court.

Mr. Randles.—In the past, the main trouble experienced has been to record the first conviction.

Mr. Rodd.—I can find no provision in the English Companies Act such as section 367 of our Act. The relevant Victorian section appears to be declaratory of the law, and, in sub-section (2), provides specific penalties for persons convicted of acting in breach of sub-section (1). There is no statutory provision in the English Act; it is a question of general law.

The Committee adjourned.

TUESDAY, 6TH APRIL, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. I. A. Swinburne,	Mr. R. T. White.
The Hon. F. H. Thomas.	

Mr. L. Rigg, Editor of Truth and Sportsman Ltd., was in attendance.

The Chairman.—On behalf of the Committee, I welcome Mr. Rigg to our deliberations. In view of the efforts made by Mr. Rigg's newspaper over a period of years to expose some fraudulent practices in connexion with companies, the Committee felt that it would be desirable to give Mr. Rigg or any member of his staff the opportunity of placing before it any information which they consider might help it in its task.

The Committee are interested in two aspects of this matter. Firstly, it is concerned with what has happened in the past in order to obtain a background as to how various fraudulent practices are carried out by companies. Secondly, the Committee are interested in amending the law to prevent such practices occurring in the future and, possibly, to catch some of the people who are at present free, but who should be called upon to answer for their activities.

Mr. Rigg.—Over a period of years, my newspaper has published articles, sometimes in specific, but more often in general, terms, most of which have been directed towards the need for closing up what we consider to be loopholes in the law, which have enabled various organizations to go outside the intention of the law, if not actually to break it. I should like to assist the Committee, but I fear that there are difficulties. Very often an article is written after someone has come forward with a complaint. For example, a Mrs. Jones might come into the office wailing because she was told that by investing her money in something it would be trebled in two years, instead of which nothing has happened. The newspaper would assign one of its staff to look into the matter. Perhaps

nothing would be brought to light, and we would be unable to take any action because the transaction was within the law. At the same time it might be noted that this type of transaction might be repeated and that it would be worthy of further investigation. Strictly speaking, I have very little to put before the Committee, because most of our material comes within the category of what lawyers term "hearsay" evidence. It would not be information gained from our own experience or from our own knowledge, but rather something which we heard, checked, and believed to be true. I have reviewed the articles that we have published over the last two years and have ascertained that some of them have related to straight-out cases of fraud. There have been various actions which, in our opinion, have "pointed up" the need for tightening the law. There does not seem to be much that I can add. When a newspaper commences a campaign in some particular regard, the fires are fed occasionally, so to speak, with some new incident which relates to different people or different sets of people, and the statement is then made, "This only backs up what we have said on many occasions, namely, that this and that requires tightening up." Unless the Committee can give me a lead on certain specific matters, I may be unable to tender any worthwhile evidence.

The Chairman.—Have you in your possession a file containing details of defects in the legislation that have been brought to your notice?

Mr. Rigg.—Only in a general sense. There has been much talk about share certificates and unit trusts, but I have no specific instances.

Mr. Hollway.—Unit trusts have caused a good deal of concern; possibly something might be done about them. Some time ago, your newspaper publicized the activities of the Rubinstein group, certain forestry concerns and Amalgamated Plastics.

Mr. Rigg.—That is so. Approximately six years have elapsed since we wrote anything about the Rubinstein group of companies. Recently, an announcement was made that that group had gained control of Deborah mines.

Mr. Pettiona.—Some of the articles printed in your newspaper are stated in fairly strong terms, and it seems that the persons whose characters are attacked are encouraged to take legal action against the paper. Recently, the Sydney *Truth* published an article in which it was claimed that a certain person was a swindler and a rogue. I take it that that claim was made by design.

Mr. Rigg.—It could be. We may have actual dealings with the person concerned, and they support the claim of other persons that dishonest tactics have been used. In those circumstances, he is denounced as a liar and a swindler. If he desires to take legal action, he may do so, but usually he does not.

Mr. Hollway.—That was the position with respect to Braund?

Mr. Rigg.—Yes, he just faded out of the picture.

Mr. Pettiona.—You criticized the activities of the Softwoods organization. Were you threatened with legal action in respect of those articles?

Mr. Rigg.—A writ was not taken out against us.

The Chairman.—Mr. Opas supplied you with a file relating to the Livingstone group. We should like your assistance in making it available to the Committee.

Mr. Rigg.—That will be done.

The Chairman.—Mr. Opas also stated that one of your reporters made an inspection of Sunday Island and took out some figures concerning the project. Would that information be available?

Mr. Rigg.—Yes. I think Sunday Island was associated in some way with Mr. Lee and Mr. Robertson.

The Chairman.—There was a suggestion also that Mr. Leonard might have been connected with the venture.

Mr. Hollway.—Have you, Mr. Rigg, heard any suggestion that Woolcott Forbes is associated with the Sunday Island companies in Victoria?

Mr. Rigg.—I have heard vague suggestions to that effect, but they are only in the category of gossip.

Mr. Randles.—If a member of the public complained to your newspaper, surely you would not publish his complaint without investigating it first; otherwise you might become liable to an action for libel?

Mr. Rigg.—That is so.

Mr. Randles.—That means that a member of your staff would carry out investigations?

Mr. Rigg.—That would be done in some instances.

Mr. Randles.—Who would make the investigations on behalf of your newspaper?

Mr. Rigg.—Various people.

Mr. Pettiona.—Mr. Opas mentioned Mr. R. Stephens, a member of your staff. Would the paper make him available for examination by the Committee?

Mr. Rigg.—Yes. He has carried out a good deal of work in this field lately.

The Chairman.—Mr. Opas informed the Committee that, during his investigations of doubtful companies, he had received considerable assistance from Mr. Stephens.

Mr. Rigg.—From time to time they see each other. Newspapermen have "contacts" in various walks of life and spend some time with them occasionally with the object of obtaining information. Mr. Stephens has direct contact with many persons, and refers particular matters to me only when the stage has been reached for action to be taken.

Mr. Pettiona.—It is hoped that it will be possible, by collating all the evidence submitted to the Committee, to institute an investigation that will result in the successful prosecution of certain persons, as *Truth* has demanded for many years.

Mr. Rigg.—A group of people has been referred to in the Victorian Parliament on occasions, and Dr. Turnbull, Minister of Health in Tasmania, has mentioned the same persons in the Parliament of that State. Many of the articles published in *Truth* have been based on those statements. When a new swindle is reported, we say, in effect, "Here is another instance, which goes to prove that nothing has yet been done, and it is time that something was done." Material is rehashed in the preparation of these newspaper articles.

Mr. Randles.—Most frauds under the Companies Act appear to be perpetrated by a "master mind" or by a certain group of persons, and doubtless the information obtained by your staff points to that fact?

Mr. Rigg.—There is a pattern.

The Chairman.—The pattern is of considerable interest to the Committee, since it presents a basis for the recommendation of amending legislation. Apart from unit and trust certificates, to which you referred, are there any other facets of the law that you consider might, with advantage, be amended?

Mr. Rigg.—I am not qualified to make a statement on that subject.

The Chairman.—If you think that you can give the Committee a lead on any question, we would appreciate receiving a letter from you.

Mr. Rigg.—Very well.

The Chairman.—Doubtless, this matter has been discussed from time to time by your staff?

Mr. Rigg.—Yes. The subject is raised at conferences.

Mr. Byrnes.—I gather that persons in poor or moderate financial circumstances are duped by false promises, are wilfully misled, or are swindled by fraudulent companies, persons, or groups. Do you consider, Mr. Rigg, that a contributing factor has been that the victims have been naturally ignorant about investments and easily misled?

Mr. Rigg.—In some instances, that contention might be valid, but the attitude of *Truth* has always been that it should not be so easy as it is at present for people to be swindled. I realize that some persons will sign documents without reading them, particularly when dealing with door-to-door salesmen, including portrait canvassers and similar persons. However, men and women much better off financially than the average person are defrauded of large amounts.

Mr. Byrnes.—Does your experience indicate that there are a large number of persons who constitute an extremely fertile field for exploitation by snide operators?

Mr. Rigg.—There must be, because the racketeers live very well.

Mr. Byrnes.—Do you consider that there exists a body of persons each of whom lives very well by defrauding others who are comparatively ignorant?

Mr. Rigg.—I am sure there must be.

Mr. Byrnes.—Do you contend that a sufficient number are being robbed in this manner to justify a tightening of the law?

Mr. Rigg.—To the outside view of the management of a newspaper, that appears to be so.

Mr. Brennan.—Speaking as a former journalist, may I ask whether many persons come to your office with stories of frauds?

Mr. Rigg.—Quite a number do. When a close examination has been made of the information submitted, it is often found that the people concerned have misled themselves.

Mr. Ludbrook.—In other words, there is "one born every minute?"

Mr. Rigg.—That statement may be aptly applied to many persons. A newspaperman may spend a couple of days investigating an allegation, only to find that the person defrauded has contributed by going in with his eyes open, so to speak.

Mr. Byrnes.—Do you consider that, if the law were stringently amended so as to protect every weak-minded individual in the community, many persons might be prevented from carrying on a legitimate business?

Mr. Rigg.—I could not express a definite opinion on that question, although I consider that a legitimate business will proceed.

The Chairman.—I have observed that your newspaper has never attacked companies or any form of trading generally, but has concentrated on directing attention to the apparent fraudulent practices of particular persons or companies.

Mr. Rigg.—Also the opportunity that the law allows for persons suspected of operating fraudulently to perpetrate swindles.

Mr. Byrnes.—Does your experience lead you to believe that there is a field being exploited by unscrupulous persons through weaknesses in the law?

Mr. Rigg.—I think there is no doubt about that fact.

Mr. Ludbrook.—You assert that certain persons are defrauding unsuspecting "mugs," and your paper has adopted the view that it is doing a public service by attempting to have their activities stopped?

Mr. Rigg.—That is so.

Mr. Ludbrook.—The articles published by your paper have been based on information obtained from such persons as Mr. Opas and others who have written letters?

Mr. Rigg.—As new angles are revealed, stories are built up largely from previously published articles and from information supplied by persons assigned at various times to make investigations.

Mr. Pettiona.—Do you refer to members of your staff?

Mr. Rigg.—No, to others. Mr. Opas is a well-known crusader in the company field, and information is obtained from other sources.

Mr. Brennan.—Is there a member of your staff specially assigned to company work?

Mr. Rigg.—Various members are given different jobs. Recently, several articles were written by Mr. Stevens, who has many "contacts" and has a good background knowledge of this subject.

Mr. Pettiona.—You keep on the lookout for any possible miscarriage of justice?

Mr. Rigg.—We endeavour to do so.

Mr. Pettiona.—Have your investigations disclosed that the law has operated too harshly on some companies?

Mr. Rigg.—I cannot recall any instance.

Mr. Thomas.—Your paper realizes that there are some weaknesses in the law relating to companies and there is a desire to have those defects remedied?

Mr. Rigg.—That is so.

Mr. Thomas.—You also wish to warn people who contemplate making investments?

Mr. Rigg.—Yes.

Mr. Pettiona.—Have anonymous letters to your paper ever proved a fruitful source of information?

Mr. Rigg.—I cannot recall any instance where we have obtained a good story from that type of material, although sometimes they build up. Usually, after receiving one anonymous communication, we get another.

The Chairman.—It might piece in with something else?

Mr. Rigg.—Yes. Sometimes when people sign their names to letters and give addresses, these particulars are fictitious.

The Chairman.—Probably it is human nature for a person not to admit that he has been a "sucker."

Mr. Rigg.—That is so. The following cases form the main basis for recent articles: An article written in 1952 on a report submitted concerning Dr. Newton of the Omar Construction Company. The particulars contained in that report will be available to the Committee, although I do not think it was ever presented to Parliament. A few weeks later, another article appeared in which it was pointed out that something should be done to amend the law; then followed articles concerning Primary Oils and Murray Cameron; a statement made in the Victorian Parliament about certain companies; a reference to Mr. Rubinstein; and on the suggestion that amendments should be made to the law to try to tighten up the position. Subsequently, it was decided to refer the question to this Committee. On the 15th August, 1953, an article which traversed old ground made reference to Mr. Opas, and there was another article a month later about a man named Foley and a concern called Bernco.

The Chairman.—Can you assist the Committee with information about Bernco?

Mr. Rigg.—Originally, it was known as Cambridge Distributors and operated in Tasmania for the supply of canteens of cutlery, and so on. It went broke and we interviewed the principals in Victoria; they went for cover when they saw us coming. Mr. Bern and Mr. Foley then formed Bernco, and I believe that they took over the assets, if any, of Cambridge Distributors. Mr. Foley was interviewed and was asked why he had taken over a bankrupt company. He said that he felt there was a future in the project and he would see that everyone was paid.

Mr. Thomas.—Did you discover Bernco in Queen-street, Melbourne, or in Johnston-street, Fitzroy?

Mr. Rigg.—It was operating in Carlisle-street, St. Kilda, when we first interviewed Mr. Foley. The articles are all soundly based. A subject is kept alive, and when a new point or a new aspect concerning it crops up that points to the need, in our opinion, to give the matter further publicity, we would run another article to say it is time that Mr. Cain did something about it.

Mr. Randles.—I take it that the files on each case are kept by *Truth* in case any legal action is taken against the newspaper?

Mr. Rigg.—Yes, but if after six months no action has been taken, we may not keep unimportant records.

Mr. Brennan.—The news element dominates your consideration of these cases, does it not?

Mr. Rigg.—Yes, but *Truth* is a somewhat different type of newspaper from other publications, and sometimes we go crusading in search of something. Our objective may not always have a great news or sales interest, but it may be an investigation which we think should be undertaken.

Mr. Randles.—Surely you would not destroy records after six months?

Mr. Rigg.—Not records containing information that is likely to dovetail with possible later developments. We keep some material when we are clearing the stuff off the spikes.

Mr. Randles.—I imagine that you would keep most of the records, particularly if, for instance, you headlined a speech by Mr. Doube in the Assembly that might directly affect one or two people.

Mr. Rigg.—In those circumstances, yes, but I had in mind cases in connexion with which we might interview 30 or 40 people. Those interviews might produce little or nothing and we might not keep those records.

Mr. Randles.—But you would keep your main outlines?

Mr. Rigg.—We would keep our article, once we proved it.

Mr. Randles.—You might direct an article at one or two "tall poppies." If they thought that you had not kept your records, they would probably take action against the newspaper.

Mr. Rigg.—We would keep records in those circumstances. I thought you were speaking of tiddlywinking things. We keep relevant records concerning anything that we publish affecting big people, upon which we can be queried.

Mr Pettiona.—I suppose that whenever you print any report that might be challenged as libellous and where you try to draw the people concerned into attack, you would be scrupulously careful to keep the material?

Mr. Rigg.—We would soon be out of business if we did not, but there is a great difference between saying "Mr. Jones is a scoundrel" and "We feel that the activities of Smith Brothers, about whom a complaint was made in the Assembly last night, points the way to an urgent and dramatic need for action." In the one case the newspaper would be attacking a person specifically, while in the other it would be following a line of policy which it had generally followed and believed to be in the public interest.

The Chairman.—On behalf of the Committee, I thank Mr. Rigg for the assistance he has given us. If he would be good enough to supply further information on those three aspects that were mentioned and if the Committee could also have the services of Mr. Stevens or any other member of the staff who has made a specific investigation, the Committee would appreciate his help.

The Committee adjourned.

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

1954

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

AMENDMENTS OF THE STATUTE LAW TO DEAL WITH FRAUDULENT PRACTICES BY PERSONS INTERESTED IN THE PROMOTION AND/OR DIRECTION OF COMPANIES AND BY FIRMS

TOGETHER WITH

MINUTES OF EVIDENCE

AND

APPENDICES

Ordered by the Legislative Council to be printed, 26th October, 1954.

By Authority:
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D.—No. 2—[5s. 6d.]—4046/54

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.

THURSDAY, 25TH FEBRUARY, 1954.

8. 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.

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.

SATURDAY, 12TH DECEMBER, 1953.

18. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question proposed—That Mr. Hollway be appointed a member of the Statute Law Revision Committee (*Mr. Cain*).

Amendment proposed—That the name "Mr. Hollway" be omitted with the view of inserting in place thereof the name "Colonel Leggatt" (*Mr. Bolte*).

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

The House divided.

Ayes, 26.

Mr. Barry
Mr. Bourke
Mr. Cain
Mr. Coates
Mr. Connell
Mr. D'Arcy
Mr. Doube
Mr. Fewster
Mr. Galvin
Mr. Gray
Mr. Hayes
Mr. Holt
Mr. Lucy
Mr. Merrifield
Mr. Morton
Mr. Pettiona
Mr. Randles
Mr. Scully
Mr. Shepherd
Mr. Smith
Mr. Stoddart
Mr. Stoneham
Brig. Tovell
Mr. White (*Mentone*)

Tellers.
Mr. Corrigan
Mr. Murphy

Noes, 12.

Mr. Bolte
Mr. Brose
Colonel Leggatt
Mr. McDonald
Mr. Moss
Mr. Petty
Mr. Rylah
Mr. Stirling
Mr. Turnbull
Mr. Whately

Tellers.
Mr. Bloomfield
Mr. Mibus

And so it was resolved in the affirmative.

THURSDAY, 25TH FEBRUARY, 1954.

6. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Hollway, Mr. Mitchell, 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.

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 Honorable the Attorney-General, by letter dated 22nd October, 1953, recommended to the Statute Law Revision Committee that they should examine anomalies in the statute law which appear to permit—(*a*) persons interested in the promotion and/or direction of companies, and (*b*) firms—to engage in fraudulent practices, with a view to reporting upon the measures deemed necessary to afford adequate protection to shareholders, creditors, and members of the public.

2. On 30th October, 1953, the Committee adopted this recommendation and commenced their inquiries. However, the Committee ceased to hold office on 24th February, 1954, and a new Committee was appointed on the first day of the present Session of Parliament, namely, 25th February, 1954.

3. The present Committee continued the inquiry and, after hearing evidence from a number of witnesses, submitted a Progress Report on 7th April, 1954.

This Progress Report recommended—(*a*) a change in the criminal law relating to false pretences by the inclusion of the offence of making a " wilfully false promise "; and (*b*) stricter control over the activities of " share-hawkers ".

Prompt action was taken to pass legislation giving effect to these recommendations.

4. In addition to the witnesses mentioned in the Progress Report, evidence has been received from the following:—

Mr. W. J. King.
Mr. K. N. Stonier, Chairman,
Mr. G. C. Tootell, Vice-Chairman, } Institute of Chartered Accountants in Australia (Victorian Branch).
Mr. H. C. Collingwood, Acting-Chairman,
Mr. G. Noall, Member of the Committee,
Mr. J. C. Johnston, Member of the Committee,
Mr. D. S. Rogers, Secretary, } Stock Exchange of Melbourne.
Mr. P. H. Opas.
Mr. R. R. Stephens.
Mr. F. H. Parr.
Mr. J. S. Bloomfield, M.L.A.
Mr. R. G. Peile.
Mr. W. J. Hopper, Secretary, Companies' Auditors Board.
Mr. F. G. Menzies, Crown Solicitor.
Mr. T. F. E. Mornane, Assistant Crown Solicitor.
Mr. A. A. Fitzgerald,
Mr. C. A. Allerdice,
Mr. G. V. Briggs,
Mr. R. J. McArthur, } representing Australian Fixed Trusts Pty. Ltd.

A number of witnesses reappeared on a second or subsequent occasion to submit further evidence or to produce documents or other information sought by the Committee.

Mr. H. A. Winneke, Q.C., Solicitor-General, Mr. F. G. Menzies, Crown Solicitor, Mr. T. F. E. Mornane, Assistant Crown Solicitor, and Mr. A. Garran, Assistant Parliamentary Draftsman, gave valuable assistance to the Committee by assisting in their deliberations and supplying considered opinions upon certain of the suggestions for company law reform submitted by witnesses.

The Chief Commissioner of Police, Mr. A. M. Duncan, appeared before the Committee and gave a detailed explanation of the powers, functions and activities of the Special Investigation, Fraud and Companies Squad of the Criminal Investigation Branch of the Victoria Police Department. This squad is entrusted with the investigation of all suspected fraudulent activities of companies, firms and individuals.

5. The minutes of evidence taken after the preparation of the Progress Report are appended to this Report. Also appended are a number of written submissions and other documents received by the Committee.

6. In the Progress Report the Committee referred to a number of proposals for amendment of the law which they had under consideration at the time when the Report was made. These were very carefully examined by a number of organizations and persons who were particularly interested in the subject-matter of the inquiry, and emanating from consideration of these suggestions the Committee had placed before them extensive evidence which greatly assisted in their deliberations.

7. It will be seen from the amount of material which has been received by the Committee in evidence and by way of submissions that the inquiry has covered a very wide field. It is not practicable to refer in detail in this Report to all the suggestions made to the Committee and the reasons why certain of them were not adopted. The Committee have given very careful thought to all matters placed before them and desire to point out that numerous suggestions were considered to be outside the scope of the inquiry, but may prove to be of value when general revision of the Companies Acts and other legislation is under consideration. Some suggestions appeared at first to be attractive but on more careful examination it was found that they could place an undue burden upon legitimate business. The Committee at all times had to keep very carefully in mind the undesirability of amending the law in a way which, whilst perhaps acting as a deterrent to a few unscrupulous people, would substantially interfere with the affairs of well-conducted companies and firms and cause hardships to small trading concerns.

8. In the opinion of the Committee it is impossible to frame legislation which will provide against all types of fraud and wrongdoing in connexion with operations of companies, firms and individuals. The evidence made it clear that whatever legislation is passed in an endeavour to prevent such wrongdoing there is always the ingenious person who will find a new way of carrying on doubtful practices within the law. The proper authorities should be constantly alert to detect any such practices and to bring them under the notice of the Government.

9. The Committee consider there are weaknesses in the existing law and are of the opinion that amendments should be considered under the following main headings:—

(*a*) The conditions under which the public are invited to subscribe for shares and other interests in commercial undertakings;
(*b*) the issue of unit certificates, lot holdings and other forms of interests in or in the undertaking of businesses;
(*c*) the keeping of books of account and other records; and
(*d*) miscellaneous provisions.

THE SALE OF SHARES TO THE PUBLIC.

10. The evidence placed before the Committee has made it clear that the provisions of the *Companies Act* 1938, which seek to control the sale of shares to the public have certain inherent weaknesses.

The problem of controlling these sales conveniently falls into three main categories, viz.:—

(*a*) The promises, representations and statements made by the person commonly called a " share-hawker " whose job it is to induce people he interviews to purchase shares.

Section 4 of the *Crimes Act* 1954, which was passed by Parliament following the presentation of the Progress Report of this Committee, considerably strengthens the legislation controlling the activities of " share-hawkers " and it is not proposed to refer further to this matter.

(*b*) The statements and representations made by the promoters of a company when inviting investment in its shares.

Proposals for amendment of the law to place a direct responsibility upon persons making false or misleading statements in this connexion are dealt with in paragraphs 11 and 12 of this Report.

(*c*) The use of schemes such as the issue to the public of unit certificates, lot holdings and similar interests outside the scope of present legislation.

This matter is dealt with in paragraphs 13 to 17 of this Report.

PROMOTERS' STATEMENTS AND REPRESENTATIONS IN RELATION TO THE SALE OF SHARES.

11. The question of controlling statements which are made by the promoters of a company to induce the public to subscribe to the issue of the shares in the company was referred to in evidence by the Law Institute of Victoria; the Stock Exchange of Melbourne; the Australian Society of Accountants and Mr. W. Oswald Burt, a solicitor with considerable experience in company law.

Many specific suggestions were made to the Committee and in general the evidence favoured the strengthening of the provisions of the *Companies Act* 1938 by the adoption of the principles of certain provisions of the English *Companies Act* 1948.

It is obviously essential that all statements in a prospectus should be true, that they should be sufficiently comprehensive to enable the prospective investor to judge the true nature of his investment, that there should be no uncertainty in the statutory provisions relating to the prospectus, and that there should be adequate penalties for the inclusion in a prospectus of false or misleading statements.

12. The Committee recommend as follows:—

(*a*) That the provisions of the *Companies Act* 1938 relating to statements issued in lieu of prospectuses be overhauled, particularly that section 40 be strengthened by the inclusion of provisions similar to sub-sections (5) and (6) of section 48 of the English *Companies Act* 1948 to provide adequate sanctions for the inclusion of false or misleading statements in a statement issued in lieu of a prospectus. If an untrue or misleading statement is so made the person responsible should be obliged to show that such statement was immaterial before he can avoid the consequences of his action.

This follows the precedent of the English Act and is justified by the view that statements made in a statement in lieu of a prospectus would ordinarily be intended to be of significance to the prospective investor.

The relevant provisions of the English *Companies Act* 1948 are as follows:—

"48. (5) Where a statement in lieu of prospectus delivered to the registrar of Companies under sub-section (1) of this section includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding Five hundred pounds, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding One hundred pounds, or both;

unless he proved either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

48. (6) For the purposes of this section—

(*a*) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(*b*) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein."

(*b*) That sections 37, 34 (3) (*c*) and 38 of the *Companies Act* 1938 be replaced by provisions similar to those contained in sections 43, 44, 45, and 46 of the English Act which read as follows:—

" 43. (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say:—

(*a*) every person who is a director of the company at the time of the issue of the prospectus;

(*b*) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(*c*) every person being a promoter of the company; and

(*d*) every person who has authorized the issue of the prospectus;

Provided that where, under section 40 of this Act, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it to be liable under this sub-section as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under sub-section (1) of this section if he proves—

(*a*) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(*b*) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(*c*) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(*d*) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person taking the statement was competent to make it and that person had given the consent required by section 40 of this Act to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this sub-section shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section 40, as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this sub-section would under sub-section (1) of this section be liable, by reason of his having given a consent required of him by section 40 of this Act, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves—

(*a*) that, having given his consent under the said section 40 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

(*b*) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(*c*) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures as the case may be, believe that the statement was true.

(4) Where—

(*a*) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or

(*b*) the consent of a person is required under section 40 of this Act to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this sub-section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 40 of this Act to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section—

(*a*) the expression " promoter " means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

(*b*) the expression " expert " has the same meaning as in section 40 of this Act.

44. (1) Where a prospectus issued after the commencement of this Act includes any untrue statement, any person who authorized the issue of the prospectus shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine not exceeding Five hundred pounds, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding One hundred pounds or both;

unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 40 of this Act to the inclusion therein of a statement purporting to be made by him as an expert.

45. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(*a*) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 38 of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(*a*) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(*b*) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected;

and section 41 of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

46. For the purposes of the foregoing provisions of this part of this Act—

(*a*) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(*b*) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith."

These provisions set out in a more definite and positive form the responsibility and liability for false and misleading statements in a prospectus. If this recommendation is adopted regard must be had to the consequential amendment of section 366 of the Victorian Act as the subject-matter thereof is partly covered by the English provisions.

It will be observed that section 44 of the English Act places upon the person who authorizes the issue of a prospectus containing an untrue statement, the onus of proving its truth or immateriality. This is considered to be a necessary protection for the public as those who authorize the issue of such a prospectus are in the best position to prove the immateriality of the untrue statement, or, failing that, their belief in its truth. It will be appreciated that such obligation does not arise until the untruth of the statement in question has first been established.

(*c*) That section 366 (1) (*d*) of the *Companies Act* 1938 be amended by the deletion of the words " specified in the prospectus."

Those words read in conjunction with section 35 (1) (*b*) have made it difficult to determine the date at which a prospectus becomes stale. The proposed amendment would forbid under sanction of penalty the allotment of shares or debentures to the public on the basis of a prospectus published more than six months before the date of the allotment.

(*d*) That section 34 (3) (*b*) of the *Companies Act* 1938 be amended to exclude from its application cases which fall within sub-section (5) of section 35 which makes it unnecessary to issue a prospectus in certain limited cases, but the provisions of section 34 have still to be complied with and, consequently, while a prospectus need not be filed, details of material contracts must be filed and certain other prospectus provisions must be observed.

(*e*) That section 34 (3) (*b*) of the *Companies Act* 1938 be further amended to provide that the principal provisions of all material oral contracts be filed with the prospectus as is required by section 41 (1) (*b*) of the English Act.

Section 34 (3) (*b*) already provides for the filing of material written contracts, and it is anomalous that there is no similar provision for particulars of oral contracts.

In addition, the prospectus should contain a statement of the general nature of all material contracts, whether oral or written, for the information of prospective shareholders. This is provided for in the Fourth Schedule to the English Act.

(*f*) That Part II. of the Fourth Schedule to the *Companies Act* 1938 be amended in accordance with the English Act to provide—

(i) that particulars of dividends and profits be given over five years prior to the issue of a prospectus instead of three years as at present;

(ii) that a statement of assets and liabilities of the company be given as at a balancing date not more than six months before the date of the prospectus;

(iii) that the requirements of sub-paragraphs (i) and (ii) hereof also apply to a guarantor company referred to in a prospectus; and

(iv) that, in the case of a prospectus issued by a holding company, particulars of the profits, dividends, assets and liabilities of all subsidiary companies be disclosed in the prospectus.

These recommendations will ensure that prospective shareholders are better informed as to the previous trading history of the company seeking their subscriptions.

(*g*) That the Fourth Schedule to the *Companies Act* 1938 be amended to eliminate certain inconsistencies between the information required from an existing company and a new company.

(*h*) That sections 354 and 355 of the *Companies Act* 1938 which relate to prospectus requirements of foreign companies be reviewed and as far as possible brought into conformity with these provisions relating to companies formed in Victoria.

(*i*) That provision be made that if a company states in its prospectus an intention to apply for listing of its shares on the Stock Exchange of Melbourne it shall not proceed to allotment until such application has been made to and approved by the Stock Exchange.

This recommendation follows generally section 51 of the English *Companies Act* 1948 and it will prevent companies advocating subscription for their shares by promising to apply for listing on the Stock Exchange when the promoters are aware that such an application would have little or no chance of being granted.

(*j*) That section 35 (1) (*d*) of the *Companies Act* 1938 be amended to provide that a stock and share broker's name shall not appear in a prospectus without his consent. This restriction already applies in the case of trustees, auditors and solicitors.

UNIT CERTIFICATES ETC.

13. The Committee heard considerable evidence with regard to unit and option certificates, lots, concessions, and other forms of interests in or in the undertaking of businesses. Such forms of interest are issued outside the legislation which at present controls the sale of shares to the public and the Committee are of opinion that this field provides opportunity for fraudulent practices.

For convenience, these various forms of interests are referred to hereafter in this Report as " unit certificates."

It appeared to the Committee that, in certain cases, notably Australian Fixed Trusts Proprietary Limited, the issue of unit certificates instead of a shareholding in a company was a method of useful and legitimate business.

In other cases the practice was simply a means of inviting the public to subscribe capital for the use of an undertaking without the promoters having to comply with the provisions of the *Companies Act* 1938 relating to prospectuses, filing of returns, and publication of balance-sheets. The sharehawker was thus enabled to operate outside the Act and the purchasers of unit certificates were not protected by any of the legislative safeguards provided for shareholders.

14. Owing to the number of complaints which the police, the Crown Law Department, and members of Parliament had received regarding certain firms and companies known for convenience as the " Mount Gambier forest companies " the Committee found it necessary to carry out a lengthy investigation of the activities of these companies which have obtained substantial sums of money from the public for investment in timber-growing projects. The subscriber to these ventures received a certificate which gave him certain rights in the proceeds of trees planted in an undivided area and maintained on his behalf. He did not receive a shareholding or interest in the company or firm promoting the undertaking.

The Committee were assisted by comprehensive documentary evidence placed before them by Mr. W. Oswald Burt, solicitor, who informed the Committee that the certificate holders in all but one of the companies have received some tax-free returns on their investments and that all certificate holders could anticipate further returns. Mr. Burt also outlined to the Committee certain steps which had been taken recently by the companies and which were designed to protect the rights of certificate holders.

The Committee do not express any opinion as to whether this type of venture was or is now under adequate control so far as certificate holders rights and interests are concerned but desire to point out that any interested person can ascertain from the transcript of evidence what action has been taken in this regard.

15. The Committee are of opinion that the chief reasons for the large volume of complaints in connexion with these companies arise from the sale of most of the unit certificates some ten or fifteen years ago by high-pressure salesmen who may not have been too scrupulous in their methods, together with an unexplained reluctance on the part of the trustee for the certificate holders to take into his confidence interested persons when they sought information as to their prospects. In fairness to the Mount Gambier forest companies the Committee desire to state that they found no indication of fraudulent practices during recent years.

16. The Committee found that, in relation to certain other undertakings which issued unit certificates, fraudulent practices did take place and investors lost large sums of money.

17. The Committee therefore make the following recommendations which they believe will prevent or minimize future fraudulent practices and at the same time not interfere with legitimate business:—

(*a*) That no individual, firm, or company be permitted to invite the public to subscribe to an undertaking or to an interest in the anticipated profit of an undertaking unless the venture is conducted by a company and that such company whether it has more or less than 50 members shall be subject to all the obligations of a public company under the Companies Acts.

(*b*) That the balance-sheet, profit and loss account, and directors' report of the company be sent annually to each unit certificate holder.

(*c*) That no interests by way of unit certificates be offered for sale to the public unless—

(i) the company so offering complies with the provisions of the Companies Act relating to share-hawking and prospectuses; and

(ii) a trustee be appointed to act on behalf of subscribers.

(*d*) That no appointment of a trustee be made without the approval of the Minister who shall satisfy himself as to the integrity and financial standing of the proposed trustee.

(*e*) That the trust deed appointing a trustee contain, *inter alia,* the following provisions:—

(i) That, by a majority decision, the certificate holders be empowered to remove a trustee and appoint another in his stead; and

(ii) That the trustee keep proper books of account and that an audited statement of his accounts be posted annually to each certificate holder.

(*f*) That the trust deed be filed in the office of the Registrar-General.

(*g*) That the trustee be empowered to investigate the accounts of the promoting company.

(*h*) That the promoting company keep and file annually in the office of the Registrar-General a list showing the names and last-known addresses of all unit certificate holders and the extent of their holdings.

ACCOUNTS.

18. The Committee gave careful consideration to a suggestion that compulsory audit of the accounts of proprietary companies should be introduced.

The following modifications of this proposal were also considered:—

(*a*) That an audit should be compulsory unless decided otherwise by resolution at a general meeting of shareholders.

(*b*) That an audit should be compulsory unless decided otherwise by a majority in number of shareholders.

(*c*) That an audit should be compulsory unless a majority of shareholders holding greater than 50 per centum of the share capital decide otherwise.

(*d*) That an audit should be compulsory if a certain specified minority of shareholders desire it.

19. The Committee, in rejecting all these proposals, were influenced by the following factors:—

(*a*) Both the recognized bodies of accountants who gave evidence before the Committee were opposed to the proposals as in their opinions they would place an undue burden upon many well conducted small proprietary companies.

(*b*) Under the existing law a majority of the shareholders of a company can decide in favour of an audit if considered necessary.

(*c*) An audit would not in itself stop fraud.

The latter consideration carried the most weight with the Committee. It was felt that if the management of a company decided to carry out fraud by manipulation of the funds of the company this could be done in a manner which would be unlikely to be disclosed to an auditor until it was too late to protect the shareholders and the public generally.

20. The Committee consider that the more satisfactory way to approach the problem is to place upon the directors of a company the onus of ensuring that proper books of account are kept. When proper books are not kept or do not disclose the true financial position of the company the directors would not escape responsibility unless they could prove to the Court that the keeping of the books was entrusted to a competent and reliable person, and that they themselves were not party to any improper practices.

In addition, the Committee consider that a number of improvements can be made in the law to ensure that the books of account which are kept and the statements of accounts which are published by companies shall contain more detailed information than is so at present. Information should be disclosed in a manner which would enable shareholders and intending shareholders and persons investigating the financial affairs of the company to ascertain more readily the true position of the company.

21. The Committee therefore recommend:—

(*a*) That sub-sections (1), (2), and (6) of section 123 of the *Companies Act* 1938 be amended to accord with the provisions of section 147 of the English *Companies Act* 1948.

This section is as follows:—

" 147.—(1) Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(2) For the purposes of the foregoing sub-section, proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors:

Provided that if books of account are kept at a place outside Great Britain there shall be sent to, and kept at a place in, Great Britain and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared in accordance with this Act the company's balance-sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(4) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that—

(*a*) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

(*b*) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully."

This would impose upon directors an obligation to keep proper books of account and would strengthen the provisions relating to the offence of failing so to do.

The adoption of this recommendation would necessitate the consequential amendment of section 274, which relates to the liability in case of a winding-up when proper books of account have not been kept.

(*b*) That provision be made for accounting records to be kept in the English Language.

A provision of this nature appears in the Commonwealth Income Tax Act and should apply to the records of all companies.

(*c*) That provision be made for the retention by the company of financial statements, returns of income and all accounting records for not less than seven years.

This follows provisions already existing in the Commonwealth Income Tax Act.

(*d*) That sub-section (1) of section 125 of the *Companies Act* 1938 be amended to make it clear that the consolidated balance-sheet of a company must show the losses of each subsidiary company whose accounts are brought into the balance-sheet.

This would prevent the losses in one subsidiary company being hidden by setting them off against profits in other subsidiary companies.

(*e*) That sub-section (7) of section 132 of the *Companies Act* 1938 be amended to bring the law into conformity with those rules of the Associated Stock Exchanges which provide that the auditor of a public company should not be related to any person holding an official position in the company and that an employee of a subsidiary company cannot audit the books of the parent or holding company.

(*f*) That sub-section (5) of section 123 of the *Companies Act* 1938 be amended to make it clear that the "items of abnormal character" which must be defined in the report of the directors shall include any amounts of an unusual nature which appear in the accounts.

This amendment appears necessary owing to the widespread practice of disclosing to the shareholders matters of an unusual nature affecting the years trading such as seasonal conditions, import restrictions, or other economic factors, but not disclosing such matters as—

(*a*) large bad debts written off which have materially reduced the profit for the year or may have turned a trading profit into a loss; or

(*b*) an increase in the value of stock owing to revaluation which may convert a trading loss into a profit.

It is apparent that the intention of sub-sections (4) and (5) of section 123 was to provide for complete disclosure to the shareholders of this type of information but the prevailing practice in most companies is not to do so.

(*g*) That sub-section (3) of section 124 of the *Companies Act* 1938 be amended to ensure that provision for payment of income tax for the year covered by the profit and loss account is shown as a separate item in the balance-sheet.

22. It was suggested to the Committee that legislation similar to the Queensland Trust Accounts Acts should be introduced into this State. Various classes of persons in business in the community, such as real estate agents, accept moneys which are to be held in trust and cases have occurred where these moneys are not kept in a separate account, with the result that they are not available when required.

The Committee appreciate that the Real Estate Agents Acts require a real estate agent to keep a trust account and provide a fidelity bond, but consider that the bond offers little protection to the public against loss from fraudulent conduct as its value is unlikely to be sufficient to cover more than a small proportion of the trust moneys which are usually handled by the average real estate agent.

23. The Committee recommend that consideration be given to the proper registration and control of real estate agents modelled upon the provisions of the *Legal Profession Practice Act* 1936 together with the provision of a guarantee fund to which all real estate agents must contribute.

24. It appears that some measure of control should be exercised over the activities of building contractors and other persons who handle moneys which they hold, on some occasions, in the capacity of trustees or quasi-trustees but it is difficult to provide safeguards by legislation without unduly interfering with legitimate and long-established business.

The Queensland Trust Accounts Acts do not seem to be directed at persons who accidentally become trustees but rather at persons who by virtue of their calling, are likely to receive moneys to be held in trust. If the necessity arises such persons could be covered more adequately in their own special Acts which would take into consideration the nature of their calling.

Section 3E of the Queensland Trust Accounts Acts is designed to cover the case of the building contractor who receives money on terms requiring him to apply it in or towards defraying the price of any contract.

The section seeks to ensure that—

(*a*) all such moneys are paid into a trust account and only such moneys shall be paid into the trust account;

(*b*) all moneys withdrawn from the account shall be withdrawn by means of a "not negotiable" cheque made out in favour of the persons to whom the moneys are to be paid, or, in the case of moneys required to be paid for wages in connexion with the contract, by such a cheque payable to the contractor himself;

(*c*) withdrawals shall only be made—

(i) for paying a person other than the contractor for any work, labor, or materials actually performed or supplied for or in connexion with carrying out the contract;

(ii) for paying the contractor himself lawful progress payments for or in connexion with carrying out the contract; and

(iii) for payment of wages; and

(*d*) the provisions of the earlier sections as to the keeping of trust accounts and their inspection are made applicable.

In the opinion of the Committee this type of legislation would require that the accounts of building contractors were kept in a proper manner, but this in itself would not prevent fraudulent conduct and could interfere seriously with legitimate business.

25. The Committee do not favour the enactment of such provisions without careful examination of the effectiveness of their operation in Queensland, and their probable impact upon existing practice in this State.

26. The Committee further consider that the "wilfully false promise" provisions of the *Crimes Act* 1954, which has been passed into law since the attention of the Committee was first drawn to the fraudulent activities of some building contractors, will discourage unscrupulous persons from accepting sums of money as deposits without having any real intention of carrying out building operations.

MISCELLANEOUS.

Returns in the Office of the Registrar-General.

27. A peculiar anomaly exists in the *Companies Act* 1938 in that, although a company is obliged to file in the office of the Registrar-General returns of directors and such returns are accepted if signed by a person purporting to be the secretary, there is no obligation to file a return showing the name of the secretary.

28. The Committee therefore recommend that provision be made for the filing in the office of the Registrar-General of a return showing the name, address, and other occupation (if any) of the secretary for the time being of the company. The Committee also recommend that the return of directors and secretary be *prima facie* evidence that the persons whose names appear in the return as holding the offices of directors and secretary did hold such offices during the period shown in the return.

Lay-by Sales.

29. The Committee had suggested to them in evidence that the provisions of the New South Wales Lay-by Sales Acts should be enacted in this State to control and regulate lay-by sales and to prevent fraudulent practices in connexion therewith.

From the evidence it seems that the practice of persons accepting money for lay-by sales when they are not in possession of the goods nor the wherewithal to obtain them offers opportunity for fraud.

This is particularly well illustrated by the activities of Bernco Products Proprietary Limited, a company with very little capital, which obtained a considerable amount of money from persons prepared to buy goods on "lay-by."

The company, at the time of making the offer to the customer, did not have the goods and, by reason of bad management and excessive administration expenses and drawings by the directors, was not in a position to purchase goods to supply customers when lay-by payments had been completed.

The activities of this company followed the general pattern of several other concerns which had operated previously in Victoria.

30. The Committee recommend that the provisions of section 3 of the New South Wales *Lay-by Sales Act* 1943 be adopted. This section generally defines the conditions under which persons can conduct lay-by sales without having the goods on hand at the time of sale and is as follows:—

> "3. (1) Except as provided in this section no person shall sell or agree to sell goods by a lay-by sale unless such goods are in the possession of such person at the time of the sale or agreement to sell.
>
> (2) A person may sell or agree to sell by a lay-by sale goods not in existence or not in his possession at the time of the sale or agreement to sell subject to the following conditions:—
>
> (*a*) the vendor shall not accept any payment, other than a deposit not exceeding twenty per centum of the purchase price of the goods, until the goods have been received into the possession of the vendor, and have been inspected and approved by the purchaser;
>
> (*b*) any time fixed by the conditions of the lay-by sale for payment of the purchase price (other than the deposit) shall commence to run as from the day upon which the goods are so inspected and approved by the purchaser;

(*c*) any deposit so accepted shall be held by the vendor exclusively for the benefit of the purchaser to be disbursed as the purchaser directs, and until so disbursed the deposit shall be paid into a bank in New South Wales to a trust account whether general or separate.

The provision of sub-section five of this section shall not apply to and in respect of a lay-by sale made subject to the conditions specified in this sub-section.

(3) (*a*) The moneys in any such trust account shall not be available for the payment of the debts of the vendor to any other creditor of the vendor, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.

(*b*) Nothing in this section shall be construed to take away or affect any just claim or lien which the vendor may have against or upon any such moneys.

(4) (*a*) Subject to the provisions of this sub-section no bank shall, in connexion with any transaction on any account of a vendor kept with it or with any other bank, incur any liability or be under any obligation to make any inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Provided that nothing in this paragraph shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(*b*) Notwithstanding anything in paragraph (*a*) of this sub-section a bank at which a vendor keeps an account for moneys paid as deposits under sub-section two of this section shall not, in respect of any liability of the vendor to the bank, not being a liability in connexion with that account, have or obtain any recourse or right whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided that nothing in this paragraph shall deprive a bank of any right existing at the time of the commencement of this Act.

(5) (*a*) A person may sell or agree to sell by a lay-by sale goods not in existence or not in his possession at the time of sale where—

(i) the goods sold or agreed to be sold are goods of a type or class to which the provisions of this sub-section have been applied by the Governor by notification published in the *Gazette*; and

(ii) the fidelity bond referred to in this sub-section has been lodged and is still subsisting.

(*b*) (i) The fidelity bond shall be a bond in the prescribed form in the penal sum of such amount as may, for the time being, be fixed by the Minister, from the Government Insurance Office of New South Wales or some insurance company or person approved for the purpose by the Minister, conditioned for the due delivery of the goods by the vendor to the purchaser pursuant to the lay-by sale or in default thereof for duly accounting to the purchaser for all moneys received by the vendor pursuant to the lay-by sale:

Provided that where security approved by the Minister for the payment of an amount equal to the penal sum (which security shall be in addition to the bond hereinafter referred to) has been given to the Minister, the Minister may, in lieu of the bond referred to in the foregoing provisions of this sub-section, accept a bond similarly conditioned from the vendor.

In fixing the amount of the penal sum the Minister shall have regard to the annual turnover or estimated annual turnover (by way of lay-by sales) of the vendor in the type or class of goods to which the provisions of this sub-section have been applied, but shall not, in any case, fix such amount at a sum greater than one half of such annual turnover or estimated annual turnover.

The amount so fixed may be reviewed by the Minister from time to time, and upon such review any additional or substituted fidelity bond shall be taken out.

The fidelity bond, or as the case may be, the additional or substituted fidelity bond, shall be lodged with the Minister.

(ii) Any purchaser may, with the approval in writing of the Minister, sue upon any fidelity bond under this sub-section for indemnity in respect of any loss covered by the said bond.

(iii) Any such action shall be taken within two years after the date upon which the cause of action arises.

(*c*) The provisions of sub-section two of this section shall not apply to and in respect of a lay-by sale made in conformity with the requirements of this sub-section.

(6) Any person who sells or agrees to sell goods in contravention of this section or who neglects or fails to comply with any of the requirements of this section shall be guilty of an offence against this Act and shall be liable if a corporation, to a penalty not exceeding two hundred pounds, or, if an individual, to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment."

31. The Committee consider that there is no need to adopt the remainder of the New South Wales legislation which covers detailed administrative matters and would require additional work in connexion with lay-by sales with consequent probable increases in the price of goods so sold.

Passing of Valueless Cheques.

32. Provision is made in the law of South Australia and of New South Wales for it to be an offence to pass a cheque which is not met on presentation unless the drawer had a reasonable expectation that such cheque would be paid. In Victoria it is difficult to obtain a conviction for the passing of a valueless cheque when the person passing the cheque can show that, at the time the cheque was passed, it was drawn upon an existing bank account.

33. The Committee therefore recommend the introduction of legislation similar to section 178 B of the *Crimes Act* 1900 of New South Wales and section 39 of the South Australian *Police Offences Act* 1953 which read as follows:—

New South Wales Crimes Act 1900.

" 178B. Whosoever obtains any chattel, money or valuable security by passing any cheque which is not paid on presentation shall, unless he proves—

(*a*) that he had reasonable grounds for believing that that cheque would be paid in full on presentation; and

(*b*) that he had no intent to defraud,

be liable to imprisonment for one year, notwithstanding that there may have been some funds to the credit of the account on which the cheque was drawn at the time it was passed."

South Australian Police Offences Act 1953.

" 39. (1) Any person who obtains any chattel, money valuable security, credit, benefit, or advantage by passing any cheque which is not paid on presentation shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for twelve months.

(2) It shall be a defence to a charge for an offence against sub-section (1) of this section to prove that the defendant—

(*a*) had reasonable grounds for believing that the cheque would be paid in full on presentation; and

(*b*) had no intent to defraud.

(3) The fact that at the time when the cheque was passed there were some funds to the credit of the account on which the cheque was drawn, shall not of itself be a defence."

Undischarged Bankrupts and Convicted Persons Acting as Directors of Companies or Managing Businesses.

34. Under Section 142 of the *Companies Act* 1938 undischarged bankrupts are prevented from being directors of or directly or indirectly taking part in the management of a company without the leave of the Court and the Committee had submitted to them various suggestions with regard to restricting undischarged bankrupts from managing businesses.

While there is considerable merit in such proposals the Committee feel that the practical difficulties of providing that an undischarged bankrupt shall not participate in the management of his own or some other person's business cannot be overcome conveniently, and view with disfavour any provision which may interfere with the endeavours of an undischarged bankrupt to rehabilitate himself.

35. With regard to a further suggestion that a person convicted of dishonesty should be placed under the same restrictions as an undischarged bankrupt, the Committee do not recommend such a course of action as they believe that a person who has served his sentence should be given every opportunity to re-establish himself in the eyes of the community without having to disclose his previous lapse.

Investigations of the Affairs of a Company.

36. Provision exists in section 136 of the *Companies Act* 1938 for the summoning of any officer or agent of a company to appear before an inspector for examination and to produce books and records. The section further provides certain sanctions for failure to obey such a summons.

Recently Martin J. in the case of *Re Australasian Asiatic Trading and Engineering Company Proprietary Limited,* (1954) A.L.R. 751, decided that this provision did not apply to former officers and agents of a company. This means that an officer or agent who is in possession of material information can escape examination by resigning and, as an investigating officer appointed by the Governor in Council under the *Companies (Special Investigations) Act* 1940 has to rely on section 136 for his powers of examination, the decision has far-reaching consequences.

37. The Committee therefore recommend that section 136 be amended to include within the scope of the examination under that section persons known or suspected to have in their possession any property of the company or believed to be indebted to the company or persons who are deemed capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

This will bring within an examination under section 136, and under the *Companies (Special Investigations) Act* 1940, all persons who are liable to a liquidator's examination under section 214 of the *Companies Act* 1938.

38. The Committee also recommend that section 137 be similarly amended to widen the scope of an examination by an inspector appointed by the company itself.

39. Several witnesses who appeared before the Committee stressed the desirability of providing that evidence given by a person during an examination under section 136 or under the *Companies (Special Investigations) Act* 1940 should be admissible as evidence against him in subsequent proceedings. This is provided for in the case of a public examination in a compulsory winding-up under section 216 of the *Companies Act* 1938.

The Committee recommend that sections 136 and 214 of the Act be amended to provide that, in the case of examinations under these sections, depositions may be taken and such depositions, after being read over and signed by the witness, shall be available as evidence in subsequent proceedings. The Committee consider that a witness should not be deprived of the common law right of refusing to answer incriminating questions, but it is clear from the decision of the High Court in *Kempley* v. *The King*, (1944) A.L.R. 249, that the rule applies unless the Act otherwise provides.

40. In evidence before the Committee it was urged that an inspector appointed under section 136 of the *Companies Act* 1938, or an investigating officer appointed under the *Companies (Special Investigations) Act* 1940, should have the power to summon and examine persons outside the State of Victoria. This obviously would be desirable as, under present legislation, material evidence can become unavailable by the departure from the State of the person who is able to give the evidence.

The Committee consider that legislation to give effect to this suggestion would be outside the scope of the constitutional power of the State of Victoria, but recommend that this State press for reciprocal legislation in other States to enable an inspector or investigating officer appointed in one State to pursue his invesigations in other States.

41. It was also suggested to the Committee that provision should be made for the Attorney-General to order, at an earlier stage than the present legislation permits, an investigation of a company or business in connexion with which a *prima facie* case of fraud has been established.

The Committee have considered this suggestion and find that no time limit is placed upon the power of the Governor in Council to appoint inspectors and it therefore seems to the Committee that the *prima facie* case necessary to secure such an appointment can be made out at any time.

42. The Committee desire to draw attention to an obvious drafting error in sub-section (4) of section 214 of the *Companies Act* 1938, and recommend that the words " the next succeeding section " in sub-section (4) be amended to refer to section 216.

43. The Committee consider that the examination under section 216 should cover the same field and apply to the same persons as an examination under section 214, and therefore recommend that section 216 be amended accordingly.

Time for Prosecuting Offences.

44. Evidence was given to the Committee of many persons suspected of offences under the Companies Acts escaping prosecution owing to the fact that most offences under the Companies Acts are punishable on summary conviction and must be prosecuted within twelve months of commission. Owing to the complicated nature of most frauds relating to companies and firms and the fact that lengthy investigation is usually necessary before a case for prosecution is ready for presentation it will be readily seen that a limitation period of twelve months is far too short.

Consideration was given by the Committee to a proposal that all offences under the Companies Acts should be indictable offences but this would have the disadvantage of rendering indictable a number of minor offences which could more conveniently be dealt with summarily.

45. The Committee therefore recommend—

(*a*) that, notwithstanding the general provision in the *Companies Act* 1938 relating to summary offences, any offence under the Act be prosecutable within three years after its commission; and

(*b*) that power be given to the Attorney-General to authorize prosecution after a period of three years has elapsed from the commission of an offence if he is satisfied that the investigation into the company could not be properly completed within that period and that no injustice will be done by prosecution after that time.

Winding-up Provisions.

46. The Committee recommended that section 138 of the *Companies Act* 1938 be amended to provide, as a ground for winding-up a company, that the inspector appointed to investigate the affairs of the company is of the opinion that the company cannot pay its debts and should be wound up. The position which arises at present is that, if an inspector does come to such conclusion, the fact that the company cannot pay its debts and should be wound up has still to be proved independently.

The Special Investigation, Fraud, and Companies Squad of the Criminal Investigation Branch of the Police Department.

47. This section of the Police Department is entrusted with the investigation, upon complaint or otherwise, of any alleged or suspected fraudulent practices by individuals, businesses or companies.

The Committee discussed the powers and functions of this section with the Chief Commissioner of Police and concur in the opinion expressed by the Chief Commissioner that the present Officer in Charge, namely Senior Detective W. H. Garvey, is an experienced and competent officer, but is handicapped by the lack of a stabilized staff sufficiently trained in the duties they are required to undertake in the course of their investigations.

48. The Committee recommend that, with a view to effective enforcement of legislation designed to prevent fraudulent practices, every assistance be given to the Chief Commissioner of Police to enable him to establish an efficient organization of well-trained investigators who can specialize in the handling of this type of wrong-doing.

GENERAL.

49. Among the suggestions made to the Committee which were outside the scope of their inquiry, but are of sufficient importance to record, are the following:—

(*a*) When the *Companies Act* 1938 is generally amended consideration should be given to the more modern drafting of the English *Companies Act* 1948. The attention of the persons undertaking this task should be drawn to the comprehensive submissions on the Companies Act, which were placed before the Committee by the Australian Society of Accountants and some of which have been commented on in great detail by the Law Institute of Victoria.

(*b*) Among the particular matters which appear to require consideration is whether the provisions dealing with the registration of proprietary companies should be amended to prevent the present practice of a company escaping liability to give notice of its intention to apply for a certificate of incorporation by forming as a limited company and then immediately converting to a proprietary company or, alternatively, whether the provisions relating to giving notice are of no real value and should be repealed.

(*c*) During their inquiry the Committee felt that there appeared to be a number of cases where audits of companies were carried out in a rather perfunctory manner and, whilst not revealing weaknesses in the company's structure, the certificate of the auditor had unwittingly encouraged shareholders and investors to believe that the undertaking was a sound one.

The Committee appreciate that it is almost impossible to prevent an auditor being hoodwinked by directors who deliberately set out to falsify the books of account of a company, but feel that consideration should be given to proposals made before the Committee, but not investigated by the Committee, that accountants should be subject to control similar to the control exercised by the Law Institute of Victoria over the conduct and ethics of its members. This in itself should do much to ensure a high standard of accountancy and audit practice, and would perhaps restrict the opportunity for unqualified accountants to present public documents.

50. The Committee were concerned with the evidence given in connexion with the Companies' Auditors Board set up under the *Companies Act* 1938. They consider that, over a number of years, this Board has operated efficiently as an examining and licensing authority, but has made little effort to exercise the disciplinary powers given to it under the Act.

CONCLUSION.

51. The conduct of this inquiry was greatly facilitated by the careful preparation and presentation to the Committee of both evidence and documentary submissions and the Committee desire to express their sincere thanks to all interested persons and organizations for their ready and willing co-operation.

In addition, the Solicitor-General, Mr. H. A. Winneke, Q.C., is to be especially commended for his valuable assistance and advice upon the many complex problems which confronted the Committee during their analysis of the evidence.

The Committee conclude by expressing their appreciation of the services of the Officers of Parliament who assisted in the investigation and in the preparation of this Report and particularly desire to mention the work of Mr. L. G. McDonald and Mr. G. N. H. Grose who have acted as Joint Secretaries of the Committee during their lengthy inquiry.

Committee Room,
14th October, 1954.

STATUTE LAW REVISION COMMITTEE.

Minutes of Evidence of Inquiry re Anomalies in the Statute Law Relating to Companies and Firms.*

TUESDAY, 13TH APRIL, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. G. E. Fitzgerald, Chairman of the Company Law Research Committee of the Australian Society of Accountants, was in attendance.

The Chairman.—Members of the Committee will remember that Mr. Fitzgerald and Mr. Ross previously gave evidence before the Committee. Mr. Fitzgerald asked for time in which to prepare evidence on a number of matters which were raised, and I now welcome him once again to the deliberations of the Committee.

Mr. Fitzgerald.—As a preliminary to submitting evidence upon the specific matters upon which the Society was asked to give evidence, I should mention that it is the wish of the Society's committee which is examining the question of company law amendment that I state the broad views of the Society upon the matter. These are set out as follows in a letter, dated 25th September, 1953, from the General President of the Society to the Prime Minister:—

UNIFORM COMPANY LEGISLATION.

In July, 1952, the Sydney press reported your statement on the subject of unification of company legislation throughout the various States of the Commonwealth, and it is understood that you contemplated the formation of an expert committee to examine the existing statutes with a view to bringing about a greater degree of uniformity. As the State Government of Queensland recently introduced a Bill to amend the Companies Act of that State, the Australian Society of Accountants considers it opportune respectfully to submit for your information its views in relation to company legislation in general.

The Society, which now has a membership of approximately 17,000, representing all branches of the accountancy profession, is the largest body of qualified accountants in Australia. It was incorporated in Canberra in October, 1952, and was established in accordance with arrangements for the amalgamation of the Commonwealth Institute of Accountants (founded in 1886) and the Federal Institute of Accountants (founded in 1894). Arrangements were later made for the Association of Accountants of Australia to merge with the Society.

For some years, committees of the Society and the former Institutes have been engaged in examining existing State legislation and the English Companies Act of 1948, with a view to reporting in what respects the Australian Companies Acts might be improved. These committees have made considerable progress, and a report relating to the accounts and audit provisions is now nearing completion.

Whilst favouring efforts being made to bring about a substantial degree of uniformity within a reasonably short space of time, the Society is of the opinion that more favourable results are likely to be achieved if well-considered legislation is introduced by one State, which might subsequently be copied by others. Though it is believed that there is a need to clarify some anomalies and ambiguities in the present State Acts and that it would be advantageous to incorporate some useful provisions from the English legislation, if it had to be a choice between Australian legislation and the English Act, the Victorian Act would be the most suitable as a pattern for adoption throughout the Commonwealth.

The *English Companies Act* 1948 contains some extremely cumbersome provisions and its Eighth Schedule —a most important one—is incomplete, difficult, if not impossible to apply, and somewhat illogically arranged. This is mentioned because there is a strong desire in many quarters to copy English legislation in order to have the benefit of English Court decisions, and the question whether English legislation is operating smoothly is at times overlooked.

The Society does not believe that company law is so urgent a matter in some States as to justify hastily considered legislation to amend or replace the existing Act. It would be regarded as a matter for extreme regret if, in the interests of obtaining uniform legislation, some of the existing provisions of Acts like the *Victorian Companies Act* 1938 were hastily amended.

It is suggested that if any steps are to be taken to form a committee of experts to consider draft legislation for uniform company law throughout Australia, earnest consideration should be given to:—

1. The desirability of not making too heavy a sacrifice for the comparatively minor advantages of uniformity;
2. Uniformity being secured by a good example being copied;
3. Haste being made slowly because of the complexity of the problem.

It is further suggested that one member at least of any such committee should be an accountant in public practice who has an intimate acquaintance with the consideration of company law amendments.

These views are placed before you to indicate the Society's interest in this important matter and in belief that service to Federal and State Governments and the commercial community is one of the primary duties of a responsible professional organization.

Yours faithfully,

(Sgd.) C. R. HICKING,
President.

Mr. Brennan.—Did the society receive a reply to that letter?

Mr. Fitzgerald.—It received an acknowledgment, intimating that the matter would receive attention.

Mr. R. T. White.—What was the society's reason for sending the letter to the Prime Minister?

Mr. Fitzgerald.—That is set out in the first paragraph of the letter. It was announced in the press that the Prime Minister was considering the question of unification of company legislation throughout the Commonwealth, and that a committee would be appointed to consider the matter.

I shall now give the views of the committee of my society on the questions raised by the Parliamentary Committee. The first question was: Is it desirable to introduce a compulsory audit for proprietary companies with a view to ensuring that books of account are kept, and that, at least annually, an audited statement of a company's affairs will be available to assist

* Minutes of Evidence taken prior to 13th April, 1954, were appended to the Progress Report of the Committee, dated 7th April, 1954.

in establishing the financial position of the company at a time when it is found or suspected that fraud or other wrong-doing has taken place?

My committee's views are as follows: Notwithstanding the fact that some individual members of my society are advocates of a compulsory audit for proprietary companies, it is the firm opinion of my committee that it would be a mistake for Victoria to follow the example of other States and countries in this respect.

In the view of my committee, the advocacy of compulsory audit of proprietary companies arises from a number of misconceptions. The first misconception relates to the purpose of an audit; a second arises from the failure to realize that the circumstances which necessitate an audit of the accounts of a public company do not apply to a proprietary company; a third shows a lack of appreciation of the fact that only a relatively small number of proprietary companies engaged in trading do not already have an audit or some other form of accounting supervision; and a fourth overlooks the fact that many proprietary companies would be deprived of a form of assistance they now receive if they were compelled to appoint so-called " independent " auditors.

However, before examining each of these misconceptions, I think it is appropriate to say that the State of Victoria has in the past shown in some of its legislation that it would not follow practices adopted elsewhere when it was demonstrated that other and wiser courses should be followed.

The State of Victoria developed, to its economic advantage, the idea of the proprietary company a decade prior to the adoption of the private company in England and very much longer before its adoption in other Australian States. So far as I have been able to ascertain at short notice, the proprietary company was introduced in the various Australian States in the following years:—

Victoria	1896
Tasmania	1920
Queensland	1931
South Australia	1934
New South Wales	1936
Western Australia	1943

Proprietary companies in Victoria have grown in number and in importance far greater than in any of the other States. At present there are approximately 14,000 such companies in Victoria, 3,200 in Queensland and 1,200 each in Tasmania and Western Australia. I have no figures for New South Wales, where statistics are not kept, and South Australia, but the numbers in those States would be considerably less than in Victoria.

Fortunately, for the well-being of enterprise which has been encouraged by the privilege of incorporation as a proprietary company, the State in which this idea originated has not sought to impose upon this class of company—except those which are subsidiaries of public companies and are thus not truly private companies—a number of requirements applicable to public companies. In this respect Victoria has adhered to the principles recommended to a select committee of the Legislative Council by the then Council of the Incorporated Institute of Accountants, Victoria—one of the bodies now incorporated in the Australian Society of Accountants. Those principles were then, and are still, backed by the business community. One of these was an exemption from filing statements of accounts; another was an exemption from the audit provisions applicable to public companies.

An audit is an examination of books, vouchers and other financial and legal records in order to verify and report upon the information disclosed in a balance-sheet and related profit and loss or revenue statement. Emphasis is placed upon the word " *report* ". Reference is often *incorrectly* made to an auditor " certifying " a statement of accounts. The auditor does not ensure or guarantee that the books of a company do show the true position. The auditor, after his examination, reports to the shareholders (and *not* to creditors or other parties) whether or not, in his opinion, the statements to which he appends his report represent a view of the state of the company's affairs (according to the best of his information and the explanations given to him and as shown by the books of the company), which can be accepted as true and fair. As I shall explain later, these financial statements are a mixture of fact and opinion, with room for legitimate differences of opinion. The auditor may not substitute his opinion for that of the directors. To the extent that a financial statement is based on opinion which is reasonable, it will be accepted by the auditor.

All the Companies Acts of the Australian States provide that an auditor shall have access to the books and records of the company and shall be furnished with any further information and explanation he may require; that he shall use reasonable diligence to ensure that the books correctly record the transactions and position of the company and that he shall report the result of his examination to the shareholders.

It has been judicially held that it is no part of an auditor's duty to give advice to directors or shareholders; that he has nothing to do with the prudence or imprudence of making loans; that it is nothing to him whether the business is being conducted prudently or imprudently, profitably or unprofitably, provided that he discharges his duty to shareholders in advising them as to the financial position of the company and the result of its activities. Likewise, it has been judicially held that while the auditor must take reasonable care and skill he is not expected to be suspicious where there is nothing to excite suspicion. Although it is not suggested that these are the last words on the subject of audit, it is thought that, for the purpose of illustrating my committee's views on the matter of compulsory audit for proprietary companies it may be regarded as a brief statement of what an audit means.

It is a common misconception that detection of fraud is the main function of an auditor; it should be emphasized however that protection against fraud is primarily an obligation of management. The conduct of a complete detailed audit of every transaction would impose a colossal financial burden on commerce and industry, for it would mean that a staff at least equal in size to those who carried out the transactions being audited would be needed to check every entry and there would still be no definite assurance that fraud (if any) would be uncovered.

Detection of errors is the most common outcome of audit and to a less extent detection of acts of dishonesty which may not have already been brought to light by the office systems being so arranged as to make it difficult for any employee to be dishonest without the collusion of another or others. Where a company is being conducted fraudulently, however, the fact that its records are subject to audit will not necessarily bring this fact to light, and, as a possible preventive against companies engaging in fraudulent practices, it cannot truthfully be claimed that an audit provides protection to the public. The world's largest frauds of this kind occurred in companies which were subject to audit and other scrutiny. Consider the well-known case of the McKesson and

Robins Incorporated frauds which came to light in the United States of America in December, 1938. The circumstances in which these frauds were conducted may be regarded as unique, but this may be said of most ingenious frauds.

This, and other large frauds which could be mentioned, is evidence that the lack of a compulsory audit does not increase opportunities for the conduct of fraudulent practices. Any statement that an audit is a protection to the public against possible fraudulent activities is not soundly based, and therefore the contention that the absence of a compulsory audit of the accounts of proprietary companies provides opportunities for fraudulent trading which would be shut off by such an audit, spring from lack of knowledge both of the function of an audit and of the manner in which frauds by companies against the public have been carried out. Audits, of course, have very definite advantages, but super-human qualities must not be attached to those who carry them out.

The reasons which render necessary the compulsory audit of a public company and which do not arise in the case of a proprietary company stem from the fact that with a large number of shareholders, in some instances amounting to many thousands, it is quite impracticable for each shareholder to inspect the company's accounts and satisfy himself personally that his interests are being protected, even assuming that he possessed the necessary knowledge to enable him to carry this out intelligently. Shareholders are therefore required to appoint an auditor who is qualified to make this inspection on their behalf.

The non-proprietary company, by reason of the manner in which it approaches the public for its capital, and, because in most instances, its shares are sold and bought freely on the markets provided through the stock exchanges, also needs a representative of the shareholders who is independent of the management to give periodical reports on the state of the company's affairs, not only for the benefit of shareholders, but also of potential shareholders. It is true that creditors may obtain some advantage from the fact that the accounts of a public company are subject to audit, but this is only incidental and it is thought that where the credit rating of a company may be in doubt it is the report of mercantile agencies and not that of the auditor upon which creditors rely.

In the case of proprietary companies, capital is not raised by invitation to the public but is arranged by those in close touch with its affairs, and it is practicable for them to make amicable and satisfactory arrangements for shareholders personally to satisfy themselves about the position of the company. Where they do not wish to do this, it is open to them to appoint someone on their behalf to do so, and as stated hereafter a large number of proprietary companies do appoint auditors.

The principal ground on which it has been urged that the accounts of proprietary companies should be subject to a compulsory audit is that it would provide the public with some protection against possible fraudulent trading and against neglect. These grounds are not considered by my committee to be valid in that proprietary companies are no more, and are possibly less, prone to fraudulent and other dishonest practices than public companies which are subject to audit, and that an audit cannot truthfully be stated to be a protection against such practices. Furthermore, even if an audit does afford some protection to shareholders, it cannot be stated that it is a protection to the public. Proprietary companies do not raise capital from the public. They are in fact nothing more than firms which have sought the privileges of incorporation without asking any member of the public to find capital for their operations. One of the principal reasons for such small organizations seeking incorporation, is to avoid the awkward and embarrassing feature of partnership relations, namely, that one partner has power to bind all his co-partners to an unlimited extent by acts performed by him in connexion with the business of the firm, no matter what arrangements to the contrary they may have entered into among themselves.

Many proprietary companies which do not trade are incorporated for such purposes as—

(1) Private investment organizations; or
(2) giving effect to family arrangements and trusts; or
(3) exercising remote control over other companies; or
(4) collecting royalties and policing licensing agreements;

and in other ways involving no contact with the public.

The law has for nearly 60 years encouraged the formation of such companies as well as those which trade. It is indisputable that the encouragement thus given by the law has been most beneficial to the progress of the State. If several people who own investments in common, or even who carry on some business, find that the simplest form of annual accounts would meet their needs, and consider that an auditor could not render them services which would justify his fee, why should they, if they formed a proprietary company, be required to do more in these respects than they did as individuals? Compelling them to do so would not serve the public in any way.

When the Bill which subsequently became the *Companies Act* 1938 was drafted, the Government of the day realized that it was unfair to compel small proprietary companies to be subject to a compulsory audit, but, because the late Sir Leo Cussen had expressed some doubt whether proprietary companies should be totally exempt, it provided that the audit provisions should apply to such companies with more than £10,000 nominal capital. This, however, led to so many difficulties that eventually it was decided not to depart from the then existing law. It may be of interest to this Committee to consider the problems relating to this matter which were examined in the years when the 1938 Act was under consideration.

But despite the fact that the law does not enforce a compulsory audit on the accounts of the 14,000 proprietary companies in Victoria (apart from subsidiaries of public companies), even the most ardent advocates of the compulsory audit of proprietary companies admit that many of them do have their accounts audited. There is no means by which the proportion of such companies which do have audits can be ascertained, but my committee would agree with those who suggest that the majority of proprietary companies which are engaged in trading either have their accounts audited or have some form of accounting supervision exercised over their records. The proprietary companies which do not have audits are probably in the main the non-trading groups mentioned earlier. Nobody is affected by the lack of audits in those instances. For the sake of the relatively few proprietary companies which are engaged in trading and do not have an audit or other form of accounting supervision, it seems to my committee to be a most unsound procedure to force a compulsory audit on all, and vary the nearly 60-year-old practice which has proved satisfactory.

Probably one of the most unfortunate results of enforcing a compulsory audit on proprietary companies similar to the audit of public companies would be to deprive many proprietary companies of most

valuable use they now make of public accountants who carry out audits or accounting duties for those small concerns. As the Committee is aware, the auditor of a public company must, because of his position as the representative of shareholders who cannot themselves examine the accounts of the company, be independent of the management of the company. In the case of a proprietary company, the position is somewhat different. In consequence, the "owners" of proprietary companies frequently invite their auditors or accountants to undertake the formal secretarial duties of the company by establishing its registered office in the office of the auditor or accountant. In other instances they appoint their auditors as directors or alternate directors who thus exercise wider supervision for them, while still carrying out their audit functions. These auditors are not less "independent" while acting in such additional offices, and are of great assistance to their clients in ensuring better account keeping, maintenance of statutory registers and filing of documents. But once the same provisions relating to audit as are applicable to public companies are applied to proprietary companies, their present auditors would either have to cease these extra services they now render, or, if they continued to carry them out, they would have to cease to act as auditors.

Then there are other proprietary companies which actually do not have an auditor in the strict sense of the word, but which employ public accountants to supervise their account keeping, prepare balance-sheets and file income tax returns. This service is perhaps even more effective in ensuring better account keeping than would be the case where an audit is conducted of accounts already prepared by the company's staff.

It has been suggested that the compulsory audit of the accounts of proprietary companies should be enforced with a view to ensuring that the books of accounts are kept, and that at least annually an audited statement of the company's affairs will be available to assist in establishing the financial position of the company at a time when it is found that fraud or other wrong-doing has taken place. This may sound attractive but it is surely a most unsound principle to force all proprietary companies to have a compulsory audit because of the shortcomings of a very few.

It is also thought that the introduction of a satisfactory system of registration of all accountants would be of material advantage to the business community, would result in the improvement of accounting methods adopted in many businesses, and would be responsible for the presentation of more reliable accounting statements. The Australian Society of Accountants is strongly in favour of registration of all accountants on a satisfactory basis. It has prepared a draft Bill for registration and I should like to have the opportunity, at a later date, of making representations in this connexion, either to this Committee or to the State Government. I understand that this matter has a bearing on the question exercising the minds of members of this Committee of ensuring that proper books of account and records generally are kept by proprietary companies.

The proper course, in the opinion of my committee, is for the law to indicate, without going into detail, what accounting records should be kept, and to award appropriate punishment to defaulters if an examinations of the affairs of the company discloses that this has not been done. This should apply not only to proprietary companies, but to all companies including public companies, building societies, and co-operative companies. As part of the work upon which my committee has been engaged, it has in draft a recommended amendment of the Act to widen its present provisions in regard to account keeping without imposing any unreasonable burden upon companies. My committee believes that it has a very satisfactory solution of this problem. However, as the particular recommendation is part of a series of recommendations for amendment of the Companies Act, I should like an opportunity at a later date to present this suggestion relating to account-keeping and some others related to this matter as well as some recommendations affecting section 367 of the present Companies Act. That section relates to the distribution of dividends.

The Chairman.—This Committee would be very interested to hear your recommendations on those two matters, as they are relevant to the present inquiry and seem likely to accord with our views. We are not concerned with questions that are not germane to the prevention of fraud.

Mr. Fitzgerald.—Our suggestions can be presented. I apologize for the incompleteness because, owing to the relatively short notice received for this morning's appointment and the fact that evidence of this description can be prepared by my committee only in its spare time, it has not been possible to present detailed recommendations as my committee would like to have done.

The suggestion about proprietary companies being required to file with the Registrar-General copies of accounts to be opened only upon the order of the court has been mentioned. Once again this appears to be attractive, but my committee is of the opinion that it is wrong in principle to compel 100 per cent. of companies to do something, because of the possible wrong-doing of something less than .01 per cent. of them. For reasons which will be given in evidence later, if the further opportunity sought to place before this Committee certain recommendations of my Society is agreed to, it will be suggested that a more effective plan can be devised without imposing additional obligations upon companies. At this stage it is desired to state that although the filing of private balance-sheets of public companies has long been in operation there are only one or two instances where an order was sought to obtain access to the sealed accounts, and in those instances the private balance-sheets did not reveal anything of value to the investigators who had applied to have such accounts made available.

It is the general view of practising accountants who audit the accounts of public companies, that sub-sections (9), (10), and (11) of section 133, which were introduced as part of panic legislation, serve no useful purpose. Those sub-sections relate to the filing of private balance-sheets. It seems, therefore, that these provisions should be deleted rather than extended. However, in their place my committee will, as already stated, submit a recommendation for an amendment which it considers of more practicable value.

Mr. Hollway.—What is the alternative to the compulsory audit of the books of a proprietary company?

Mr. Fitzgerald.—I think the alternative is to ensure proper account keeping and to impose penalties for neglect to keep proper records.

Mr. Hollway.—Those records would remain in the possession of the company?

Mr. Fitzgerald.—Yes. After all, a proprietary company is only a partnership with a limited liability.

Mr. Hollway.—I think the benefit of limited liability imposes some obligation.

Mr. Fitzgerald.—It imposes an obligation to keep proper records and prepare proper balance sheets.

The Chairman.—Your proposal would apply not only to proprietary companies, but also to public companies?

Mr. Fitzgerald.—It would apply to all companies.

The Chairman.—Your society feels that there are defects in the present legislation so far as the keeping of accounts is concerned?

Mr. Fitzgerald.—In my opinion, the provisions of the present legislation could be tightened up and certain of them could be made to apply not only to a compulsory winding up by the court, but to all windings up and also to the case of an investigation ordered by the Governor in Council. I consider that there is ample protection in the present Act if certain provisions are extended.

The Chairman.—And enforced.

Mr. Fitzgerald.—That is so.

Mr. Byrnes.—You consider that a compulsory audit will afford no protection to the public, but that a more thorough system of accounting will do so?

Mr. Fitzgerald.—I think better results would be obtained that way.

Mr. Ludbrook.—You think that an organization to control accounts should be established.

Mr. Fitzgerald.—No. I believe that sufficient protection can be obtained by extending the provisions of the present Act. After all, in America the Securities and Exchange Commission was set up to control this sort of thing, but despite that organization the McKeeson–Roberts frauds occurred.

Mr. Ludbrook.—In my opinion, some protection should be afforded, because the minority in a proprietary company should have some protection. A proprietary company may function properly if the members of the company work amicably.

Mr. Fitzgerald.—In the vast majority of proprietary companies, they do.

Mr. White.—It is your intention to make recommendations to the Committee as an alternative to a compulsory audit?

Mr. Fitzgerald.—Yes. I think protection lies in ensuring that accounting methods are improved.

Mr. Byrnes.—When an audit of accounts takes place, the auditor reports that to the best of his belief the balance sheet is a fair and reasonable statement of the affairs of the company from the accounts submitted to him. On occasions, he comments on the fact that the accounts have been well kept or otherwise.

Mr. Fitzgerald.—That is so, but that is not part of his statutory duty. It is done where an auditor wants to pay a tribute to the work done by the secretary or accountant.

Mr. Byrnes.—The report of the auditor does not refer to any practices of the company.

Mr. Fitzgerald.—No. It is no concern of the auditor whether the transactions being carried on by the directors are imprudent.

Mr. Byrnes.—In other words, he is not an investigating officer.

Mr. Fitzgerald.—That is so.

Mr. Byrnes.—If there was anything irregular in the keeping of the accounts, the auditor would comment, but it is not his duty to report upon the manner in which the business is being conducted?

Mr. Fitzgerald.—That is correct. He is concerned mainly with reporting to the shareholders whether the financial statements presented by the directors give a fair and reasonable view of the state of the affairs of the company and the result of its operations during the year. As I have said previously, that covers a number of things that involve questions of opinion, and usually the directors are in a better position to form an opinion than is an auditor. The auditor makes inquiries and checks up on the opinions of the directors; he tries to satisfy himself whether or not those opinions are reasonable, and whether the directors have presented an unreasonable or an unfair picture of the affairs of the company.

Mr. Byrnes.—He does that from the accounts submitted to him?

Mr. Fitzgerald.—Yes.

Mr. Pettiona.—Could you inform the Committee of the number of public accountants who carry out accounting duties for small proprietary companies?

Mr. Fitzgerald.—They would be numerous. In many cases the books of proprietary companies are kept in the offices of public accountants who carry out most of the accounting duties for those companies.

Mr. Pettiona.—Can you furnish the Committee with that information?

Mr. Fitzgerald.—No.

Mr. White.—I take it that you are presenting the considered view of your society?

Mr. Fitzgerald.—It is the considered view of my committee, which has been appointed by the general council of the society.

The Chairman.—Can you inform the Committee whether the following is a usual certificate of an auditor:—

I certify that Bristo Plastic Industries has from the profits earned by its investments during the year 30th June, 1945, paid a dividend at the rate of 10 per cent. per annum on all fully paid certificates of ownership as per the certified schedule hereof.?

Mr. Fitzgerald.—That is not an auditor's report; it is a certificate for a specific purpose. In that case, the auditor was certifying to a fact. Such information would be ascertainable from the books.

Mr. Randles.—When auditing the books of some companies that have come under the notice of the Committee, the auditor must have known there was something "fishy" about them. In such a case, surely it would be within the province of the auditor to make some comment?

Mr. Fitzgerald.—It may be that an auditor could be held liable if he failed to do so.

Mr. Randles.—Only by the shareholders, not by the general public.

Mr. Fitzgerald.—In what way would fraud be committed on the general public?

Mr. Randles.—Prospective shareholders would say, "There is the auditors' report", and in the light of such a report they would invest money. The auditors are not liable.

Mr. Fitzgerald.—Apparently that is an argument against the compulsory audit of proprietary companies.

Mr. Randles.—No, but I think that consideration should be given to all the ramifications of existing practices and to the duties and responsibilities of auditors.

The Chairman.—I would like Mr. Fitzgerald to say whether the report given by auditors is usually in this form:—

I have examined the books and accounts of the company for the year ended 30th June, ..., and have obtained all the information and explanations I have required, and report that in my opinion the foregoing balance sheet is properly drawn up so as to exhibit a true and correct

view of the state of the company's affairs, according to the best of my information and the explanations given to me and as shown by the books of the company.

Mr. Fitzgerald.—That is the usual form of certificate.

The Chairman.—And is that the most that an auditor can be expected to give in accordance with his duty?

Mr. Fitzgerald.—In the report which you read there are two words to which I take some exception. I refer to the expression "true and correct". I would prefer the words "fair and reasonable." The Act specifies the words "true and correct."

The Chairman.—If you had placed before you a balance sheet at the bottom of which there was a certificate in the form I have read, and if that certificate were signed by an auditor with the required qualifications, would you regard the balance sheet as being sufficiently reliable to justify you in acting on it?

Mr. Fitzgerald.—I would take into account many other factors, such as the reputation of the people connected with the company and the proposed directorate.

Mr. Brennan.—From a bookkeeping point of view, would you say that, in the light of such a certificate, it would be fair and reasonable to assume that the affairs of the company were being conducted in a proper manner?

Mr. Fitzgerald.—Yes.

The Chairman.—That would be a fair assumption?

Mr. Fitzgerald.—I think so.

Mr. Pettiona.—If it were proved that the accounts and information presented to the auditor were not "true and correct", and if the auditor were aware of the fact, would he be liable to have some action taken against him?

Mr. Randles.—Only by the company.

Mr. Fitzgerald.—You are suggesting that an auditor should have a responsibility which the legislation does not apply to him. If a company desires to obtain additional capital, it is customary for a prospectus to be prepared and for a special investigation of its trading results to be made by an accountant specially appointed for the purpose. The result of such investigation is included in the prospectus for the information of prospective investors. Any person who has had dealings with the Stock Exchange will from time to time have received such prospectuses incorporating the report of the accountant's investigation.

The Chairman.—Is there a statutory duty for such a report to be given, or is it Stock Exchange practice?

Mr. Fitzgerald.—It is Stock Exchange practice, and there are also provisions in the Act concerning prospectuses.

The Chairman.—What sort of investigation would the accountant make?

Mr. Fitzgerald.—It would depend entirely on the circumstances of the case. The accountant would make a more exhaustive investigation than the one he would make in connexion with an audit. For the purpose of the prospectus, he would be concerned with the manner in which the business was being conducted, and therefore he would make an inspection of the business itself and of the company's plant and property. He would also obtain sworn valuations, and examine the directors and managers of the company as to the way in which they were handling the business.

Mr. Byrnes.—Concerning plant, certain sums of money may have been set aside for depreciation. That would be done as part of the normal accounting system which the auditor checks and reports upon, but it would not be the auditor's duty to make an independent valuation of the plant so that he would be in a position to say, "That plant is included in the books at a valuation of £10,000, but in my opinion it is worth only £1,000."

Mr. Fitzgerald.—It would be his duty to report if he thought that reasonable depreciation had not been allowed.

Mr. Ludbrook.—In the copy of the certificate read by the chairman, there are the words "according to the best of my information and the explanations given to me". I understand that you propose to make certain recommendations relating to that provision. Consider the case in which the accountant of a company, who might be in the "joke", might give false information to his board of directors. I understand that you propose to submit some recommendations designed to counteract such a possibility.

Mr. Fitzgerald.—I do not know how it would be possible to counteract irregular practices of that sort. When making his investigation, the auditor has to make up his mind whether there is anything of a suspicious nature.

Mr. Ludbrook.—That goes back to the point raised by Mr. Randles that the question of the audit should be reviewed. The manager of a company, who may himself be very sound, has in many cases to rely to a great extent on his inside accountant.

Mr. Fitzgerald.—I quite agree. The inside accountant has a very great responsibility.

Mr. Ludbrook.—Do you intend to submit a recommendation from your committee on that aspect?

Mr. Fitzgerald.—I do not think much can be done apart from ensuring that appointees to such positions are men of integrity, possessing the requisite qualifications.

Mr. Ludbrook.—I know of a case in which an auditor told the management of a company to "pull up their socks" in relation to the accountant.

Mr. Fitzgerald.—The management of a company is in a better position than an auditor to find such things out, because it is in daily touch with the accountant.

Mr. Ludbrook.—Do not you think that the management should be protected in respect of its internal accountancy work? You have suggested that accountants should be placed under control.

Mr. Fitzgerald.—Yes.

Mr. Brennan.—If an auditor is keen, it is inevitable that in the course of his bookkeeping investigations he will perceive the drift of things in a company. Do not you think it is his duty to report that to the management, in the same way as Auditors-General of the States and Commonwealth make pointed comments on conditions revealed by Government audits?

Mr. Fitzgerald.—To my knowledge accountants frequently direct attention to a drift in the finances of a company or forecast what is likely to happen if certain methods are continued.

Mr. Ludbrook.—Does not that show the need to have such a check made?

Mr. Fitzgerald.—In the case of a public company, yes; in the case of a proprietary company, it is entirely a matter for the shareholders.

The Chairman.—Do you consider that the auditor, in addition to his report in accordance with the provisions of section 133 of the Companies Act, should be given the duty of reporting to the management any drift in finances or any doubtful practices?

Mr. Fitzgerald.—Before I reply I should like my committee to consider that question. I see some dangers in the suggestion, which might require the

duty to be stated more specifically. I also think there is a tendency to confuse the audit provisions of the Companies Act with the provisions in sections 34 to 38 respecting the issue of prospectuses. In my opinion, the latter provisions should receive your attention.

Mr. Randles.—In the case of *Candler* v. *Crane Christmas,* reported in 49 King's Bench or 49 All England Reports, an auditor was called in to audit the accounts of a company, with the knowledge that the results of his audit would be used to influence prospective shareholders. The auditor was lax in his duty and, instead of checking on various assets which he included in the balance sheet, he took the word of the management of the company that they were correct. Items shown as clear assets were in fact subject to very heavy mortgages. As a result, investors lost heavily, but had no claim against the auditor because his duty was to the management and not to the shareholders. In view of that case, surely it is time that the audit provisions were reviewed with the object of protecting prospective shareholders?

Mr. Fitzgerald.—So far as public companies are concerned, I think auditors generally realize that they have at least a moral responsibility to potential shareholders. In the celebrated Kylsant case criminal proceedings were taken against an auditor because his statements were used in a prospectus.

Mr. Thomas.—You stated that it is a common misconception that detection of fraud is the main function of an auditor. How does that misconception arise?

Mr. Fitzgerald.—I do not know. The man in the street seems to regard protection against fraud as the principal duty of an auditor.

Mr. Thomas.—You say that is not his duty?

Mr. Fitzgerald.—It is not his main function. The management is in a better position to detect fraud than is the auditor.

Mr. Thomas.—In some cases, the management may not wish to detect fraud.

The Committee adjourned.

WEDNESDAY, 14TH APRIL, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. G. E. Fitzgerald, Chairman of the Company Law Research Committee of the Australian Society of Accountants, was in attendance.

The Chairman.—Yesterday, Mr. Fitzgerald tendered evidence on the matter of audits. We come now to Question No. 2, which Mr. Fitzgerald has posed to his committee and which he will now proceed to state and then answer.

Mr. Fitzgerald.—Question No. 2 is as follows:—

Is it desirable to provide that the opinion of a qualified investigating officer of the financial state of the company at a particular date shall be *prima facie* evidence of the financial position of the company at that date? This proposal emanates from the difficulties found in proving the financial position of a company at a time when offences have been committed or suspected to be committed by the directors or officers.

My reply is in the following terms:—

My committee entertains some doubts as to the likely effect of a provision of this nature. It accepts the fact that it may be difficult, after a lapse of some time, to prove what was the financial position of a company as at a given date, but questions whether the proposed amendment is desirable.

First, assume it to be provided that the report of a qualified investigator as to the financial position of a company is to be *prima facie* evidence of the position as at the date concerned. If, in the opinion of the investigator, fraud has been committed, then presumably his opinion as to the financial position of the company will, at least in some cases, be one of the matters relied on in proving the fraud. My committee feels that in circumstances such as these the fact that the investigator's opinion of the financial position is to be treated as prima facie proof of the financial position may be followed by a tendency to treat similarly his opinion that fraud has taken place—i.e. as prima facie proof of the fraud alleged.

To this extent my committee would not favour the proposal. Admittedly, legislation does in some cases provide that an allegation is to be treated as *prima facie* proof of the facts alleged—e.g., the "facts" in sub-section (7) of section 119 of the Bankruptcy Act. This provision relates to the circumstances in which a discharge may be refused to a bankrupt. If his assets are worth less than 10s. in the £1, a discharge is refused unless the bankrupt can prove that the circumstances causing that state of affairs arose from something over which he had no control. It is felt, however, that such legislation should not be extended to cases where actual fraud is alleged. In these cases the view of my committee is that the prosecution should accept the onus of proof. If it were otherwise, then it may be just as difficult for the defendant to disprove the allegations after a lapse of time as it is at present to prove affirmatively the financial position of the company. My committee would not like to see the difficulties of the latter overcome by legislation which might result in the unfairness of the former.

Moreover, many acts and omissions which in the light of after events may appear to be part of an ingenious scheme of fraud may be capable of innocent explanation if viewed only in relation to the circumstances prevailing at the time they were done or suffered. It is, of course, a matter of considerable difficulty so to isolate the relevant circumstances, but it is nevertheless considered that where criminal proceedings are involved the difficulties which attend the proof of fraud should be shouldered by the prosecution, rather than that the defendant should be saddled with the task of disproving allegations which may, after all, be founded largely upon the wisdom which so often arises after the event.

Secondly, my committee is not satisfied that the problem cannot be solved without resort to the method suggested. It is considered that comparatively minor amendments to the Companies Act as it now stands could achieve a satisfactory result. Thus, if section 214 and the following sections could be amended to allow a public examination in either or both of a voluntary winding up or an investigation under sub-division 8 of Division 5 of Part I., or if section 274 were adapted in a manner which will be outlined in evidence before your committee at a later date, then it is felt that many of the present difficulties might be overcome.

Section 214 applies only with respect to examination in the case of winding up by the court. Sub-division 8 of Division 5 comprises sections 135 to 138; it relates to investigation of affairs by an inspector appointed by the Governor in Council. If the provisions of section 214 could be extended to a voluntary winding

up and also to an investigation by an inspector appointed by the Governor in Council, I believe that the result desired by this Committee would be achieved. That procedure would be preferable to placing on a defendant the onus of disproof, which, we feel, would be a very dangerous expedient to adopt.

Mr. Hollway.—Except that the defendant would have created the position by not having kept proper books of account.

Mr. Fitzgerald.—Not necessarily. Difficulties might have been caused entirely by an opinion formed when the statements were prepared, perhaps two or three years previously. It is all very well to assert subsequently that the opinion was stupid. When conceived, it might have been completely sound, but proved to be wrong in the light of succeeding events. Fraud is an extremely serious offence, and in my view adoption of the suggestion would be a dangerous expedient to apply. Similar objections to those offered to the proposed legislation of the Menzies Federal Government to outlaw Communism can be taken in the circumstances now being discussed.

The Chairman.—This Committee's inquiry is concerned principally with the type of company formed obviously for fraudulent purposes. There is a pattern: No books have been kept; there are no accounts; there have been no audits; and the promoters have been able to keep from the public knowledge of the actual state of affairs until they have milked it successfully. Then sufficient material is gathered to enable an examination to be conducted, but the investigating officer is unable to obtain information concerning the financial affairs of the company.

The society that you represent, Mr. Fitzgerald, has rejected the suggestion relating to audits and has proposed that more rigorous provisions could be made regarding the keeping of books. Persons who float fraudulent companies will not take any notice of such provisions, and the damage will have been caused by the time their activities have been disclosed. Alternatively, it has been suggested that the investigating officer's opinion of the financial circumstances of the company should be prima facie evidence.

This proposal is intended to apply only when there are not available books or accounts from which the required information can be obtained. An answer to the problem must be found. Your society is knocking down all the propositions submitted; it may be on good grounds. Have you any alternative suggestion that will provide a solution to the problem?

Mr. Fitzgerald.—Yes. Our advice is to clothe the investigating officer with all the powers contained in section 214 of the Companies Act.

The Chairman.—How would that assist the investigation officer? If the persons concerned refused to answer questions on the ground that they might incriminate themselves, he would be up against a dead end.

Mr. Fitzgerald.—Under the terms of section 214 of the Act the investigating officer may hold a public examination. To me, as a layman, the fact that persons refuse to answer questions for fear of possible incrimination suggests that a fraud has been committed. That would be a telling point.

Mr. Hollway.—But it would not be evidence, although doubtless the matter would receive publicity in the press.

The Chairman.—In the circumstances outlined, it would not be possible to convict the persons investigated, but it might prevent further frauds. Evidence presented to the Committee indicates that certain persons continue to engage in fraudulent activities under the Companies Act, but they escape prosecution because sufficient evidence is not available to prove the state of affairs of the company when the fraud is alleged to have been committed.

Mr. Fitzgerald.—That type of person is a very small minority in the community, but it is now proposed to apply an expedient that might affect a vast number of honest people, who may have been guilty of errors of judgment.

Mr. Hollway.—No; this would apply only when a company became insolvent.

Mr. Fitzgerald.—That fact might be due to honest mismanagement, and is scarcely prima facie evidence of fraud.

Mr. Hollway.—The only real object in switching the onus of proof is to get the defendant into the witness box so that he can be cross-examined. If he does not give evidence, the investigator may carry out the most minute examination without being able to prove anything.

Mr. Fitzgerald.—I have not had experience of these legal procedures.

The Chairman.—The Crown would rely on a provision of the type envisaged only when there were no books, documents, and other records from which the financial status of the company concerned could be disclosed.

Mr. Fitzgerald.—It is a matter of opinion. The suggested provision seems to be somewhat dangerous. At first it appealed to me to a degree, but when I gave the matter fairly careful consideration it seemed to me to be unsafe. I advise the Committee to endeavour to overcome the problem of recommending an extension of the provisions of certain sections of the Companies Act, particularly section 214, to cover voluntary liquidations and to assist the activities of inspectors appointed by the Governor in Council.

Mr. Thomas.—Is it the opinion of your committee that there is such a small minority of wrongdoers that the introduction of a law along the lines suggested would constitute a grave danger to the rest of the community?

Mr. Fitzgerald.—Yes.

Mr. Thomas.—The laws of the land, including the criminal code, exist for the benefit of all, and because a few persons transgress them it cannot be truly said that the laws are harsh.

Mr. Fitzgerald.—An honest man should not be subjected to harsh laws and unnecessary burdens.

The Chairman.—Do you consider that the suggestion is in the category of an unnecessary burden?

Mr. Fitzgerald.—It could be.

The Chairman.—It seems to me that it can operate only if a prima facie case has been made out sufficient to justify the Attorney-General appointing an investigator to ascertain if there is any material that can be presented to the court to show the financial state of the company. If that were found, it would be prima facie evidence of the financial position of the company at the time.

Mr. Fitzgerald.—The material that he would present to the court would be founded upon his own opinion, and there might be just as strong evidence and opinion to the contrary. If the opinion of the investigator is prima facie evidence of the financial position of the company it might also be assumed to be prima facie evidence of fraud having been committed.

The Chairman.—I cannot visualize how that could occur, because a Judge would direct the attention of the jury to what was prima facie evidence and what was not. Prima facie evidence is always handled with extreme caution in a court. The Judge would be at

great pains to point out to the jury that the *prima facie* evidence related only to the financial state of the company and had nothing to do with the case of fraud, which must be proved beyond reasonable doubt.

Mr. Fitzgerald.—We have given the Committee our views as accountants, but lawyers may say there is no substance in those views.

Mr. Pettiona.—Unfortunately, members of your society, as well as chartered accountants not associated with it, are connected with fraudulent companies and give varied opinions which are coloured. I do not think you can indicate any case where there has been a miscarriage of justice so far as the questions under consideration are concerned. In fact, the law has practically leaned so far backwards that certain people have been able to avoid their responsibilities to the community. As a layman, I do not think there would be any miscarriage of justice to the people with whom you are concerned if the proposed amendment were introduced, but it would bring the people with whom we are concerned within the full rigor of the law.

Mr. Fitzgerald.—It is unfortunate that any professional man should express coloured views, but it does not happen only in the accounting profession. We should be assisted to exercise more control over the profession. Mr. Pettiona has said that the law has leaned over backwards in the past, and I suggest that the Committee should be careful to see that it does not lean too far forward in the future and place a burden on honest persons who may have been guilty of errors of judgment.

Mr. Randles.—You seem to be afraid that people who make honest mistakes in the conduct of business will be brought within the ambit of the proposed amendment, but are you not confusing an honest mistake with reckless course of conduct?

Mr. Fitzgerald.—There are many more honest mistakes in business than there are frauds. Mistakes in judgment occur every day; fraud is committed only occasionally.

Mr. Hollway.—So is murder, but that is no reason why the law relating to murder should be wiped out.

Mr. Fitzgerald.—Prima facie evidence is not accepted where a charge of murder is being heard; the prosecution is made to prove the charge.

Mr. Randles.—If the manager of a business knows that the company is bankrupt and he continues to raise funds from the shareholders, surely he is guilty of reckless conduct and morally is not doing the right thing?

Mr. Fitzgerald.—The Companies Act contains provisions relating to prospectuses which, I think, warrant careful consideration. One section provides that before capital can be obtained the prospectus must be prepared and the report made by an accountant, who shall be named in the prospectus, with respect to the profits of the company for the three financial years immediately preceding the issue of the prospectus. As I pointed out yesterday, that is as a result of an investigation for a special purpose, and is entirely different from an audit. The accountant making such an investigation approaches the task with an entirely different attitude from that of an auditor in the normal course of his duty. He exercises a certain amount of suspicion about anything that is presented to him. The auditor is in an entirely different position; he is not expected to be suspicious where there are no circumstances suggesting that he should be.

Mr. Randles.—Taking proprietary companies as an example, in the past people have been selling certificates and so on in order that they might operate outside the provisions of the Companies Act and the auditors have been in the "joke." Although assets have been over-stated and the report of the auditor has been used to defraud people, nothing has been done by your society or any other body.

Mr. Fitzgerald.—From time to time we receive complaints against members. Those complaints are thoroughly investigated and action is taken in appropriate cases. We have struck a man off the register; also we have refused to accept a resignation so that we could strike that person off the register.

Mr. Randles.—Other witnesses have told the Committee that they know of instances where accountants have not been dealt with by the society.

Mr. Fitzgerald.—That is entirely wrong. A few years ago a man from Geelong, after being called upon to furnish an explanation for a certain action, submitted his resignation. The society refused to accept it and later struck him off the register.

Mr. Randles.—I suggest that similar action should be taken against several other auditors.

Mr. Fitzgerald.—If any complaints are made to the society they will be investigated thoroughly, and the Committee can rest assured that that position applies not only now but at all times.

Mr. Ludbrook.—Has your society control over all auditors?

Mr. Fitzgerald.—No. Some auditors are not members of our or any other society, and they do not have to be.

Mr. Randles.—But they can still practise?

Mr. Fitzgerald.—Yes, and there is no power to deal with them.

The Chairman.—What action can be taken by the Board of Licensed Auditors?

Mr. Fitzgerald.—The Board places accountants under the obligation to pass an appropriate examination. If they pass the test they are granted a licence to conduct audits.

The Chairman.—Has that Board any disciplinary powers?

Mr. Fitzgerald.—Yes.

Mr. Randles.—Even if an accountant is struck off the membership roll, there is nothing to stop him from carrying on his business.

Mr. Fitzgerald.—That is so.

The Chairman.—Mr. Fitzgerald is at this stage proposing the enactment of legislation to provide for the registration of accountants.

Mr. Fitzgerald.—If it is desired to control the accountancy profession, the most effective way of doing it would be by a system of registration.

Mr. White.—Do you make that recommendation to the Committee?

Mr. Fitzgerald.—My society strongly recommends it, as it considers that control of the profession can be implemented satisfactorily only by placing it in the hands of a Board consisting of representatives of the profession and of the Government.

Mr. White.—That is part of your recommendation to this Committee?

Mr. Fitzgerald.—Yes. Reverting to the Chairman's question, I do not know of any case where disciplinary action has been taken by the Board.

The Chairman.—Action may be taken by the Board under the terms of sub-section (6) of section 134 of the Companies Act, which reads as follows:—

> The Board after giving notice to the holder of a licence whether issued before or after the commencement of this Act and giving him an opportunity of being heard may at any time—
>
> (*a*) Inquire into the conduct and character as well as the abilities of such holder; and
>
> (*b*) cancel such licence.

In sub-section (7) there is provision for an appeal by an aggrieved person to a Judge of the County Court. Do you know of any case in which the Board has exercised those powers?

Mr. Fitzgerald.—I cannot recall a case.

The Chairman.—It appears that the Board functions as a licensing authority, but does not actively discipline persons who hold licences as auditors and who commit any breach of the Act.

Mr. Pettiona.—Nor has it power to do so.

The Chairman.—There appears to be power under sub-sections (6) and (7) of section 134 to enable the Board to act, but apparently that power has never been exercised.

Mr. Fitzgerald.—The Board might never have received any complaints.

Mr. Thomas.—In connexion with the investigation that has to be made by an accountant for the purpose of the issue of a prospectus by a company, a period of three years is specified. Do you thing that period is too long?

Mr. Fitzgerald.—It is not long enough.

The Chairman.—Mr. Fitzgerald's point was that it is the duty of the accountant to investigate the affairs of a company during the three years preceding the issue of the prospectus.

Mr. Thomas.—The company might have been operating for only twelve months.

Mr. Fitzgerald.—In such a case the investigation would cover its activities during that twelve months.

Mr. Brennan.—I should like to stress the preventive aspect. To indicate the necessity for an effective check of the affairs of a company, I shall cite a case that came under my notice, in which the auditor conspired with the manager. It was agreed that the auditor when examining the accounts should not notice certain fictitious entries involving some thousands of pounds. The true state of the accounts was later discovered by an employee and an investigation was made. The manager of the concern disappeared, but the auditor was required to make good the deficiency. Luckily he had the means to rectify the defalcations, but that might not have been so in other cases. The point is that it is not a sufficient safeguard merely to have the accounts audited. There should be some statutory requirement that would ensure that an audit would not be a mere perfunctory one.

The Chairman.—Section 379 would cover the point. It reads as follows:—

> Every person who in any return report certificate balance-sheet or other document required by or for the purposes of any of the provisions of this Part specified in the Thirteenth Schedule wilfully makes a statement false in any material particular knowing it to be false shall be liable to conviction on indictment to imprisonment for a term of not more than two years . . . . .

That provision would apply to auditors and it would be applicable in the circumstances which you mentioned.

Mr. Brennan.—I agree. In the case to which I referred the shareholders' money was recovered, but even if the person responsible for an irregularity were convicted and sentenced, the loss would not necessarily be redeemed.

Mr. Fitzgerald.—Is there a suggestion for any stronger preventative?

Mr. Hollway.—If the auditor is dishonest he will not bring to light his own defalcations.

The Chairman.—Perhaps Mr. Fitzgerald will continue his statement.

Mr. Fitzgerald.—The next question is as follows:—

Question 3: The words " and in addition a statement showing the total losses (if any) of the subsidiary company or companies " which appear in sub-paragraph (ii) of paragraph (*a*) of sub-section (1) of section 125 of the *Companies Act* 1938 appear to be ambiguous. Should they not be clarified to ensure that the loss or profit of each subsidiary company is shown in the consolidated profit and loss account of the holding company?

Reply: The Committee considers that the words " and in addition a statement showing the total losses (if any) of the subsidiary company or companies " which appear in section 125 (1) (*a*) (ii) of the *Companies Act* 1938 do not serve any useful purpose. They were introduced as an answer to objections made by accountants and others to the provisions of the English *Companies Act* 1929 which provides for a statement to be attached to the balance-sheet or a holding company showing how the aggregate profits and losses of subsidiary companies, so far as they concern the holding company, have been dealt with in the accounts of that company; it provided further that the statement must also state to what extent provision had been made for the losses of subsidiary companies, either in the accounts of those companies or of the holding company or both, and to what extent the losses of subsidiary companies had been taken into account in arriving at the profits and losses of the holding company as disclosed in its accounts.

A statement in such vague terms as " The profits of subsidiaries have been dealt with in the accounts of the holding company to the extent of the dividends paid by the companies, but the losses of subsidiaries have not been taken into the accounts of the holding company, as these have been fully provided for in the accounts of the subsidiaries " was sufficient compliance with the provisions of the English Act of 1929.

The provisions in the Victorian *Companies Act* 1938 for the presentation of a consolidated statement, showing the result of trading of the holding company and all of its subsidiaries taken as a whole or alternatively the presentation, with the financial statements of the holding company, of the financial statements of each of the subsidiaries, answer the criticism of the English provisions and result in the presentation of more informative financial statements than the statement required by section 125 (1) (*a*) (ii). So long as the profits and losses of all subsidiaries are brought to account in a consolidated statement, nothing is gained by presenting " a statement showing the total losses, if any, of the subsidiary company or companies."

It is also considered unnecessary to provide for the loss or profit of each subsidiary to be shown in the consolidated profit and loss statement. Subsidiary companies are merely branches of a holding company group organized as separate legal entities for the purpose of facilitating management or for some other convenience in administration. It has never been considered necessary for any company to present a statement showing the profits or losses of each department of its business. Such information would be of little interest to shareholders and we see no reason why such a provision should be imposed on holding companies. The English *Companies Act* 1948 does not contain any such provision or any provision

similar to sub-paragraph (ii) of paragraph (*a*) of sub-section (1) of section 125 of the Victorian *Companies Act* 1938.

There could be very good reasons for the directors of a holding company to continue operating a subsidiary company even though its activities resulted in trading losses; it does not appear to my committee to be necessary for them to explain to shareholders and competitors all the reasons which influence them in determining policy.

We are unable to see how the introduction of a provision for "the loss or profit of each subsidiary company" to be shown in a consolidated profit and loss statement or the retention of the provision of sub-paragraph (ii) of paragraph (*a*) of sub-section (1) of section 125 would operate to prevent fraud or assist in its detection.

The committee has prepared comprehensive recommendations for the accounting provisions relating to holding companies and if desired would be pleased to submit them at a later date. Generally, in my opinion, the provisions of the Victorian Companies Act of 1938 relating to holding companies are very good and have operated very satisfactorily. In fact, they served as the basis for the English Companies Act of 1948.

Mr. Pettiona.—Could you quote, as an example, one good reason why the directors of a holding company would continue to operate a subsidiary company at a loss.

Mr. Fitzgerald.—One purpose would be to supply materials to other subsidiary companies. As long as the picture of the operations of the organization as a whole are properly presented, there is no need for shareholders to know the details.

Mr. Byrnes.—It might also be of advantage to keep such a subsidiary company going in order to assist other branches of the business in various ways.

Mr. Fitzgerald.—That is so. The principle could apply in many directions.

The Chairman.—Curious things happen with regard to subsidiary companies. One example which comes to mind is the case of a public company which could not obtain any further accommodation from its bank. It was decided to form a subsidiary company with a paid up capital of, say, £50,000, on the understanding that the bank would be prepared to advance £25,000 against that amount of capital. The £50,000 paid up capital was created by the holding company paying the subsidiary £50,000 for 50,000 shares. On the same day, the subsidiary company lent the holding company £50,000. So virtually the subsidiary company had no capital, but against its nominal capital of £50,000, the bank advanced £25,000. Those accounts were discarded and not disclosed in the consolidated balance-sheet. As a result, the shareholders were not aware that the subsidiary company was operating on bank overdraft, without capital, in this particular case for the convenience of the directors.

Mr. Fitzgerald.—Was that the case of a wholly owned subsidiary?

The Chairman.—Yes.

Mr. Byrnes.—The bank manager must have been asleep.

The Chairman.—I am not concerned with the position of the bank, but I do want members of the Committee to realize that perhaps the question of subsidiary companies is not quite as simple as Mr. Fitzgerald makes it appear. There are certain advantages available to dishonest people who can hide some of their losses in subsidiary companies.

Mr. Fitzgerald.—I am not suggesting that the matter is simple. Such dishonest persons cannot hide losses if a consolidated statement is prepared.

The Chairman.—If the profits of some subsidiaries are sufficient to hide the losses of other subsidiaries, shareholders can be very easily misled.

Mr. Fitzgerald.—Shareholders are concerned with the net result.

The Chairman.—I agree, but it is not very difficult to inflate the profits of a subsidy company sufficiently to hide losses in other subsidiary companies. Profits can be inflated by revaluing stock and by certain methods of estimating the returns from hire-purchase agreements.

Mr. Fitzgerald.—That is not peculiar to holding companies and subsidiaries. The same thing can be done in a company which has branches or departments. A subsidiary company is equivalent to a department of a concern. It is the over-all results of the concern with which shareholders are concerned. It is easy to inflate profits and eliminate the losses of a subsidiary company by crediting it with income from another subsidiary company. Therefore, if a provision of the type contemplated is enacted, it will not achieve anything. There is a very simple way of avoiding it.

Mr. Pettiona.—For how long have subsidiary companies been popular?

Mr. Fitzgerald.—They began in America and Germany in the last century. I believe they have been in operation in Australia for about 30 years. They offer certain very definite advantages which have made them popular.

Mr. Pettiona.—One advantage relates to taxation.

Mr. Fitzgerald.—That is so. Management convenience is another important advantage. This morning I was present at a discussion as to whether a subsidiary company should be formed. The factors considered related to management.

The Chairman.—I ask Mr. Fitzgerald to proceed now to Question No. 4.

Mr. Fitzgerald.—That question is as follows:—

Is it desirable to amend section 127 of the *Companies Act* 1938 by deleting the words "as such" in sub-section (5). This would compel a complete disclosure of payments made to directors. In this regard it is pointed out that section 148 gives a section of shareholders a right to demand this information.

My reply is in the following terms:—

Section 127 of the Companies Act is ambiguous; it has been the subject of conflicting opinions from eminent Queen's Counsel and should be clarified. If it is desired to provide for a complete disclosure of all payments to directors for their services in all capacities the legislation should say so.

In our opinion it is not desirable to provide for such a complete disclosure in the published financial statements; the legislation does not provide for the disclosure of remuneration paid to managers and we consider it would not be advisable to insist that such information should be presented when a manager is appointed to the Board of directors or where a director is appointed as manager.

Such a provision could be easily avoided by a managing director retiring from the Board and retaining his position as manager when his remuneration would not be disclosed. Apparently this course was adopted in at least one of the leading Australian companies because it was thought that sub-section (5) of section 127 required the managing director's remuneration to be included with the payments to

directors. Further, such a provision might operate to the detriment of the company as it could be the cause of either the directorate or the management losing the services of a man well qualified to act in both spheres.

It is considered that section 148, which gives shareholders a right to demand the information, is a sufficient safeguard. I might add that, under section 148, one-quarter of the voting strength of the shareholders can demand that such information be supplied to all shareholders.

Mr. Brennan.—Would that information be circulated to individual groups?

Mr. Fitzgerald.—If one-quarter of the shareholders insisted on disclosure of the information, it would be supplied to all shareholders.

Mr. Brennan.—There are certain obvious objections to disclosing the remuneration of certain persons employed by a company.

Mr. Fitzgerald.—I agree.

Mr. Byrnes.—Mr. Fitzgerald indicated that it is necessary to publish the amount of fees paid to directors but, in the event of their expense accounts being inflated, I take it that there would be no means of applying a check to the figures and that there would be no need for the management to disclose the information.

Mr. Fitzgerald.—That is so.

The Chairman.—Twenty-five per cent. of the shareholders could demand it.

Mr. Pettiona.—Do you, Mr. Fitzgerald, consider that deletion of the word "officer" would clarify the section?

Mr. Fitzgerald.—Without a careful examination of the section I would not like to suggest how it should be clarified.

Mr. Randles.—Would 25 per cent. of the shareholders mean that percentage of the numerical strength of shareholders or of the total number of shares held?

Mr. Fitzgerald.—Twenty-five per cent. of the total voting strength. Possibly that percentage is too high, but I think the principle involved is correct. The listing requirements of the Stock Exchange are stringent; they are ahead of current legislation, and they are more enlightened than the Companies Act. Yet, the Stock Exchange does not ask for this information to be presented.

The Chairman.—I think the Stock Exchange did provide for a number of matters that are not covered by the Act.

The Committee adjourned.

THURSDAY, 15TH APRIL, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. William John King, of 11 Summit Drive, Heidelberg, and Mr. N. L. Colbran, of the firm of Messrs. Corr and Corr, solicitors, of 104 Queen-street, Melbourne, were in attendance.

The Chairman.—At a previous meeting, at which Mr. Colbran was present, he informed the Committee that a client of his, Mr. King, would be prepared to attend before the Committee and give evidence concerning certain transactions that he and his wife entered into with some of the companies which have been mentioned in our investigations. Mr. King is now present and I welcome him and thank him for having made his time available to assist us in our deliberations. I shall ask Mr. King to relate his experiences regarding these companies, whose names were referred to in Mr. Colbran's evidence.

Mr. King.—A number of years ago, probably before 1940, I first made investments in C.A.P. Softwood Industries. I think there were several companies linked, and I am not sure of the titles they assumed. My first experience was in conjunction with my business partner, Mr. Walter Laidlaw. A call was paid on us by a gentleman named Mr. Leach, who was employed by these companies. He may have caught us in an unguarded moment. At all events, he described a proposition which sounded attractive. It was a matter of our subscribing to debentures or bonds by paying a nominal deposit and a certain sum weekly. We bought a parcel of four or five, and proceeded to make payments. They were short-term debentures and we were advised that within five years we would double the money we had invested or make an even greater profit.

Subsequently, we were taken on a journey to Mount Gambier, where we were shown a number of plantations. However, I do not think many of them were owned by C.A.P. Softwood Industries. In the Mount Gambier district there are many well-grown pine plantations belonging to the South Australian Government. We were also taken to sawmills. The prospects of our making some money from the venture appeared to be glowing. We were not told that we would ever be shareholders.

At the expiration of five years, I had purchased a few more parcels, but I had received no financial return. The war then broke out, and it was used to a large degree as an excuse why the company was unable to pay us for our debentures.

The Chairman.—Who took you to Mount Gambier?

Mr. King.—Mr. Leach, and he was accompanied by a Mr. McDonald, who was probably one of the leading figures in the venture. Mr. Laidlaw, my partner, and a bus proprietor from Geelong, a Mr. Wise, were also there.

The Chairman.—Was Mr. Wise acting on behalf of a company, or was he another person interested in subscribing?

Mr. King.—I think he had been in the company before I was. Whether he received any monetary gain, I do not know, but he was very enthusiastic about the enterprise.

Mr. Randles.—Do I understand that according to the original scheme you were to invest money for a certain time, after which you would be repaid, and that there was no promise that you should be paid interest on it each year?

Mr. King.—That is so. The debentures cost me about £60, and it was stated that the prospects were that I should receive a return of £200, if they bought us out.

Mr. Pettiona.—If you did not receive £200, were you to get 90 per cent. of the proceeds?

Mr. King.—Something like that.

The Chairman.—Did you sign agreements for the purchase of the debentures?

Mr. King.—Yes.

The Chairman.—Would they be the documents that you made available to Mr. Colbran?

Mr. King.—They were issued to us when we took out the debentures. I cannot remember whether my signature was placed on them.

The Chairman.—Mr. Colbran, were those the documents that you produced to the Committee?

Mr. Colbran.—Yes.

Mr. Brennan.—Did you, Mr. King, sign any other document before you received the ones that you handed to Mr. Colbran?

Mr. King.—Yes. I signed some sort of document, but I cannot remember what it was.

Mr. Brennan.—It was not described as a trust deed?

Mr. King.—I cannot remember.

Mr. White.—During the tour of inspection, did you have a discussion with Mr. Wise.

Mr. King.—Yes. That occurred some ten years ago. He seemed to be quite keen on the project, and I was too at that time. I had known Mr. Wise for a number of years. I am also in the bus business. He seemed to be an agreeable gentleman.

Mr. Pettiona.—Did you know how many lots he had purchased?

Mr. King.—No.

Mr. Pettiona.—You formed the impression that he was in the same position as you were, and that he also was making the tour to ascertain what he was buying into?

Mr. King.—Yes.

Mr. White.—You came away feeling quite happy about it?

Mr. King.—After looking around, I came away quite contented and thinking that the proposition looked all right. We were told that we would receive some return on the money we had invested in about five years. However, we were put off year after year. It is now sixteen or seventeen years since I first made my investment.

Mr. White.—How long after you took out the debentures did you make the tour of inspection?

Mr. King.—It was five years later.

Mr. White.—At that time you were expecting a return?

Mr. King.—Yes.

Mr. White.—Although you had not received any return, you were quite happy about the position when you had made an inspection?

Mr. King.—Everything seemed to be all right. We accepted the excuse that the war had caused some interference.

Mr. Thomas.—Did you purchase any additional debentures later?

Mr. King.—Yes.

Mr. Randles.—After the expiration of five years, did you complain to the company, or did you receive a report with a request for an extension of time?

Mr. King.—They kept us informed by letters or reports, but I found out later they were more or less excuses. We were always kept well informed; in the report we were advised that within the next few years things would be brighter, and we expected some return for our investment.

Mr. Pettiona.—Was that in the form of a trustee's report?

Mr. King.—It could have been. The letter I received may be on Mr. Colbran's file.

Mr. Randles.—Was that letter from Dundas Smith?

Mr. King.—Yes.

Mr. Byrnes.—Did the statements you received from time to time contain any indication of the progress of the forests?

Mr. King.—Yes.

Mr. Brynes.—Did you gain the impression that there was an attempt to conceal anything, or did you feel that the statements were fair and honest?

Mr. King.—I did not think they were trying to conceal anything until I made a personal approach seeking some return or the redemption of early debentures.

Mr. Byrnes.—When you were informed of the progress of the plantations, were you given any statement why no revenue was forthcoming?

Mr. King.—Yes. I was informed that the growth of the trees had been retarded and that the change in world conditions had altered the whole outlook.

Mr. Brennan.—Did they say that the war had prevented the milling of the trees?

Mr. King.—Yes. We were informed that there would not be a market for the timber.

Mr. Byrnes.—In the reports that you received from the company a reasonable excuse was advanced why you had received no return, and you were prepared to accept that explanation?

Mr. King.—Yes.

Mr. Byrnes.—That position obtained until approximately three or four years ago.

Mr. King.—Probably five years ago.

Mr. Brennan.—When you went on the tour of inspection, was any place pointed out to you as being the company's land?

Mr. King.—Yes.

Mr. Pettiona.—Was any particular lot indicated to you as being the one in which you were interested?

Mr. King.—No.

Mr. Brennan.—The property of the company was indicated to you?

Mr. King.—Yes. In most places, the trees were well-grown.

Mr. White.—Why did you think the plantations were owned by the South Australian Government?

Mr. King.—That Government has extensive properties in the locality. On my own behalf, I have visited the area several times since my first tour of inspection.

Mr. White.—You did not think the plantation was the property of the South Australian Government on the occasion of your first visit?

Mr. King.—No. On later visits, it appeared to me that some of the areas through which we drove on the first occasion, were the property of the South Australian Government.

Mr. Randles.—You were given the impression that it was the property of the company?

Mr. King.—I do not think there was any attempt at any time to try to mislead us in that way. What I did think was misleading was the time in which they promised to redeem the debentures.

The Chairman.—Will you now inform the Committee what occurred after you made that tour of inspection?

Mr. King.—Mr. Leach gave us time to think over what we had seen. A week or two later he approached me with a special scheme—it could have been a special "C" or a special "A" issue—that was open to lot holders and not to outsiders.

The Chairman.—Did Mr. Leach succeed in selling you any of those?

Mr. King.—Yes, he was a good salesman.

The Chairman.—Were any fresh promises made concerning that scheme?

Mr. King.—Yes. In the case of that issue, it was a new scheme relating to plastics, and even the gum that came out of the trees when they were being cut was to be used.

Mr. Brennan.—Was the price of those shares lower or higher than the first issue?

Mr. King.—I think it was approximately the same.

Mr. Pettiona.—Was not the price increased a little on each occasion?

Mr. King.—That could be so. We might have taken over lots that had been developed for a year or two. It was proposed to build a huge factory to manufacture plastics.

The proposition appeared to be attractive enough and it was on the basis of a weekly payment. These people had a nice office and staff in the city, and at the time it did not appear that there was anything wrong with it. They made a promise that they would redeem the debentures, but they failed to do so. I had heard that some lot holders had received dividends, but I was not in a position to be sure whether that was so in fact. I would have been quite happy if the company had paid me a few hundred pounds in redemption of the earlier debentures, in which case I would probably have re-invested the payment in a further holding.

Mr. Pettiona.—You attempted to sell your lots for the original price but you were not successful?

Mr. King.—When I first put the matter in the hands of Mr. Colbran's principal, Mr. Corr, he made an investigation and told me that a Sydney firm was taking over the lots at their face value. I do not recall the name of the firm. Later Mr. Corr told me that he had had no success.

Mr. White.—Did you say that you purchased a second lot?

Mr. King.—There were several issues. Mrs. King was interested in one lot.

Mr. Thomas.—What did a lot consist of?

Mr. King.—One acre.

Mr. Randles.—Did the same salesman visit you on each different occasion?

Mr. King.—On the last occasion there was a different salesman. The original salesman, Mr. Leach, had left the venture. It might be worth mentioning that about two years ago I met Mr. Leach at the South Yarra club of which he was a member, and he asked me how I was getting on. He was hostile about the whole show, and said that he would be pleased to give me any help he could. I have since tried to contact him but have been unable to do so.

Mr. Randles.—What did he mean by the statement that he was hostile about the company?

Mr. King.—He was in disagreement with the set-up of the company and he left its employment.

Mr. Randles.—Did he make any allegations against the company?

Mr. King.—Only veiled allegations, but nothing definite.

Mr. Brennan.—You said that the lots were 1-acre blocks. Was there any means by which you could identify the individual lots?

Mr. King.—I think each lot was given a number.

Mr. Byrnes.—You went to the plantation to have a look at it?

Mr. King.—Yes, only once at the invitation of the company, but several times at my own expense.

Mr. Byrnes.—When you went to the plantation did you have any means of identifying the actual locality of your own lots?

Mr. King.—There were notices indicating the different sections of the property.

Mr. Byrnes.—They were indicated in general terms, but were you taken to see, for instance, block No. 546, or the area in which your particular lot was included?

Mr. King.—No, not at any time were we taken over the property for that purpose.

Mr. Byrnes.—Therefore, you could not say from your personal inspection what was the actual condition of the plantations in any of the areas in which you were personally interested?

Mr. King.—I could not.

Mr. Byrnes.—Did you ask members of the company if they would identify the lots more closely for you?

Mr. King.—I did, because I had the impression that we would never be allotted any particular lots. I understood that, as the trees developed, they were marketed, and that therefore it did not matter whether the trees were grown on one person's block or another.

Mr. Byrnes.—It did not matter whether you bought section "A" at a certain time or section "B" two years later. Everything was more or less merged in some manner which you did not quite understand. Presumably, the company would operate in its discretion in the interests of the lot holders.

Mr. King.—Yes.

Mr. Byrnes.—You had no opportunity of identifying your own block of pines. When you looked at the land owned by the company, did the trees appear to be in reasonably good condition?

Mr. King.—Yes, they did appear to be well cared for and to be growing quite well.

Mr. Byrnes.—The company must have had some income?

Mr. King.—Yes.

Mr. Byrnes.—I should think that would be so because box boards are cut from pines only a few inches wide. The company was also taking timber right down to the paper mills in Gippsland.

Mr. King.—They have their own box factory there, and we were taken on a tour of inspection of a pulp mill. We saw the logs being carted in, from which cardboard was being manufactured. We were shown all the workings of the mill. I suppose that was intended to be a means of keeping us interested with a view of our making further investments.

Mr. Ludbrook.—You were not in a position to be certain that the property that you were shown belonged to the company?

Mr. King.—We were taken on a sort of conducted tour.

Mr. Byrnes.—They would say to you, "This is our property and our mill," but they did not say, "That is your block?"

Mr. King.—No.

Mr. Ludbrook.—There was no documentary evidence to substantiate their statements?

Mr. King.—No. We were taken to another mill at which logs were being peeled for the manufacture of ply. At that time I was under the impression that the mill belonged to Softwoods, but it was the property of the South Australian Government.

Mr. White.—That was on your first tour of inspection; the company took you only once to the mills?

Mr. King.—Yes.

Mr. White.—But you went down there several times altogether. What did you find out on the second and subsequent visits?

Mr. King.—We found that we had been misled. We discovered that the mills belonged to the South Australian Government.

Mr. Brennan.—At first you were told that the mills were the property of the company?

Mr. King.—Actually, they did not say one thing or the other.

Mr. White.—Who went with you on the second visit?

Mr. King.—Mr. Laidlaw.

Mr. White.—Was the Geelong man with you on subsequent occasions?

Mr. King.—No, we just took our wives for a trip.

Mr. White.—Did you take any action when you returned?

Mr. King.—Yes. We made several approaches to the company. We did not accuse them of anything, but we inquired when we would receive a return from the industry which appeared to be so prosperous.

Mr. White.—What was the reply?

Mr. King.—The same as always, that the war had interfered and set the original programme back five or ten years, and that trees had not grown as well as expected. We were told that they would be fully matured in ten years. I believe some in South Australia have been growing for 30 years and have not yet reached maturity.

Mr. White.—When was your last trip to the area?

Mr. King.—About twelve months ago. On that occasion I drove around the area and showed a friend the trees in which I was interested.

Mr. White.—Is there any guarantee that the land you have been visiting does belong to this company?

Mr. King.—The only knowledge I had was the notices exhibited on the land.

Mr. White.—Was the land you inspected on later visits in company with Mr. Laidlaw the same land which they took you to on the first conducted tour?

Mr. King.—No. It is very difficult to be precise. There are thousands of acres of trees and by-roads, and one does not know exactly where one is. In fact, one could spend weeks walking around the plantations. Some of them belong to the South Australian Government.

Mr. White.—The only evidence of ownership you had was the notices posted up on the land?

Mr. King.—There were notices painted "C.A.P."

Mr. White.—Your trees might have been on any particular acre in a thousand?

Mr. King.—Yes, but the other 999 acres might belong to the South Australian Government. The blocks are mixed.

Mr. White.—Do you still hold all your original debentures?

Mr. King.—Yes.

Mr. White.—Have they paid you any moneys at all?

Mr. King.—No.

Mr. White.—Have you asked them for some return?

Mr. King.—Yes, on several occasions over a period of six or seven years.

Mr. White.—What is their latest answer?

Mr. King.—During the last five years I have "given it away" as a dead loss. I was definitely convinced that I had been taken on and that I have no hope of getting anything back.

Mr. White.—Would you jump at an offer if they made you one now?

Mr. King.—I would accept face value or even less for my holdings.

Mr. Pettiona.—Would you say that the trees they showed you were similar in size and growth to those in the South Australian Government plantations?

Mr. King.—Yes. It was difficult to know which were which.

Mr. Pettiona.—Is it difficult to assess whether the plantations are older?

Mr. King.—Yes. My first impression was that C.A.P. owned practically all the plantations and that the South Australian Government came in and copied them.

Mr. Pettiona.—Did your later visits convince you that the South Australian Government plantations were much larger than the company's?

Mr. King.—I am pretty sure of that now. I think their holdings would be much greater.

Mr. Pettiona.—What other persons have you personally contacted in the company apart from salesmen?

Mr. King.—Mr. McDonald, with whom I flew back from Mount Gambier. He appeared to be the original shareholder. There were only a certain number of shares. We were bond holders and could not become shareholders at any time. It was something new to him.

Mr. Pettiona.—Did you ever attempt to inspect the trust deed?

Mr. King.—No.

Mr. Pettiona.—In your copy of the contract it is stated that the trust deed is available for inspection at the office of the trustee during office hours. You did not avail yourself of that opportunity of investigation?

Mr. King.—No.

Mr. Pettiona.—Once you felt you were being "jinked" of your money, did you think a solicitor would be the best person to consult?

Mr. King.—I thought there were possibilities of getting somewhere. I was advised to see Mr. Opas who had been investigating these matters, and a certain Branch of the Police Force handling that sort of thing, but I did not do so.

Mr. Pettiona.—Do you feel like seeking out Dundas Smith at the present time to see whether you could obtain information from him personally?

Mr. King.—All I am interested in now is to get rid of my holdings to the highest bidder. I do not know whether anybody has ever received any return for their holdings.

Mr. Pettiona.—If the name of the company in Sydney was mentioned to you, do you think it would ring a bell in your mind?

Mr. King.—No. I was not interested in the name. Mr. Corr said there was a possibility of someone buying my interests at face value, which I was prepared to accept.

Mr. Pettiona.—Can you recall any salesman other than Leach who contacted you?

Mr. King.—No. I do not think I have seen a salesman since Leach finished with me some years ago.

Mr. Randles.—Mr. Colbran, as Mr. King's legal representative, surely it is only reasonable to expect that you should have had access to the trust deed. As they have "duck-shoved" on the matter, is it feasible to believe that the document does not exist?

Mr. Colbran.—I did not think that it did exist, but I had not directed my mind to that question.

Mr. Randles.—Do you think that in their opinion the document might not be as watertight as they thought it was and that they are keeping it hidden for that reason?

Mr. Colbran.—I do not know their reasons.

Mr. Brennan.—Have you ever considered demanding this document from Dundas Smith in court under the provisions of the Trustee Act?

Mr. Colbran.—No.

Mr. Thomas.—Have you had any consultations with Mr. Burt?

Mr. King.—Not that I can remember; I do not think I have ever met him. Previously, we were discussing the growth of trees and the prospect of receiving a return in 20, 30, or 40 years. Another scheme put forward was based on the use of trees for the manufacture of plastics. It was proposed to plant a quick-growing tree, which would provide the necessary raw material in five or six years for the production of silk stockings and plastics. However, when there was no money forthcoming, I became more suspicious than ever that I had been defrauded. The scheme was not proceeded with, although I do not know the reason. It may have been lack of capital, inability to build a factory, or difficulty in importing machinery, which was supposed to be brought from Germany. As time went on, I became convinced that I had been "jinked," and I wrote off my investment.

The Committee adjourned.

WEDNESDAY, 21ST APRIL, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. F. M. Thomas.	Mr. Pettiona,
	Mr. Randles,
	Mr. R. T. White.

Mr. K. N. Stonier and Mr. G. C. Tootell, State Chairman and State Vice-Chairman of the Institute of Chartered Accountants in Australia, were in attendance.

The Chairman.—Gentleman, in welcoming Mr. Stonier and Mr. Tootell, I might say that I have already indicated to Mr. Stonier the lines along which the Committee is thinking about this difficult problem, and we should be glad to hear their views on the subject.

Mr. Stonier.—At the outset, perhaps I should say that a great deal of time has not been available to us to deal with the subject. Since an intimation was received that the Committe wished to hear evidence from us, however, the State Council of the Institute has held three special meetings, and we have done the best in the time available to us. We are conscious that possibly there are other matters than those with which we shall deal to-day on which we could be of assistance to the Committee, but we have endeavoured to keep to what appear to us to be the major points of the problem confronting the Committee.

Mr. Brennan.—Are these the views of the Victorian or the Australian body?

Mr. Stonier.—The Victorian council met to deal with the matter.

Mr. Brennan.—These are not the views of the whole institute?

Mr. Stonier.—They are not the views of the general council.

The Chairman.—The Committee will hear the views that you desire to present and if there are any other matters of an accountancy nature on which we require further evidence we will ask you for your views.

Mr. Stonier.—We are willing to assist the Committee in any way possible. The first question asked by the Committee in a letter of the 19th March was—

> Is it desirable to introduce a compulsory audit for proprietary companies with a view to ensuring that books of account are kept, and that, at least annually, an audited statement of a company's affairs will be available to assist in establishing the financial position of the company at a time when it is found or suspected that fraud or other wrong-doing has taken place.

Our reply—

1. A fraud is the action generally of an individual. In the commission of the same he may use the vehicle of a public company, a private company or a partnership. He may use none of these vehicles and commit fraud in his individual capacity. In rarer cases frauds are committed by groups of individuals as members of firms or directors of companies.

2. With all the legislation compelling limited companies to keep proper accounts and to have them audited, such companies in the hands of unscrupulous individuals are still capable of being the vehicle whereby frauds are committed.

3. We are, therefore, firmly of opinion that compulsory audits will not prevent frauds, nor would any legislation that obliged private companies to publicize their financial statements. The main reasons for this opinion are as follows:—

(*a*) A person desirous of committing a fraud will use any means to do so. Legislation to provide for audit or the keeping of books would be ignored or action delayed by the unscrupulous. Indeed, there is already ample legislation to compel the keeping of accounts. The Companies Act provides stringent penalties for failure to do so in section 123 (1). The Commonwealth Income Tax Act provides penalties for both persons and companies engaged in business which fail to keep books. (Section 262A). The Bankruptcy Act imposes penalties for failure by individuals. These provisions do not deter the person whose purpose it serves to have no records or inadequate records of transactions.

(*b*) Provisions for compulsory audit would similarly not deter the wrongdoer. He would merely not appoint an auditor, or, having appointed one, delay the audit while perpetrating his misdeed.

(*c*) An audit is not an insurance against disclosure of wrongdoing. An audit report is merely the expression of opinion of the auditor on the statement of accounts made to the best of his knowledge and belief after examination thereof. In the case of a well-planned fraud it may be taken for granted that the planner would take all possible steps in guarding against discovery by his victims and his colleagues in business, and,

naturally, take the same steps to deceive the auditor. If we take the simple case of, say, a company inviting deposits for some future sale or service to members of the public who had no regular dealings with such company, the unscrupulous director would merely pocket the proceeds without making any record, a procedure which is often successful in hiding the defalcation from all other parties unless the victim makes inquiry of someone other than the wrongdoer.

(*d*) Nor is it considered that compulsory audit and disclosure of balance-sheets would prevent investment by potential victims in cases where finances are weak. The investor in many cases is one who through lack of knowledge would either not have recourse to the authority with whom balance-sheets were filed, or, if he does, would lack the capacity to understand it. An audited balance-sheet is based on historical costs; the auditor is not a valuer of what forced realization might bring, nor is he a prophet of future prospects.

(*e*) An audited balance-sheet might be strictly correct and as such engender a false feeling of security. Armed with such a balance-sheet, the fraudulent promoter might more easily attract victims while subsequent manipulations had already seriously weakened the company's financial structure.

(*f*) The great majority of companies, both public and proprietary, are honestly conducted. Many proprietary companies have no dealings whatsoever with the public, being merely convenient forms of organization for family investments, property ownerships, &c. These proprietary companies which carry on business on any appreciable scale usually arrange to have their books audited and the strength or otherwise of their credit standing is known to those with whom they deal. To impose an audit on all would do little if anything to curb the activities of the unscrupulous few, and the expense would in any case be disproportionate to the losses it is desired to prevent.

(*g*) There appears no more justification for imposing compulsory audits on proprietary companies than there does on all firms and individuals engaged in transactions with others.

Mr. White.—Do most proprietary companies have their books audited?

Mr. Stonier.—A number of them do, particularly the trading companies.

Mr. Tootell.—They may be divided into two classes. I should say that the majority of the trading companies would have their books audited, but, in addition to companies of that type, there are many small companies which might consist of two or three members of the same family. Those companies might have been formed for the purpose of property owning, and their books might not be audited.

Mr. White.—What adverse effect would a compulsory audit have on companies of that type?

Mr. Tootell.—It would involve them in an additional expense.

Mr. White.—Would that be the only effect?

Mr. Stonier.—The books of such companies would frequently be kept by a chartered accountant, and if an independent audit were compulsory it would be necessary to employ somebody else to do it. Those small companies which employ a chartered accountant to keep books are supplied with the usual statements by such accountant. They would feel that, if they were required to pay for an independent audit, it would be an unnecessary expense.

Mr. White.—In other words, the answers which you are submitting to the Committee indicate that a compulsory audit would not restrict the activities of fradulent proprietary companies?

Mr. Stonier.—It might restrict them up to a point. Generally speaking, we do not think that an audit can be relied upon as a prevention of fraud.

Mr. White.—If people connected with such companies intended to commit fraud, they would find a way of doing so, notwithstanding the holding of an audit?

Mr. Stonier.—Yes. An audit might be held only once in twelve months.

Mr. Randles.—If transactions involved cash payments, and if no receipts were given, an auditor could not detect the irregularity?

Mr. Stonier.—That is so.

Mr. Brennan.—Then, what point is there in having an audit?

Mr. Tootell.—An audit is not, as many people think, a complete safeguard against fraud. The scale of modern business is such that frequently an auditor cannot guard against fraud. In most companies fraud can be prevented only by the proper working of the internal organization. If an auditor were required to keep a strict check on every transaction, he would need to employ one man for every employee of the business in order to check the work of the company's employees. To sum up, an independent audit is a check which enables the auditor to say that, having made such examination as he thinks the circumstances warrant, he is of the opinion that the financial statements show the true and correct state of the company's affairs. Of course, that is only the auditor's opinion.

Mr. Brennan.—Is it not an auditor's duty to direct attention to any species of culpable neglect in business administration which ultimately could amount to fraudulent conduct?

Mr. Stonier.—Yes, in so far as he does see that the books appear to be properly kept and that there are adequate forms of internal check and control, as there should be in the case of a trading company without attempting to verify every transaction.

Mr. Randles.—For instance, if he were checking the books and noticed that, while there was a receipt for £100, there was no corresponding debit, he would conclude that there was something wrong.

Mr. Stonier.—That is so.

Mr. Tootell.—An important point in relation to audit is that it is the duty of an auditor appointed under the provisions of the Companies Act to make a report on the accounts to the shareholders, but in the case of small companies, the main persons to be protected are those who are induced to enter into transactions with such companies. Directors may press for an audit to be completed or, on the other hand, they may do all in their power to delay it, and in the meantime fraud can continue to take place.

Mr. Brennan.—The suggestion is not that results of the audit should be made public, but that they should be available as a starting point for investigation if necessary. One witness suggested to the Committee that the papers should be deposited in a sealed envelope at the office of the Registrar-General.

Mr. Tootell.—We have a similar suggestion to make.

Mr. White.—Does the audit play an important part in the case of public companies?

Mr. Tootell.—Yes.

Mr. White.—Do a large number of proprietary companies have an audit?

Mr. Tootell.—Yes.

Mr. White.—Is the expense factor the only reason why you do not wish the compulsory provision to be extended to proprietary companies?

Mr. Stonier.—Plus the fact that there are a number of types of companies where it is perhaps not really aplicable. Many proprietary companies are no more than family partnerships. Partnerships are not compelled to have an audit.

Mr. Randles.—Do you suggest that an auditor could only discover fraud if the persons concerned in the company were negligent?

Mr. Tootell.—Yes.

Mr. Stonier.—The object of question No. 1, as we understand it, is to ensure as far as possible that proper financial statements and books of account have been kept by proprietary companies and that these will be available if fraud is suspected. We have expressed our reasons for the view that compulsory audits would not prevent frauds, and we submit that there are better ways of achieving the object stated. We consider it preferable to impose greater obligations on the directors and management of proprietary companies. We suggest:

(*a*) Books of account.—That the penalties under section 123 (6) be increased if thought desirable, and that the wording of the subsection be reviewed to ensure that appropriate action can be taken if necessary.

Thus the director of a proprietary company who was not keeping proper books of account could be punished on that ground. Sub-section (1) of section 123 of the Companies Act describes "proper books of account" in this way:—

Every company and the directors and manager thereof shall cause to be kept proper books of account in which shall be kept full true and complete accounts of the affairs and transactions of the company.

Mr. Brennan.—Do you think it should be provided that books of account shall be produced to an authorized Government official, without their necessarily being examined?

Mr. Stonier.—I think that might be dangerous. The Government official could only sight the books.

Mr. Brennan.—Examples are occurring where, after fraud has taken place, it is discovered that there are no books of account. Can you suggest any way to ensure that proper books of account are kept?

Mr. Stonier.—That is our aim in these replies.

Mr. Randles.—Many persons who keep books of account are not competent to do so. In one bankruptcy case a woman who conducted a business kept her books so badly that she did not know where the business stood from year to year. The business lost thousands of pounds.

Mr. Tootell.—That is not the type of person for whom it is intended to legislate in this case.

Mr. Thomas.—Sub-section (2) of section 123 states—

The books of account shall be kept at the registered office of the company or at such place as the directors think fit, and shall at all times be open to inspection by the directors.

Do you not think that provision should be more explicit?

Mr. Stonier.—I think it would be very dangerous to have the books open to inspection by shareholders. Take, for example, the case of a large company with 10,000 shareholders. One of those shareholders could ascertain certain information for the benefit of a trade rival. It is difficult to legislate against the few without inflicting hardship or injustice on the bulk of honest traders. Our reply proceeds in the following terms:—

Consideration should be given to the proviso contained in section 147 (4) (*a*) of the English Companies Act.

Section 123 (1) requires the "directors and manager" to keep proper books of account. Section 123 (6) prescribes penalties for a "director," but does not mention a manager.

(*b*) Filing of Balance-Sheet and Profit and Loss Account.—That these financial statements, drawn up in the form required by the Act for public companies, be deposited with the Registrar-General in a sealed envelope at the same time as the Annual Return is lodged.

A statutory declaration by two directors (a director if only one director) should appear on the outside of the envelope or be attached thereto, certifying that the statements enclosed are correct and have been signed by them, and that the books required to be kept by the Act have been properly kept. Alternatively, if the terms of his appointment so provide, a licensed company auditor may make a report to the same effect.

The point in that regard is that it is probably only after the "balloon goes up" and an investigating officer is appointed that it is found that there are no proper books of account and that a copy of the company's balance sheet is unobtainable. However, the proposal furnishes a starting point.

To obviate an unnecessary accumulation of these documents power should be given to the Registrar-General to destroy envelopes which are more than a stated number of years old. The main point is to ensure that a balance-sheet will be available, so that an investigating officer will have a starting point. He will certainly not have to go back from ten to twenty years, but he may have to go back from five to seven years, or some other period that is regarded by the Committee as being appropriate.

Mr. Pettiona.—If an investigating officer reached the stage of having to go back from twenty to 25 years, he would be in extreme difficulty if the documents were destroyed after five years.

Mr. Stonier.—That is a good point. The reply continues:—

The responsibility of the Registrar-General for seeing that the envelope has been lodged should be clearly expressed, and a failure, after appropriate warning, should be a ground for the appointment of an investigating officer.

An envelope should be opened only on the authority of the appropriate court having jurisdiction in criminal affairs for the purpose of evidence in a criminal case.

Appropriate penalties should be prescribed.

(*c*) Foreign Companies.—That appropriate amendments be made to Division 12 of the Act to ensure, as far as practicable, that similar obligations are placed upon foreign proprietary companies.

We feel that such a provision is necessary, otherwise, a person who wants to defraud the public, instead of incorporating a Victorian company, will incorporate one in New South Wales and register it in this State as a foreign company.

Mr. Pettiona.—Would such companies normally be regarded with suspicion?

Mr. Stonier.—No. Most of such companies are genuine.

Mr. Tootell.—A trader who desires to conduct his operations in various States finds it cheaper to incorporate in one State and to register foreign companies in the other States.

Mr. Stonier.—The reply proceeds:—

5. If, despite the views expressed, it is considered necessary to introduce a compulsory audit for proprietary companies, we recommend that section 114 (1) of the New South Wales Companies Act be substituted for section 132 (7).

That is a provision relating to disqualification of auditors. The present section is all right, because audit applies only to a public company. In New South Wales there is provision for the audit of proprietary companies, but certain persons who act as auditors for proprietary companies may not audit the books of public companies. If, in all the circumstances, this Committee is of the opinion that there ought to be a compulsory audit of the books of proprietary companies in Victoria, further consideration could be given to that aspect.

Mr. White.—Would the members of family partnerships be involved in considerable expense if they were compelled to comply with the requirements stated in your reply to question 4?

Mr. Stonier.—No, because directors must now keep proper books of account.

Mr. White.—Are directors appointed by family partnerships?

Mr. Stonier.—Yes. When we refer to family partnerships, we really mean private companies.

Mr. White.—Are the provisions of the Companies Act responsible for the formation of private companies?

Mr. Tootell.—In answering that question, I desire to cite a few examples. Assume that a family decides to buy a property. By contributing their money to a company they will secure a greater degree of ease in handling title deeds. Moreover, the death of a partner causes difficulty and expense. Death terminates a partnership. In such an event, if there is a joint tenancy or a tenancy in common, it is necessary to have the title deeds altered. Companies are formed not only to purchase property, but also to conduct small trading concerns, and members of a family sometimes group together their investments. In all those instances, books would be kept for income tax purposes. The persons to whom I have referred constitute one class of taxpayer that the Taxation Department has no difficulty in checking, as the authorities can easily look at the list of registrations.

Mr. White.—Then there are some disadvantages attached to the formation of a proprietary company?

Mr. Tootell.—Yes. Proprietary companies formed for the purposes mentioned are disadvantaged from the viewpoint of the payment of taxation. Such a company would pay more taxation than the aggregate its members would pay as individuals.

Mr. Stonier.—Question No. 2 is:—

Is it desirable to provide that the opinion of a qualified investigating officer of the financial state of the company at a particular date shall be prima facie evidence of the financial position of the company at that date? This proposal emanates from the difficulties found in proving the financial position of a company at a time when offences have been committed or suspected to be committed by the directors or officers.

We must say, firstly, that the rules of evidence are a matter on which we are not qualified to advise. However, the suggestion is one that appeals to us as laymen as well worthy of adoption. In a fraudulently conducted company, either no records will be available or available records may be unreliable. In either case the true picture at any date must necessarily be fashioned from information culled from all sources, including the records of the company and records of other companies and individuals. An independent investigating officer, armed will full powers to elicit facts, is the logical choice for such purpose. In any case, even where books and records do exist, such do not prima facie show the position at any determined date, nor do they take into account actual values as compared with book values. Whatever, therefore, the evidence which might be disclosed from a company's records, such would have to be interpreted in the light of the circumstances only through skilled investigation. Subject to the qualification of our inability to advise on legal matters, we consider that the provision suggested is desirable.

Mr. Hollway.—Those views more or less coincide with the opinion of members of this Committee.

Mr. Brennan.—The points referred to are very good. I am in agreement with much that is contained in this evidence.

Mr. Stonier.—If the scope of the Committee's inquiry was widened to embrace suggested amendments of the Companies Act on questions other than that of fraud, we should be pleased to help.

Question No. 3 relates to losses of subsidiaries. It states:—

The words "and in addition a statement showing the total losses (if any) of the subsidiary company or companies" which appear in sub-paragraph (ii) of paragraph (*a*) of sub-section (1) of section 125 of the *Companies Act* 1938 appear to be ambiguous. Should they not be clarified to ensure that the loss or profit of each subsidiary company is shown in the consolidated profit and loss account of the holding company?

Our reply is that the aggregate profit or loss of a holding company and its subsidiaries appears in a consolidated profit and loss account and, as the holding company publishes its own profit and loss account, the aggregate profit or loss of subsidiaries is readily ascertainable. In addition to this sub-paragraph (ii) of paragraph (*a*) of sub-section (1) of section 125 requires "a statement showing the total losses (if any) of the subsidiary company or companies." We would have thought that the intention was clear that the statement should show the amount of the loss of a subsidiary company, or, if more than one subsidiary incurs a loss, the aggregate of the losses. We do not consider it necessary or desirable that "the loss or profit of each subsidiary company" be shown. If the words are considered ambiguous the following might be added "without offsetting any profits of a subsidiary company or companies."

If a holding company has half a dozen or more subsidiaries, one of which has shown a loss and the others have made profits, the aggregate result of all is shown. If the directors were required to disclose in the report that one subsidiary had suffered a loss, the shareholders would be warned and could ask questions if they wished. The question arising is not so much that of having a statement of the profit or loss of every subsidiary. This might be difficult to obtain because some companies have a host of subsidiaries.

Mr. White.—There might be a reason for it.

Mr. Stonier.—There could be a very good reason. We have assumed that the words referred to are designed to provide a safeguard for the shareholders,

The holding companies we are dealing with are public companies. If there were a loss, that fact would be disclosed to the shareholders and they could ask questions if they desired.

If the Committee intends to review the sections dealing with holding companies we would be pleased to have the opportunity of presenting our views, as there are several matters which require consideration. A notable example is the doubt whether sub-section (1) of section 126 extends to a "sub-subsidiary" company.

Question No. 4 is:—

Is it desirable to amend section 127 of the *Companies Act* 1938 by deleting the words "as such" in sub-section (5)? This would compel a complete disclosure of payments made to directors. In this regard it is pointed out that section 148 gives a section of shareholders a right to demand this information.

We respectively ask that we be permitted to convey our views on this matter to the Committee at a later date.

Question No. 5 is:—

Should section 367 of the *Companies Act* 1938 be amended to prohibit the payment of a dividend in cash out of estimated or unrealized profits?

Our answer is that the profits of nearly every company are to some extent estimated and unrealized. For example, the closing stock on hand is valued and is included in the trading account and in the balance-sheet; being on hand at balance date, it is "unrealized." Any such amendment would place companies in an impossible position. They would not be able to declare interim dividends or, in fact, a final dividend. The Income Tax Assessment Act provides that if proprietary companies do not declare a sufficient dividend under Division VII., the Department may impose a tax of 10s. in the £1. If the Companies Act stipulated that in certain circumstances a company was prohibited from declaring a dividend, an impossible position would arise.

Question No. 6 is:—

Have you any views on the introduction in Victoria of legislation similar to the Trust Account Acts 1923 to 1953 of Queensland and the *Lay-by Sales Act* 1943 of New South Wales?

In the time at our disposal it has not been possible to give consideration to the Acts mentioned or to other matters which might be thought to be of assistance to the Committee. We will be pleased to examine any other matters which the Committee may submit to us, and to render any assistance that may be required.

Mr. White.—What is the Victorian membership of the institute?

Mr. Stonier.—Approximately 800.

Mr. White.—That figure includes country accountants?

Mr. Stonier.—Yes.

The Committee adjourned.

WEDNESDAY, 28TH APRIL, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. I. A. Swinburne,	Mr. R. T. White.
The Hon. F. M. Thomas.	

Mr. W. Oswald Burt, Solicitor, of Melbourne, was in attendance.

Mr. Burt.—Before discussing sections 214 and 216 of the Companies Act, and answering seriatim the 21 questions submitted to me since I last attended before the Committee, I desire to make a personal explanation, particularly in view of recent newspaper reports. First, over approximately the last ten years, I, acting as solicitor for numerous clients, have recovered for them approximately £215,000 in money and assets from companies and businesses alleged to be fraudulent or in respect of transactions arising out of alleged fraudulent company transactions.

Mr. Thomas.—Do the companies to which you refer include those listed?

Mr. Burt.—Yes. Of the total amount of £215,000, the sum of £37,500 was recovered by court action and the balance without court action. In the largest individual recovery—approximately £155,0000—I was assisted by my articled clerk, Mr. Kevin Coleman, a son of the Honorable P. L. Coleman, M.L.C., and now a member of the Victorian Bar. He carried out most of the detailed work.

Secondly, prior to the passing of the 1938 Companies Act of this State, I personally drafted a number of new and entirely original protective provisions which were accepted and incorporated in the 1938 Act. These were adopted and do not appear in any company legislation in other States. The most notable of these are sub-section (7) of section 5, sub-section (3) of section 8, section 10 and section 52, all relating to the protection of rights of preference shareholders who during the "depression" years had been treated very badly.

Thirdly, in 1949, at the request of the then Attorney-General, the late Mr. Trevor Oldham, I prepared the first draft of what is now the *Business Investigations Act* 1949 and was instrumental in enlisting the support of the Stock Exchange of Melbourne to that measure. The necessary knowledge for the purpose of such drafting was gained by me while cleaning up an alleged fraudulent enterprise.

Fourthly, dealing, categorically with the alleged fraudulent companies referred to in the *Age* report of evidence given before the Committee, I say that I have never—nor has any member of my firm—ever acted directly or indirectly in a professional or in any other capacity for, or advised or had any financial interest in any of the following:—

Amalgamated Plastics (Australia) Pty. Ltd.
Sister Williams (Babycraft) Pty. Ltd.
Comely Park Sand & Gravel Company.
Grampians Olive Plantations Ltd.
Primary Oils.
Bristo Plastics.
Power Fuel Industries.
Pacific Oil Projects Limited.
Woodtex (Victoria) Pty. Ltd.
Highway Laundries Pty. Ltd.

The Chairman.—This Committee has heard of no suggestions that you have been connected in any way with any of those companies.

Mr. Burt.—Publicity has been given to evidence placed before the Committee, and because I have been a witness here and questions have been raised about companies in which I am interested, certain members of the public—by a process of reasoning known only to themselves—might assume that I have acted for some of the concerns I have named.

The Chairman.—I trust that other witnesses who have appeared before the committee will not feel similarly.

Mr. Burt.—My firm did act against Bristo Plastics for a number of years, recovering substantial sums of money, and in conjunction with six leading Melbourne legal firms—advised by Mr. E. H. Hudson,

Q.C.—induced Cameron, the proprietor of Bristo Plastics, to hand over £155,000 of assets to Century Industries Proporietary Limited, thereafter controlled by unit holders who became shareholders.

My firm acted for one Cooper against Power Fuel Industries and Pacific Oils Projects Limited, endeavouring to extricate Cooper from the responsibilities of a trustee which he had been induced to undertake. My firm acted against Riverina Collieries Proprietary Limited in an endeavour to induce the Attorney-General to appoint and inspector under the Companies Investigation Act.

Since I was last before this Committe I have been informed:—

1. By the Fire and Accident Underwriters Association, consisting of about 125 insurance companies, for whom I act as solicitor, that the constituent insurance companies would prefer not to be invited to issue bonds to share salesmen. They do not regard this as legitimate insurance business, and it is not the sort of risk they wish to undertake.

2. By the chairman of the Stock Exchange, Melbourne, who is now abroad, that he hoped to obtain from the Stock Exchange, London, a report on the English *Prevention of Fraud (Investments) Act* 1939.

I wish now to discuss sections 214 and 216 of the *Companies Act* 1938. Matters arising under those provisions are at present engaging my attention. I have been instructed by the official liquidator appointed by the Supreme Court to wind up a company and to have the directors and officers connected with it publicly examined. The company concerned is Yarra Park Industries Pty. Ltd. which owes the sum of £75,000 to its creditors. I have encountered what I consider to be serious difficulties in the application of those sections. In my opinion, this is an appropriate time to refer to the subject.

The Chairman.—This will be of assistance to the Committee.

Mr. Burt.—I desire to draw the attention of the Committee to these sections, to apparent deficiencies, to a drafting error in section 214 and to section 216 of the *Companies Act* 1938. Those sections relate to the right of a liquidator of a company in the course of being wound up to have certain persons examined before the Supreme Court or a Judge of the County Court.

My own view is that these two sections should, after very careful consideration, be redrafted as one new section, so that one comprehensive order of the court would be necessary and not two orders as at present, and that the scope of the examination be extended. There are procedural difficulties that I consider should not occur.

Mr. White.—Have you been confronted with this probelm previously?

Mr. Burt.—No, because I personally have not had an examination in a winding-up since about the year 1933. I speak of my own experience. There have not been many. Either one or other of the sections has been used. In the matter in which I am now engaged, it will probably be necessary to apply the two sections simultaneously.

Under the present legislation, if a director were summoned to attend a court, his counsel could raise a number of objections to many questions that might be asked. There should be one effective section rather than two ineffective sections. By virtue of section 214 a court may examine—

> any officer . . . . . or person known or suspected to have in his possession any property of the Company or . . . . . indebted to the Company or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the Company.

That provision refers to a private—not a public—examination of informers who could furnish information, and apparently does not relate to directors or other officers of a company. My comments on this section are:—

1. That the section should be extended to cover also former or past officers of the company. In other sections (See 275) the draftsman has been careful to cover this. It may be argued of course that the succeeding words "person . . . . capable of giving information" are wide enough to cover this. I do not agree

I was asked to advise in a matter in which it was likely that a man would be called for examination under this section. He stated, "I am not a director, and the section does not cover former directors." Other sections of the Act relate to directors and former directors. A bad drafting error has been made here. The words "the next succeeding section" should be "section 216."

2. The sale of shares in the capital of the company is not covered by section 214 as it may be said that the company is not concerned in transactions relating to its own shares. Without this extended right the court would not have power to examine as to what often has proved the major aspect of fraud in the affairs of certain companies.

I direct attention to the case of Riverina Collieries Limited. No fraud actually within the ambit of the company was committed, but there was a fraud in the sale of shares to the public and it was outside the scope of this section. It was represented that the company was flourishing. The section refers to the "promotion, formation, trade, dealings, affairs or property of the company." In an examination it might be ascertained that everything was perfectly in order concerning those matters, whereas a fraud had been perpetrated by the sale of shares, which was outside the ambit of the company's "trade dealings affairs or property."

3. Why should there be an examination under section 214 and a public examination under section 216?

Section 214 provides for the holding of a private examination in camera and section 216 for a public examination. It may be said that the purpose of section 214 is to enable an informer to be examined in camera, but I think nowadays it does not take long for anything that happens in the courts to become known, whether held in private or not.

Section 216 provides that, when a liquidator reports that in his opinion a fraud has been committed, the court may publicly examine—

> Any person committing any fraud, in promotion or formation of a company, any director or officer as to promotion, formation and conduct of the business of the company or his conduct and dealing as director or officer thereof.

I ask the Committee to note the words "or his conduct and dealing as director or officer thereof." I repeat my three comments made on section 214 and add the following further comments—

4. The court should be able to examine a director or officer as to his conduct and dealings in relation to the company whether in his capacity as director or officer or otherwise in any other capacity, e.g. in regard to his dealings in the shares of the company;

5. This section should extend the right to examine "any person capable of giving any information as to the conduct of any director or officer of the company"—following section 214.

I am at present acting as solicitor for the official liquidator appointed by the Supreme Court of a company where it is alleged creditors of the company have been defrauded to the extent of £75,000. I am about to launch applications for examination of directors and others. In the course of preparing the application to the Supreme Court under section 214 and 216, I have been faced with the limitations which I have mentioned.

I draw the attention of the Committee to a drafting error in sub-section (4) of section 214. The words "or the next succeeding section" should be "or section 216."

The Chairman.—Sub-section (4) of section 214 states:—

> An examination under this or the next succeeding section may, if the court so directs and subject to the rules, be held before any Judge of County Courts named for the purpose by the Court, and the powers of the Court under this and the next succeeding section may be exercised by such Judge.

The next succeeding section does not deal with the matter, but relates to the attendance and payment of witnesses.

Mr. Burt.—That is so. I have carefully examined the section and the limitations are really ridiculous.

The following remarks relate to what I shall conveniently call the Mount Gambier forest companies as I do not want them to be mixed up in any way with the companies operating in New Zealand. Those companies comprise—

Pine Plantations Proprietary Limited;

The Softwood Milling & Reafforestation Co. Pty. Ltd.;

Softwood Products Treatment Co. Pty. Ltd.;

C.A.P. Treatment Company Pty. Ltd.;

Consolidated Forests and Milling Co. Ltd.; and

C. C. and H. Company Pty. Ltd.

In these particular companies, lot holders in addition to being free of income tax on profits made are also protected by a first mortgage security over land having (exclusive of forests) an estimated value of £200,000. Such security is never given to shareholders in any company. I shall produce to the Committee subsequently titles to 20,000 acres of land. I have seen this property and as I know something of land values, I should say that a valuation of £10 an acre is not excessive.

The Chairman.—Will you explain to the Committee later how the mortgage operates?

Mr. Burt.—Yes.

The taxation position was clarified early this month in the High Court when a lot holder named Clowes of one of the above companies, Pine Plantations Pty. Ltd., won an appeal to the Full High Court of Australia against the Federal Commissioner of Taxation. I actually conducted the appeal, therefore I know a good deal about it.

On the 7th April, 1954, the Full High Court of Australia, (*Clowes* v. *Commissioner of Taxation*) in the appeal brought in respect of lot holders' profit in Pine Plantations Pty. Ltd., held—

> that profits made by lot holders in that company are not subject to income tax; that is, if a lot holder pays £50 for a lot and receives £100 in return the profit of £50 of the lot holder is not subject to income tax.

Dixon, Chief Justice, in the course of his judgment stated that the lot holder passively awaited whatever return he might receive from the company, he did nothing but lay out his money on the faith of the contract and await the result, the company was in no sense his agent, the company acted independently of the direction or control of any lot holders whose relationship to the company was simply that of persons providing it with money on special terms.

Therefore, to give lot holders in the above companies more control (other than that of mortgagees as at present) in the affairs of the forest company will render lot holders' profits subject to payment of Commonwealth income tax, under section 26 (*a*) Income Tax Assessment Acts. The point in the decision of the High Court was that lot holders did not carry on the business, they were not engaged in a profit making scheme; therefore any profits they made were not taxable. Furthermore if income tax were payable it would be payable in the year of receipt of income which income has in fact been earned over a period of twenty to 25 years.

I shall now outline the result of voluntary investigation of my six client companies lodged with the Crown Law Department in 1950. I understand that this Committee has had an opportunity of examining the files containing the result of those investigations made in 1950. I do not know whether or not I am correct, but as a result of the questions that were asked on the last occasion I attended before the Committee, I surmised that the Committe had access to those files.

The Chairman.—Yes, the file has been made available.

Mr. Burt.—In case members have not appreciated the manner in which these investigations (under my direction) in 1950 were conducted I desire to place on record what was done.

1. The then secretary of these companies, Mr. Lauer, A.I.C.A. prepared particulars of areas planted and dates of planting in relation to lots purchased; I saw the actual document which is very comprehensive.

2. The external auditor, Mr. J. O. Holt—a pratising chartered accountant—independently audited and certified as correct the information supplied by Mr. Lauer;

3. Mr. C. N. MacKenzie, a solicitor for Victoria and South Australia who acted for the trustee for lot holders, certified *re* titles of companies to the lands planted for lot holders;

4. Mr. F. Oswald Barnett, chartered accountant, with such certificates, &c., attended with me and the trustee, at the plantations at Mount Gambier and made certain inquiries on the spot.

We first met Mr. Symonds, a licensed surveyor, who had surveyed lands for title purposes. He pointed out and identified each piece of land to Mr. Barnett, and the trustee and Mr. Hill, a representative of Dalgety and Company Limited, and myself. Also present was Mr. Bailey, (a nurseryman) who supervized the planting of the areas with trees. He was questioned by Mr. Barnett and me and by the trustee as to dates of plantings and these were checked by Mr. Barnett with the audited office records of the forest companies. Mr. Hill (local manager of Dalgety and Company Limited), who for many years had known the lands and planted areas also identified the lands and collected data for a report to the forest companies; as a matter of fact, he acted in the sale of a great deal of land to the companies. Mr. Symonds was then directed by me to make a comprehensive reconnaissance survey of each area and report as to whether each area was fully planted and then proceeded to make such survey.

A report from Mr. Barnett accompanied by certificates of the foregoing verifications including the report on reconnaissance survey were placed before Mr. R. G. Menzies, Q.C., and Mr. E. R. Reynolds, Q.C., who advised that on the evidence submitted they (Counsel) were of the opinion that my client companies had fulfilled their contracts with lot holders.

I am pleased to answer the questions submitted to me when I was last before this Committee. I must comment, however, that the purport of those questions challenges the veracity, honesty and bona fides of three public and chartered accountants who acted independently; Mr. MacKenzie, solicitor for the trustee; Mr. Symonds, licensed surveyor; Mr. Hill, manager at Mount Gambier of Dalgety and Company Limited; Mr. Bailey, the nurseryman; Messrs. R. G. Menzies, Q.C. and E. R. Reynolds, Q.C. and myself. I submit that no one can seriously contend that each of the persons mentioned acting independently and in concert conspired to supply fraudulent reports and certificates or that Messrs. Menzies and Reynolds, Q.C.'s acted improperly in any way. Yet I regret to say the matters raised in this inquiry do so by implication.

The Chairman.—I do not agree with the inference you have drawn. This Committee has a duty to make inquiries, and it is doing so. I consider that all the questions you were asked were proper.

Mr. Burt.—I agree that they were proper questions.

The Chairman.—I am sorry you have thought fit to place on record the fact that you feel that certain inferences were made against you or other people as a result of certain questions.

Mr. Burt.—I am glad to have that assurance, Mr. Chairman. I have concluded from the tenor of the questions submitted to me that there have been *ex parte* allegations made against my client companies to this Committee in my absence and in the absence of any representative of my client companies.

Accordingly I am assuming that the 21 questions now about to be answered by me (as representing my client companies) deal with the whole of the allegations made to this Committee in my absence. If there have been any other allegations than in common fairness to my client companies and to me I should be apprised of same and given a reasonable opportunity of answering them.

The Chairman.—As to that matter, I have already informed you that a copy of the report, together with minutes of the evidence, will be sent to you. If there are any matters contained in the report or in the evidence on which you would like a further opportunity of submitting evidence the Committee will be glad to furnish you with that opportunity in the same way as it will give anyone else who feels a reflection has been made upon him an opportunity to submit evidence.

Mr. Burt.—I am grateful for that statement. I had prepared these notes before I was aware that the evidence would be made available.

The Chairman.—It has been the practice of the Committee, ever since its inception, to send a copy of the report to witnesses. Sometimes reports are available in a form in which they can be sent to such persons at the time of their presentation to Parliament, but owing to the urgency of the present matter and that a recommendation was made by the Committee, not relating to any of the evidence given by you in connexion with these companies, it was thought necessary to present the report before the present session of Parliament had been completed. For that reason, there will be a few days delay before a copy of the evidence can be made available to you.

Mr. Burt.—I am glad to have that assurance. I am not a director or shareholder of or a lot holder in any of my client companies now to be referred to and the information supplied and the several independent verifications and certificates, and documentary evidence tendered have been obtained at my request and under my direction as solicitor and legal adviser to those client companies.

I will now proceed to answer questions and supply the information asked for. I have numbered the questions and requests for convenience of reference. They are as follows:—

Nos. 1 to 10 (both inclusive) per the Chairman (Mr. Rylah);

Nos. 11 to 19 (both inclusive) per Mr. Pettiona; and

Nos. 20 and 21 per Mr. Randles.

Dealing with question No. 1, which related to the names of all companies in the group and location of registered office; the answer is: —

Ronwells (N.Z.) Limited incorporated in New Zealand and its six subsidiaries, namely,

(*a*) Pine Plantations Proprietary Limited;
(*b*) The Softwood Milling and Reafforestation Co. Pty. Ltd.;
(*c*) Softwood Products Treatment Co. Pty. Ltd.;
(*d*) C.A.P. Treatment Company Pty. Ltd.;
(*e*) Consolidated Forests and Milling Company Limited; and
(*f*) C. C. & H. Company Proprietary Limited,

which subsidiary companies will be referred to by me as the Mount Gambier Forest Companies. I repeat that the reason for that is that I do not want these companies to be confused with companies that have plantations in New Zealand.

The Mount Gambier Forest Companies are incorporated in the State of Victoria, each having its registered office at Temple Court, 422 Collins-street, Melbourne, excepting Consolidated Forests and Milling Company Limited which is incorporated in the State of South Australia, having its registered office at 12 King William-street, Adelaide. I should add that it is also registered in Victoria as a foreign company and it has its principal place of business in this State at 422 Collins-street.

In question 2 I am asked to give particulars of shareholders and directors of each forest company. The beneficial owner of all issued shares in the Mount Gambier Forest Companies (excepting approximately 800) is Ronwells (N.Z.) Limited. Ronwells (N.Z.) Limited owns all the shares in C. C. and H. Company Proprietary Limited. and the other five Mount Gambier Forest Companies are all (except for the 800 shares mentioned) totally-owned subsidiaries of C. C. and H. Company Proprietary Limited.

Mr. Pettiona.—For how long have they then been owned by Ronwells?

Mr. Burt.—Negotiations were in hand for eighteen months, and the transaction was concluded, I think, at the end of November. The moneys were paid on the 12th December last. I handled a considerable sum of money from New Zealand.

The Directors of Ronwells (N.Z.) Limited are:—

Archibald Lyndsay Mason, MacKenzie-street, Putaruru, New Zealand, company director.

John Hamilton Mason, Middle-road, Havelock North, New Zealand, company director.

They have substantial timber and milling and similar interests in the Dominion of New Zealand, and the Mason Brothers and their associates own the whole of the shares. On many occasions during the last two years, while negotiations were in hand, they have been over here in Victoria.

R. G. Dun and Company (The Mercantile Agency) reports on the Mason Brothers as follows:—

A. L. Mason, one of the most outstanding New Zealand timber men. J. L. Mason was associated with J. C. Williamson Picture Corporation. Plimmer, prominent business man associated number Wellington companies, all first-class reputation.

I have included that information for what it is worth. Plimmer is one of their associates about whom I inquired. I shall now tender photostat copy of cable received by R. G. Dun and Company from their Wellington office.

Exhibit "A"—Photostat copy of cable from R. G. Dun and Company, Wellington, New Zealand.

Mr. A. L. Mason frequently visits Australia and directs the milling operations, and his manager from New Zealand—a man named Burgess—acts as mill manager.

The Chairman.—Have the Mason interests always owned those shares?

Mr. Burt.—No. I think information on that matter will be given later in my statement. I shall state the present position. After having made inquiries all over the world, we concluded that the procedure adopted in New Zealand was the most skilful for the handling of softwoods. In 1951 I visited Norway and Sweden in connexion with the business of these companies, and I have no hesitation in saying that in many respects the technique adopted in those countries is inferior to that of the New Zealanders, particularly that of the Mason brothers.

The Mason interests have contributed substantial capital towards the erection and installation of an up-to-date all-electric sawmill and kilns at Mount Gambier, with a view to the milling of the whole of the timber growing on the lands of these forest companies. This mill is nearing completion and is now in operation. It is expected to have an intake of 40,000,000 log-feet of timber per annum from the plantations of the Mount Gambier forest companies, as soon as the forests are old enough to supply that quantity of timber. The mill is handling some 10,000,000 to 15,000,000 log-feet at the present time.

I personally handled the formalities relating to the introduction of a large sum of New Zealand capital—£75,000—to complete the mill. It is estimated that the whole mill outfit as it now stands has a valuation exceeding £150,000.

Mr. Randles.—How was the capital raised—by the shareholders or blockholders?

Mr. Burt.—I do not know. It came through the Bank of New Zealand. That is all I was concerned with—getting the money and handling it at this end.

Mr. Randles.—You do not know in what way it was raised?

Mr. Burt.—No, I would not know. The fact is that the money is going into the mill; it is being spent in the purchase of plant. I know that there is a big kiln on the way from London. It is being imported through Dalgety and Company. A big boiler is being installed and generators and other appliances are being provided. All the money is being used for that purpose. That is all I can tell you. I do not think that it matters a great deal from our point of view. My informant on these matters is a member of Dalgety's organization.

The Directors of the six Mount Gambier Forest Companies are:—

(Chairman) Robert Malcolm McPhee, 37 Stevenson-street, Kew, Victoria; retired merchant.

George Freeman Lloyd, 43 Grandview-road, Brighton, Victoria; industrial chemist.

Albert Edward Hankin, 76 Pender-street, Thornbury, Victoria; merchant.

There is little likelihood of the Mason brothers changing those directors, who have been acting as such for 25 years. The Mason brothers travel to and from New Zealand with their representatives and they say that they see no reason to change the present directors. They do not want to break up the continuity of the show.

Mr. Hankin replaced the late Mr. Phillip Lawrence who was a shareholder and large bondholder from the inception of Mount Gambier forest companies.

Mr. Lloyd replaced the late Albert George McDonald, a well-known business man and director of many prominent companies. Mr. McDonald was the founder of all these companies and also traded personally as—

The Softwood (Australia) Milling Products and C.A.P. Softwood Industries—

which said firms sold the major proportion of the forest lots to the public.

Mr. McPhee and members of his family have been bondholders, and Mr. McPhee himself a shareholder and director for up to twenty years.

Mr. Pettiona.—Could you tell us the extent of their shareholdings?

Mr. Burt.—I think Mr. McPhee had 5,000 or 6,000 shares.

Mr. Pettiona.—Of a face value of £1?

Mr. Burt.—Yes. I would not be absolutely certain of that, but if the information is of importance I shall obtain it for you. At any rate, it was a substantial holding of his own; it consisted of money that he brought into the venture in the McDonald period.

Mr. Pettiona.—Did Mr. Lloyd replace Mr. McDonald at the time of the latter's death, or did he take Mr. McDonald's place at some earlier time?

Mr. Burt.—It was prior to Mr. McDonald's death. Mr. McDonald retired, a very sick man, in 1947 or 1948.

Mr. Randles.—Was Mr. McDonald a shareholder.

Mr. Burt.—Yes; he was the founder. He was very much a shareholder. He and McPhee owned practically all the shares.

Mr. Randles.—What was the capital of the firm when it first started?

Mr. Burt.—I have no idea.

Mr. Randles.—I take it that the capital was fully paid up?

Mr. Burt.—I think that point will be covered later when discussing the matter of capital.

The Chairman.—It may be that after we have perused the information that you will submit, the Committee may wish to ask you further questions.

Mr. Burt.—I shall be happy about that.

Question 3 relates to particulars of lands which each of the forest companies is holding or which are held for them by Consolidated Trusts Corporation Limited or any other company, and Question 4 was in reference to the production of titles and information as to whose custody same was in.

I now tender to the Committee the following plans (prepared by a licensed surveyor) and documents, namely:—

1. In a folder, surveyor's plans of all lands of the six forest companies showing—

	Coloured.
(*a*) Lands of Pine Plantations Pty. Ltd.	Orange
(*b*) Lands of The Softwood Milling and Reafforestation Co. Pty. Ltd. ..	Yellow
(*c*) Lands of Softwood Products Treatment Co. Pty. Ltd.	Red
(*d*) Lands of C.A.P. Treatment Co. Pty. Ltd.	Blue
(*e*) Lands of Consolidated Forests and Milling Co. Ltd.	Mauve
(*f*) Lands of C.C. and H. Company Pty. Ltd.	Green

Exhibit "B"—Surveyor's plans of all lands of the six Mount Gambier forest companies.

For the purpose of reducing the number of plans to a minimum, we have taken the hundreds of Benara and Kongorong, and also the Parishes of Warrain and Glenelg, which are in Victoria. The different companies are indicated by the colours as I have already stated, and can thus be identified.

Mr. Thomas.—Are the colours divided into lots?

Mr. Burt.—No. The titles to the 20,371 acres of land shown in colours and shaded on the plans are held as follows:—

(*a*)	14,266½	acres, in the name of Consolidated Trusts Corporation Limited.
(*b*)	5,191	acres, lodged at the Victorian Titles Office for transfer to Consolidated Trusts Corporation Limited.
(*c*)	913½	acres, to be transferred in due course to Consolidated Trusts Corporation Limited.
	20,371	

I now tender a schedule in respect of each Mount Gambier forest company, showing particulars of titles, areas planted and not planted, and the total area.

Exhibit "C"—Schedule in respect of each Mount Gambier forest company with particulars of titles, areas planted and not planted, and total area.

The next document I wish to submit to the Committee is the certificate of a licensed surveyor, Mr. Symonds, stating that he has, for title and other purposes, surveyed all such land and has made a reconnaissance survey, on the basis of which he certifies to the respective areas of the lands and the extent to which those lands are planted with pine trees. A reconnaissance survey is not a measurement survey, but one to determine which areas of land are planted and not planted, and any special features of the terrain.

Exhibit "D"—Certificate of a licensed surveyor as to respective areas of the lands and the extent to which same are planted with pine trees.

The lists included in Exhibit "C" and the certificates in Exhibit "D" are all in the same form with the exception of particulars relating to the Softwood Milling and Reafforestation Coy. Pty. Ltd. The surveyor has qualified his certificate by pointing out that in certain areas the trees have not grown as well as in other parts. Titles to the whole of the lands mentioned of the six forest companies are in the name of Consolidated Trusts Corporation Limited except the following certificates of titles, volumes and folios:—

7297/303	3089/616	4389/637
4113/417	2961/143	3048/413
6707/214	4946/012	7522/094
6562/400	2793/495	6623/518
6562/387	6523/520	6562/388
6562/398	6140/889	4776/165
	and 6695/818	

which are lodged at the Victorian Titles Office for transfer to Consolidated Trusts Corporation Limited. The titles which I missed in the course of the transfer are certificates of titles, volumes and folios, 1456/192 and 1478/36, containing 447 and 208 acres respectively; 2048/36, containing 26 acres; and 1966/173 and 2049/124, containing 100 and 132½ acres respectively. Those titles are about to be transferred to Consolidated Trusts Corporation Limited. The matter was brought to my notice by Mr. Holt, and is receiving attention. In any case, the omission would have been picked up at the end of the financial year.

I now tender the titles of all six companies mentioned relating to a total of 20,371 acres 0 roods 16 perches, planted and unplanted, made up as follows:—

	A.	R.	P.
(*a*) Pine Plantations Pty. Ltd.	3,166	2	24
(*b*) The Softwood Milling & Reafforestation Co. Pty. Ltd.	4,029	1	0
(*c*) Softwood Products Treatment Co. Pty. Ltd. ..	4,210	0	30
(*d*) C. A. P. Treatment Co. Pty. Ltd.	5,595	0	28
(*e*) Consolidated Forests & Milling Co. Ltd. ..	1,425	0	0
(*f*) C. C. & H Company Pty. Ltd.	1,944	3	14
	20,371	0	16

The titles mentioned, apart from two which I shall specify, were in the custody of Messrs. Alderman, Brazel, Clark and Ward, of Waymouth-street, Adelaide, solicitors for Consolidated Trusts Corporation Limited, until they were forwarded to my firm—Oswald Burt and Company—for production to this Committee. Titles to Victorian lands, namely, C. T. Vol. 7888/014 and 7895/027, each covering 60 acres, have been in the custody of my firm for and on behalf of Consolidated Trusts Corporation Limited.

Exhibit "E" 1—Titles of lands transferred from Softwood Products Treatment Company Proprietary Limited to Consolidated Trusts Corporation Limited subject to deed of defeasance.

Exhibit "E" 2—Titles of lands tranferred from Pine Plantations Proprietary Limited to Consolidated Trusts Corporation Limited subject to deed of defeasance.

Exhibit "E" 3—Titles of lands transferred from The Softwood Milling and Reafforestation Company Proprietary Limited to Consolidated Trusts Corporation Limited subject to deed of defeasance.

Exhibit "E" 4—Titles to lands transferred from C.A.P. Treatment Company Proprietary Limited to Consolidated Trusts Corporation Limited subject to deed of defeasance.

Exhibit "E" 5—Titles of lands transferred from Consolidated Forests and Milling Company Limited to Consolidated Trusts Corporation Limited subject to deed of defeasance.

I now submit a letter signed by my firm, addressed to the Registrar of Titles, requesting the Registrar to permit the Assistant Crown Solicitor of Victoria or his clerk to inspect a number of titles in course of being transferred tho Consolidated Trusts Corporation Limited. The transfers have been with the Titles Office for approximately eighteen months. There is some difference about a matter of 5 acres in these titles. I offer my services and those of a conveyancing clerk to accompany the Assistant Crown Solicitor or his representative to the Titles Office to assist in verifying the titles.

The Chairman.—The Committee possesses no facilities for safekeeping the titles, so, with your approval, it will arrange for them to be placed in the custody of the Assistant Crown Solicitor.

Mr. Burt.—I am agreeable to that. I am prepared to wait upon the Assistant Crown Solicitor in company with a clerk from my office to assist in the identification of the various documents.

The Chairman.—We appreciate that offer which Mr. McDonald, secretary of this committee, will convey to the Assistant Crown Solicitor.

Mr. Burt.—In answer to question 5, "Particulars as to vendors of such lands to each forest company?" I tender to the committee a schedule setting out this information.

Exhibit "F"—Schedule as to vendors of such lands.

I might explain that, for the sake of convenience, Exhibit "F" has been attached to Exhibit "B," just after the legend. It is headed "Vendors of Land," and there is a summary setting out the hundred or parish so that the items can be readily cross checked. With the assistance of this statement it will be possible to pick up quickly from the map the name of the vendor of each piece of land and the dimensions of each allotment in acres, roods, and perches. Those details can be checked, in turn, with the title for ownership of the land.

Question 6 is in these terms, "Detailed plans of such lands?" My answer is that these have been supplied under questions 3 and 4. With respect to question 7, namely, "The number of lots sold in each area and the area of each lot?" I desire to state that each lot can be regarded as one acre. Some twenty years ago some smaller and some larger lots were disposed of, the price thereof being adjusted accordingly. I tender certificate of Mr. J. O. Holt, chartered accountant (Australia) who is external auditor of the Mount Gambier Forest Companies giving this information in respect to each of those companies.

Exhibit "G"—Certificates from Mr. J. O. Holt, giving information as to the number of lots sold in each area and the area of each lot for each of the Mount Gambier Forest Companies.

Converted to total acres required for lot holders (including fire reserves) these certificates relate to a total of 18,199 acres. The certificates of Mr. Symonds, licensed surveyor, certify to a total planted area of 18,882 acres.

My reply to question 8, namely, "Produce a copy of one of the lot contracts (if identical)?" is that the contracts of each of the Mount Gambier Forest Companies in substance are identical although some have varied from time to time. I tender three forms of contract, which I consider are a fair sample of the forms of contract issued by the Mount Gambier Forest Companies over a period of years.

Exhibit "H"—Copies of three typical lot contracts.

In response to question 9, namely, "Produce a copy of a trust deed?" I tender copy of a trust deed which, in my opinion, is a fair sample of the trust deeds. All trust deeds are similar in principle.

Exhibit "I"—Copy of a sample trust deed.

Question 10 is stated in these terms, "Copy of any accounts and reports which may be available?" The answer to this question involves a proper understanding of the real nature of the contract between the Mount Gambier Forest Companies and lot holders. The lot holder paid, say, a sum of £50 to the forest company and the forest company agreed:—

(*a*) to plant the land now mortgaged to the lot holders;

(*b*) to maintain land and forest; and

(*c*) to market timber and account to lot holders for 90 per cent. proceeds of marketing.

Mr. Brennan.—How would the lot holders be affected if the company which was handling these deals originally assigned the milling rights to another company?

Mr. Burt.—Milling rights must be given to someone.

Mr. Brennan.—How do the lot holders secure 90 per cent. of the proceeds of marketing? Is that percentage the net income finally received?

Mr. Burt.—What happens is that the company carries the whole of the maintenance up to the time when someone goes in to fell the trees. The moment a tree is felled, it is sold to someone, and it is paid for. I am uncertain as to whether the company pays for the felling, but an adjustment of costs is made on a royalty basis. Any expenses that there might be attendant upon actual marketing are deducted.

Mr. Brennan.—Would they be included in the 10 per cent.?

Mr. Burt.—No. All moneys received are paid to the trustee, who distributes 90 per cent. to the lot holders and hands back 10 per cent. to the company.

Mr. Pettiona.—Are you associated in any way with the milling section?

Mr. Burt.—I negotiated for the Mason brothers, and I will be acting for them. I may even represent them.

Mr. Pettiona.—Will they be the only people milling this timber?

Mr. Burt.—Yes. At this stage, perhaps I should say that there is a shortage of milling facilities in the Mount Gambier district. Nearby, the State Government has an extremely large mill, at Mount Burr, which is "flat out" trying to mill its own forests. Not far away South Australian Perpetual Forests Limited has a large area of forest country, and it is begging the milling company to help it out with the milling of its logs so that it will be able to carry out its obligations to shareholders. The milling company says, "no, we are putting in a mill at a cost of £200,000 to carry out obligations to our lot holders; we cannot take any logs from another company." There is a substantial demand for softwoods at the moment.

Mr. Randles.—It was mentioned that you were instrumental in bringing about an agreement between the forest companies and the milling company in which the Mason brothers have a controlling interest. Can you state the basis of the agreement? When timber reaches maturity is there anything to prevent royalty being paid?

Mr. Burt.—The contract provides a clause concerning established market value. The trees may be sold either as standing timber or in the log. There is an accepted basis for royalties, which is almost world wide. The trustee has his own solicitor at Mount Gambier; he is a former Judge of the Supreme Court at Darwin, and his name is Roberts. Mr. Roberts employs a tally clerk, who reports periodically, giving details of each particular area from which logs are taken. The logs are tallied as they come out, after having been measured. From the time of planting until the company commences to market the timber, the lot holder is furnished with a periodical report from the trustee as to the fact and progress of planting and maintenance. These reports have been sent by the trustee to lot holders, and copies of the 7th September, 1953, report are tendered.

Exhibit "J": Copies of 7th September, 1953, report from the trustee to lot holders.

As and when moneys have been received by the trustee from the Mount Gambier forest companies as a result of marketing timber, a statement has been sent to lot holders by the trustee showing how amounts of money distributed have been arrived at. In other words, the statements have disclosed the amount of royalties, less expenses, and indicated what they were; so much for division among so many lot holders.

The lot holders, through Consolidated Trusts Corporation Limited, are in effect first mortgagees over the titles to the 20,371 acres of land on which the forests are planted, the titles (except as to five titles) having been transferred (subject to deeds of defeasance) to the Consolidated Trusts Corporation Limited as a guarantee of performance of lot contract by the forest companies.

Mr. Pettiona asked, "What is the average size of each lot in the following plantations—Special 5A, Special 8A, Special 8B, 11C, 12A, and 14C?" The answer is—area of each lot, 1 acre. These are the issues in which Mr. and Mrs. W. J. King are holders. I was asked only about Mr. King, but I have added information concerning Mrs. King. I take it that the next question also relates to Mr. and Mrs. King. This is Question No. 12, which states, "What is the average cost of planting pine tree seedlings on these lands?" It is not practicable to separate the cost of planting lands referred to in question 11. The cost of planting seedlings on areas referred to in question 11 must include:—

(*a*) the cost of clearing and preparing the land for planting;

(*b*) the cost of fencing and wire netting the land;

(*c*) the cost of seedlings; and

(*d*) the labour cost of actual planting.

All of these costs over many years have varied and progressively increased, but a fair estimate would appear to be about £20 per acre.

More is entailed than merely pushing a seed or a small seedling into the ground. It is necessary first to clear the land, fence it, and erect wire netting to keep out rabbits, which can destroy young trees. Seedlings are purchased from a nursery and expense is incurred in the payment of labour for planting.

Mr. Pettiona.—I assume that the cost of the land is not included in the estimate given?

Mr. Burt.—That is so. Question No. 13 is—

What is the precise location of the land on which the above plantations have been established? (presumably those referred to in question 11).

I tender a plan showing the precise location of these plantations; they are coloured red and blue.

Exhibit "K"—Plan showing precise location of plantations in which Mr. and Mrs. W. J. King are lot holders.

The titles to those lands—in the name of Consolidated Trusts Corporation Limited—are as follows:—

P.L. Volume 994/50
P.L. Volume 1008/19
C.T. Volume 2146/172
C.T. Volume 1975/147
C.T. Volume 2152/12
C.T. Volume 2012/126
P.L. Volume 994/49
P.L. Volume 1008/18
P.L. Volume 1012/12
M.L. Volume 1044/20
C.T. Volume 1975/149
P.L. Volume 982/28
C.T. Volume 2146/173
C.T. Volume 1809/26

They have already been produced by me to this committee. This information relates to areas which include lots purchased by Mr. and Mrs. King.

Mr. Thomas.—Are they individual lots?

Mr. Burt.—No; they are sections. A person who had purchased a lot in any of these areas and wished to see the trees would probably be taken to a plantation which might cover, for example, 500 acres and which might represent the interest of 500 lot holders. He would be told that his interest was not in any one particular acre, but when the timber from the whole plantation was milled he would receive his proportion of the total proceeds. If one person owned 499 of the lots, his share would be 499 five-hundredths of the profits. It is not a matter of a lot holder going to Mount Gambier and asking, "Where is my lot?" He can merely be shown a plantation and informed that he is entitled to participate with the rest of the lot owners in the yield.

Question No. 14 is, "What is the age of the oldest plantation in which Mr. W. J. King is a lot holder?" In preparing the answer, I have included Mrs. King for good measure. Question No. 15 is, "Has any money been paid and if so what sums to the trustee for disbursement among the lot holders of plantations in which Mr. W. J. King is interested, namely, Softwood (Australia) Milling Products, C.A.P. Softwood Industries and C.A.P. Treatment Company?" The answers to these questions are as follows:—

Date Purchased.	Issue.	Number of Lots.	Amount Paid.
			£ s. d.
Mrs. E. M. King—			
26.11.45 ..	Plantation Special 5A ..	5	350 0 0
Mr. W. J. King—			
6.11.40 ..	No. 14C	2	120 0 0
3.2.41 ..	No. 14C	2	120 0 0
10.6.41 ..	No. 14C	2	140 0 0
22.8.41 ..	No. 12A (£60 less £3 2s.)	1	56 18 0
10.4.42 ..	No. 11C	5	325 0 0
30.1.43 ..	Special 8A	5	325 0 0
18.6.43 ..	Special 8B	3	195 0 0
26.11.45 ..	Plantation Special 5A ..	5	350 0 0

and the planting of the areas to which his lots relate are as follows:—

Issue.	Year of Planting.	Location.
Special 5A ..	1944	Section 378 hundred of Benara;
		„ 349 hundred of Benara;
		„ 350/1 hundred of Benara; and
		„ 354 hundred of Benara
No. 14C ..	1940	„ 495 hundred of Kongorong
	1941	„ 89 hundred of Benara
No. 12A ..	1941	„ 490 hundred of Kongorong; and
		„ 527 hundred of Kongorong
Special 8B ..	1944	„ 349 hundred of Benara
	1945	„ 371 hundred of Benara; and
		„ 562 hundred of Kongorong
Section 8A ..	1942	„ 492 hundred of Kongorong;
		„ 91 hundred of Benara;
		„ 496 hundred of Kongorong; and
		„ 355 hundred of Benara
Section 11C ..	1941	„ 490 hundred of Kongorong
	1942	„ 493 hundred of Kongorong; and
		„ 311 hundred of Kongorong
	1943	„ 77 hundred of Benara

When McDonald was running these companies, he entered into certain contracts in his own name, for reasons best known to himself, and then novated them to the company. I have my own ideas as to why he did that, but I may not be right.

The Chairman.—In view of the fact that questions 14 and 15 have been grouped together, the words "amount paid" are ambiguous. As presented, the statement implies that the various amounts have been paid to Mr. and Mrs. King.

Mr. Brennan.—Perhaps the words "Purchase price" could be substituted.

The Chairman.—Or "Amount paid for lots."

Mr. Burt.—I have answered the questions as I have understood them. Perhaps I could be permitted to proceed, and if further information is required I can supply it later.

Mr. Pettiona.—If the words "Purchase price" were used, the position might be made clear.

Mr. Burt.—Probably I have answered the questions both ways.

Mr. Brennan.—Are you a member of the companies?

Mr. Burt.—No; I made that fact perfectly plain at the outset. I am the legal adviser.

Mr. Brennan.—One of the documents states that you are a director.

Mr. Burt.—I am a director of Consolidated Trusts Corporation Limited, which is the trustee company.

Mr. Brennan.—A number of documents contains a statement to this effect: "The company of which I am chairman of directors has as my co-directors, Mr. Oswald Burt, solicitor, ... "

Mr. Burt.—That refers to the Consolidated Trusts Corporation Limited.

Mr. Brennan.—It does not refer to this company?

Mr. Burt.—No. I have no interest, shareholding, or directorship in any of the various companies, but I am a director of Consolidated Trusts Corporation Limited. As yet no conflict of opinion has arisen. It may some day, and I may have to "kick the forest companies out the backdoor," but I hope not.

I shall now quote an excerpt from the last report of the trustee, dated 7th September, 1953. I might say that at that time a fair bit of cutting was done by way of thinning. The timber was used for case material but the return was quite small. Wooden cases are being superseded by cardboard cartons, so there is not much of a market for case timber. The passage to which I have referred reads—

> As a general rule cutting for case material may be commenced at thirteen or fourteen years from planting date but if that is done the yield of timber per acre is relatively small. From this age onwards the annual increase rises rapidly until nearing twenty years when selected timber of high quality is available for building purposes.

I also wish to quote the following extract from a report made by Mr. Harrison Smith, forest expert of Whatane Board Mills Ltd., New Zealand, who was engaged by the Mason brothers—

> The trees in this district are quite the best *pinus radiata* I have seen and far surpass anything grown in the pumice district in New Zealand, though those grown on heavier soils are more nearly equal. Your trees are more lightly branched than ours and therefore produce better timber.

Accordingly as yet no portion of the forest covered by lots owned by Mr. or Mrs. W. J. King has been felled or sold and there is no money for payment by the company to the trustee in respect of these lots.

The Chairman.—All contracts contain the provision that if the timber is milled by a certain date a fixed sum will be payable to the lot holder. From the trustee's report of September, 1953, it would seem that at the time the contracts were entered into there could not have been any possibility of that amount being available within the specified time.

Mr. Burt.—That occurred in Mr. McDonald's time. I have made inquiries about that matter, and I find that he had some idea of disposing of the whole of the plantations. At the time, there was a wave of popularity towards pine forests; the Australian Paper Mills were planning to plant large areas and so on, and I think Mr. McDonald had an idea of selling the whole plantations without waiting for the timber to mature.

Mr. Brennan.—Perhaps there was some misconception as to the time of maturity, because in the trustee's report it is stated that the growh of the trees was delayed because of abnormal drought conditions.

Mr. Burt.—That could be the position. Question No. 16 is—

> Is there any relationship between any of the foregoing companies and Securities and Equities Pty. Ltd., which is registered in New South Wales.

The answer is: No. Securities and Equities Pty. Ltd. has no share of other interest in any of the Mount Gambier forest companies, nor has any Mount Gambier forest company any share or other interest in Securities and Equities Pty. Ltd.

Mr. Pettiona.—Do you know if that company ever obtained purchased lots?

Mr. Burt.—Yes, it has but it is not the only concern that has bought and sold lots. There has been a good deal of activity in connexion with the sale of lots since the Clowes decision, as people who are looking for a tax-free investment have been on the job. One or two brokers as well as other people have approached me because as the project has only a further five or ten years to go they consider that they may treble or quadruple their money. As any profit is not subject to tax, it is a pretty good investment. There has been some activity in that regard, even this month. In reply to question No. 17—

> Is there any relationship between the companies mentioned and Vatabula Limited, of Suva, Fiji.

My answer is, no, there is no relationship.

Mr. Pettiona.—What is Vatubula?

Mr. Burt.—I should say that this suggestion has emanated from Mr. Opas, whose son is interested in a company dealing with forest waste. I was in touch with Vatubula Limited with the idea of acquiring the Chapman process of making hardboard ⅛ inch thick from forest waste. In America, hardboard made by this process promises to compete with Masonite. I entered into negotiations to acquire the right to use that process, but for many reasons the negotiations failed. I even purchased an area of land at Mount Gambier with the idea of putting in plant. My idea was that the forest companies would be paid for the waste which at present is being burned.

Mr. Randles.—Is that a practicable scheme?

Mr. Burt.—Yes. There are many processes, but I consider that the Chapman process is the best; I have discussed the matter with officers of the C.S.I.R.O., who know of the process, and they advised me to get it operating here. They considered that it would be a first-class industry. Around the sawmills there are mountains of sawdust which would be a menace, as, if they caught fire, they would smoulder. It is necessary to burn up all the other stuff. Question 18 was whether any lots had been sold as far north as Fiji. The

answer is: No lots of any of the Mount Gambier forest companies have been sold in Fiji. Question 19 was as follows:—

> Is Mr. Burt prepared to state that each lot, portion and concession holder will receive a just return on his investment?

My answer is that there appears to be no reason why future returns to lot holders should not be at least equal to those being received by lot holders in Pine Plantations Pty. Ltd., in which the public invested £38,000 and from which it has already received £117,163, with more to follow.

Mr. Thomas.—How was that sum paid?

Mr. Burt.—It was paid out in cash over a period.

Mr. Pettiona.—From the proceeds from trees that had been felled and sold?

Mr. Burt.—Yes, and there is more to come; I do not know how much more.

Mr. Randles.—After the land has been cleared of trees, it remains the property of the company?

Mr. Burt.—Yes.

Mr. Brennan.—Would you say that the amount paid out would represent 90 per cent. of the total proceeds?

Mr. Burt.—Yes. The £117,163 would be 90 per cent. of the total nett proceeds from felling, so far. There is probably more to come. Regarding Pine Plantations Pty. Ltd., the work has been done largely at two small bush mills. In future a mill worth £200,000 will be operating, and therefore from now on there will be a greater milling capacity.

Mr. Brennan.—That 90 per cent. and the 10 per cent. retained by the company would represent 100 per cent. of the proceeds after all the charges had been met?

Mr. Burt.—Yes.

Mr. Thomas.—Including royalty?

Mr. Burt.—Royalty received by the forest company from the milling company is included in the proceeds.

Mr. Ludbrook.—I take it that some areas will become re-afforested. What will happen in respect of such areas?

Mr. Burt.—The land belongs to the company. I do not think it would be worthwhile re-afforesting it. I have been told that after forest land has been cleared of trees it becomes good dairying land. I should say that it would be impossible to buy good dairying land anywhere for less than £10 an acre.

Mr. Ludbrook.—You realize that there is a possibility that the land will re-afforest itself.

Mr. Burt.—I am not technically qualified to express an opinion on that matter.

Mr. Brennan.—I am not seeking an expert opinion if you are not in a position to give one, but is it a fact that as a result of the afforestation the land becomes enriched and therefore more valuable?

Mr. Burt.—I have been informed that that is definitely so, but I could not express an expert opinion.

Mr. Pettiona.—Was it the intention of Mr. McDonald to replant this area with pines?

Mr. Burt.—Yes, which means that he would have been able to sell another lot of bonds and so forth. However, I would say that there is enough timber there to provide milling for the rest of our lives. There is an area of 20,000 acres and the plantations are coming on at a colossal rate every year. There may have been complaints regarding tardiness in the milling of these forests, but I have been given staggering figures as to the amount of timber that is added to the forest every year. So what might appear to be lost through the rate of progress in felling trees for sale at royalty rates is more than made up for by the growth of extra timber.

The High Court decision (7/4/1954) in *Clowes* v. *Commissioner of Taxation* decided that profits received by lot holders who are not trading in lots are free of income tax. This taxation advantage does not apply to any other form of investment known to me. That point relates to the question whether lot holders received a just return on their investments.

I now tender photostat copy of reports of Dalgety and Company Limited covering their inspections of the forests of six Mount Gambier forest companies made in the years 1947 and 1950 respectively.

> Exhibit "L"—Photostat copy of reports of Dalgety and Company Limited in the years 1947 and 1950 respectively.

I quote from a letter of Dalgety and Company Limited accompanying their report of 10th January, 1951. The extract is as follows:—

> It was amazing to see the exceptional growth that all the forests had made during that time, and one cannot help but foresee a very bright future for those interested in this particular industry.
>
> Of the many strong impressions made during the inspection quite apart from the health of the actual trees, the care and trouble taken in every area in maintaining firebreaks is most outstanding. An immense amount of work has been put into this most important task.
>
> The condition of the fencing around all of the younger forests is also first class.

Concerning the last paragraph of the letter, I previously mentioned that it was not merely a matter of planting trees; they also had to be protected.

Question 20 was asked by Mr. Randles. This is my note in reference to the point:—

> In 1947 certain moneys, £1,200, deposited with Mr. Dundas Smith as trustee to protect interest of lot holders against default—same being lodged in trust account at Savings Bank, Elizabeth-street, Melbourne. A further sum of £5,000 approximately in Treasury bonds was deposited with Mr. MacKenzie, solicitor.

The reply is that of the above amount of £6,200 lodged with Messrs. Hickford and MacKenzie, solicitors for the trustee, that firm still holds an amount in Commonwealth bonds and cash of £5,229 5s. I now tender a certificate from Mr. MacKenzie as to this amount.

> Exhibit "M"—Certificate from Hickford and MacKenzie as to amount held on behalf of the trustee.

The reduction of approximately £1,000 over five years is explained by clause 3 of the relevant agreement covering deposits which is as follows:—

> If as at the 30th day of November in the year 1948 and thereafter as at the 30th day of November in each succeeding year until the said trees shall have been marketed as aforesaid the trustee's solicitor will (on receipt of a certificate to that effect signed by the trustee and his forestry adviser) in respect of each such year during which the said trees shall have been faithfully maintained redeliver or repay to the company Eight pounds per centum of the said bonds or proceeds of sale thereof and so that (subject as aforesaid) the balance thereof shall be redelivered or repaid to the company on the 30th day of November, 1960.

The effect of clause 3 is to extend maintenance for a further twelve years. If the company carried out maintenance each year, it was to receive 8 per cent. back; this is a gradually diminishing factor. In the meantime it is earning interest which is still in the trust account.

If the Committee's question is directed to ascertain whether the rights of lot holders are adequately protected and secured, it should be sufficient to add

that the lot holders of the six Mount Gambier forest companies are protected by a first mortgage over the titles to 20,371 acres of land of a total estimated value, exclusive of forests, of approximately £200,000.

Mr. Brennan.—Who is the mortgagee?

Mr. Burt.—Consolidated Trusts Corporation Limited. In fact, it is something better than the usual first mortgage. I shall deal with that aspect later. The next question was: Where did Mr. Dundas Smith obtain the money given him considering the paid-up capital of the various companies was £52?

My answer is that the total paid capital of the Mount Gambier forest companies and reserves exceeds £20,000. Mr. Dundas Smith was paid the sum mentioned by the forest companies from their own moneys.

The last question was: Were the lot holders in effect guaranteeing themselves? My reply is "No."

The Committee will note that no verifications in relation to Mutual Investments Proprietary Limited, an associated company incorporated in Victoria, the registered office of which is at 422 Collins-street, Melbourne, have been tendered in the course of my statement. The reason is that this is a very small company in the same group which had only 250 acres of plantation. Approximately one-third of the lots sold were purchased for cash by the late Mrs. E. D. Livingston, of Mount Gambier. Her husband was formerly a member of the Lower House of South Australia and, I think, of the first Commonwealth Ministry. The whole of the company's issued shares are held by a South Australian company, Mutual Investments Limited. The original shareholders of the South Australian company were mainly Western District and South Australian grazing families named McKellar, Austin, Palmer, Napthine, Moreton, Livingston, and others.

Bondholders paid £6,985 to this company for bonds and have already received £14,281 2s. 11d. Shortly they are to receive a further £5,805 19s. 5d., and when the balance of timber is cut they should receive a further £20,000. Then the original investment of £6,985 will have produced £39,000 on which no income tax is payable by bondholders. The winding up of this company is in sight.

Mr. Brennan.—Was that £39,000 net to the bondholders?

Mr. Burt.—Yes. The late Mrs. E. D. Livingston was, during her lifetime, a very large holder of forestry bonds acquired by purchase in this and other Mount Gambier forestry companies. Her lots were acquired by purchase for cash. They were sold to her by McDonald and his associates. Mrs. Livingston died in 1943, and her holdings of forestry bonds in this company and Pine Plantations Proprietary Limited were valued for probate at £43,740.

The information and documentary evidence placed before the Secretary of the Crown Law Department in 1950 and that now submitted by me to this Committee should be more than sufficient to satisfy the Committee and its individual members as to the bone fides of the Mount Gambier forest companies. My client companies invite you, Mr. Chairman, accompanied by any expert or officer of the Forests Commission of Victoria, to visit Mount Gambier to inspect the forest areas and the saw mill and to meet a licensed surveyor who will point out to you and identify the lands of each of the Mount Gambier forest companies.

As a matter of interest to members I tender three sectional photographs of the mill.

Exhibit "N"—Photographs of the mill.

The Chairman.—You were going to say something further about the mortgages.

Mr. Burt.—The deed of defeasance is an old form of mortgage. Under such deeds the titles of the land concerned are transferred outright to Consolidated Trusts Corporation Limited. The deed says, in effect, that if the company properly plants trees and maintains the land, markets the timber, and accounts for the proceeds, the title will be transferred back to the company. I was instructed to prepare the documents, and, knowing that I was to be a director of the trustee company, I considered it advantageous to adopt the old deed of defeasance in respect of these lands. I have not a copy of the deed with me, but if the Committee is interested I could send one along.

The Chairman.—Perhaps it would be as well to complete the file.

Mr. Burt.—Provision is made in the deeds whereby, if any of the Mount Gambier forests companies do not carry out any of their obligations under the lots, Consolidated Trusts Corporation Limited can sell the land, or any portion of the land, including the pine trees and everything thereon, or mortgage the land, or take other action of that kind. I considered that having the title in the name of the Consolidated Trusts Corporation Limited would give a greater freedom of movement to the mortgagee than would the ordinary form of mortgage.

The Chairman.—On behalf of the Committee, I desire to thank you Mr. Burt for the information you have supplied, and for the comprehensive manner in which you have prepared it. These details will assist the Committee considerably in their deliberations. There may be certain other matters concerning which the Committee will desire information, in which event you will receive reasonable notice.

Mr. Burt.—I thank you, Mr. Chairman, for your courtesy. I shall be pleased to attend, if required, at a later date and to tender any further evidence which may be desired.

The Committee adjourned.

THURSDAY, 29TH APRIL, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. Harold Cuthbert Collingwood, Acting Chairman of The Stock Exchange of Melbourne;

Mr. Gerard Noall, a member of The Committee of the Stock Exchange of Melbourne; and

Mr. Douglas Stewart Rogers, Secretary of The Stock Exchange of Melbourne;

were in attendance.

The Chairman.—On behalf of the Committee, I welcome Mr. Collingwood, Mr. Noall, and Mr. Rogers. I understand that they are present not so much to give evidence that will assist us but to get an indication as to the type of evidence that will be helpful to us in our deliberations. I also understand that they will produce certain documents relating to practices of the Stock Exchange concerning public companies listed on the Exchange.

Mr. Collingwood.—The Stock Exchange of Melbourne wishes to assist the Committee in its activities to the utmost of its power as regards the prevention of objectionable practices of "share pushers." The

Rules and Regulations of The Stock Exchange, as can be ascertained from a perusal of them, have been framed with the object of protecting as far as possible the investing public from the machinations of unscrupulous individuals and from the maladministration of companies. We realize that if the investing public has confidence in our laws relating to companies and also in the Stock Exchange, we can exist. I do not wish to imply that we have higher ethical standards than the rest of the commnuity, although in that regard we would not take second place to any other body of men. So long as we have the confidence of the investing public, we can continue in business. It is the confidence of the people of Australia that we wish to maintain. Many of our regulations and our customs and usages are governed by decisions of conferences with other Australian Stock Exchanges. Those conferences are held sometimes annually and sometimes once every two years. Agreements are reached concerning courses of action to be taken in dealing with company matters as questions arise from time to time. I reiterate that we desire to assist the Committee to the best of our ability.

The Chairman.—Have you some documents that you wish to submit?

Mr. Collingwood.—We desire to tender a document setting out the listing requirements of The Stock Exchange of Melbourne. In many respects these are more detailed than the provisions of the Companies Act. It has been found from experience that many of the provisions contained therein are very necessary. These listing requirements are subject to decisions of the conferences to which I have referred. Since this document was printed, a further requirement has been adopted. It states:—

> A company intending to apply for listing on the Stock Exchange or a listed company making an issue of new securities, whether to shareholders or the public, should not state in the relevant prospectus or circular its intention to apply for quotation of the securities unless the prospectus or circular in draft form has first been submitted to and approved by the committee of the Stock Exchange.

Certain companies might state in their prospectus that they intended to apply for listing on the Stock Exchange, but their Articles of Association might contain provisions that would not be acceptable to us. The requirement is designed to overcome that situation. We want to examine the Articles of Association and the prespectus before the companies state that they intend to apply for listing.

Mr. Brennan.—How often are your rules revised?

Mr. Collingwood.—Whenever necessary.

Mr. Brennan.—It is not done annually?

Mr. Collingwood.—No. The Rules and Regulations applying to The Stock Exchange of Melbourne are a domestic matter. In the main, they agree with those of other stock exchanges. There are minor differences, largely owing to variations in the Companies Acts of the several States.

Mr. Thomas.—Are there any differences in the rules of the stock exchanges as regards memorandums of association?

Mr. Collingwood.—Not so much in the Memorandum as in the Articles of Association. Many differences occur there. Mr. Rogers, who is our perusal officer, can more adequately answer the question.

Mr. Rogers.—The Memorandum, in itself, is usually an all-embracing document which sets out primarily the objects of the particular company. So far as concerns the practical administration of the company, it is the Articles of Association in which we are chiefly interested.

Mr. Byrnes.—I assume that a company applying for listing on the Stock Exchange would submit its Memorandum and Articles of Association and prospectus, and that they would be examined. Is there a special organization to undertake that work?

Mr. Collingwood.—Mr. Rogers is the officer who makes the examination. Under the new requirement, when we had approved of the documents, we would state on the draft prospectus that the Articles of Association and the prospectus are acceptable to us, with the usual disclaimer clause to the effect that we do not in any way guarantee that the enterprise will be profitable. In New South Wales, the Registrar-General issues a statement that a prospectus has been lodged, but that he is in no way responsible.

The Chairman.—Have you any objection to this official list of requirements being incorporated in the transcript? Generally speaking, I feel that there is much misapprehension about the requirements of the Stock Exchange, and it would be of great benefit to members of Parliament if this document were included in the record.

Mr. Collingwood.—The matter has not been discussed by my committee, but I think it would be only too delighted if the statement of requirements were included.

Mr. Noall.—I should not think there would be any objection whatever. Concerning the scrutinizing of Articles of Association, if Mr. Rogers was uncertain about any Article, he would place the matter before the whole committee of the Stock Exchange, which meets every week.

Mr. Brennan.—What disciplinary powers does the committee exercise?

Mr. Collingwood.—Our members are very well disciplined; we have control of the members of the Stock Exchange, and any breach or irregularity is dealt with very quickly. We have no legal status concerning outside companies, but any company that is listed on the Stock Exchange is listed at the will of the committee, which can, if necessary, suspend such company.

Mr. Brennan.—During the pleasure of the committee.

Mr. Collingwood.—That is so. The power of suspension is really our only safeguard. It is very seldom applied, but unfortunately it has to be applied on occasions. When a company is suspended from the official list, the shareholders immediately get busy.

The Chairman.—Speaking in general terms, what type of action would warrant suspension?

Mr. Collingwood.—The non issue of balance sheets within a certain time; not giving sufficient notice to shareholders to take up rights; general breaches of the agreement. When a company applies to be included on the list it signs an agreement, and any breach of that agreement might lead to suspension. Of course, the suspension of a company is rather a serious matter.

Mr. Pettiona.—Is there an auditing division of the committee?

Mr. Collingwood.—Not as regards companies. That would not be practicable as there are 800 to 900 companies listed on the Stock Exchange. The activities of chartered accountants and of the Stock Exchange are closely associated, and we have to rely upon the accountants quite a lot. It is very rarely that we have any cause for complaint.

Mr. Pettiona.—If the affairs of a member of the Stock Exchange required investigation, the committee would ask a chartered accountant to do any auditing that was necessary?

Mr. Collingwood.—If that were necessary, yes. We have power to obtain a complete report.

Mr. Pettiona.—If the committee suspended a member of the Stock Exchange it could just as easily remove the suspension?

Mr. Collingwood.—The committee has power to impose fines, but if the offence requires more than a fine we report to the room, which can suspend or expel.

The Chairman.—It should be made clear that Mr. Collingwood is now referring to suspension of members of the Stock Exchange. The previous evidence related to the suspension of companies from the list of the Stock Exchange.

Mr. Brennan.—Is part of your power over members derived from any statute or as a result of the operation of your own rules?

Mr. Collingwood.—We have stringent rules and regulations, any infringement of which would lead to trouble.

Mr. Brennan.—No specific law of Parliament gives you power over members?

Mr. Collingwood.—No, we act under our own Rules and Regulations.

Mr. Brennan.—When members join the Stock Exchange they voluntarily submit to those regulations?

Mr. Collingwood.—They sign a declaration submitting to the existing rules and any that may be passed in the future.

Mr. Noall.—Of course, the Stock and Share Brokers Act includes a provision that there shall be an audit and a report to the Chairman on each member within a certain time after the audit is completed. In answer to the query raised by Mr. Pettiona, the business of every share broker is audited whenever the Chairman may ask for an audit—in practice, at least once a year.

The Chairman.—What happens to a share broker who is suspended from the Stock Exchange?

Mr. Noall.—In my experience, there has been only one suspension, and I think I would be justified in saying that was due largely to nerves. The position of the person concerned was not nearly as bad as he thought it was. Over the years there has been a vast improvement in the control of members by the Stock Exchange. If a member is expelled, he ceases to be a member altogether.

The Chairman.—He could not operate within the Stock Exchange building?

Mr. Noall.—No, nor could any member operate for him.

The Chairman.—Do you mean that he would go completely out of business?

Mr. Noall.—Yes.

Mr. Hollway.—Could any member of the Stock Exchange deal with such a person?

Mr. Noall.—So far as I know, there is no rule to prevent any dealing with such a person, but I suggest that he would need to have a thick "hide" to come near the place.

Mr. Hollway.—If a member of the Stock Exchange was suspended, could he buy and sell shares through another member?

Mr. Noall.—Even if a person were expelled I do not think there would be anything to prevent him from dealing with a member of the Stock Exchange, but whether that member would be prepared to deal with him would be another matter.

Mr. Brennan.—Is there any way in which a person who has been expelled from the Stock Exchange can carry on a profitable business as a share broker?

Mr. Noall.—I know of only one person in Melbourne calling himself a share broker who is not a member of the Stock Exchange, and he deals almost entirely with proprietary companies.

Mr. Pettiona.—Has that person been suspended?

Mr. Noall.—No. He has never been a member of the Stock Exchange.

Mr. Collingwood.—Expulsion from the Stock Exchange would be a very severe penalty, and I doubt whether a man could live it down in Melbourne.

Mr. Brennan.—The work of the Stock Exchange is founded entirely on the complete confidence of the public?

Mr. Collingwood.—Yes. In my opening remarks I said that we were out to retain the confidence of the public as far as possible. If the Committee can show us how we can improve our status in that regard, we shall be happy to consider any suggestion.

The Chairman.—Is there any objection to including in the minutes of evidence the agreement made by a company as part of the application for official listing by the Stock Exchange?

Mr. Collingwood.—No.

Mr. Randles.—If a company issued a prospectus in which it was stated that it intended to apply for listing in the Stock Exchange, but no approach was made to you and the prospectus was not submitted for scrutiny, what action could you take?

Mr. Collingwood.—We could not take any action. It would rest with those persons who had subscribed for shares to take legal action. We cannot compel companies to apply to the Stock Exchange for listing. If a company does not do so, any party who suffers damage by reason of shares not being listed can take legal action.

The Chairman.—Assuming a company included on its prospectus a statement that it intended to apply for listing, and that one of your members acted as the broker either officially or unofficially in the transaction, would the Stock Exchange have any control over the broker?

Mr. Collingwood.—In such a case we would call the person concerned before us and if he were the broker to the company, we would want to know why the company had not been listed. If he could prove to us that he had done his best to get the company to apply for listing, I do not think we could take any action against him.

The Chairman.—I shall take the point a stage further. Assume that your new rule were in operation and that you had made known to all your members that a company was not entitled to indicate on its prospectus that it intended to apply for listing until it had complied with certain requirements. I am assuming that the company had not made the application and had not submitted its memorandum and articles, but had included a statement in its prospectus regarding listing and that one of your members had acted as the broker, what would be the position?

Mr. Collingwood.—It may be said—to quote an authority—that all members of the Stock Exchange are honorable men. Doubtless, the broker would do his best to have that company listed. If he failed, I do not think he would incur any penalty.

Mr. Noall.—I think the requirements might go further than that when the new requirement comes into force. Then, I do not think that any of our members would be free to act as a broker to a company unless all information had been submitted to the Stock Exchange beforehand. If for some reason the company subsequently said that it did not desire listing on the Stock Exchange, no fault could be found with

the broker, but no broker could deal with a company which made such a statement on its prospectus unless it had previously presented all the necessary papers to the Stock Exchange.

The Chairman.—That is my point. Do you feel that, under this new rule which provides that a company shall not publish a prospectus except as specified, there would be an obligation on your members to inquire before agreeing to act as the broker?

Mr. Collingwood.—Definitely, and I suggest that any broker who acted contrary to rules and before the required submissions had been made to the Stock Exchange, would very seriously jeopardize his position.

Mr. Pettiona.—Does the Stock Exchange propose to make this mandatory; it is not stated that any particular action will be taken against those who do not comply with requirements?

Mr. Noall.—I think the reply to Mr. Pettiona's point is that unless a particular company has a member of the Stock Exchange associated with it, there is no action that we can take.

Mr. Pettiona.—Has it happened that a company has intimated on its prospectus that it intended to apply for listing, but did not actually apply?

Mr. Collingwood.—There have been cases of that kind.

Mr. Pettiona.—Do you contemplate legislation that would prohibit a company from stating that it intended to apply for listing if it had no intention of doing so?

Mr. Collingwood.—If a company never at any time intended to apply but included a contrary statement in its prospectus, that would amount to a false statement. That is the sort of thing against which the Stock Exchange takes a firm stand. Possibly, such a company could be dealt with under the criminal code.

The Chairman.—Possibly, the provisions of the Crimes Bill which was introduced in the Assembly will cover the point.

Mr. Hollway.—A company might contend that originally it had genuinely intended to apply for listing, but that later it had decided not to do so.

Mr. Collingwood.—It would be necessary for the prosecution to prove criminal intent.

The Chairman.—I was thinking of cases in which statements of the kind we have been discussing might be made quite recklessly by a company which has no intention of trying to become listed.

Mr. Hollway.—The mere mention in a prospectus of the fact that a company intended to apply for listing, and the use of the term "Stock Exchange," does tend to give a company an enhanced prestige. After the money has been collected, the damage has been done and if the company then decides not to apply, there is nothing much that can be done about it.

Mr. Collingwood.—That is so.

Mr. Hollway.—Possibly, the only way in which that state of affairs could be avoided would be by putting into force a rule prohibiting companies from calling for capital until such time as the documents had been submitted to the Stock Exchange and a decision had been made.

Mr. Noall.—That would apply to any company and not to our members only.

Mr. Hollway.—That is one of the difficulties. We are concerned not so much with members of the Stock Exchange as with the honesty of people who travel around the country selling shares.

The Chairman.—And who, to some extent, take advantage of the reputation of the Stock Exchange by making certain statements in the prospectus. As a matter of interest, the Act mentioned by Mr. Noall is No. 4510 of 1937.

Mr. Collingwood.—Mr. Chairman, you and your members might be interested in our activities to the extent of wishing to observe the working of the Stock Exchange. It at any time would like to see a room in session, we would be pleased to welcome you and to explain procedure on the spot.

The Chairman.—Thank you, I am sure that we shall be happy to accept your invitation. Our secretary can contact Mr. Rogers and make the necessary arrangements. It has been suggested that I should indicate to you some other matters on which the Committee would be pleased to receive information. I think you have covered much ground very well this morning. I understand that Mr. Rogers has some further argument to submit, but possibly before he does so, the Committee might wish to consider the information that has already been placed before it. Then it would be in a better position to indicate the matters on which it desires further particulars.

Mr. Byrnes.—I presume you gentlemen are acquainted with the Committee's terms of reference in relation to this inquiry?

Mr. Collingwood.—We have very little information on the matter.

Mr. Byrnes.—I think you should be provided with the terms of reference, together with the Committee's interim report which has been tabled in both Houses. That report contains certain recommendations and details of a number of suggestions which have been made with respect to amendment of the company law of the State. I point out that, when the Committee makes recommendations, implementing legislation is often passed with very little debate. With your wide experience of Stock Exchange matters, you may be able to assist the Committee.

Mr. Collingwood.—We shall be very happy to examine the data mentioned, and then give the Committee our opinions and offer any suggestions which occur to us.

Mr. Thomas.—The Committee's terms of reference are—

To examine anomalies in the statute law which appear to permit (*a*) persons interested in the promotion and/or direction of companies; and (*b*) firms—to engage in fraudulent practices, with a view to reporting upon the measures deemed necessary to afford adequate protection to shareholders, creditors and members of the public.

Mr. Collingwood.—The aspects raised go considerably beyond the purview of a share broker, but we will assist in any way possible.

Mr. Byrnes.—Our main problems are associated with private companies rather than public companies.

Mr. Pettiona.—Most of our discussions have centred around proprietary companies and share hawking.

Mr. Collingwood.—As the Committee is no doubt aware, proprietary companies cannot be listed on the Stock Exchange. In order to be listed a company must have freedom of transfer and so on.

Mr. Byrnes.—It has been suggested that a form of audit should be compulsory in relation to proprietary companies.

Mr. Collingwood.—We are very much in favour of audits and the use of qualified chartered accountants.

Mr. Randles.—Accountants themselves admit that they cannot detect cleverly hidden fraud, especially when the transactions are in cash.

Mr. Collingwood.—An auditor has a very difficult task but, while he will not always detect fraud, my experience indicates that he makes it more difficult for the " crook " and advances the day of his discovery.

Mr. Noall.—It would be a step in the right direction if it were made compulsory for proprietary companies to issue balance sheets.

Mr. Pettiona.—That suggestion has been advanced, but it has been stated that it would deprive companies from protection against competitors and so on. It has been proposed that such balance sheets in sealed envelopes should be lodged with the Registrar-General.

Mr. Noall.—That does not help the public. I have never been able to understand how the publication of balance sheets was of advantage to competitors.

Mr. Thomas.—Have you found that prospectuses issued by some companies are too colourful or exaggerate the possibilities of future activities?

Mr. Noall.—Prospectuses are often highly coloured. I think a judge of the Supreme Court has stated that they can be coloured but must not depart from the truth.

Mr. Pettiona.—If you consider that a prospectus submitted to you is unreasonably coloured, do you insist on its being discoloured, so to speak?

Mr. Noall.—No, as long as the actual facts are stated. We have very stringent requirements in respect of reports by experts, which must be published stating that they are made for inclusion in the prospectus. Every prospectus must be dated. In addition, we require particulars as to how often the property has changed hands. We have gone to lengths far beyond the requirements of the Companies Act in order to keep the game as clean as possible.

Mr. Thomas.—Do you authorize the persons who submit reports in respect of prospectuses to do so?

Mr. Noall.—No. A company can obtain a report from anybody. The value of the report depends on the qualifications of the author. On the financial side, the report must be made by the auditor, and, in many cases, by the investigating accountant.

Mr. Thomas.—Are there also statements from banks?

Mr. Noall.—No.

Mr. Randles.—Some proprietary companies submit a statement prepared by an expert which, although correct does not contain the whole truth. I have in mind particularly the Riverina Colliery firm which furnished a report to the effect that coal was available, but it omitted to state that the prohibitive cost of transport rendered the deposit unpayable.

Mr. Hollway.—Someone informed me recently that that firm is now paying a dividend.

Mr. Collingwood.—Is the dividend being paid from profits?

Mr. Hollway.—I cannot say. Apparently the company concerned has some form of contract with a company that is conducting an undertaking at Mulwala in New South Wales, just over the border from Yarrawonga.

Mr. Collingwood.—I know very little about the Riverina Colliery except what I have gained from hearsay. The remarks of Mr. Hollway interest me.

Mr. Randles.—If the Riverina Colliery people have entered into a contract with another organization nearby, it is possible that the coal deposit to which I referred could be a payable proposition, but I maintain that it would not be a lucrative proposal to transport the coal to Melbourne.

Mr. Hollway.—I understand that the promoter allotted certain shares to himself and later sold them around the countryside. His action did not assist the company.

Mr. Collingwood.—That matter was written up in the *" Herald "* newspaper, was it not?

Mr. Hollway.—Yes.

Mr. Randles.—The point I intended to make was that although an expert furnished a report in respect of the coal deposits held by Riverina Collieries, other considerations must be taken into account. In other words, the opinion of one expert must be dovetailed into that of another, so to speak.

Mr. Hollway.—There is no doubt that coal is available in the area; the difficulty is to get it out.

Mr. Randles.—All the expert said was that coal was there.

Mr. Rogers.—The prospectus of any mining concern should include an estimate of costs. This committee may be able to arrange to tighten the requirements in that regard.

Mr. Byrnes.—Mr. Collingwood asked, a moment or two ago, whether the firm of Riverina Collieries was paying dividends out of profits. That is a matter which has been raised previously before this committee. Actually, no dividend should be paid except out of realized profits.

Mr. Collingwood.—I prefer not to discuss that aspect. The matter of realized profits is one that takes some understanding.

Mr. Pettiona.—What was the reaction of your committee to a recent decision of the High Court of Australia with respect to income tax assessed on a person associated with Pine Plantations Proprietary Limited?

Mr. Collingwood.—That firm is not listed with us; it is extraneous. I could give a personal opinion only.

Mr. Pettiona.—I understand that the court decision was to the effect that a portion of the sum of money received by a lot holder from the sale of timber on a lot that he held was not subject to income taxation because it was regarded as capital profit.

Mr. Collingwood.—Had the timber been sold?

Mr. Pettiona.—Yes.

Mr. Noall.—If the timber had been cut and sawn, I should have thought that it would have been subject to income taxation when it was sold.

Mr. Randles.—If the land had been bought with timber growing on it, that might have been so but, in this instance, the lot holder did not buy the land but rather an interest in it. The pines were planted after the land was purchased. That is the aspect that seems strange to me.

Mr. Noall.—Was the whole property sold as it stood?

Mr. Randles.—No, the land itself belongs to the company. The lot holders invested the money with which the pines were planted. The profit derived by the lot holders was regarded by the Taxation Department as being exempt from income tax.

Mr. Pettiona.—When giving evidence before this committee yesterday, Mr. Oswald Burt stated:—

> On the 7th April, 1954, the Full High Court of Australia, (*Clowes* v. *Commissioner of Taxation*) in the appeal brought in respect of lot holders' profits in Pine Plantations Proprietary Limited, held—
>
> that profits made by lot holders in that company are not subject to income tax; that is, if a lot holder pays £50 for a lot and receives £100 in return the profit of £50 of the lot holder is not subject to income tax.

Dixon, Chief Justice, in the course of his judgment stated that the lot holder passively awaited whatever return he might receive from the company, he did nothing but lay out his money on the faith of the contract and await the result, the company was in no sense his agent, the company acted independently of the direction or control of any lot holders whose relationship to the company was simply that of persons providing it with money on special terms.

I am wondering how your committee would view a decision such as that.

Mr. Collingwood.—This is a technical matter, which involves a knowledge of taxation; it is somewhat beyond our purview. I might mention that I have been a sharebroker since 1908 and these timber lots have been a curse. A person comes to my office and says, "Mr. Collingwood, I have lot so and so; they are not listed on the Stock Exchange; can you sell them?" The office of the company concerned is not interested in the matter because it is selling other lots. I am impelled to say to my client, "Mr. Jones, I am sorry; I can do nothing for you." The position might develop that the timber matures and the company says, in effect, to the lot holders, "Here is your timber; what are you going to do about it? Come and get it." That is a most unsatisfactory state of affairs from a sharebroker's point of view. I abhor these timber lots.

Mr. Pettiona.—I hand you, Mr. Collingwood, three copies of the Bill that was brought down yesterday in the Legislative Assembly, upon which you will be asked to comment later. Minutes of evidence will be sent to you later. Could this Committee have a copy of the documents that have been referred to this morning?

Mr. Rogers.—I now tender three documents. The first sets out the official list requirements; the second is in the form of an agreement which is to be made part of an application for official listing; and the third is a form of application for admission to the official list.

Mr. Collingwood.—The rules of the Stock Exchange comprise a voluminous document, perusal of which I am sure would satisfy this committee that we aim at protecting the investing public as far as possible. The Stock Exchange of Melbourne has 84 rules and 74 regulations. The Exchange has operated since the year 1884. Previously, there existed the Melbourne Stock Exchange and the Stock Exchange of Melbourne, which were then amalgamated. From time to time certain alterations have become necessary and they have been embodied in the Rules.

Mr. Thomas.—Are the provisions of this document common to all Australian Stock Exchanges?

Mr. Rogers.—Yes.

Mr. Thomas.—Is there much variation?

Mr. Rogers.—Only in the clause concerning control of voting power. The Stock Exchange of Melbourne has a blanket clause to the effect that the twenty largest shareholders shall not control more than 66 per cent. of the voting rights. That is more stringent than the income tax Act, which provides that they shall not control more than 75 per cent. Some of the exchanges, notably that in Sydney, have a set scale for voting. That is the only distinction, otherwise the requirements are the same.

Mr. Collingwood.—I regret that the Chairman of The Stock Exchange of Melbourne, Mr. R. A. Rowe, who is one of the most able men in Stock Exchange circles, and Mr. Ian Potter, another very competent gentleman, are abroad at present. They have a great experience of these matters, and they could help the Committee considerably. However, the remnants of the Committee of the Stock Exchange will do their best to assist.

Mr. Thomas.—On behalf of the Committee, I thank you for your attendance to-day.

The Committee adjourned.

TUESDAY, 4TH MAY, 1954.

Members present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. I. A. Swinburne,	Mr. R. T. White.
The Hon. F. M. Thomas.	

Mr. P. H. Opas, Barrister-at-Law, was in attendance.

The Chairman.—Mr. P. Opas is present this morning to submit suggestions to overcome those deficiencies that enable firms and corporations to evade the provisions of the Companies Act by setting up trustees and disposing of option certificates.

Mr. P. Opas.—I have been looking for means to tighten up two sections of the Companies Act. I understand that the Committee desires to make it impossible for people to be duped in the way they have been by persons making wilfully false promises of one type or another to induce them to invest money in a concern, which may not even be a company—but may be like Power Fuel Industries, a one-man firm—but which nevertheless issues most attractive looking literally gilt-edged securities called option or share certificates, which may be hawked about the country. The persons selling such certificates operate outside the share-hawking provisions of the Companies Act because they are not selling shares in a company. At the same time, however, they may receive large amounts of money from investors who have not the protection of the Companies Act at present because they are not shareholders in a company. The holders of option certificates cannot call a meeting of directors, because there may not be any; they cannot get any direct control in the running of the company, because the company or firm is being run, as far as they are concerned, by trustees fewer than twenty in number. Therefore, under the law only the trustees are carrying on business, and, as I understand the position, because they are fewer in number than twenty they are not covered by the provisions of section 358 of the Companies Act.

I have had the temerity to draft two suggested amendments, which, if they meet with the approval of the Committee, will in general have the effect of preventing share hawking—whether the shares are called certificates or anything else, or whether or not they are shares of profits or assets in a firm or company. They would also restore to the status of shareholders those persons who have already bought such certificates and give them a chance to call meetings of directors or even be appointed as directors themselves. I believe that the Companies Act has been flouted deliberately by many unscrupulous manipulators, who at the moment are acting within the law. Section 358 of the Companies Act reads—

No company association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business other than the business of banking that has for its object the acquisition of gain by the company association or partnership or by the individual members thereof unless it is registered as a company under this Part, or is formed in pursuance of some other Part of this Act or of some other Act of Parliament or of letters patent.

I suggest that at the end of the section the following words should be added:—

A company association or partnership shall be deemed to consist of more than twenty persons for the purpose of this section where more than twenty persons appoint trustees or agents less than twenty in number to carry on business on their behalf, and where the carrying on of such business by such trustees or agents entitles more than twenty persons as beneficiaries or principals of such trustees or agents to share in the profits or losses gained or suffered as a result of such carrying on of business or to share in the assets acquired by such trustees or agents as a result thereof.

I also suggest an amendment to the share-hawking provision of section 356 by deleting the definition of "Shares" contained in paragraph (*a*) of sub-section (8) and substituting—

"Shares" means the shares of a company, whether a company within the meaning of this Part or not or of a firm registered or required to be registered under the provisions of the Business Names Act or of a partnership by means of which the owner of such shares is entitled to receive some aliquot part of or participate in the profits of such company, firm or partnership, or to share or participate in the assets of such company, firm or partnership in the event of its being wound up or ceasing to carry on business, or to share or participate in the losses sustained by such company, firm or partnership, and includes debentures and units and (without affecting the generality of the expression "debentures") all such documents (commonly referred to as "bonds") as confer or purport to confer on the holder thereof any claim against a company, whether such claim is present or future or certain or contingent or ascertained or sounding only in damages.

I believe that those amendments will effect a two-fold purpose:—

1. Persons who have been sold unit or option certificates similar to those which you have heard about in evidence already will be converted to the status of shareholders, so that they will have the full protection accorded to shareholders under the Act. They will be entitled to call a general meeting, to be appointed as directors, to examine balance-sheets and accounts, and to insist on an annual meeting at which accounts can be presented. They will have a direct voice in the carrying on of the business in which they have invested.

2. It will prevent evasion of the Act by the appointment of trustees, less than twenty in number, who at present are entitled to say to investors, "We are carrying on business for you not as agents but as trustees. We do not have to register as a company. You are not shareholders and your rights are limited to those conferred by the contract you have entered into on buying the option certificates. We are under no duty to publish a balance-sheet, and we do not have to tell you how many other option certificate holders there are or how much money has been received for the sale thereof."

Mr. Randles.—If this section were amended, would the trustees be removed from the protection which they at present enjoy under the provisions of proprietary companies?

Mr. P. Opas.—No. I have in mind proprietary limited companies, or even public companies, which issue option certificates or trust certificates—call them what you will. The option certificate holders are not shareholders in a proprietary limited company. Usually, there are two or three trustees for the option certificate holders, and those trustees may or may not be shareholders in the proprietary company. As the law is at present, they will be the only persons carrying on that particular business—not the option certificate holders. There may be, for example, five shareholders in a proprietary limited company, and there may be 2,000 option certificate holders in that same company. The 2,000 option certificate holders would have no direct contract with the company. They are not shareholders, in a sense, although they are the ones who subscribe the money used by the company. If the section is amended as I suggest, there would have to be a separate registration, as a company, of the group of persons comprising the trustees and the option certificate holders. They would be carrying on business as envisaged by the Act, that is, if there were more than nineteen persons formed into an association for the purpose of gain.

Mr. Randles.—If the lot holders in a proprietary limited company became shareholders, the company could no longer remain a proprietary limited company.

Mr. P. Opas.—If there were more than 50 such persons, the enterprise would have to be a public company.

Mr. Randles.—That would alter the situation?

Mr. P. Opas.—Yes. If there were 2,000 lot holders, for example, it would need to be a public company.

The Chairman.—The effect would be to bring all the people who were subscribing the money into the category of constituent members of the company?

Mr. P. Opas.—Yes.

The Chairman.—Consequently, if there were more than 50 persons in the undertaking, they would not have the protection of a proprietary limited company; it would be necessary to register as a public company?

Mr. P. Opas.—Yes. I would think that is the spirit of the Companies Act. If 2,000 people invest in an enterprise, it is surely big enough to come within the category of a public company.

Mr. Randles.—At present the machinery of a proprietary limited company is being used to defraud investors?

Mr. P. Opas.—Quite. Not only is the company set-up used for that purpose but also the registration of an impressive sounding name. A title such as Power Fuel Industries would appear to indicate a pretty big show, particularly when such an enterprise issues attractively produced brochures and gold-edged certificates. Frequently, however, when a search at the Titles Office is made it is ascertained that it is a one-man show. If that one individual can obtain £188,000 from investors, the enterprise should come within the status of a public company.

Mr. Byrnes.—The only protection afforded to the investors is that which is given by means of a trust deed.

Mr. P. Opas.—Yes, but the only trust deeds I have seen—which might be, perhaps, three or four—have been contracts between the trustee and the investor, not between the investor and the company. The company has a separate deed with the trustees. Normally, all the trustee is entitled to do is to receive money paid to him by the company for distribution *pro rata* among unit certificate holders. Often that is done in some ridiculous proportion. In one case which I have in mind the person concerned was entitled to a "one ten-thousandth" share. Of course, if the trustee does not receive any money from the company—that is what usually happens—he cannot make a distribution to the unit certificate holders. The trustee has the right to look at the books, I understand, but a unit certificate holder has no such right. At least, that was so in the cases which I have investigated. Neither have they the right to call a meeting of the trustees. Having no right personally to examine the books of the company they do not know who are the other unit certificate holders. Consequently, they have no means of voicing any protest. As I said before, the trustees' only duty is to distribute such money as is paid to them by the company, but if they receive nothing for distribution, they can make no payments.

Mr. Byrnes.—Do you think that disability could be overcome by having a register of unit certificate holders?

Mr. P. Opas.—I do not think that would be sufficient, because although by that means a unit certificate holder might know who were his fellow victims, in a sense, it would not enable any individual unit certificate holder to have a show-down. For example, if the company was making profits and chose not to pay them, in the form of dividends, to unit certificate holders, but decided to use the money to enlarge the

business by, perhaps, acquiring other undertakings, the unit certificate holders could not protest to anybody to make it known that they were dissatisfied with the conduct of the company.

Mr. Byrnes.—But they could form themselves into a mutual protection association if they knew who the other unit certificate holders were, with a view to safeguarding their interests, and they could then demand information from the trustees?

Mr. P. Opas.—I do not know how they could do that, unless they held the status of shareholders. Of course, they could do it by the method sometimes adopted by cranks who gather on the Yarra bank, thus forming themselves into some sort of a protest committee.

Mr. Byrnes.—You think that would be futile?

Mr. P. Opas.—Yes, they could make a lot of noise, but their protests would be of no avail as they would have no power to take effective action. I am seeking a means by which the protective provisions of the Companies Act can be applied to persons who have invested their money in a company, but have not been given the protection to which shareholders are normally entitled.

Mr. Byrnes.—In your opinion, there is no means of protecting unit certificate holders, except by giving them the status of shareholders?

Mr. P. Opas.—I do not think there is. My suggestion, if it were adopted, could not possibly harm any genuine concern which has unit certificate holders. It is likely that at present many such genuine enterprises give unit certificate holders some say in the management of the company, and treat them as shareholders without being obliged to do so.

I think examples have been cited to the Committee of companies which have bought large areas of land for, say, £5 an acre. After spending perhaps a further £15 an acre to plant trees or fruit, lots are sold bringing in £1,000 an acre. It seems to me, as a lawyer, that the lot holders, who permit the company to make a profit of at least £900 an acre, should have some say, first in the planting and later in the marketing of the produce. In fact, having invested such a large sum of money, I can see no reason why a lot holder should not be eligible to be elected as a director of the company.

Share hawking will become virtually impossible under the amendment suggested. Option and trust certificates which escape the present provisions of the Act will be hit by the proposed amendment. Briefly elaborating on the legal basis under which the present Act is being flouted, the case of *Smith* v. *Anderson* (1880) 50 L.J. Ch. 39, is the authority behind which vendors of option certificates have sheltered. Indeed I have seen a brochure to salesmen, I think in the case of Amalgamated Plastics, in which this case was cited by name and reference to the volume and page of its report to convince salesmen and would-be purchasers of the legality of the scheme. The option certificate seems to have been used, as the Committee has already been informed, to evade the capital issues control. It was given a wider use than this by some unscrupulous people, because not only did large sums of money become invested in ways that would not have been possible by the sale of shares, but the certificates were hawked and sold on wilfully false promises without a prospectus being issued or required to be issued. In addition, of course, purchasers had no say in the running of the business as they would have been entitled to do if they had been shareholders, and did not enjoy the rights or protection given to shareholders under the Act.

In many cases, such as Power Fuel Industries, the options were for some ridiculous share, such as a one ten-thousandth share, of the profits in a firm, not a company at all. *Smith* v. *Anderson* dealt with a deed made between trustees and a covenantee for certificate holders for the purchase of stock and shares in a submarine telegraph company. Certificates of a nominal value of £100 were issued for every £90 subscribed. The deed was between the certificate holders and the trustees. The holders were not in any way concerned with carrying on business as a telegraph company and the Court of Appeal held that this was a scheme for the management of a trust fund invested by the trustees. It was not carrying on business for the acquisition of gain and, further, any business carried on was by the trustees as principals; they, being less than twenty, did not require to be registered under provisions similar to our section 358. In this case action was brought by a certificate holder, who alleged that the association was illegal and claimed an injunction restraining the trustees from dealing with the assets. Lord Justice James at page 49 of the report said—

> The mischief aimed at is to prevent large trading undertakings being carried on by large and fluctuating bodies of persons so that persons dealing with them are put to difficulty and expense from not knowing with whom they are contracting. It cannot be averred that any contract had been made by or on behalf of the body of certificate holders either by any member of themselves or by an agent or manager for them. I cannot conceive how people can carry on business when they cannot enter into contracts.

The case has been criticized quite often without being overruled.

I believe Smith's can be distinguished from most option or trust certificates with which the Committee has been concerned recently because, although option certificate holders do not have a direct say in the management of the company or firm and cannot enter into contracts, they do participate in a direct sharing of profits—at least on paper they do so. However, there is a real doubt about this, and to clear up the obviously undesirable situation whereby a person may be deluded into investing large sums of money in an enterprise with virtually no protection I recommend the amendment of section 358.

I am able to point to one example within my own knowledge. In about October, 1948, Dr. R. J. D. Turnbull, then Minister for Health in Tasmania, apparently made some strong statement in the House concerning Power Fuel Industries, a firm registered in Victoria with a stated business of extracting oil from shale. As a result, Dr. Turnbull was visited by the late Alan Wainwright, a solicitor acting on behalf of the firm, who gave him a copy of a balance-sheet, dated the 15th October, 1948, signed as correct by one J. W. Crowther, L.C.A., Public Accountant. This balance-sheet showed that the firm had received £180,488 14s. 5d. in subscribers' funds and capital reserves. Dr. Turnbull forwarded the balance-sheet to Messrs. Moule, Hamilton, and Derham, who probably have it now. I know I have seen the document as in November, 1948, I gave an opinion relating to it. This money was of course subscribed for option certificates in a firm, not a company. The firm was a one-man show, that man being Arnold Gunton Cooper, now deceased. Even if the figure of £180,000 odd be correct—and it is believed to be conservative—there seems to be something wrong with the legislation if such a large sum can be obtained from the public without the protection of the Act.

Smith's case has been accepted as law since 1880. If it is good law, merely by the device of appointing trustees less than twenty in number to act on behalf of the many investors in option certificates, the provisions of the Act can be avoided. As a matter of

academic interest, I should like to have an opportunity some day of attacking that decision as being wrong, but I may not succeed as the text-books apparently accept it despite the fact that other judges have commented on it adversely without overruling it. Certainly Smith's case was not dealing with anything comparable to Power Fuel Industries or Amalgamated Plastics.

Lord Justice Baggally in *re Siddall,* reported in 29 Ch. D. 1 at p. 6, cast doubts on the correctness of Smith's case.

In *Crowther* v. *Thorley* (1884) 32 W.R., page 330, Lord Coleridge said at page 332—

> Having been no party to *Smith* v. *Anderson* I will admit that it seems to me that where trustees are appointed to carry on business for the benefit of the association which they represent there is an evasion of the Act.

Although Lord Coleridge, who was of equal status to other members of the Court of Appeal, doubted the correctness of the decision in *Smith* v. *Anderson,* no attempt was made then or later to overrule that decision.

In Australian cases, Judges have approached much nearer to declaring a scheme such as that of option certificates invalid. That leads me to hope that in Australia, Judges could be persuaded to distinguish Smith's case and not to follow it. In *re Commonwealth Homes Co. Pty. Ltd.,* 1943 S.A.S.R. 211, a company was formed to issue bonds to be acquired by subscribers in consideration of payment of premiums. The main purpose was to enable subscribers to obtain loans and acquire house property for themselves. On the winding-up the liquidator asked a number of questions of the Court none of which involved any question of the validity of the association of bondholders. Mayo J. at page 227 said, "Another suggested defect common to all bonds but not adopted by Counsel for any party was the carrying on of business as an illegal association." Nobody apparently wanted the association declared illegal and the Judge did not do so, but on his reasoning it seems clear that he would probably have done so if asked.

In *re Tasmanian Forests and Milling Co. Pty. Ltd.,* 1932 Tas. L.R. 15, the Full Court of Tasmania did hold illegal a similar scheme to that in Power Fuel Industries. Clark J. at page 34 said, "Here the timber certificates do purport to create mutual rights and obligations both between the certificate holders *inter se* and the certificate holders and the company and the certificates provide for the certificate holders taking part through their representatives in the conduct of the business of milling and marketing the timber." There the shareholders took part through their representative, namely their trustees, and the Court still found the scheme illegal. This Tasmanian decision was tacitly approved in New South Wales in the "Sunkissed Bananas" case 1935, 52 W.N. (N.S.W.), 188, by Jordan C.J.

Mr. Randles.—I do not think the trustee had any say in the running of the business; he merely looked after the interests of lot holders.

Mr. P. Opas.—That is so; all a trustee has to do is to receive money.

Mr. Randles.—Trustees seem to have been carrying on business operations.

Mr. P. Opas.—In the case of *Smith* v. *Anderson,* the trustees were not carrying on the business but were investing the funds of lot holders in a telegraph company. They were handling a bond investment scheme, but were not carrying on the business so they were not the directors. In that case, the Court was concerned with the business of the investors in the bonds; their business was investment. The trustees were carrying on an investment for the lot holders, but they were not running the telegraph company.

Mr. Randles.—Would not the lot holders have had a right against the trustees?

Mr. P. Opas.—Yes, but that is poor consolation if their money has been lost.

Mr. Randles.—There seems to be analogy between Smith's case and the one you are now discussing.

Mr. P. Opas.—Yes. Smith's case obviously has been in the minds of those who advised persons to invest in the present scheme, and they have been careful to avoid any of the pitfalls that have been delineated in Smith's case.

Mr. Randles.—By making sure that the trustee has not invested any money in the company?

Mr. P. Opas.—They are ensuring that the trustee is not taking any direct part in the management of the business in which the money is in fact being invested.

Mr. Randles.—It follows then that, because Dundas Smith is not investing money in the company, the lot holders will have no right against him unless he misappropriates money that comes to him from the company?

Mr. P. Opas.—Yes, but they would have action against Dundas Smith or any other trustee in accordance with the deed which the individual investor enters into with the trustee. That deed is usually a closely-printed document which contains very little concerning the duties of the trustee; those duties consist mainly of distributing money received from the company. The trustee is bound to do nothing but wait until he receives the money before he distributes it.

The Chairman.—Perhaps I should interpose that although suggestions have been made to the Committee that trustees are in some way in league with the promoters of a company, there is really no evidence with respect to quite a number of trustees mentioned in this inquiry to indicate that they are in that position. It may well be that the trustees are carrying out their duties efficiently, but those duties are such that they are unable under their trust deed to protect the investors.

Mr. P. Opas.—I would say that in at least two cases in which I was concerned, the trustees were reputable people who were as much hoodwinked as were the investors. Their only duty was to receive money from the company and, when it was received, to pay it to the investors. They had no right to investigate the affairs of the company to determine whether they should receive money or not. They merely had the duty of paying out money that they received. Several trustees received no money, so they did nothing, as they were bound to do.

Mr. Randles.—That aspect would not alter the line of my inquiry.

Mr. P. Opas.—That is so. Since the decision in the case of *Smith* v. *Anderson,* those behind these authorized option certificate schemes have taken care to ensure that the trustees are not involved in carrying on the business, so that it cannot be claimed that the shareholders are carrying on the business through their representatives, namely, the trustees.

The Chairman.—The less power a trustee possesses, the more likely is a particular scheme to come within the decision in the case of *Smith* v. *Anderson*?

Mr. P. Opas.—Yes. I should like to argue against that principle, but there is a real probability that I should fail if I did so because the decision in *Smith* v. *Anderson* has stood since 1880 and it is accepted as good law by all text-books. If this Committee

considers that the lack of protection of unit holders at the moment is unsatisfactory and undesirable, and that there is deliberate flouting of the Act, the only remedy lies in legislative action. It is not a matter for the judiciary to determine.

Mr. Randles.—The trustee has no right to act on behalf of the lot holders?

Mr. P. Opas.—The trustee usually has a deed of trust made between the company and himself, but the deed of trust generally gives him no powers; it merely gives him an obligation to distribute money. He may have the right to inspect books or balance-sheets, but I do not think he has the power to take any action if the company is not being run as he thinks it ought to be run.

Mr. Thomas.—Has the trustee no protection under the Trustee Act?

Mr. P. Opas.—His own protection is the trust deed. He is only bound to distribute money that is paid to him.

Mr. Thomas.—Is there any violation of the Trustee Act? Have trustees no responsibility to the people whom they represent?

Mr. P. Opas.—I do not think there is any violation of the Trustees Act because there is no unauthorized investment. The investment is authorized by those persons with whom the trustee contracts. The trustee tells the persons concerned, "I am investing this money for you in certain companies." The trustee and the investors know before they start that the investment is one which the trustee is authorized to make. The investors are aware also of the limit of the trustee's powers to manage that investment, his only power being to receive money and distribute it.

Mr. Randles.—One aspect with which this Committee is concerned is that all of the money subscribed by investors might not reach the books of the company concerned; some of it might find its way into the pockets of directors.

Mr. P. Opas.—In one scheme the purchaser of a unit certificate buys direct from a salesman, and has nothing whatever to do with the trustee. The purchaser signs a document which links him with the trustee through the trust deed made between the trustee and the company, but he is never brought into direct relationship with the trustee himself. In other words, he makes a direct investment in the company on terms whcih require the company, if and when it sees fit, to pay money to the trustee for distribution.

Mr. Randles.—The trustee does not know how much money has been invested and has no means of ascertaining?

Mr. P. Opas.—That is so.

Mr. White.—Does the trustee become a useful unit in the scheme?

Mr. P. Opas.—He becomes an indispensable unit. If the trustee is eliminated, clearly the unit holders participate directly in the investments as shareholders in the companies. Under the scheme, there must be a trustee, otherwise the promoters are subject to the provisions of section 358 of the Companies Act. I have stated everything of substance that I wished to submit to the Committee. Implementation of the suggestions that I have put forward for consideration would prevent undesirable practices such as those that have been engaged in, and would prohibit share hawking.

Mr. Hollway.—As your proposed amendments are framed, would they have retrospective operation?

Mr. P. Opas.—That depends on the legislature. As I have drawn the suggested amendments, the plan would operate retrospectively. Its effect would be that certain existing companies would have to come into line by registering and converting their option holders to shareholders.

Mr. Thomas.—Do you consider that the provision dealing with the memorandum of association could be widened to conform with section 25 of the Companies Act, which states that the subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company? The memorandum could be limited by the fact of persons subscribing to a company through a trustee.

Mr. P. Opas.—In my view, there is a difference. The subscribers to the memorandum are not the same persons as the subscribers to the capital of the company. The subscribers to the memorandum merely undertake to purchase shares to the limit stated opposite their names and guarantee that the company shall have a legitimate basis for commencing business.

Mr. Thomas.—One group consists of persons who come together for the purpose of drawing up a memorandum?

Mr. P. Opas.—To form a company. They are not the same as the persons about whom I have been talking in the sense of their being subscribers to unit or lot certificates. The word "subscribers" does not figure in my proposed amendment. I am concerned there only with persons who contribute money on the basis that they will share in the profits or losses or assets of the company.

Mr. Thomas.—Are they not still subscribers?

Mr. P. Opas.—Only in the sense that they subscribe capital; they are not subscribers to the memorandum. Used in this sense, the word "subscribe" means "to write one's name underneath." Persons who write their names underneath the memorandum, so as to be subscribers in that sense, agree to take the number of shares stated opposite their names and to give the company its start. I have not used the word "subscriber" in the proposed amendment; perhaps that is a little misleading.

The Chairman.—It would refer to the subscribers to the memorandum and not to the subscribers of the capital of the company?

Mr. P. Opas.—Yes. The true meaning of the word "subscribe" is "to write underneath."

The Chairman.—On behalf of the Committee, I thank Mr. Opas for the information he has furnished this morning. He has made some very constructive suggestions concerning a question that has been troubling us, and we appreciate his efforts.

The Committee adjourned.

WEDNESDAY, 2ND JUNE, 1954.

Members present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. H. C. Ludbrook,	Mr. Pettiona,
The Hon. I. A. Swinburne.	Mr. Randles,
	Mr. R. T. White.

In attendance was Mr. Ronald Reginald Stephens, journalist, of Melbourne, employed by Truth and Sportsman Limited.

The Chairman.—You are aware that Mr. Rigg, your editor, has given evidence, and in the course of that evidence he was asked to make certain items available to the Committee. Mr. Rigg said that he would

arrange for you to do so and also to bring forward further items that we desired should be discussed. We shall first deal with the matters mentioned to Mr. Rigg. On page 75 of the evidence appended to the Committee's Progress Report it is shown that Mr. Opas said he supplied you a file relating to the Livingston group.

Mr. Stephens.—Mr. Opas did not actually supply a file but gave me a number of papers referring to that group. I had nothing that built up a consistent picture. I do not think Mr. Opas has made any investigations directly into the companies concerned in the group. I was mystified by the comment in his evidence because, I repeat, he gave me papers but not a file.

The Chairman.—Have you brought those papers with you?

Mr. Stephens.—I have all papers on the subject that I have been given. If we go through them, I can explain them.

The Chairman.—We understood from Mr. Opas that you made an investigation of Sunday Island?

Mr. Stephens.—Yes. We received a report in the office that Hector Leonard and his brother, Gordon Leonard, the promoters of the Tan Bark Development Syndicate had purchased an island in 1943 at Port Albert and known as Sunday Island. Up to that stage, it had been a wild strip of land, infested with mosquitoes, and no one had attempted to develop it. When the syndicate was formed, the ostensible purpose was to plant wattle trees in large quantities, and when the trees had matured, the bark would be stripped and used for tanning hides. Mr. Opas estimated that they had raised £68,000 capital by the use of trust certificates. I do not know on what basis the figures were computed, but that was the sum mentioned to me at the time. We had received letters from people who had invested money in the concern complaining that over a period of seven or eight years they had heard nothing and all they had received from Leonard were unhappy reports, that the concern owed him money, that they had potato crop failures and wattle tree failures and apparently every other misfortune that could occur. Of the vast capital sum it appeared there was nothing left and that the people concerned would be loaded with debt.

I decided to look into the matter and put certain questions to Mr. Leonard, in the public interest. I went to the island, and from what I could see it was a wild and desolate little atoll on which 20 acres at the maximum had been planted with wattle trees. They were so spindly that few of them would have borne my weight. On the island was an aged caretaker who claimed that he was a relative of the Leonards. He was living under poor conditions with his wife and child in an old, dilapidated house, the wire screens of which were all broken. This man was running a few sheep.

Mr. White.—Was there any trace of potato crops?

Mr. Stephens.—Not at the time I was there, but it appeared that a crop had been grown the year before. I have photographs of the alleged plantation and a copy of a list of questions that I put to Mr. Leonard. He has not as yet answered any of the questions. At the time I made my inspection, Leonard was involved in the Wauchope Wolfram Syndicate and a claim in connexion with the syndicate had been made against the Leonards. He had to pay some £40,000 to a number of persons. He promised to do so by a given date, and when he did not pay the matter was taken to court. Then, all matters concerning the Leonards became *sub judice* and I could not deal with this venture. I was not in a position to publish the material about Sunday Island. I produce a photograph showing the operational headquarters on the island; it is not an impressive structure.

Mr. Brennan.—Is the venture going on now?

Mr. Stephens.—I understand there is a man on the island looking after the unhappy wattle trees.

Mr. White.—Has further development taken place?

Mr. Stephens.—There has been no further development. My latest information comes from the fishermen at Port Albert who said there is still a man there looking after the place but nothing further has been done.

The Chairman.—What was the date of your inspection?

Mr. Stephens.—I went to the island in August, 1952. Some of the photographs I produce were taken on an earlier visit but at that time I was not a member of the staff of *Truth*.

Mr. White.—The paper was interested in this matter prior to your visit?

Mr. Stephens.—Yes, because of the complaints that had been received.

Mr. White.—Four years elapsed before a second move was made by your paper.

Mr. Stephens.—Apparently that would be right.

Mr. White.—It is six years since *Truth* was first notified about this matter.

Mr. Stephens.—Yes.

Mr. Brennan.—Is there much natural vegetation on the island?

Mr. Stephens.—There is a lot of small scrub and some gum trees. At one stage, wattle trees were planted and the lines cultivated. I estimate the area of the island to be about 3 square miles. I was told that it can be approached only from the point where we landed. The following are the questions that I put to Leonard:—

1. Are you still the manager of Tanbark Development Syndicate and North Tanbark? Did you promote the company?
2. What did you do before 1940? Where you then a company director and property holder?
3. Comely Park Sand and Gravel Co. Pty. Ltd., was liquidated during the second world war. Is it a fact that shareholders lost £8,000 and the business was under your direction? Did you, upon the company's liquidation, obtain an unregistered debenture over the company's assets which, in effect, shut out all claims by shareholders and creditors?

It appears that Leonard took a debenture over the company's assets. When the company began to show losses irrespective of the capital collected, he pointed out that certain moneys were due to him.

4. Do you consider that the raising of capital by the issue of Trust Certificates is, in effect, an evasion of the Companies Act and another form of share-hawking, which is illegal?
5. Did the Federal Government's Capital Issues Control Board refuse permission for the flotation of the Tanbark Syndicates?

Because of the way he raised the money he did not have to approach the Board. If he had attempted to seek its permission during the period that it operated, he would have been compelled to make a formal application, and I think there was a limitation of about £10,000 at that time.

6. Was Tanbark Development registered in 1940 under your name, and the names of Kevin Mulhall and Huston Christmas? Are the latter two still members?

I was anxious to learn whether Mulhall was involved because he was a salesman for Power Fuel Industries and was an associate of Murray Cameron and other dubious financial adventurers.

7. Who owns the freehold of Sunday Island, you or the syndicate? Who paid for it?

I understood that the ownership was in the name of Leonard.

8. You said in a circular issued in 1942, to unit holders, that 1,500 acres on the island had been planted with wattles. Are there 50 acres of mature, cultivated wattles there now?

9. Did you know that police reported in 1944, they considered no genuine effort had been made to cultivate wattles on Sunday Island?

The Police Companies Squad made an investigation at that time.

Mr. White.—Who gave you that information?

Mr. Stephens.—Mr. Garvey. The next question was—

10. Did you pay £4,000 for Sunday Island and £500 for barges and implements, out of syndicate funds? Will the Titles Office allow a syndicate to own freehold?

All these questions were framed largely on the type of complaint that the paper received from members of the Syndicate.

11. What is being done with the 1,100 acres bought from McPhaill at Yarram for £8,800? Is this land in your own name? How much money has it returned the syndicate on the original investment?

He bought more land elsewhere in Victoria and in both areas had potatoes planted.

12. If sheep and rabbits destroyed the young wattles on Sunday Island, why did you increase sheep flocks there?

He had stated that sheep and rabbits had eaten out the wattles as fast as they were planted.

13. How much wattle-bark has been produced and sold by Tanbark in the past twelve years? Any? How much has been produced by North Tanbark at the Pomonal property? Any?

It was at Pomonal that the other potatoes were planted.

Mr. White.—In the Grampians?

Mr. Stephens.—Yes.

14. Is the 1,644-acre property at Pomonel in your own name?

I understand it is, or was.

15. Your balance sheet of June, 1943, said that £41,000 had been collected from syndicate members issued with Trust Certificates. Your 1951 balance sheet indicated that collections had risen to £66,000. How much of this money remains unused?

It will be noticed that these figures differ from Mr. Opas' estimate of about £68,000, but they have been taken from the balance sheets.

16. Do you pay "unit holders" 4 per cent. interest annually on their investment until a profit is earned? If so, is this interest paid out of subscribed capital? If not, who pays it, and from what investment?

Here was a venture in which a vast sum of money had been collected and from which, reports indicated almost from its inception, there was no basis for actual production or trade. It was stated that wattle trees were being eaten out, that sheep were not getting fat, and that potatoes were being blighted, but despite these factors in the first three years Leonard paid 4 per cent. interest. Where was the money coming from? If he admitted that it was paid from capital, that would be admitting a breach of the Company law.

17. What is the excess of expenditure over receipts in the past twelve years for the Tanbark ventures?

Tanbark Development Syndicate was launched in the year 1940, and the time of which I speak was 1952.

18. Have any "unit holders" sued you for recovery of their money?

I was not able to find any unit holder who had done so or contemplated doing so.

19. Why did potato-growing cease on Sunday Island and at Yarram?

His report stated that the crops had been a failure.

20. Balance sheets show that the syndicate had 49,000 option units subscribed in 1945, and excess of expenditure over receipts of nearly £8,000. Development and profit and loss account was £33,000. What is it now? £44,000? Why?

On the figures, I think that is a fair question to ask.

21. If the syndicate's ventures were continually failing, why weren't the option holders called together and faced squarely with the position?

All that happened was that the unit holders received annually a very dismal report from Mr. Leonard, and as in the case of a number of other ventures of which we have received information and which were similarly launched, when the unit holders were furnished with no facts they called at the head office with the object of interviewing the gentleman concerned. Usually, in these circumstances, he is either out or in the "bush", or if he talks to them he tells them that all will be fine by and by, but at the moment there are problems to be overcome.

Mr. Pettiona.—Was there a trustee involved here?

Mr. Stephens.—Yes. Leonard signed the documents as manager, but there is always a trustee for the unit holders. I have the accounts of the Tanbark Development Syndicate as at the 30th June, 1951. The balance sheet and profit and loss account are merely counter checked and guaranteed by A. G. Waterland, public accountant. He would not be the gentleman concerned.

22. Balance sheets show that your personal land account was reduced from £5,900 in 1941 to £3,191 in 1945. Why? Did the syndicate earn any money to justify this?

The inference in the question is merely this: "You have taken out another £2,000 to reduce your personal account, yet the company is making losses. Where does the money come from? Who authorized it?"

23. Your advance account and property account was £7,900 last year. What is it now?

In the report there was no indication of what it was.

24. Are you, in fact, a substantial creditor of the syndicate? Will you have a claim on its assets should it fail?

In fact, that is so. The basis of the flotation was that Leonard raised the money but was placed in the position of holding debentures and of being a creditor, so as the company failed he acquired its assets. He could not possibly lose.

25. Development and profit and loss account has risen from £3,969 in 1941 to £44,915 in 1951. Does this not in fact represent the syndicate's loss?

In my opinion, if the figures deny any other reasonable explanation, that is one deduction that could be drawn.

26. How much of this loss is stood by unit holders, and how much by you?

I should liked to have had his answer to that question. Considering the organizational principle of the company, I think Leonard would stand to lose nothing, no matter what happened to Tanbark Development Syndicate; but I may be wrong and he may have a bigger and warmer heart than I consider he has.

27. Who signs the syndicate's cheques? Has any indemnity policy been taken out to safeguard unit holders in the event of loss?

Probably it can be safely said that the answer to this question is in the negative, nor was it proposed or contemplated.

Mr. Brennan.—Were these questions in fact tendered to Leonard?

Mr. Stephens.—Yes.

Mr. Brennan.—He did not reply to them?

Mr. Stephens.—That is so. They were taken to his office, but he was not present.

Mr. Brennan.—The questions were not published in the newspaper?

Mr. Stephens.—No. They were tendered to him for his reply, and since none was received, they were not published.

Mr. Swinburne.—Did you expect to receive a reply?

Mr. Stephens.—I thought we might get some sort of answer.

28. Who is your present auditor? How many have you had? When will your next balance sheet be produced?

29. Have you guaranteed the bank overdraft? What happens if you withdraw the guarantee? On May 21 last, you advised unit holders that you might not be able to continue making advances on loan to keep the syndicate afloat until it became self-sufficient. Does this mean you are preparing to wind up the syndicate altogether? If that happened, what money and assets would you then claim as your own?

Mr. White.—Did the unit holders have meetings?

Mr. Stephens.—I could not swear whether they did or not. The unit holders who complained of having lost money stated that they were never called to a meeting and that any attempt they made to obtain information on the progress of the company was met with blandishments and prepared roneoed letters which conveyed nothing. They were never called to a meeting at the stage of which I speak.

The Chairman.—You submit to the Committee a list of questions which were prepared for answer by Mr. Leonard; you sought answers from him and he did not answer any of the questions?

Mr. Stephens.—That is so. I received no reply after I left the questions at his office.

The Chairman.—You did not personally interview him?

Mr. Stephens.—No. I did not see him personally at any stage.

The Chairman.—Did you leave them to be answered?

Mr. Stephens.—Yes. When I received no reply, I endeavoured to see Leonard at his home. I understood that he lived at Mentone and I saw a brand new palatial residence there—a very impressive house. I expected that I would find him there, but he was not in.

Mr. Pettiona.—You have never seen him?

Mr. Stephens.—I have never spoken to him.

Mr. Swinburne.—On your inspection of Sunday Island, did you find that any of the wattle trees had been stripped?

Mr. Stephens.—From recollection, I should say no. Those I saw had not been stripped. The wattles were very young, and there were very few that I would have wanted to swing on.

Mr. Swinburne.—One photograph that you have submitted indicates that the wattles were nearly to the size at which they are normally stripped.

Mr. Stephens.—Yes. The overseer stated that they would be stripped shortly.

Mr. White.—From your knowledge, was any revenue derived from any of the company's activities there?

Mr. Stephens.—I believe the answer to that question is contained in the profit and loss account of Tanbark Development Syndicate for the year ended 30th June, 1951—that was for the year ended twelve months before I visited Sunday Island. From memory, this does not show any evidence of trading. It contains no indication of any trade or sale of material from there. It merely lists the expenditures, which are considerable.

The Chairman.—It indicates that about £2,000 was spent during the year.

Mr. Swinburne.—What happened to the sheep?

Mr. Randles.—Mr. Opas submitted a report which gave the capital cost of the sheep. After two or three years the figure was suddenly removed from the statements issued, and the reason given was that the sheep had been drowned when being taken either to or from the island.

Mr. Stephens.—I believe there was something of that nature. I submit the development and profit and loss account and balance sheet of Tanbark Development Syndicate for the year ended 30th June, 1951, together with a progress report signed by Mr. Leonard, as manager, issued by Tanbark Development Syndicate and dated 21st May, 1952.

Mr. White.—I assume that Mr. Stephens saw sheep on the island?

Mr. Stephens.—Yes.

Mr. White.—Did you inquire how many there were?

Mr. Stephens.—I did. There were only a handful, a few odd sheep straying in the scrub—I suppose a dozen or so. They were hardly worth mentioning.

The Chairman.—Were you not told by the caretaker that he was running the sheep for his own benefit?

Mr. Stephens.—Yes. They belonged to the syndicate, but he stated that he was running them for his own benefit to keep down the grass, which grew quickly, around the dwelling house.

Mr. Pettiona.—Did you form the opinion from your investigation that, whatever Leonard had done, he was actually evading the share-hawking provisions of the Act?

Mr. Stephens.—Certainly.

Mr. White.—Most of the questions you put to Leonard were framed because of correspondence that had been received from unit holders?

Mr. Stephens.—Yes, and personal complaints, plus my own analysis.

Mr. White.—Did you answer the letters received from the unit holders?

Mr. Stephens.—Yes, we always do so. A person may write or call at the office and say, for example, "I bought £3,000 worth of unit trust certificates in an organization called Tanbark Development Syndicate. I have had the money invested for seven years and have received no return. I am a bit worried. Do you think I should consult a solicitor or go to the police? Do you know anything about these people?" That happens to us every day. From memory, many complaints were received about this syndicate in 1952. I went to see Mr. Opas and asked him what he knew about Tanbark Development Syndicate. He gave me some assistance, and I decided to visit Sunday Island. After I had done so, I prepared the list of questions for submission to Leonard and attempted to find him, but when the court case concerning the Wauchope Syndicate came on, the whole matter was *sub judice,* so the material was not published in the paper. Normally, I would have tracked down Leonard until I received his replies, but there was no point in doing so if I was prevented from publishing them.

Mr. White.—Did you answer the queries of the unit holders?

Mr. Stephens.—We wrote letters to them.

Mr. White.—You have not heard any more from them?

Mr. Stephens.—Not in the last few months.

Mr. White.—So far as you know, they could have been paid off or otherwise pacified?

Mr. Stephens.—Any action whatever could have been taken in the last twelve months, but I have not heard of any developments. If anything drastic occurs, I usually hear of it. Persons I contact concerning matters of this nature learn these things and they inform me. I have available sources of information. If Leonard had taken any action in the matter, I think I would have been advised.

Mr. Randles.—According to the balance sheet, the amount subscribed was about £40,000. I gather that you have not had any evidence of a comparable amount having been expended?

Mr. Stephens.—That is so. According to Leonard, the total sum of money involved was £66,000, but according to Mr. Opas it was £68,000. In any case, it is reasonable to say that tens of thousands of pounds were raised. I wanted to ascertain where the money had gone. If an organization had been operating on a sound business basis, or a basis of sound expectation, one would expect the money to be invested in such a way that the assets could be clearly seen.

When I visited this small atoll, which is a natural breeding ground for the enemies of mankind, I found that there were a few wattles growing in the scrub, and there was one man looking after a few sheep. According to their figures, operations had been going on for twelve years, but the property was yielding little or nothing.

Mr. Brennan.—Would you say that the scrub was of comparatively recent growth?

Mr. Stephens.—It looked to me as if there had been an initial attempt to lay out a proper and impressive plantation, but subsequently over the years—between the time of the laying out and when I saw it—it had been neglected, and one could see that the effort to maintain it at the original level had been abandoned. Consequently, it had become overgrown and neglected in appearance, and many of the wattles were dead.

Mr. Brennan.—There was only a caretaker on the island?

Mr. Stephens.—Yes.

Mr. Brennan.—Was he employed by the company?

Mr. Stephens.—Yes. I think his job was to tend the plantation, but I do not know what that involved as I am not a technician.

Mr. Pettiona.—You have none of the original advertisements put out by Leonard in which it was stated what he was going to do, and how he was going to do it?

Mr. Stephens.—No.

The Chairman.—Perhaps the following report on the Tanbark Development Syndicate which the Committee have from the Police Department, dated June, 1944, might answer a number of these questions:—

No. 1 Division,
June, 44.

TANBARK DEVELOPMENT SYNDICATE—complaint regarding activities of the manager, Hector Victor Leonard.

1. I have to report that on receipt of attached letter from Mr. Opas, Public Accountant, of 243 Collins-street, Melbourne, I interviewed him in regard to the activities of Hector Victor Leonard, manager of Tanbark Development Syndicate of 334 Collins-street, Melbourne.

2. Mr. Opas informed me that owing to his knowledge of Leonard's past activities, particularly in regard to Comely Park Sand and Gravel Co. Pty. Ltd., of which Leonard was manager, where the shareholders and creditors lost over £8,000 as a result of Leonard obtaining an unregistered debenture over the assets and effects of the company, so that on liquidation the shareholders and creditors were shut out. He had no doubt that Tanbark Development Syndicate was another of Leonard's schemes to defraud the public.

3. Apart from the personal knowledge Mr. Opas has of Leonard, the main points of his complaint in regard to his activities with the Syndicate are:—

(*a*) That paragraph 5 of the endorsements on the back of the Certificate of Ownership is *ultra vires,* and being so, the Syndicate should be registered under the *Companies Act* 1928.

(*b*) That having more than 25 members, the Syndicate is committing an offence by not being registered under the *Companies Act* 1928.

(*c*) By canvassing for subscribers they are "share hawking", which is an offence under National Security Regulations in force.

(*d*) They cannot seek capital for its purpose without the permission of the Federal Treasurer being first had and obtained.

(*e*) They cannot form a company without the permission of the Federal Treasurer being first had and obtained.

5. Paragraph 5 of the endorsements on back of Certificate of Ownership reads: "The contract evidenced by this certificate shall not be deemed to create the relationship of partners between the Holder and members of the said Firm, and the Holder shall not be subject to any liability in respect of the business carried on by the said Firm: The said Firm hereby indemnifies the Holder against all claims and demands whatsoever kind which may be made upon the Holder in respect thereof."

6. As the Unit Option Holders accept the conditions that appear on the back of the Certificate of Ownership, it seems that paragraph 5 of the conditions debar them from being members of the firm: Therefore the Companies Act would not apply to this Syndicate, and no action can be taken in this respect.

7. Tanbark Development Syndicate was registered as a firm on the 14th October, 1940, under the provisions of the *Business Names Act* 1928. Members of the firm as registered are:—Kevin James Mulhall, of St. Cross Hotel, King William-street, Adelaide; Commission Agent. Huston Christmas, of 60 Foley-street, Kew; Commission Agent. Hector Victor Leonard, of 5 Hayball-court, Brighton; manager. It is stated in the registration that the general nature of the business is to plant and cultivate wattle trees; strip, prepare and market the bark and/or produce derived thereform. Scene of operations to be at Sunday Island off Port Albert.

8. It has been stated by the firm through the medium of literature published and an endorsement on the Certificate of Ownership issued to Option Unit Holders, that the objects of the firm are:—

(*a*) To complete the purchase of freehold land situated in the Parish of Sunday Island, County of Buln Buln.

(*b*) To plant and cultivate wattle trees on the said land; strip, prepare and market the bark and/or products derived therefrom and do all other acts and things as shall reasonably be required in connexion therewith to further the interests of the firm.

According to a pamphlet issued by the firm to Option Unit Holders (published in *Smiths Weekly* on 1st August, 1942) it appeared that the firm had 1,500 acres of land planted in wattle trees on Sunday Island.

9. Inquiries were made by Senior Constable Castles, of Yarram, and he reported that although five men were employed on the island, no genuine attempt was being made to cultivate wattle trees.

10. Inquiries have been made by me on Sunday Island and in the Yarram district regarding the activities of the Syndicate. The purchase of Sunday Island was transacted by Hector Victor Leonard on behalf of the Syndicate. Purchase price being £4,000, including £500 for barges, boats, and sundry implements on the island. The vendor, Mr. Ray Stockwell, now residing in Yarram, informed me that the full purchase price had been paid by Leonard. The transfer has not yet been effected from Stockwell as the consent of the Farmers Debts Adjustment Board has first to be obtained. Further the Titles Office will not allow the title to be in the name of a Syndicate, therefore it seems that Leonard will be the owner.

11. At the time of my visit Mr. Joseph Gaben, manager of the property, was busy removing plant, &c., from the island to a property in the Yarram district, consisting of

1,100 acres, which the Syndicate had purchased from a Mr. McPhail for £8,800, provided consent of the Federal Treasurer was obtained. Work on the island had ceased. One man, apparently caretaker, was employed there. About 100 wattle trees were growing behind the woolshed. There is evidence of a fairly large area having been planted with wattle trees, but the hearts of the young trees, which were about 1 foot high, had been eaten out. Although Leonard was aware that sheep and wallabies would eat young wattle trees, he placed a large number of sheep on the island after the seedlings had been planted. Machinery, bags of potatoes, and manure and plant generally was laying about the jetty at Port Albert.

12. The property at Yarram which the Syndicate were negotiating the purchase of from Mr. McPhail, was being ploughed in preparation for planting of potatoes for the Army. About 600 sheep on the property had been purchased from McPhail and paid for. McPhail informed me that he was at a loss to know how a manager and four or five men were going to pay dividends for the Syndicate, as he worked the property alone and got a fair living only. Permission to purchase this property was refused the Syndicate by the Commonwealth Government. The reckless spending of money in the purchase of stock from McPhail; the ploughing of a large area of land; and the removal of stock, plant, &c., from the island to the property, prior to permission to purchase having been obtained, shows the regard he had for money belonging to the Syndicate.

13. I later received information that Leonard had registered North Tanbark Syndicate. Inquiries at the Titles Office reveal that North Tanbark Syndicate was registered as a firm under the provisions of the *Business Names Act* 1928: Registered number of firm 80316. The members of the firm are Hector Victor Leonard, of 5 Hayball-court, Brighton, manager; and Trevor William Webster, of 255 Gleneira-road, Caulfield, gentleman. The general nature of the business is stated as Rural Lands Development at Pomonal, Victoria.

14. Inquiry at Pomonal reveal that Mr. A. Hately of Pomonal sold his farm consisting of 1,644 acres to North Tanbark Syndicate. About 50 acres of wattle trees have been planted; Mr. Hately was managing the property for the Syndicate. The only plant on the property belonging to the Syndicate was two tractors and a motor car. Permission to buy this property was refused the Syndicate by the Commonwealth Government.

15. The balance sheet issued by the Syndicate some time after June, 1943, shows that option units to the value of £41,326 15s. had been accepted. Of this amount £9,023 10s. is owing on units allotted and payable by instalments; thus the Syndicate has received £34,303 5s. in cash. As no profits are derived until time production commences the interest rate of 4 per cent. on fully paid up units is being paid from capital. Excess expenditure over receipts until the 30th June, 1943, is shown at £20,015 16s. 10d.

16. Moule, Hamilton, and Derham, solicitors, of 394 Collins-street, Melbourne, are acting on behalf of a number of unit holders. They are contemplating civil action against Leonard. In addition a writ for £5,000 has been issued against Leonard by two option unit holders in Tasmania.

17. As a result of interviews with a member of the Commonwealth Taxation Department, an audit examination of the books of the Syndicate was to be made. No evidence that would assist the inquiry was obtained.

18. Harold Keith Cartledge, chartered accountant, of 330 Little Collins-street, Melbourne, was auditor for the Syndicate until February, 1944. He has been interviewed and stated that he could find no evidence of fraud by Leonard. He stated that he spent the funds of the Syndicate in a very reckless manner.

19. No evidence has been obtained to support a criminal charge against Leonard; at the present the most that can be said is that the venture has turned out a failure as far as the option unit holders are concerned.

20. Leonard is at present in South Australia; he will be interviewed on his return, when his description, &c., will be obtained for recording at the Information Bureau.

21. Mr. Opas has been informed of the result of police inquiries.

That report is not signed, but Mr. Stephens says that he believes that is was compiled by the Police Companies Squad.

Mr. White.—Where is Leonard now?

Mr. Stephens.—I believe that he has an office in McEwan House.

The Chairman.—Another letter in the file, written by W. Neville Harding, specialist in taxation, of 91 Phillip-street, Sydney, addressed to Mr. J. Opas, 243 Collins-street, Melbourne, reads:—

Dear Joe,

It has come to my ears, in connexion with that investigation you were conducting. that Mr. Leonard, about June, 1934, was concerned with a matter of payment of damages to a doctor in Adelaide . . . .

At that time he was associated with Woolcott Forbes' organization, and he had to swear, in order to escape paying the damages, that he did not receive enough money to live on, so someone from the Forbes organization—I think called Taylor—gave evidence in support of Leonard, which was quite false.

You may already know something of this.

Mr. Stephens, will you leave with the Committee the file of cuttings relating to Leonard; it may be of some assistance.

Mr. Stephens.—Yes.

The Chairman.—Could you proceed with the case of Bernco now?

Mr. Stephens.—Yes. I cannot support the case concerning Bernco with documents; the only things we have on the matter are press cuttings of two articles that we published. I can produce those to the Committee to-morrow if they are required, but I do not know that they mean very much. I dealt with this matter personally the whole time, and I can relate the story as I experienced it. We received our first complaints about Bernco Products at the beginning of 1952, when women brought us attractive folders printed in red, white, and blue, showing the name of Bernco Products International Proprietary Limited, and giving the address as 422 Collins-street. The folder listed household goods that could be purchased by lay-by on the basis of door to door canvass. The goods comprised cutlery, linen, glassware, radio and electrical appliances, kitchen furnishings, glory boxes, clocks, carpets, sweepers, and other household goods. The complaints were that when people paid their money and went to collect their goods they could not find anyone at home. Apparently there was no one at 422 Collins-street. The women were told, "We are sorry, we have not got anything in the warehouse at the moment. We are having a difficult period; will you put it off for two or three weeks?"

In November, of 1952, I decided to go and find the gentleman named as the managing director—Mr. Bernard L. Foley, of Farrington-road, Kalorama. With another member of our staff—he is no longer here, he is in London at the moment, Mr. Michael Williams—I interviewed Mr. Foley in his office at 163 Johnston-street, Collingwood. Mr. Foley was a very disconcerted gentleman. He was not at all reluctant to answer our questions, and the purport of his answers was, "I have got myself into a very difficult position, and I do not know how I am going to get out of it. I hope you people will bear with me." He said that he and his wife had been induced by a man named Copas and his wife——

Mr. Pettiona.—Did you know of the company being known by any name other than Bernco?

Mr. Stephens.—No, I knew it as Bernco then. His story was that he had been induced by a man named Copas to invest money in an organization known as Cambridge Sales, the registered business address of which was in High-street, St. Kilda.

Mr. Pettiona.—Does the name of "Bern" ring a bell with you?

Mr. Stephens.—I have never heard of any Mr. Bern in connexion with the matter at all. I doubt very much whether there would be, as I knew the men who were associated with the organization; I have

spoken to them all over a period of time. Cambridge Sales also had a branch office in Launceston, and had sold quite a number of lay-by orders in Northern Tasmania. At the time Foley told me his story, Cambridge Sales had in fact folded up. Foley told me that Copas had induced him to put money into Cambridge Sales and that Copas had collected from house-holders, as a result of a door to door canvass by salesmen working on his behalf, several thousands of pounds in respect of goods for which time payments would be made over a maximum period of ten months, in which time the goods would have to be delivered. Foley said that when Copas collected all this money he simply vanished, and that he could not find him. He said that subsequently he had been to the police and had found that the police had a warrant out for the arrest of Copas for false pretences. I did not find that to be so, but I understand that the police were anxious to interview Mr. Copas at that time. I have never heard of them ever finding him anywhere. Copas did in fact vanish; I checked that subsequently. Foley said that when Copas vanished he was left with a lot of debts, because he really had a very small capital—he was under-capitalized if anything. He admitted frankly that he had relied for his operational basis in the business on being able to use the moneys collected in advance from the lay-by subscriptions to buy the goods when the period of satisfaction of the client became due.

Foley had no reserve capital, and he collected the money in advance. He bought goods to satisfy some clients. He allowed nothing for bad debts or fluctuations in market prices. He had a margin of 10 per cent. to cover his business operations. He said that rising prices had affected his estimates and he could not satisfy all orders unless given time. At that stage he sought consideration on behalf of clients to enable him to get in more money to buy goods. He was getting further behind and he needed further capital. I formed the opinion that Foley was an honest man basically, but he was a fool. He had only a vague notion of how to conduct the business.

The Chairman.—Although he was involved with Cambridge Sales with Copas, he formed Bernco Products to carry on the project?

Mr. Stephens.—Yes. He said he did not like to see the people concerned in Cambridge Sales let down. He felt the business idea was sound and that if he extended his operations he could make sufficient to pay back all these people. The clients of Cambridge Sales were let down by Copas. Foley wrote a letter to the clients of Cambridge Sales guaranteeing that he would satisfy their requirements.

Mr. White.—Did he satisfy those clients?

Mr. Stephens.—I do not know how many were satisfied. Foley worked on a hand to mouth basis and those who kicked up a fuss usually got something. He told me of solicitors and business men he had approached to put further capital into the business and he thought that everything would be all right.

Detective Garvey told me that after he had gone through Foley's account he had concluded that the business would continue to lose money. The figures showed that Foley was progressively getting further into debt. The allowance for profits was too small and the overheads were too large. The money was collected in an unbusinesslike way. Detective Garvey told Foley that he could not hope to shelter behind the police by saying to them "I am in trouble; will you be kind to me." He had no right to collect money from the public when he knew that he could not satisfy his contracts. I think that was the reasonable view.

We averaged one complaint a week in this matter. I have known three or four complaints to be received on one day regarding Bernco Products. Foley had a salesman working in Adelaide and he alleged that this man took the money collected from 400 customers and forwarded only a small portion to the company. That alleged dishonest behaviour increased the liability of the company almost to the point of bankruptcy. *Truth* published an article warning Adelaide people about this Bernco branch.

In March or April of last year, Foley informed the police company squad that he had ceased to accept any further orders and was merely going to collect instalments due on contracts made and to satisfy them. He realized that the way the business was being conducted that it could end only in the ditch and he said that he would not take further orders. Foley was an extraordinary man and I did not know whether he was innocent, cunning, or merely stupid. Imagine a sound business man saying "I have stopped my business and no one can take action against me now."

It became clear that he could not satisfy the orders and about June or July he went to a man named Walker in Plenty-road, Preston, who had a thriving radio and electrical business, operating on the hire-purchase agreement basis. Foley arranged that Walker should take over the commitments of the Bernco Products in the metropolitan area. I understand the plan accepted by Walker was: "You operate on a hire-purchase basis. I cannot satisfy these people completely but I would like them to get something. If a person has paid £5 off a £20 payment for a radio set, will you let them have the radio set and allow them as discount the amount paid. That will relieve me of responsibility in the matter." Persons who had paid, say, £15 or £16 and only had to make one or two further instalments were the sufferers as Walker would give them only a small proportion in the way of allowance for what they had paid. According to Foley, Walker would not take over the entire commitments of those people. He would take over the commitments completely when there was not much involved. In other words he gave those people a discount.

According to Foley, Walker regarded this as a good proposition because it meant that the 600 or 700 clients of Bernco in the metropolitan area became his clients, and good salesmanship on his part was not required when a person said to him, for example, "I have paid £10 towards a glory box on a lay-by account. Can you give me one?" He would say, "I do not sell glory boxes, but I will allow you £10 off the price of a £150 refrigerator." It was very good business for him. In my view, he would have been happy to make such an arrangement, and he did that. Foley circulated to Bernco's clients a very oddly-phrased letter, of which Detective Garvey has a copy. It did not state, in effect, that Walker had taken over his commitments, as such, but it said that all clients would be satisfied; they merely had to have a little patience, and when their orders fell due they were to visit Walker at Plenty-road, Preston, and he would fulfil them.

Mr. White.—Did this arrangement apply only to metropolitan clients?

Mr. Stephens.—That was the plea. It may have ended up being country clients instead. Foley told me in July last year that he would make arrangements to satisfy country clients, indicating that Walker would handle metropolitan only.

Mr. Pettiona.—Do you know if there were many metropolitan clients?

Mr. Stephens.—There were dozens of them. They came into the office continually.

Mr. Pettiona.—Are you sure that they did not originally make their contracts in the country?

Mr. Stephens.—They may have done so. I can only relate the story that Foley told me. What in fact happened is a matter for other investigation. I think the police have a thorough knowledge of what occurred. Foley also admitted that he had become involved with an organization named D. and M. Enterprises, which was operating on a similar basis. It was a lay-by organization such as his, and was taking over some of his responsibilities. Representatives obtained orders by canvassing from door to door. The goods were to be delivered when payment of the lay-by instalments had been completed. According to him, he transferred only some of his clients from Bernco to D. and M. Enterprises, which subsequently became bankrupt and is now in the hands of a liquidator.

The Chairman.—Has Foley since left Victoria?

Mr. Stephens.—Yes. Foley remained at Johnston-street, until November and then began selling his assets. At the end of that month he sold his home at Kalorama, from which I understand he did not get much cash because it was heavily mortgaged, and disappeared. I heard that he went to Coff's Harbor, New South Wales, and then to Brisbane. Last week in the Fitzroy Court of Petty Sessions action was taken against Bernco Products. In his absence, Foley was convicted on a charge of having failed to keep proper books of account and sentenced to imprisonment for six months.

Mr. Brennan.—That punishment cannot be enforced.

Mr. Stephens.—That was the story published in the *Herald.* The police may have other views on the matter. The period allowed for an appeal has not expired.

Mr. Brennan.—I understand that other charges are to be preferred.

Mr. Stephens.—As a result of the activities of the Bernco company, I obtained from Sydney a copy of the New South Wales Lay-by Sales Act and wrote an article for the paper in which I strongly suggested that similar legislation should be passed in Victoria to prevent anybody from operating a business on the basis that Bernco did. I advocated that such a company should have adequate capital or give guarantees.

The Committee adjourned.

THURSDAY, 3RD JUNE, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. H. C. Ludbrook.	Mr. Randles.

Mr. R. R. Stephens, journalist, of Melbourne, employed by Truth and Sportsman Limited, was in attendance.

The Chairman.—Mr. Stephens will comply with our request to his editor that he should supply to the Committee all the information that he has concerning what has been loosely called the Livingston group. Probably it will be more accurately described as relating to the Mount Gambier forestry companies.

Mr. Stephens.—In the past three years, when I have been at *Truth* office, I have received letters, telephone calls, and personal visits from persons residing in various parts of Victoria who have asked the opinion of the newspaper concerning the future of their investments in the Mount Gambier forestry companies. All these persons have been lot holders who took out lots in this group of companies between 1931 and 1943. In every case the complaint has been to this effect: "We have put our money into these lots. Every year we receive a neatly-printed letter from the lot-holders' trustee informing us of the progress of the growth of forests and future intentions, but as yet we have received no money. We are a bit restive about it and want to know whether any information is available from any official source as to what is really going on."

The Chairman.—Can you name any of the persons who have made complaints to you?

Mr. Stephens.—Yes. I could name some of the persons. A number of them know that the matter is being discussed by this Committee and they have informed me that they are not unwilling to have their names mentioned. One person is Mr. Verdun Clare Brindley, of Avondale, Walwa, Victoria, pastoralist.

The Chairman.—For purposes of identification, can you state the lots in which he is interested?

Mr. Stephens.—Yes. There are two lots in C.A.P. Softwood Industries, Issue 10B; eight lots in C.A.P. Treatment Company Proprietary Limited, plantation number Special 5A; two concessions in C.A.P. Softwood Industries, Issue Special 8B; and two concessions in C.A.P. Softwood Industries, Issue Special 8A. I produce the contracts for the Committee.

Mr. Brennan.—I take it that these are merely contracts and that there is no trust deed?

Mr. Stephens.—That is so. I have a copy of a statutory declaration made by Bridget Mary Bishop, of 109 Disraeli-street, Kew, made four years ago. The declaration was made in connexion with an inquiry we were conducting into the activities of convicted share hawker Arthur Murray Cameron. In the text of the statement, Mrs. Bishop stated that in the middle of October, 1944, Mr. M. J. Cameron, who was manager of Softwood Milling Products, induced her to purchase bonds in Softwood Milling Products. She did not state the amount of her purchase and I have not the details of her lot numbers, but I daresay they could be ascertained.

In the statement, Mrs. Bishop stated that Mr. M. J. Cameron said to her that he was leaving Softwoods and going into Bristo Plastics with Mr. A. M. Cameron, and induced her to buy trust certificates in Bristo Plastics in addition to her holdings in Softwood Milling Products. This statement, and others that I have, make it clear that Mr. Cameron at that time was peddling interests not only in Bristo Plastics in the form of trust certificates but also in the Mount Gambier forest group, by whom he was employed. I submit this document.

I have another statutory declaration by Mr. N. A. Miller, of Dalmore, referring to a discussion with a share salesman, named Lewis, who was also peddling interests in Bristo Plastics. In the statement, Mr. Miller says:—

> Lewis had tried to see me *re* C.A.P. Shares—Softwood Industries. He said that Company (Bristo) was buying Softwood Products. He spent two nights first week at my house. One night second week. One night third week. He produced a book full of photos and sanctions from Government concerning making of products and buildings owned by Company—

The rest of the document refers only to Bristo Plastics, but I tender it all as an exhibit.

Mr. A. C. Herbst, of 8 Stawell-street, Kew, informed me that he invested more than £1,000 in acre lots of pine plantations between 1930 and 1932. He received

a return of £20 on each lot, for which he paid £50, and he was induced by Mr. Dundas Smith in 1946 to transfer his holdings to C.A.P. Treatment Company.

Mr. Brennan.—The dividend was £20 for each £50 invested?

Mr. Stephens.—Yes. He placed that money in the C.A.P. Treatment Company.

Mr. Pettiona.—How long after he had made the original investment did he receive the £20 dividend?

Mr. Stephens.—From fourteen to sixteen years, according to the individual purchases. He made purchases over a period of two years.

He was dissatisfied with his investment, as he felt that the return was quite inadequate considering the period of time his money had been in the hands of the companies.

Mr. E. N. Luthold of 154 Almond-avenue, Mildura, also came to see me. He was one of the early investors and was in possession of the first prospectus put out by the companies in about 1929 or 1930. Mr. Luthold told me that he had visited Dundas Smith several times since 1945 wanting to know why no money had been returned on his investment after the elapse of a period of from fifteen to twenty years. Mr. Luthold alleged that he had received no satisfaction at all. I produce a copy of a letter that he sent to Mr. Dundas Smith; it reads:—

Dear Sir,

As I am lot holder of three milling bonds of £30 each (total £90) purchased 7th October, 1933, and which was supposed to return me £500, per £30 bond, in not later than fifteen years according to contract issued by Consolidated Forests and Milling Company Limited, Registered Office, 13 Grenfell-street, Adelaide, South Australia in the booklet dated 24th September, 1931, I am very much perturbed and disappointed not being in receipt of any revenue, or even indication of any, after just on nineteen years since purchase. Have made inquiries on many occasions to the Secretary, C. J. Lauer, 422 Collins-street, all I could get is a lot of excuses for years past. Also that everything is progressing very well, as far as we bond holders are concerned I can not see anything good or nice about it to our benefit.

I am also lot holder of one (1) lot number 16 B.26 which cost me £70 and which was to return me £200 by not later than 1st November, 1952. Up to date no sign of any return at all.

Now, as our Trustee I would like to ask you a straight question, is the Company going to pay up on my three bonds according to contract as outlined in the booklet issued 24th September, 1931, and on lot 16 B.26 according to agreement number 26, paragraph 7, dated 28th May, 1942.

If no satisfactory payments are made in the near future, what right have I and what proceedings can I take to recover my just dues.

Up to date the whole business has been most unsatisfactory. As you are lot holders' Trustee you surely can give me full details and advise as to future action in this matter.

Thanking you in advance for an early reply,

I am, Yours truly,

E. N. LUTHOLD.

Dundas Smith sent Mr. Luthold a reply but I have not a copy of that document. The date of Mr. Luthold's letter to Dundas Smith is the 28th April, 1952.

Mr. Brennan.—Was the reply from Dundas Smith a printed report or a personal letter?

Mr. Pettiona.—Mr. Luthold received a personal letter, which is in my hands. Following on Mr. Stephens's remarks relating to Mr. Luthold, I might mention that Mr. Luthold has forwarded to me various documents, contracts, and letters received by him from Mr. Lauer and Mr. Dundas Smith. These documents were obtained by me with the assistance of Mr. Lind, the honorable member for Mildura, who contacted Mr. Luthold and asked him to send this material to me. In forwarding the documents to me Mr. Luthold did not enclose a letter relating his experiences, but they include the reply of Mr. Dundas Smith to the letter sent by Mr. Luthold. That letter is dated the 7th May, 1952, and reads:—

Dear Sir,

I have to hand your letter of 28th ultimo and in reply thereto would advise that the plantations in which you are interested as a bond holder are continuing to make satisfactory progress.

So far I am not yet in a position to advise when a return will become available to bond holders. As you are aware all returns to bond holders must come as a result of the milling of the area.

I have regularly inspected the plantation areas in company with my consulting forester and Directors of the Company and at all times have been satisfied that the Company is fully carrying out its contract with bond holders.

With respect to the one (1) lot £70 you have purchased part of Issue number 16B of Softwood Products Treatment Company Proprietary Limited, I would advise you that it is not part of my function as Trustee to estimate when a return will become available to lot holders. As soon, however, as milling operations are undertaken proceeds therefrom will be distributed by me in accordance with the conditions of the contract.

That is similar to other letters in the possession of the Committee. Mr. Luthold then wrote a letter on the 1st August, 1953, which reads:—

To Mr. F. Dundas Smith,
480 Bourke-street,
Melbourne.

Dear Sir,

As Mr. Lauer has resigned his secretaryship with the Consolidated Forests and Milling Company, in which company I am holding certificate of three milling bonds of £30 each, purchased the 7th of October, 1933, also in Softwood Products Treatment Company Proprietary Limited I am holding certificate of one lot 16B 26 purchased 28th May, 1942, at £70. According to contracts, as set out in the Company's booklet in September, 1931, I should have had payments up to £500 per bond from the Consolidated Forests and Milling Company and up to £200 on lot 16B 26, to date I have not received one penny. I am writing to you, Mr. Dundas Smith, as you are the lot-holders' Trustee, for information as to the Company's activity and the validity of my bonds.

Trusting to hear something concrete to my benefit as soon as possible.

The reply to that communication is dated the 14th August, 1953, and reads:—

Dear Sir,

I have to hand your letter of 1st August. I will be forwarding a report in connexion with Softwood Products Treatment Company Proprietary Limited at an early date and trust this will give you the information you require.

In respect of the £30 Milling Bonds of Consolidated Forests and Milling Company Limited, no appreciable milling has taken place on this area but as soon as proceeds become available from milling operations I will communicate with you.

Yours faithfully,
F. DUNDAS SMITH.

There is also a fully paid Milling Bond, dated 29th June, 1938, issued by Consolidated Forests and Milling Company, registered No. C(379)1026. That relates to three milling bonds and entitles Mr. Luthold to £90 worth. There is also a trustee's report dated 7th February, 1951, an undated trustee's report, which refers to the 1951 report; the original prospectus with the words " The road to wealth " on the cover. There is no information as to the salesman who issued that prospectus on behalf of Consolidated Forests and Milling Company Limited, the registered office of which is shown as 13 Grenfell-street, South Australia, and the Melbourne office at Temple Court, 422 Collins-street, Melbourne.

The Chairman.—Who are shown as the directors?

Mr. Pettiona.—At that time the directors were The Honorable John Livingston, grazier, Mount Gambier, South Australia; John K. Moreton, esquire, grazier, Boswell Park, Lake Bolac, Victoria; J. M. Livingston, esquire, grazier, Temple Court, 422 Collins-street, Melbourne; Hubert F. Kessal, esquire, grazier, Mount Gambier, South Australia; the bankers are shown as the Commercial Bank of Australia Limited; the solicitors as Hickford and McKenzie, Stock Exchange Buildings, Melbourne; the bond holders' trustee was to be appointed by the bond holders as provided; the trustee's solicitors were to be appointed by the trustee; the surveyors were Saunders, Milton, and Campbell, of Pirie-street, Adelaide; and the consulting forester was G. R. Cowell, a Bachelor of Science in Forestry, of Balhannah, South Australia.

Mr. Randles.—Are the solicitors, Hickford and McKenzie, the same solicitors who at present hold the title deeds on behalf of the various firms?

Mr. Pettiona.—In all probability. On the front page of the prospectus the name of W. F. Sedgley, Hartwell Hill-road, Hartwell, appears. I have no knowledge of that person. Other documents are a letter from Mr. Lauer dated 8th February, 1943, under the name of Softwoods Products Treatment Company Proprietary Limited; a certificate issued by Lauer for Consolidated Forests and Milling Company Limited for the purchase of a milling bond, and dated 7th October, 1933; a trustee's report of Softwoods Products Treatment Company Proprietary Limited, of 7th September, 1953; a contract between Softwood (Australia) Milling Products and Mr. Luthold on plantation No. 16B (1 lot) for which he paid £70; and a further letter from Mr. Lauer dated the 4th June, 1942, with the heading of Softwood (Australia) Milling Products. I also have a number of receipts received by Mr. Luthold.

Mr. Stephens.—Mr. C. E. Lynch of 14 Albermarle-street, Kensington, Victoria, also wrote to us and complained that he had invested £50 in the South Australian Timber Company Proprietary Limited, associated with South Australian Perpetual Forests for 25 years. He had received no return and asked us for information on the subject. From inquiries I was able to make it appear that he was in fact referring to the Livingston group, although he certainly did not get the correct name. Mr. Lynch may be able to give the Committee information.

The Chairman.—Is it your understanding that the Mount Gambier forest companies commenced from the Consolidated Forests and Milling Company, and that these other companies followed and had some connexion with it?

Mr. Stephens.—Yes, that is my understanding, but I must say that in attempting to check the history of this project I have found it very difficult indeed. I went to a Mercantile Agency, who normally have this information, and obtained their report. It appears that that firm is not exactly clear on the origin of the group. It seems that the group of companies in which Livingston had an interest had such enormous ramifications and so many registered names that it defies the analysis of any one other than a skilled investigator.

Mr. Brennan.—Was not Livingston at one time a member of the South Australia Parliament?

Mr. Stephens.—I understand that one of the Livingstons was formerly a member of Parliament. I tender reports which show the difficulty that was experienced. The report regarding C.A.P. Softwood Industries was made in 1942, and the report respecting the Softwood Milling and Reafforestation Company Proprietary Limited is dated 26th May, 1944.

I mentioned that lots were peddled by salesmen in Victoria for the Mount Gambier forest group, amongst other by Alexander Murray Cameron. Since there has been much comment relating to Cameron in previous hearings of the Committee it may be of interest if I tender a page from *Smiths Weekly* of 8th December, 1945, purporting to give the business history of Cameron and his association with the Livingston group. Cameron is now the promoter of an organization called Australian Primary Oils. It is operating in South Australia but I feel we shall hear a lot more about it because the company is registered in Victoria.

I next tender a cutting from Tasmanian *Truth* of November, 1949, being the report of an interview between representatives of *Truth* and the Secretary of the South Australian forest groups—at that time, Mr. C. J. Lauer. The interview was held in his office at 422 Collins-street, Melbourne. Mr. Lauer explained certain aspects of the activities of the concern in answer to questions, which were published.

I also tender a report from the *Herald* of 9th July, 1946, giving details of payments to lot holders of Pine Plantations Proprietary Limited. These were the first payments made to persons who had invested in this company twenty years previously. I also submit the directors' report and statement of accounts for the year ending June, 1953, of Pine Softwoods Limited. Its solicitor is Mr. Oswald Burt.

The Chairman.—This balance sheet contains the balance sheet of Pine Products Proprietary Limited?

Mr. Stephens.—Yes. They are New Zealand companies. I thought the Committee would be interested as Mr. Burt is solicitor for these concerns.

I also put in the balance sheet of Pine Bach Limited for the year ended 30th June, 1953. It contains the account of Pine Bach and Pine Products. The secretary is Mr. G. S. Anderson of 360 Collins-street, Melbourne.

I also tender the directors' report and statement of accounts for the year ending June, 1953, of Matured Pine Trees Limited, another New Zealand venture associated with the two other companies I have mentioned. The directors, solicitors, and registered office are the same in each case.

Mrs. M. Patterson, of 226 Banks-street, South Melbourne, and a Mr. Tyrill of Highett-road, Highett, wrote seeking information as to the South Australian company known as Softwood Mills Products in the Livingston group. They both said that they had invested money, but neither gave details as to lot numbers, date of purchase and amounts paid.

I also produce a letter dated 30th November, 1946, to the manager of our Sydney office, signed by L. Sainsbury. He had invested money in Softwood Milling Products but did not state the lots. He complained that he had not received any return and mentioned that he had learned that one of the principals of the company had recently entered into a £500,000 plastic business called Bristo Plastics. He had written to him but had received no reply. He did not name the principal but it is clear that the reference is to Murray Cameron, and the implication is that he bought his stock from Cameron because in 1946 Cameron changed from softwoods to Bristo Plastics.

I also submit a letter from Mrs. G. S. Ross, care of "Parkhill", Tyabb-road, Mornington. She said that early in 1944 a salesman for C.A.P. Softwood Industries canvassed the sale of lots in her area but she did not mention whether she had invested money in that concern. She suggested that there were doubts as to the soundness of the investment.

We do not keep records of every inquiry or of every person who has written us on this matter, which has been before us for many years. From my experience of three years in the office, it is a subject that is being perpetually brought under notice. There appears to be confusion and misunderstanding in the minds of lot holders as to the future of their investments. Some of them appear to be dubious of the prospects of returns despite assurances from 422 Collins-street. I express no opinion and all I say is that these matters have been brought to our notice.

The Committee adjourned.

TUESDAY, 8TH JUNE, 1954.

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. R. R. Stephens, journalist, of Melbourne, employed by Truth and Sportsman Limited, was in attendance.

Mr. Brennan.—Referring to the Sunday Island venture, Mr. Stephens stated "Mr. Opas estimated that they had raised £68,000 capital by the use of trust certificates." Does that figure relate to the Sunday Island venture alone, or to general matters?

Mr. Stephens.—It refers to the Tanbark Development Syndicate and to North Tanbark. That is the sum that Mr. Opas considered had been raised between the two.

Mr. White.—Were the Tanbark Development Syndicate and North Tanbark both concerned in the activities on Sunday Island?

Mr. Stephens.—No. North Tanbark was involved in the Pomonal property near Stawell.

Mr. White.—Can Mr. Stephens indicate the amount of money raised for each enterprise?

Mr. Stephens.—No. I have stated the only estimates that I had. The figure of £68,000 was given to me verbally by Mr. Opas, but I have no knowledge of the material he had to substantiate it.

Mr. Brennan.—Would that figure be the total of the money that Leonard raised?

Mr. Stephens.—No. It refers only to the two ventures mentioned. Leonard is involved in a number of mining syndicates in the Northern Territory and other promotional schemes. His interests are extensive.

Mr. Randles.—In view of the fact that the *Truth* newspaper has on a number of occasions published articles relating to the softwood companies, generally known as the Mount Gambier forest companies, has the paper received any correspondence from the companies or their representatives in connexion with those articles?

Mr. Stephens.—Yes.

The Chairman.—Are you able to produce any correspondence in relation to these matters?

Mr. Stephens.—I have in the file on this matter two letters relevant to the subject written to our office by Mr. Oswald Burt, as solicitor for the companies concerned.

The Chairman.—The Committee feels that the correspondence should be produced to it.

Mr. Stephens.—If that is your requirement, I have no option but to accede to it. The first letter is dated 29th September, 1953, and was forwarded to us from our solicitors, Messrs. Moule, Hamilton, and Derham, who received the correspondence initially from Mr. Burt. I tender it to the Committee. I also tender a copy letter written by Oswald Burt and Company to Messrs. Moule, Hamilton, and Derham, solicitors for Truth and Sportsman Limited, dated 27th April, 1954.

The Chairman.—Can you produce the article that appeared in *Truth* prior to Mr. Burt's letter of the 29th September, 1953?

Mr. Stephens.—Yes.

The Chairman.—Will you undertake to produce it?

Mr. Stephens.—Yes.

Mr. White.—When did that article appear?

Mr. Stephens.—The history of the matter is that Mr. Doube made a series of allegations in Parliament in which one of Mr. Burt's client companies was named—it was a passing reference only. Mr. Doube received a fair amount of publicity as a result of his statement, although as our paper came out a week later we made only a brief reference to it. In September of last year, we published some editorial matter in which we summarized the statements made by Mr. Doube and others and referred at that time also to the intention of the Government to have the matter examined by the Statute Law Revision Committee. I think it is that article of which Mr. Burt mainly complains. The only other reference since then, I think, has been the publication in our paper of a highly condensed report of the interim report of this Committee which was tabled in Parliament.

The Chairman.—Will you now proceed with the other matter?

Mr. Stephens.—Yes. After Mr. Doube made his allegations we had occasion to check formally with the Law Department to ascertain if there was any information on any of the wide range of companies that had been made. The Law Department stated at that time that an investigation of C.A.P. Treatment Company Proprietary Limited, and C.A.P. Softwood Industries was commenced in 1948 but was discontinued as counsel advised that the *Companies (Special Investigations) Act* 1940 did not apply. The only comment of the Law Department concerning Tanbark Development was that a police investigation in 1944 was conducted but when the report was studied the Crown Solicitor advised that no offence was disclosed.

Mr. White.—Which is Tanbark Development?

Mr. Stephens.—That is the Leonard set-up at Sunday Island. Probably the Committee has had from Mr. Burt a reasonable history of the development of the Mount Gambier project.

The Chairman.—What have you in mind?

Mr. Stephens.—I have some information that has been accumulated from a Mercantile agency. The area comprises from 15,000 to 20,000 acres in the County of Grey, South Australia. Some 25 to 30 years ago, the land, or portion of it, was held by the Livingston family, who are pastoralists. When the companies were formed to exploit the area and plant pine forests, Mr. Livingston sold the land to the companies and took as part payment in consideration a shareholding in the companies formed. The secretary of Pine Plantations, and in fact, for the group at that time, was Mr. C. J. Lauer, and Mr. George Alexander McDonald assisted in the promotion. The C.A.P. Treatment Company and Pine Plantations Limited seemed to be the main operative companies. The interest I had in the matter was to

discover how many subsidiary companies operated in conjunction with the Pine Forests group. I found that the Livingston-McDonald group at Temple Court appeared to have a directive interest in Pine Plantations, C.A.P. Treatment, Guthrie's Paints and Products Proprietary Limited, Softwoods Manufacturing Proprietary Limited, the Basic Trading Company Proprietary Limited, Penola Timber Milling Company Proprietary Limited, Softwoods Milling and Reafforestation Company Proprietary Limited, Mutual Investments Proprietary Limited, Oban Investments Proprietary Limited, and G.L.K. Gold Mines Proprietary Limited.

It appeared that the Basic Trading Company was the firm handling the financial affairs on behalf of the others. I have been told the names of persons who worked for the group, but it appeared that they were employed officially by the Basic Trading Company.

Mr. White.—What interest had Livingston in these matters?

Mr. Stephens.—Later I shall read statements showing the exact interests. When the companies were formed, they registered a certain amount of nominal capital; they issued shares which were taken up to the extent of several thousands of pounds.

Mr. Randles.—Were the shares sold on the open market?

Mr. Stephens.—I do not think they were registered in the open market.

Mr. Randles.—They may have floated the company, their cohorts may have bought the shares, and then they may have hawked the lots.

Mr. Stephens.—I suggest that whatever they did would have been strictly legal. When the shares were sold, salesmen sold lots to the public by canvassing. I understand that some 20,000 lots were sold. In some cases, the lot holders, as distinct from the shareholders, paid from £25 to £70 a lot, depending upon the position of the land. They received an entitlement to the land they bought, and their interests were apparently guarded by the appointment of a trustee. The point which concerns me is this: Apart from the paid up capital and the shareholders in the firms, how much has been collected for the land sold in the area? If 20,000 acres were sold at an average of £50 an acre, £1,000,000 would be involved.

Mr. Pettiona.—You would have to subtract the high percentage of commission on sales.

Mr. Stephens.—There were high commissions and heavy expenditures, but it would be interesting to learn the exact amount the companies raked in by the sale of lots, and to compare that amount with the paid-up capital. I have not seen anything that accounts for the expenditure of the money, although the answer may be simple.

Mr. Pettiona.—One has the information given to the Committee by Mr. Burt that it would cost about £20 to plant 1 acre, without the cost of the land. We have figures as to the land bought, and possibly the answer could be found in what Mr. Burt has told us.

Mr. Stephens.—If the Committee is interested in obtaining the financial background of the organization, it should look not so much to see if the asset exists and lot holders have received any return but it should compare the amount of money received by the companies not merely by the issue of shares but also by the sale of lots.

Mr. White.—Could it be that they sold one lot half a dozen times?

Mr. Stephens.—The allegation has been made that that has been done but I have no reason to believe it has been done. I have no personal knowledge of it, and I could not prove such a thing.

Mr. Pettiona.—It could have been in the mind of Mr. McDonald who made a press statement to the effect that he visualized the land being used for ever. One person would obtain the produce from it in 25 years, and another person would do so 25 years later. Should we be concerned with what was done with the money, if, in fact, a reasonable return is being made to the persons who purchased lots?

Mr. Stephens.—If the Committee was attempting to obtain a picture of the financial situation, it would not have a picture with any perspective until it said " this group of companies has collected from the public more than £1,000,000 either by the sale of lots or shares. The companies have had the money for a period of fifteen to twenty years. What return has been made, and what business activities have been conducted involving heavy overhead costs to account for any proportion of the money." With such a picture before it, the Committee could judge whether the return was equitable, and whether the investment was as sound and as worthy as it is claimed to be, and whether this method of organizing a business by the sale of lots can be regarded as sound procedure in which the public could safely invest its money. It appears that we have not the necessary figures.

Mr. White.—If you had been the purchaser of a lot, could you have inspected it?

Mr. Stephens.—I have spoken to five lot holders and they have told me that they have not been able to identify one particular lot as being theirs. They visited Temple Court and spoke to Mr. Dundas Smith and to Mr. Swan and also to Lauer in earlier days. They were shown survey maps with divided lots, but in no case were they able to say—even the two that visited Mount Gambier—that they had walked over ground that was theirs. They had been in an area in which their certificates showed that they held land.

The Committee adjourned.

WEDNESDAY, 9TH JUNE, 1954.

Members present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. R. R. Stephens, journalist, of Melbourne, employed by Truth and Sportsman Limited, was in attendance.

Mr. Stephens.—Yesterday I was giving to the Committee an outline of some of the information that unit holders had sought from us. It appeared to be of primary interest to discover the exact financial set up of the group of companies so that a reasonable answer might be given to those people who desired to know whether they should hold or cash their certificates. It appeared, from an estimate based on an average of the value of the sale of the trust certificates, that the total sales in the County of Grey area which covered 20,000 acres, must have been in the vicinity of £1,000,000. That is a conservative figure. Most of the acre lots were sold at £70, but taking an average of £50 a lot, and 20,000 acres sold, the

return was £1,000,000. In addition, subsidiary companies controlled the development of the plantations, and they also had subscribed capital amounting to tens of thousands of pounds.

Mr. Brennan.—Would you say that all the shares were bought for cash?

Mr. Stephens:—The lot holders paid for them either in cash or in instalments. I think those purchased by Mrs. Brindley were paid for in very big instalments.

Mr. White.—Were all the lots sold?

Mr. Stephens.—Presumably. Mr. Burt gave the Committee evidence on that point. Didn't he state that 20,000 lots were sold? We found it very difficult to obtain all the necessary information. Apart from the paid-up capital and the shareholders of the companies—the paid-up capital would probably amount to some tens of thousands of pounds—the question of the disposal, usage or development of the area must also be considered. Both aspects must be studied before there can be a realization of whether the return already made to lot holders, or likely to be made, would be reasonable and equitable, and would represent for them a good investment over a period of, say, 20 to 25 years. Many of the lot holders have had their money in the concern for that long.

The Chairman:—Do you know of any other companies which were alleged to have had an interest in either the milling or the handling of timber from the Mount Gambier forest companies?

Mr. Stephens.—Yes, the firms of Selector Proprietary Limited, Vatabula Limited of Suva, and Pajola Proprietary Limited.

The Chairman.—You understand that Pajola Proprietary Limited and Selector Proprietary Limited were registered in Melbourne.

Mr. Stephens.—Both of those companies were registered in Melbourne.

The Chairman.—Do you know of any company that has been handling the transfer of lot certificates in connexion with the Mount Gambier forest group?

Mr. Stephens.—I understand that Securities and Equities Limited of Sydney has been handling that business.

Mr. White.—Did those extra companies operate in South Australia?

Mr. Stephens.—They operated from Victoria. They were only subsidiary to the main organization.

The Chairman.—You understand that Pajola Proprietary Limited was a subsidiary of Pine Plantations Proprietary Limited?

Mr. Stephens.—That is what I was informed, yes.

The Chairman.—Have you any information concerning the activities of Selector Proprietary Limited?

Mr. Stephens.—Selector Proprietary Limited was registered in 1949. The shareholders were Oswald Burt and his four legal associates—Douglas Knight, Henry Gallin, Ronald Eilenberg, and Clifford Harris. Burt and Eilenberg were the directors. The total paid capital was five £1 shares. On July 7, 1950, Burt was issued with 250 shares at £1, for which he paid cash.

Mr. Brennan.—Are these the timber selling companies?

Mr. Stephens.—I would not know what the official function of the company was; I only know what it did. Oswald Burt bought the shares of the other shareholders excepting Eilenberg, and they dropped out of the company.

Mr. Pettiona.—From where did you obtain this information?

Mr. Stephens.—From the Titles Office as a result of a search. The position then was that the company had a paid-up capital of £254, Eilenberg holding one £1 share, and Burt 253 £1 shares. On 7th August, 1950, Selector Proprietary Limited entered into negotiations with a firm called Vatubula Limited of Suva, Fiji, registered in the name of two solicitors at Fiji. The shareholders were Robert Alan Crompton, who held 25 £1 shares, and John Neal Falvey, who held 24 shares; the Wastewood Products Corporation held 51 shares. The paid-up capital of the company was £100. I understand that as a result of these negotiations Selector Proprietary Limited agreed to issue Vatubula Limited with 200,000 shares for other than cash on the consideration that Selector Proprietary Limited was nominated to obtain a licence agreement with two big American corporations to supply and treat pine timber for special manufactures. A transaction between the two companies was effected on 4th December, 1950, when shares in Selector Proprietary Limited were issued to Vatubula Limited.

The Chairman.—The Committee has received from Mr. Doube, M.L.A. a letter that was sent to him from the Secretary of the Law Department with reference to Vatubula Limited, enclosing a document from the Registrar of Companies, Suva, Fiji, setting out the names of the shareholders of Vatubula Limited, the shareholders being as stated by Mr. Stephens. I ask Mr. Stephens whether he has any information concerning the shareholders of Securities and Equities Proprietary Limited.

Mr. Stephens.—No. To obtain the information would have necessitated a check being made in Sydney, and one was not made.

The Chairman.—Mr. Pettiona produces a letter from the Secretary of the Law Department dated 22nd October, 1953 to Mr. Doube, M.L.A., enclosing a letter from the Registrar General in Sydney dated 21st October, 1953 to the Law Department in Melbourne, stating that the list of members of Securities and Equities Proprietary Limited, made up to 16th December, 1952 and filed on 24th April, 1953, consists of John Ross Stewart Smithies, of Woy Woy, and Ross Smithies Proprietary Limited, of Woy Woy, each holding one £1 share.

Mr. Pettiona.—Mr. Stephens stated that Securities and Equities Proprietary Limited was buying lot certificates from original lot holders. Does he know whether Pine Plantations Proprietary Limited circularized lot holders advising them that they could obtain a purchaser for their lots if they wished to sell?

Mr. Stephens.—Anything I might state on that subject would not be reliable but would be purely hearsay. Statements have been made to me by persons claiming to be lot holders. I mentioned five names earlier. About eighteen months ago one lot holder came to the office and from memory he stated that Securities and Equities Proprietary Limited was the firm handling the interests of any lot holder who was selling his lots and that it was also arranging the affairs of the purchaser. In other words, it was an agency to handle the transfers and re-sales. This person informed me that certain lot holders, including himself, had been circularized and asked whether they wished to dispose of their lots; if so, a buyer could possibly be found.

The Chairman.—The impression you gained was that the company was acting as agents to arrange the transactions?

Mr. Stephens.—Yes. At that stage I had no particular interest in the matter and had no reason for making a detailed inquiry into it, so I did not do so.

Mr. White.—Was the person who spoke to you interested in selling?

Mr. Stephens.—No. He merely mentioned in passing that this action had been taken. It may have been Luthold who told me this. I recollect that he stated that some of the lots he held in Pine Plantations Proprietary Limited he had received when the sum of £117,000 was paid to lot holders and the additional money he had gained he had been induced to invest in the C.A.P. Treatment Company. That was a considerable time ago.

Mr. Randles.—Have you any information about the shareholders in Securities and Equities Proprietary Limited?

Mr. Stephens.—No. The names do not mean anything to me. I have some lists which may answer some questions. One document is an abstract taken out more than three years ago, before I was employed by *Truth*. It is in our file of material, and I think the information was obtained from the Titles Office or from the company itself. It is headed "Pine Plantations Proprietary Limited," the registered office being at 422 Collins-street, Melbourne. The nominal capital is stated to be £25,000, and the paid-up capital £10,550 —paid up in cash, £4,550 and paid up otherwise, £6,000. That is apparently for considerations other than cash. The document states that the total amount of calls received, including payments on application and allotment, is £5,500, which includes £1,000 premium received from issue of 2,000 shares at £1 10s. a share. The directors of Pine Plantations Proprietary Limited at that time were Robert M. McPhee, who held 50 shares; Phillip Lawrence, who held 25 shares; and George F. Lloyd, who held 25 shares. The secretary of the company was then C. J. Lauer. The shareholders were C. M. Grano, 100 shares; Joint Estate Pastoral Company Limited (in liquidation), 600 shares; P. Lawrence, 300 shares; J. M. Livingston, 450 shares transferred; G. F. Lloyd, 200 shares; C. H. Marsham, 100 shares; A. G. McDonald, 9,100 shares transferred; J. McKellar, 100 shares; and R. M. McPhee, 9.150 shares; a total of 10,550 shares.

Mr. Hollway.—What is meant by "transferred?"

Mr. Stephens.—The Livingstons obtained, as part of the settlement for the sale of land they originally held as pastoralists in the area, two pine plantations in the other foundation companies, and they received as part payment not only cash but also shares issued to them as consideration other than cash. This may be a section of it.

The Chairman.—The document from which Mr. Stephens has quoted looks like an extract from an annual return, and the shares transferred may be shares transferred since the previous return was prepared. It appears that the 9,100 shares owned by McDonald went to McPhee, who is shown as a director, holding only 50 shares. The shares held by J. M. Livingston probably had been transferred to one of the other present holders. That information could be checked on a further search being made.

Mr. Stephens.—I have a copy of a letter from Pine Plantations Proprietary Limited to Mr. R. B. Scanlon, care State Savings Bank of Victoria, Nathalia, dated 24th July, 1946. It reads as follows:—

Distribution to Lotholders—No. 3 Section.

The Directors have pleasure in informing you that as a result of the logging of Lotholders Pinus Radiata plantations which has been carried out to 30th ultimo sales of logs have returned £100,311 4s. 10d. After allowing £2,382 12s. 10d. for expenses and £9,784 19s. 9d. due to the Company for its 10 per cent. share of net proceeds (in accordance with the Company's contracts with lotholders), £88,143 12s. 3d. remains for distribution to lotholders and this distribution is now being made.

The details in respect of No. 3 Section in which you are interested as a lotholder are as follows:—

	£	s.	d.
Proceeds in respect of timber sold to 30th June, 1946	25,531	7	7
Less costs and expenses paid to Mr. D. A. Roberts, solicitor, Mount Gambier and his tallymen whom he appointed to assist him. (Mr. Roberts and his tallymen carried out a continuous independent check and certified the total quantity of all logs from the area, which certificates have been duly produced to the auditor for audit purposes.)	1,063	7	0
	24,468	0	7
Less company's one-tenth share of the net proceeds as provided for in clause 8 of the agreements with lotholders	2,438	18	8
Net proceeds to 30th June, 1946 now being distributed to lotholders of No. 3 section	22,029	1	11
Net proceeds to 30th June, 1946 per lot	44	1	1

Owing to the number of inquiries which we have had as to the taxability of this money, we have sought the opinion of one of the leading Taxation Consultants in Australia and the following in an extract from the reply received:—

> "In such a case we cannot see that the nature of the transaction can be regarded as anything other than speculation and we do not think that any surplus over cost received on realization of the timber on the land can be regarded as income, nor do we think that if the amount finally received does not equal the purchasers original outlay the deficiency can be claimed as a deduction in income tax returns. It is in each instance an accretion to or a loss of capital.
>
> "This advice, however, is not intended to cover the case of a person who is dealing substantially in bonds or lots, for buying and selling on any scale would indicate a *prima facie* commercial activity or profit making scheme, which would bring the transactions within the scope of the Income Tax Assessment Act."

A cheque in your favour for £44 1s. 1d. in respect of One (1) Lot/s Contract 287 is enclosed.

Would you please sign and return to us the enclosed form of receipt for completion of our records and production to our auditor.

Yours faithfully,
ALBERT G. McDONALD,
Director.

The Chairman.—That would be the first distribution by Pine Plantations Proprietary Limited?

Mr. Stephens.—Yes. These figures are an interesting addition to those you have received concerning that distribution.

Mr. White.—Do you know what sum Scanlon paid originally for his lot?

Mr. Stephens.—No. He would not have paid more than £70 an acre; probably about £50. When the company first commenced operations, lots were obtainable for £25 or £30. It depends when he took out his lots. I produce details of Softwood Manufacturing Company Proprietary Limited, one of the group. It was incorporated as a limited and proprietary company on 22nd November, 1933. Its objects were stated to be: "To carry on the business of foresters, forest planters, &c. To carry on the business of pastoralists, graziers, &c. To carry on the business of paint manufacturers, &c." The registered office was at 422 Collins-street, Melbourne. A special resolution passed on 7th January, 1942, stated:—

The Board of Directors may appoint any Trustee Company or any person to be Attorney of the Company.

Any person appointed as a Director by a governing Director need not hold any shares in the Company to qualify him as a Director.

The Directors were stated to be Albert George McDonald, engineer, of 8 Gurner-street, St. Kilda; and Christian John Lauer, accountant, of 5 Walker-street, Newport. The secretary was C. J. Lauer, 422 Collins-street, Melbourne. The shareholders were given as Christian John Lauer and Albert George McDonald, each holding one share. The document I have contains the following information:—

Share capital £5,000 divided into 5,000 shares at £1 each.
Shares taken up to 12th December, 1945=two.
Number issued for cash two.
Called up on each of two shares £1.
Total amount of calls received £2.
Amount of indebtedness of the Company in respect of Mortgages and Charges; £2,550.

DEBENTURE No. 4079.

Total amount secured by whole series	£20,000
Amount of present issue	2,550
Date of resolution authorizing issue	19th April, 1939.
General description of property charged	All the assets of the Company including its included capital.
Amount of rate per cent. of the commission allowance	10 per cent.

On the 19th August, 1946, Mr. L. Rigg, the editor of *Truth,* wrote the following letter and submitted the questions mentioned:—

Messrs. A. G. McDonald and C. J. Lauer,
C.A.P. Softwood Industries,
422 Collins-street,
MELBOURNE, C.1.

Dear Sirs,

With reference to recent telephone messages which have passed between your Mr. Lauer and our Mr. Bateson, we have, in accordance with your suggestion, drafted a number of written questions in regard to the various companies and firms controlled by you and concerning which our advice has been requested by readers. These questions you will find attached.

We have made these questions rather more comprehensive than we originally intended, partly because we have received additional requests for information since Mr. Bateson telephoned you and partly to save you time and trouble in future, in the event of further inquiries being received in respect of concerns other than Softwood Milling Products, C.A.P. Softwood Industries, and Pine Plantations Proprietary Limited.

In submitting these questions, we would like to assure you that our sole object is to publish an article which will be factual and will furnish our readers with an accurate and faithful picture of the position as it exists. I think you will agree that, in view of the unhappy history of many afforestation concerns in the past, especially in New Zealand, a frank, factual and impartial survey of the activities of your concerns will be beneficial to all.

We shall be grateful if you will let us have your answers to these questions at your convenience.

The questions were—

1. When did the Softwood (Australia) Milling Products commence (*a*) operations and (*b*) the sale of lots?
2. How many plantations does it own, and how did it acquire these?
3. Were its plantation or plantations already planted when Softwood Milling acquired it or them?
4. If already planted, at what stage of growth was the timber and what species did the timber comprise?
5. Was there only one, or more than one, issue of lots?
6. Was the price of each lot £60 or, if there was more than one issue, did the price vary with the different issues?
7. What rate of commission was paid salesmen on the sale of lots?
8. Is it correct that the terms of sale for each lot were: Deposit of £5, with the balance payable at the rate of not less than £1 per calendar month?
9. Was any discount allowed the lotholder who paid cash?
10. Did the terms of the issue, or issues, provide that,
    (*a*) not later than November 1st, 1947, Softwood Milling should pay to the trustee for lotholders the net proceeds of realization on the sale of the timber, cut or standing;
    (*b*) that the trustee should divide such monies received by him until each lotholder shall have received £200 in respect of each lot held by him; and
    (*c*) that if by May 1st, 1948, the lotholder shall not have received the above sum of £200 per lot he shall be entitled to his proportion of 90 per cent. of the full net amount of realization notwithstanding that the total sums received by the lotholder shall exceed £200 per lot purchased?
11. In the event of clause (*c*) above operating, to what purpose is the remaining 10 per cent. of the net proceeds devoted?
12. Does Softwood Milling charge a commission on the gross proceeds received from realization and what other charges, if any, have to be deducated from such proceeds before arriving at the net amount available for distribution to lotholders?
13. In what way is the upkeep and maintenance, &c., of the plantations financed until the timber reaches maturity or is saleable?
14. In prevailing conditions, is it anticipated that the timber will be sold by November 1st, 1947, or is it thought that it will be necessary to have recourse to clause (*c*) mentioned in question No. 10? In order that *Truth* may make clear to its inquirers the exact position, it would be appreciated if the premises on which the answer to this question are founded be set forth.
15. What is the position of the lotholder if the net proceeds of realization do not permit of the distribution of £200 to each lotholder (*a*) when clauses (*a*) and (*b*) of question No. 10 operate and (*b*) when clause (*c*) of question No. 10 operates?
16. What was the total number of lots sold in the issue or issues in respect of Softwood Milling?
17. Is it correct that certain cash bonuses, or discount bonuses, have been made in respect of Softwood Milling?
18. If so, what was the basis of these bonuses, how did their payment become possible and how was it financed?
19. Is it correct that Softwood Milling Products exercised the right to transfer to Softwood Products Treatment Company Proprietary Limited all its rights and obligations, and, if so, what consideration, if any, was involved in this transfer?
20. What was the object and purpose of Softwood Products Treatment Company Proprietary Limited and the transfer to it of the rights and obligations of Softwood Milling Products?
21. Were lots in C.A.P. Softwood Industries sold on the same terms and conditions as lots in Softwood Milling Products, with the exception that the price per lot was £70?
22. Were the reasons for the right of C.A.P. Softwood Industries to transfer all its rights and obligations to C.A.P. Treatment Company Proprietary Limited identical with those which operated in respect of Softwood Milling Products, and was this option exercised in respect of C.A.P.?
23. For what do the initials C.A.P. stand?
24. Is it correct that some special issue of lots was made in respect of C.A.P. Softwood Industries, and that in respect of these the terms provided that each lotholder should receive £100 not later than November 1st, 1945, and a further amount of £100 not later than November 1st, 1948, from the net proceeds of realization, with provision that should these amounts not be paid by the due dates each lotholder should be entitled to 90 per cent. of the net proceeds of realization even should the amount exceed £200 in respect of each lot? Was this the only special issue?
25. It has been stated to *Truth* that the first sum of £100 payable on November 1st, 1945, has not been made. Is this correct?

26. What are the reasons why the making of this payment has been impossible, if payment has not been made, and is it anticipated that despite this the second payment of £100 will be made before November 1st, 1948?
27. What other firms or companies, registered in the names of either or both Albert George McDonald and Christian John Lauer, or having one or both of these gentlemen as directors, and interested in afforestation and the disposal of lots in plantations, exist?
28. In respect of these latter companies and firms, is there any material difference in the terms of the issues of lots as compared with Softwood Milling Products and C.A.P. Softwood Industries?
29. In regard to Softwood Milling Products, C.A.P. Softwood Industries, and any other firms or companies controlled by the same parties and operating on a similar basis to the first two mentioned, why is or was it anticipated that the terms of payment to the lotholders could be fulfilled when lotholders in Pine Plantations Proprietary Limited did not receive their first payments until after twenty years? Is the report of the latter concern published in the *Herald* on July 9th last correct?
30. What were the terms and conditions on which lots in Pine Plantations Proprietary Limited were sold, and is it anticipated that when final payments are made to lotholders the latter will have received the full amount, or a greater or lesser sum than that, provided by the terms on which the lots were sold?
31. Is the timber in the plantations of Softwood Milling Products and C.A.P. Softwood Industries sold on the market in open competition, either by tender or other means, or is it sold to firms in accordance with contracts which have been made, and, if the latter, can the names of these firms and the prices paid be disclosed?
32. It has been stated to *Truth* that some of the salesmen employed in disposing of certificates of option of ownership in Power Fuel Industries of Australia, especially Messrs. Tasman Robertson and S. Lee, at the same time sold lots in Softwood Milling Products, C.A.P. Softwood Industries, and/or one or some of your other firms or companies. Is this correct, and are these salesmen still connected with your concern?
33. It has been further stated to *Truth* that a salesman has represented to a lotholder that in respect of at least one of your concerns, lotholders who had purchased these lots, in lieu of the payments of £200 in respect of each lot, have the option of accepting a house "built in plastics," and that it is anticipated that it might be possible to make available such homes within two years, provided Government approval is secured. Is this correct?
34. If so, on what terms and conditions would such houses be erected, and by whom?
35. If this statement in regard to houses is correct, does it mean that some or all your concerns have a tie-up with firms engaged in the manufacture of plastic products?
36. If so, which are those firms, what is the nature of the link-up, and in what way is it valuable and advantageous to the afforestation concerns?
37. In order to enable *Truth* to write an accurate review of these afforestation concerns, and to place it in a position to advise those readers who have sought *Truth's* advice in regard to their investments in these concerns, are there any other facts which *Truth* should know or any other matters which you would like to place before us to enable an accurate and impartial factual article to be written?

The substance of the answers to the questions was included in an article published by *Truth*, southern edition, on 26th November, 1949.

I submit details of financial holdings and backgrounds of these companies in the Livingston group: G.L.K. Goldmines Proprietary Limited, Oban Investments Proprietary Limited, and Basic Trading Company Proprietary Limited.

I also submit a copy of letter, dated 14th August, 1946, sent by Mr. Lauer, as secretary, to a lotholder in C.A.P. Treatment Company—Mr. W. J. Webster, of 1 Walton-avenue, Preston. A further letter was sent to Mr. Webster on 29th May, 1946.

As to issue No. 12 in Softwood Milling Products, lots were sold for £60. The terms were £5 on the signing of the agreement, £1 on the first of the following month, and future payments at the rate of £1 on the first of each month until paid up. The promised term was £200 payable on 1st November, 1947, and sales commenced in 1940. I do not know whether any returns were paid. Apparently a discount bonus was at the rate of 4 per cent. per annum from the date that the lots were fully paid. It was for four years, payable half yearly.

As an exhibit, I submit an extract from the agreement between Softwood Milling Products and Mr. W. J. Webster, dated 17th April, 1941. I also submit search notes of Mutual Investments Proprietary Limited; G.L.K. Pigments Proprietary Limited; Curratum Estate Proprietary Limited; Pine Plantations Proprietary Limited; Penola Timber Milling Company Limited; Consolidated Paints Proprietary Limited; Softwood (Australia) Milling Products; C.A.P. Softwood Industries; Softwood Milling and Reafforestation Company Proprietary Limited. I also submit details of the contract of the special G issue of C.A.P. Softwood Industries, the details of special 12 issue, and special 7 A and H issues in C.A.P. Softwoods.

I have no further documents to produce on these matters. The material submitted represents information brought to the notice of *Truth* by investors in the Mount Gambier projects. They appeared to be restive about the future of their investments, and, according to their statements they had consulted newspapers and solicitors. The additional material has been obtained as a result of searches and interviews. The newspaper I represent has no interest whatever in merely probing the affairs of a sound business concern for mischievous reasons. Criticisms have been levelled against the newspaper by legal advisers of the Mount Gambier forestry group that *Truth* seemed to have an attitude of suspicion and hostility to the project. That is without foundation. Anything that has been investigated by the newspaper has been in pursuance of its function of guarding what it considers to be public interest. The only inquiries we have made into this matter have been from that standpoint. It appears from the record that we have received every co-operation and assistance from the Mount Gambier companies in the supplying of information whenever we have sought it. I am not in a position to say—I would not venture an opinion as I am not a qualified accountant—whether the project is sound or otherwise. The most that I or any representative of *Truth* would do would be to direct attention to specific matters which were the subject of inquiry by the public or by persons with an interest in the concerns.

I do think, however, considering the vast amount of money collected for this forestry project and the tremendous length of time that the money has been in the hands of the promoters of the scheme, a complete analysis of the annual accounts of the entire group, showing the disbursements of the money and the percentage which has been or is likely to be returned to lot holders, would be of interest. Not many concerns in Australia have obtained upwards of £1,000,000 from the investing public, particularly those that are not public companies, which do not publish balance-sheets and records, and which have obtained the capital by means of high presure salesmanship akin to share hawking. It is those unique characteristics of the Mount Gambier concern which perhaps, and even unjustly, make the investors draw parallels with groups of other ill-fated concerns mentioned before this Committee, in which, likewise, hundreds of thousands of pounds have been raised by

direct share hawking in the form of trust certificates and with no adequate returns ever being made to the investors.

Mr. White.—Do your investigations indicate that there is need for an amendment of the Companies Act to deal with this sort of thing?

Mr. Stephens.—Yes, most certainly. No matter how sincere and honest and enterprising the promoters of a scheme of this nature may be, it is wrong that a condition should exist whereby huge sums of money can be taken from the investing public and manipulated by a very small group of people who are not obliged to give any accounting of their handling of the money, and, in fact, refuse to do so when asked. I think that fact alone indicates that a tremendous degree of trust is being placed in the hands of people who are not by law obliged to be as publicly responsible as they should be. For instance, I gave details earlier of the investment of Mrs. Brindley in C.A.P. Softwoods. Her husband invested the money in that firm in 1942, and she was interested to find out something of the accountancy of that firm in which a sum of £3,000 had been invested for twelve years and on which she had received no return. She felt that she was justly entitled to ask certain questions. Mrs. Brindley told me that she went to the offices of the concern at 422 Collins-street, Melbourne to see the trustee for the lot holders—Mr. Dundas Smith. He was not available and she was interviewed by a Mr. Swan. I might say that approximately twelve months ago Mr. Swan was an employee of the Basic Trading Company, and I have been informed that comparatively recently he was a salesman for lots in the group. I am not sure on that point.

Mrs. Brindley told me that she asked Mr. Swan who the directors and shareholders of C.A.P. were; how much money had been collected on the sale of lots; were any audited accounts available for each year since 1942 to show what had been done with her money and the money of other people, and she was told, in effect, that it was not her business, that the trustee safeguarded the interests of lot holders, that everything was going fine, and that as yet no payments had been made to the group in which she held lots. She was told that every reasonable precaution was being taken by the company to promote the concern on a sound business basis. The only specific answers she claims she received were that they had paid out no money on her lots and that they had no idea when she would get any return. Beyond that, she received no satisfaction. Is it surprising that persons like Mrs. Brindley—she is no exception—should feel that the affairs of an organization which operates like that should be much more closely investigated?

There may be, in fact, no grounds for any suspicion that the company is not being soundly, well, and very honestly operated, but that is not the impression that would be left in the mind of a lot holder after an interview of that nature. As the law permits organizations to function in this way, I think this highlights the fact that far too much is left to the discretion and disposal of a handful of individuals and no real obligation is placed upon them to inform the subscribers of capital how their money is being spent.

The Chairman.—On behalf of the Committee, I thank you, Mr. Stephens, and the newspaper you represent, for the assistance given to us in this inquiry. The matters that you have placed before us will be carefully investigated and your suggestions will be considered.

The Committee adjourned.

TUESDAY, 15TH JUNE, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. I. A. Swinburne,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles,
	Mr. R. T. White.

Mr. Francis Henry Parr, senior partner in the firm of F. H. Parr & Co., Public Accountants, 422 Collins-street, Melbourne, was in attendance.

The Chairman.—Mr. Parr, we understand that you have had some recent experience of companies in which some fraud has been suggested.

Mr. Parr.—That is correct.

The Chairman.—We thought that you might be willing to make some submissions to the Committee, within the terms of reference of its inquiry in relation to companies and firms and in regard to proposed amendments of the law designed to prevent frauds. Would you like to give the Committee any information concerning frauds that you have discovered in the particular investigation that you are making?

Mr. Parr.—The position is somewhat difficult in that at the present time the case is still in course and, possibly, much of it might be held to be *sub judice.* However, there is one matter that I should like to bring to your notice. It has already been determined by the Supreme Court and it vitally affects the interpretation of a section of the Companies Act. The company with which I am concerned is the Australasian Asiatic Trading and Engineering Co. Pty. Ltd.

The Chairman.—Is it in liquidation?

Mr. Parr.—No. My connexion with it is that I have been appointed an inspector under the terms of section 136 of the Act. I should like to bring to your notice firstly, the provisions of paragraphs (*a*) and (*b*) of sub-section (4) of section 136 of the Companies Act, which reads as follows:—

(*a*) The inspector may, by summons in the prescribed form, require any officer or agent of the company to appear before him for examination on oath (which he is hereby authorized to administer) in relation to its business.

(*b*) Such summons may require the production of all books and documents in the custody or under the control of such officer or agent.

The facts of the case are these: On the 9th of February of this year I was appointed an inspector to investigate the affairs of this company, and notice of such appointment appeared on page 880 of the *Government Gazette* of the 17th of February, 1954. Prior to that appointment I had carried out certain investigational work as directed by a meeting of the directors of the company. This company operates in Melbourne.

The Chairman.—Your appointment was made under the provisions of the Companies Act and not under those of the Companies (Special Investigations) Act?

Mr. Parr.—That is correct. The preliminary inquiries revealed some very serious allegations against a man who was undoubtedly an officer of the company on the date on which I was appointed an inspector. That person had, incidentally, made certain unsworn statements to me in the course of my preliminary inquiries last year. I was about to issue a summons on him, together with other summonses, when I discovered that two days after gazettal of my appointment—that is, on the 19th of February—the directors had held a meeting and had removed him from office. That action was taken pursuant to clause (*f*) of Article 80 of the Company's Articles of Association,

on the ground that he had committed a breach of trust of his office as a director of the company. I then sought advice as to whether, in the circumstances, I was still empowered under section 136 of the Companies Act to proceed with the issue of a summons. The advice I received was that, while the section in its operation was open to some doubt, it was not for me to decide that issue, as it well might be that the true interpretation of the section was that all persons who were officers on the date of my appointment fell within the scope of the inquiries that I was making.

On the 3rd of March I issued a summons, which was served on the gentleman in question on the 4th March, requiring him to appear before me on the 9th of that month. He duly presented himself, and I proceeded to administer the oath. Before he would take the oath, he inquired as to what was the jurisdiction which gave me authority to question him. Argument then proceeded between the company's solicitor and the solicitor for the person whom I had summoned. Following that argument, I adjourned the proceedings, with an intimation that I would apply to the Court for a ruling. It was found then that it was necessary for me to act under the provisions of the next sub-section to the one I have referred to, namely, sub-section (5) of section 136 of the Companies Act. This sub-section, in substance, provides that if any officer or agent of a company refuses to give evidence, the matter can be certified to the Court, which may then take action.

The case came before the Court and the decision of Mr. Justice Martin was that section 136 operates only in relation to officers and agents at the time of the examination. Mr. Justice Martin therefore dismissed the case and awarded costs against myself. I was then faced with the situation that I had no jurisdiction empowering me to compel this man to answer questions despite the serious allegations that had been made to me regarding his activities, and despite certain unsworn statements that he had made to me in the earlier stages of my inquiries.

Mr. White.—When was that?

Mr. Parr.—The statements to which I refer were made to me in October and November of last year. There are two other aspects in relation to the inquiries that I have in hand, which are the result of the decision of the Court. The first one is that in this particular company the books were kept by a practising accountant, who was also a co-signatory to cheques for a period of some four or five years, and he was also the secretary of the company for some seven years. In the earlier stages of my inquiry he did voluntarily give me some information, but he is not a compellable witness. I have no doubt that any person who had occupied the position in which this man had acted would be in possession of most valuable information regarding the activities of the company during the period over which he was particularly acting as—to use his own expression—" bookkeeper," keeping the books under the direction of and on information supplied to him by an officer of the company.

The other aspect, which becomes unfortunate, is this: During the period of the company's operations, from its formation in 1945 until the time of my appointment as an inspector, there had been changes in the directorate. The position was that directors who had ceased to be directors at the time of my appointment could no longer be called upon to give evidence. If they voluntarily tendered information, so much to the good, but there was no power to compel them to do so. At least one such person was happy to come along and tell me everything that he knew.

Mr. White.—Has he been a director continuously?

Mr. Parr.—No, he has not been a director since about 1950. There is, finally in relation to this matter, another aspect. On the conclusion of my inquiries, I have to submit my opinions to the Governor in Council. To me it seems that I am in a most unfortunate position if I am required to form an opinion after having heard only one side of the case, particularly in view of the serious nature of the matters raised in the course of my inquiries.

To sum up, there are, possibly, three main results of the Court's decision. The first is that I have no power to interrogate a person against whom there have been serious allegations; I cannot interrogate the accountant or bookkeeper for the company—the person who was bookkeeper until a recent date—and I cannot interrogate former directors.

The Chairman.—The reason for that position is that the Court construed the section of the Act as applying only to persons who were officers and agents of the company at the time the summons was issued.

Mr. Parr.—That is correct.

The Chairman.—The Court would not accept the argument that it applied to officers and agents of the company at the time of the making of your appointment?

Mr. Parr.—That is so. I was advised that I had no alternative in the matter. As an inspector it was necessary for me to test the situation. It seems to me that the section requires to be amended so that it will be brought into line with sub-section (8) of the same section, which reads as follows:—

> (*a*) If the law officer to whom any matter is referred under this section considers that the case is one in which a prosecution ought to be instituted, it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance in connexion with the prosecution which they are reasonably able to give.

The Chairman.—The curious situation is that the investigator cannot go into past affairs, whereas a law officer may do so.

Mr. Parr.—The English Act was amended along those lines. Section 167 of the *Companies Act* 1948 of England reads as follows:—

> It shall be the duty of all officers and agents of the company and of officers and agents of any other body corporate whose affairs are investigated . . . to produce to the inspectors all books and documents of or relating to the company.

Sub-section (5) of the same section is in these terms:—

> In this section, any reference to officers or to agents shall include past as well as present officers or agents, as the case may be, and for the purposes of this section the expression "agents" in relation to a company or other body corporate shall include the bankers and solicitors of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

The Chairman.—That is a very useful provision.

Mr. Parr.—It is.

Mr. Pettiona.—As a result of your investigations of the operations of the company, could you not report to the Governor in Council that a person has committed an offence but that owing to the provisions of the Act you are not empowered to interrogate such person to ascertain further facts?

Mr. Parr.—I think the position is that I could report to the Governor in Council purely in relation to the facts as I discovered them.

Mr. White.—With what aspects are you dealing?

Mr. Parr.—The powers of the investigator, the scope of the investigation, and the necessity to amend the Act to prevent fraud.

Mr. White.—Do you intend to make any suggestions in that regard?

Mr. Parr.—I can offer certain observations.

Mr. Pettiona.—You consider that you should have power to call for any evidence you require from all persons concerned prior to submitting your report?

Mr. Parr.—That is correct.

Mr. Swinburne.—Sub-section (8) of section 136 of the Companies Act exempts the defendant in any proceedings, but if the investigator were given the power you seek the person who might become the defendant in subsequent proceedings would be included.

Mr. Parr.—That is so. However, is this not the point, that when the report of a law officer has been submitted criminal proceedings are in course?

Mr. Hollway.—If you were inquiring into the activities of some person, although he was not technically the defendant, your first question to him would be, "Did you embezzle this money?" I do not think you could expect him to answer that question.

Mr. Parr.—I agree, although that provision is in the English Act.

Mr. Pettiona.—If the Companies Act was amended to give the law officer power to conduct an examination of a person on oath the law officer could do anything if that person refused to answer questions, other than to submit a report that the refusal was more or less an admission of guilt.

Mr. Parr.—We must not lose sight of the fact that it is not necessarily a past officer of a company who might become the defendant in subsequent proceedings and for that reason the evidence of a former director, bookkeeper or accountant can become most useful when inquiries are made, although none of them may become incriminated at any stage.

Mr. White.—That is true, but at present those persons need not answer one question.

Mr. Parr.—That is correct.

Mr. Pettiona.—In your opinion, the section should be amended by the addition of the words "former officer or agent." A person who is not an officer of a company when a summons is issued could claim that he has no case to answer because he is not at present an officer.

Mr. Parr.—That is so. There should not be a time limit with respect to former officers. In the case in which I am particularly concerned at the moment, it is essential that I probe thoroughly the first entry in the cash book, which was made in March, 1945, because on it depends to some extent the share structure of the company.

Mr. White.—Have you any more cases like this one?

Mr. Parr.—This is the first of its kind.

Mr. Pettiona.—The Committee are considering the question of taking proceedings without paying any regard to the time factor.

Mr. Parr.—The next point I was about to raise concerned sub-section (3) of section 136, which states, *inter alia*:—

> It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

That is a provision which came up for discussion in the Supreme Court; hence my reason for mentioning it in passing. It seems that there is some ambiguity in the wording of that provision with respect to when the officers and agents shall produce to the inspector all books and documents. Possibly, the words "on demand" or some similar words should be included in the provision.

Mr. Randles.—Paragraph (*b*) of sub-section (4) of section 136 states:—

> Such summons may require the production of all books and documents in the custody or under the control of such officer or agent.

Do you say that there may be a time limit on that provision?

Mr. Parr.—No. What I intended to imply was that if there is any reference to past officers being included in the power of the inspector, there should be no limitation on how long ago they were officers of the company.

Mr. Randles.—I see nothing wrong with your first suggestion.

Mr. Parr.—The English Act brings in past and present from the beginning.

Mr. Hollway.—I think that covers what we are seeking.

Mr. Parr.—The next point I wanted to raise was the question of the scope of the activities of an inspector appointed under section 136. The difficulty that confronts an inspector relates not to what is in the books but to what is left out of the books. I cite an example, which is factual. An officer has access to the stocks of a company, some of which he sells. He issues invoices on unnumbered forms and keeps a record of the invoices which he sends out. He types out a monthly statement setting out the details of the invoices. He then makes certain that he is the person who opens the mail, and he intercepts the incoming cheque. Despite the fact that the cheque is crossed "Not Negotiable," and is marked "Bank Account Payee only" with the word "bearer" struck out, he, being the registered signatory for endorsements at the bank, endorses the cheque—by multiple endorsements—to himself, and has the cheque paid into his own bank account.

Mr. Hollway.—I cannot think of any amendment to the Companies Act that would cover that contingency.

Mr. Parr.—What I am trying to point out is that at the moment the inspector's sphere of operations is distinctly limited. For argument's sake, when a cheque has been drawn, I do not think that an inspector has any greater power than to have the cheque turned up at the bank to ascertain if there is any mark on the cheque. I do not think the inspector has the power to go behind the cheque, so to speak, and ask the bank into what account it did in fact pay that cheque.

Mr. Hollway.—This is a technical matter. Do you think it would be possible to let the Committee have a written submission to cover the difficulties you have enumerated and at the same time suggest a solution?

Mr. Parr.—I shall be pleased to do so.

Mr. Hollway.—The matter will then be discussed with the Crown Law Office and possibly it will be taken up with you again. This matter leads us back to what we considered previously, namely, the desirability of proper audit.

Mr. White.—Have you, Mr. Parr, any opinion with respect to compulsory audit?

Mr. Parr.—I am not a legal man, but I have a suspicion that there is, in fact, throughout Australia, such a things as a compulsory audit of private companies. Regulation No. 9 of the Income Tax and Social Services Contribution Assessment Act states:—

> (1) Except as otherwise prescribed, every return under the Act shall—
>
> (*a*) be made and furnished in such of the forms provided by the Commissioner for the purposes as is applicable;
>
> (*b*) contain the information and particulars mentioned or referred to in that form.

Every company form issued requires, as the first item, an audited trading account, profit and loss account, appropriation account, and detailed balance sheet.

Mr. Pettiona.—Would that provision apply to proprietary companies?

Mr. Parr.—Yes; they all use the one form.

Mr. Pettiona.—Would there be no way of securing exemption?

Mr. Parr.—I do not claim that the provision is being enforced completely. After perusing the transcript of evidence that has been submitted to me, I say frankly that I foresee much worry in trying to enforce an audit of private companies. I might say, however, that this morning my partner was called out to make an investigation of a private company which was purely a family affair, and he found that the financial records were in an extremely poor shape. The statutory records were either completely muddled or non-existent.

Mr. White.—In view of the fact that it was a family concern, do you consider it would be necessary in that case to have an audit.

Mr. Parr.—The aspect that worries me is: What is the actual meaning of the word "audit?" I contend that that word is extremely difficult to define because there is so much that is actually a matter of opinion. I do not think any one could lay down precisely what is done in an audit, because each case must be judged on its own merits.

Mr. Hollway.—Had you been auditing the books of the company to which you have referred from the beginning, would you have detected any fraud?

Mr. Parr.—If a strict audit had been made, this position could not have continued longer than twelve months.

Mr. Randles.—How would you pick up the fraudulent dealings?

Mr. Parr.—We would ask for vouchers. That leads me to an interesting point. Under the Australian income tax law it is merely necessary to keep records in the English language sufficient to enable the income and expenditure which is regarded as assessable income and allowable deductions to be readly ascertained, but there is no definition of the word "records." Conversely, the New Zealand Act states that the word "records" shall include books of account, recording receipts or payments, or income or expenditure, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any of such books of account.

One of the principal difficulties was that the books were written up from the cheque butts, with nothing to support them. When cheque butts alone are taken as the basis of the record, and at face value, anything can happen.

Mr. Randles.—Was there an outside accountant?

Mr. Parr.—Yes, he was the bookkeeper. Clause 145 of the Articles of Association of the company provides that the accounts relating to the company's affairs will be audited in such manner as the company shall from time to time determine. In that particular instance, it was left to one person in the company to arrange for the audit, and there was always a reason why the audit could not be performed. Another interesting point concerning that case is that, under the articles of association, a director could demand a poll. A director could get himself into the position of holding the majority of the shares and the other directors would then be virtually non-existent.

Mr. Swinburne.—How many shareholders were there in the company to which you refer?

Mr. Parr.—I think there were from eight to ten.

Mr. White.—Were they all family relations?

Mr. Parr.—No, they were unrelated persons.

Mr. Hollway.—If you, Mr. Parr, could let us have a written submission it will be incorporated in your evidence.

Mr. Parr.—I shall be pleased to do so.

Mr. Hollway.—On behalf of the Chairman, and other members of the Committee, I take this opportunity of extending to Mr. Parr our sincere thanks for attending to-day and tendering much helpful information.

The Committee adjourned.

WEDNESDAY, 16TH JUNE, 1954.

Members present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. I. A. Swinburne,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles,
	Mr. R. T. White.

Mr. K. N. Stonier (Chairman) and Mr. G. C. Tootell (Vice-Chairman) of the Institute of Chartered Accountants in Australia (Victorian Branch) were in attendance.

The Chairman.—Recently Mr. Stonier and Mr. Tootell tendered certain evidence to this Committee, but there were one or two matters which they desired to consider further. Those gentlemen are now in attendance, and I ask Mr. Stonier to proceed.

Mr. Stonier.—Question No. 4 was in these terms:—Is it desirable to amend section 127 of the *Companies Act* 1938 by deleting the words "as such" in sub-section 5?"

The Chairman.—For the information of the committee I might mention that section 127 deals with the setting out in the accounts of a company, for presentation at the general meeting, of the amount of any loans that have been made to directors and also payments that have been made to directors, irrespective of whether those payments were made by way of fees, percentages, or other emoluments.

Mr. Brennan.—Does that provision relate to expenses?

The Chairman.—Sub-section (5) of section 127 provides that the expression "emoluments" includes fees, percentages, and other payments made, or consideration given directly or indirectly to a director as such of the company, or of any such holding, company, or subsidiary company, and the money value of any allowances or perquisites belonging to his office.

The point previously made in evidence was that the obligation was limited to showing the payments made to directors as such, and the question now arises whether the accounts should contain records of payments made to a director in another capacity, such as manager of a company.

Mr. Stonier.—Under date of the 12th June, 1952, the Law Institute of Victoria submitted to the Attorney-General a report on suggested amendments to the Companies Act. Included as an appendix was the report of the Victorian State Council of the Institute of Chartered Accountants in Australia. We would refer your Committee to that report. In dealing with section 127 we suggested the deletion of paragraph (*c*) of sub-section (1) as we were of the opinion that the

rights of shareholders were fully protected by sub-section (1) of section 148. Under that provision, shareholders have the right to demand that information.

The Chairman.—That particular provision gives to a percentage of shareholders absolute power to require statements of all moneys that have been paid to directors.

Mr. Stonier.—That is so. We also suggested that company accounts should show as separate items the fees, &c., paid to directors for their services as such. Our opinion in this matter is still the same.

The Chairman.—What is the effect of that submission? You imply that there is no need to show in the balance sheet payments made to directors except payments made as directors' fees. However, if the shareholders desire to ascertain what has been paid to directors they have the necessary power under sub-section (1) of section 148 to demand that information.

Mr. Stonier.—That is so. It is necessary to consider also the position of a full-time employee who is a director. The question arises as to whether his remuneration should be disclosed. If that is done, the company concerned may be placed in a dangerous position because the information would become available to its competitors.

Mr. Brennan.—The items to which you refer will be shown in the profit and loss account and the trading account?

Mr. Stonier.—They would be included in the profit and loss account but they would not be shown in the published accounts of the company.

Mr. Tootell.—Our feeling is that companies should be obliged to show directors' fees as such in the accounts. Section 148 gives to the shareholders power to demand the full story with respect to payments to directors if that information is required.

Mr. Brennan.—Do you consider that disclosure of the information in a published balance sheet might unnecessarily embarrass the company concerned in competing with other firms?

Mr. Tootell.—The figures would be misleading. Mr. Stonier has directed attention to certain anomalies and difficulties, but there are others as well. In a company there might be a director who was a trader from whom that company purchased goods. It is difficult to frame legislation whereby it could be determined which payments were to be excluded and which were to be included in the published accounts of the company. In many companies there are directors who are interested in several concerns and sales are made from one firm to another. If a director were operating as a private trader as well, it would be necessary to show in the published accounts of the company all payments made to him in his capacity as a supplier of goods.

Mr. Stonier.—That condition would apply to the supply of both goods and services.

Mr. White.—Do you claim that this provision protects both the director and the company and has no adverse effect on shareholders?

Mr. Stonier.—Yes.

Mr. Thomas.—Are there many instances of directors of public companies who are the proprietors of smaller factories that are making goods for the parent organization?

Mr. Tootell.—Yes, but the cases I have in mind do not relate only to direct trading. I might mention the case of a country storekeeper who is invited to join the board of directors of an industrial company in his town. He, in his capacity of storekeeper, is the person to whom the company would go when it wanted to purchase brooms, brushes, buckets, and so on. The storekeeper receives payments for those goods in the ordinary course of business. I believe that if overriding legislation relating to the disclosure of all payments to directors were introduced, many complications would arise.

The Chairman.—Do you, Mr. Tootell, believe that sub-section (1) of section 148 (which provides that before shareholders can obtain the requisite information there must be one-fourth of the total votes which can be cast at a meeting in favour of the proposal) is onerous, so far as shareholders are concerned?

Mr. Tootell.—I have not considered that aspect but I concede that it might be so.

The Chairman.—Sub-section (1) of section 148 states, *inter alia*:—

> . . . . . the directors of a company shall, on a demand in that behalf made to them, in writing . . . . . by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled furnished to all the members of the company within a period of one month from the receipt of the demand at the registered office, a statement certified as correct, or with such qualifications as are necessary, by the auditors of the company, showing as respects each of the three last preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company . . . . . .

That is a more difficult proposal than the suggestion originally made that action could be taken at a general meeting. It means that one-quarter of the shareholders, or those shareholders who have one-quarter of the total voting power at the general meeting must get together and make a demand on the company, in writing, for this information before it will be supplied.

Mr. Stonier.—I defer to your legal knowledge, Mr. Chairman, but I wonder whether, if at the annual meeting an ordinary shareholder moved a Resolution that this information be supplied, and the Resolution was agreed to by a simple majority, the directors would not have to comply with the requirement, irrespective of section 148.

The Chairman.—I think there might be legal difficulty in that regard. Theoretically, the shareholders control the company and, if they pass such a Resolution, I suppose the directors would have to comply. I foresee difficulites, however, in the case of an unwilling director, who might assume the attitude that although the shareholders are clearly entitled to receive the desired information under the Act, they must comply strictly with section 148 before they can obtain it.

Mr. Stonier.—I believe the principle is that there should be a reasonable number of shareholders demanding the information before it is made available. If the requisite number were set at too low a figure, it might be possible for, say, half a dozen shareholders who possess a relatively small proportion of the total shareholding to obtain the information for certain purposes, with an ulterior motive.

Mr. Randles.—There is a proviso to sub-section (1) of section 148 which states:—

> (i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is received at the registered office resolves that the statement shall not be furnished . . . . . .

The Chairman.—The directors would then have to call a meeting of shareholders for the purpose of voting on the matter. Probably that is not an unreasonable procedure because, if the majority of the shareholders are of the opinion that the information should not be supplied, the directors should not be required to furnish it.

Mr. Brennan.—Should not the shareholders have the maximum amount of information concerning a company's affairs? Why should it be necessary for a formidable percentage of shareholders to vote in favour of the preparation of the required information?

The Chairman.—This is a provision that could lead to abuse and I think it desirable that the matter be discussed by the Committee.

Mr. Stonier.—Part of question No. 6 was expressed in these terms:—

Have you any views on the introduction in Victoria of legislation similar to the *Trust Accounts Acts* (1923-53) of Queensland?

Our reply is that the *Trusts Account Acts* (1923-25) of Queensland relate to moneys received for or on behalf of any person by a trustee. The word "trustee" has a limited meaning defined as being any barrister, solicitor, legal practitioner, conveyancer, public accountant, auctioneer, commisison agent, farm produce agent, and every other person or class of person declared to be a trustee by Order in Council. The Act makes it obligatory for any trustee as defined to lodge trust moneys to the credit of a trust account and provides that moneys in such trust account shall not be available for payment of the debts of any other creditors of such trustee.

Regulations under the Act cover the mode of keeping records of trust accounts and provide that such trust accounts shall be audited twice yearly and a report sent to the Attorney-General on the result of the audit. The regulations further provide for the lodgment with the Government by trustees of deposits as security against misapplication of funds. These regulations do not apply to all the trustees named in the Act but only to solicitors, legal practitioners, conveyancers or public accountants. The regulations are expressed in great detail as to the mode of keeping books, depositing and disbursing trust funds and the issue and control of receipt forms by the Department of Justice.

Amendments to the Act in 1952 made special provision for contractors. Contractors are defined as those who undertake by contract or promise to "construct, repair, alter, extend, renovate or paint, or perform work or labour or supply materials for or in connexion with the construction, repair, alteration, extension, renovation or painting of a dwelling house or other fixed improvement whatsoever on any land." The legislation makes it obligatory for any contractor who receives money which he is required to apply toward the price of a contract to pay that money into a trust account. It specifically limits the drawing of cheques on such trust account to those for payments to outsiders for work on the contract and lawful progress payments to himself. It provides that regulations may be made regarding keeping of trust accounts and audit thereof. We have no knowledge of any regulations having been made regarding contractors. The legislation and regulations inasmuch as they apply to "trustees" are comparable with the legislation in Victoria for the audit of solicitors' accounts. Such Victorian legislation also provides for the establishment of a fund to protect the public against misapplication of funds by members of the legal profession.

In our opinion, such legislation provides little safeguard against misappropriation. It appears to be based on the assumption that if a practitioner is required to issue prescribed forms of receipts and keep prescribed records, that his accounts will reveal any misappropriation. In fact, however, the defaulter will normally refrain from making any record of moneys he receives and intends to misapply. The accounts kept in pursuance of such legislation may therefore be expected to be a record of honest transactions, the unscrupulous will avoid them. We would recommend that you also seek the opinion of the Law Institute of Victoria on this aspect.

The Queensland legislation is strange inasmuch that while the principal Act requires numerous classes of "trustees" to deposit moneys to trust accounts, the account keeping and audit provisions of the regulations extend only to legal practitioners and public accountants, whereas auctioneers, commission agents who might be expected to handle vast sums of trust moneys are excluded from such provisions. Indeed, if legislation is required for audit of trust funds, why should it not extend to the most widely held conception of trustee, that is, the trustee of a deceased estate? Presumably, under the Queensland Act, as under the Victorian legislation referred to, a solicitor appointed a trustee under a will must submit his estate accounts to audit. If other members of the community are appointed, their accounts do not come within the legislation.

Public accountants do receive trust moneys. Many of them are appointed trustees under wills. However, if it is considered that the Queensland legislation relating to their accounts is desirable, is it not even more desirable that such legislation should be applied to all those members of the community who are less skilled in the keeping of records and the care of trustee funds? It will be realized that such legislation would bring to public accountants considerable fees for the audit work required so that a mercenary self-interest would lead us to commend any such legislation. However, it is our firm belief that not only would such legislation be ineffective in preventing misapplication of funds, but that it would impose a vast burden of expense on all those who availed themselves of the services of a trustee, particularly in the case of small estates or isolated transactions. For the above reasons we do not recommend the adoption of legislation on the lines of the Queensland Act regarding "trustees."

Mr. Thomas.—Do you know of cases in which persons handling trust moneys have become careless and have mixed such funds with their own moneys?

Mr. Stonier.—The mixing of trust funds with other moneys is always likely to happen. Dealing with the legislation as it affects contractors, we assume its introduction was to guard against the unscrupulous or careless contractor who requires payment in advance for building or renovation work, and then applies the moneys received to other purposes. This we understand is the type of transaction through which many persons desiring to acquire homes have suffered loss of material amounts in relation to their means. For the same reasons as mentioned earlier, we do not think legislation of this nature will deter the unscrupulous. We also think it goes too far inasmuch as the whole body of reputable persons and companies undertaking repair work, whether it be of very small amount or material sums, would be obliged to channel all their receipts through trust accounts, even though such money was received for work already performed. If audit provisions were extended to every person engaged in work of this nature, an unnecessary burden would be placed on the small businessman. We do not therefore recommend that the Queensland legislation as it affects contractors should be adopted.

In the whole of the legislation there is perhaps one principle worthy of adoption. We are firmly of the opinion that such legislation would not prevent dishonesty. There is, however, the case of the person holding trust moneys who might be in difficulties because of carelessness in mixing trust moneys with

his own. Some safeguard might be provided by more insistence on the use of trust bank accounts for the repository of trust funds.

Section 3 of the Queensland Act makes it obligatory for a trustee as defined to bank trust moneys in a general or separate trust account until he applies them for the purposes for which they have been received, and protects those trust funds against creditors. There would, we consider, be merit in making all trustees deal with trust moneys in this way. If considered desirable, contractors for building could be brought within the ambit. In the case of contractors, we would consider they might be treated as trustees only in respect of moneys received by them for work to be done or for materials to be supplied in the future and not to normal contracts for building or repairs.

The second part of question 6 is as follows:— "Have you any views on the introduction in Victoria of legislation similar to the *Lay-by Sales Act* 1943 of New South Wales?"

The widespread custom of selling goods on the "lay-by" system is one which we believe has not been the subject of legislation in Victoria. The special factors in this type of trading requiring consideration would appear to be the following:—

(*a*) Protection of the customer against the unscrupulous or reckless trader who accepts "lay-by" instalments for more goods than he purchases and puts aside for his commitments.

(*b*) Protection of the customer in the event of the financial failure of the seller.

(*c*) The generally adopted procedure whereby failure of the customer to pay in full involves forfeiture of the amounts of instalments already paid.

The rights of the customer would no doubt depend on the point of time at which the property in the goods passed to him, a matter which is no doubt governed by the conditions laid down by the seller. However, since the amount of individual transactions is usually small, consumers would probably pay little heed to legalities, a feature that would play into the hands of the unethical trader. We do not know to what extent legal decisions may have established law and custom relating to this type of trade, but in any case we feel there are sound grounds for statutory enactment, as was the case with sales on the basis of hire purchase.

The New South Wales *Lay-by Sales Act* 1943 makes provision for the following:—

(*a*) Generally goods shall not be sold or agreed to be sold on lay-by unless such goods are in the possession of the vendor at the time of sale.

(*b*) An exception is made for goods not in existence or not in the vendor's possession, providing the vendor accepts not more than 20 per cent. of the purchase price before receiving the goods and the purchaser inspecting and approving the same.

(*c*) A further exception is made for goods of a type prescribed by the Government and where the vendor lodges a fidelity bond to guarantee performance.

(*d*) Trust accounts shall be kept for the deposit of customers' payments. That relates, for example, to purchases under (*b*).

(*e*) The rights of customers and vendors where a sale is not completed, including the appropriate refund to the customer.

(*f*) The form of agreements to be used, the mode of recording sales.

(*g*) Authority is given for promulgation of regulations regarding keeping of accounts, audit, &c.

We agree on the desirability of legislation to regulate lay-by sales. Regarding any provisions therein for keeping of accounts and audit thereof, we can only repeat the views expressed in earlier evidence. We consider that legislation which attempts to deal in too much detail with the form of accounts places an unnecessary burden and expense on the vast body of reputable traders and does not deter the unscrupulous few. In such a matter as this, proper account keeping is essential. However, we consider it would be sufficient to definitely state the items of information to be recorded by the vendor and leave it to him to find the method most suited to his records rather than to attempt to describe in detail the forms of books and records as mentioned in the New South Wales Lay-by Sales Act or the Queensland Trust Accounts Acts as referred to above. If legislation regulating lay-by sales is to be introduced, we would be glad to confer with the Government on the provisions regarding accounts.

Mr. Tootell.—I might add that the New South Wales legislation, in relation to sales and the keeping of accounts, specifies many requirements in considerable detail. For instance, it provides that certain records must be kept in books, or on cards, or in loose-leaf form. In our opinion, such detail is unnecessary.

The Chairman.—You consider that if the New South Wales type of legislation was enacted in Victoria, it would be desirable to adopt a standard form of account which, while ensuring a proper record, would not be too detailed and onerous?

Mr. Tootell.—That is my point.

The Chairman.—Before this meeting commenced, Mr. Stonier mentioned to me the question of evasion generally of the prospectus provisions of the Companies Act. He pointed out that advertisements are published regularly advertising "Buy your own flat." In effect, that is inviting the public to subscribe for shares in a proprietary company, and shares are practically all a person receives in most of the schemes of this nature at present in existence. Mr. Stonier pointed out that, on the face of it, this appeared to be an evasion of the provisions of the Act, and that normally it is illegal to invite the public to subscribe capital without issuing a proper prospectus. Perhaps Mr. Stonier would like to add to the comments he made to me.

Mr. Stonier.—We have not discussed the matter in detail; we did not know whether the Committee wished to consider it. We carried out a good deal of work concerning the account section, and the report on that subject is available to the Committee. It is attached to the report of the Law Institute of Victoria. We understood that the Committee was interested primarily in the question of fraud.

The Chairman.—That is so.

Mr. Stonier.—If it is the intention of the Committee to consider other aspects of the Companies Act, there are a number of matters which could receive attention.

The Chairman.—We do not intend to embark upon a general inquiry into the Companies Act, but it seemed to me that the question of inviting subscriptions by indirect methods was relevant to this investigation relating to frauds.

Mr. Pettiona.—It could eventually become fraudulent.

The Chairman.—We have already seen that some unscrupulous promoters have used the option certificates in order to evade the provision that a proprietary company must not have more than 50 members, and such certificates have been hawked around. Perhaps Mr. Stonier and Mr. Tootell could consider that aspect of the matter and submit a memorandum to the Committee.

Mr. Stonier.—We shall be pleased to do so.

The Chairman.—Mr. Bourke, M.L.A., referred to us the question of persons being invited to buy their own flats, and we referred him to the Committee's Report on the Transfer of Land Bill. In that report the view was expressed that some machinery could be evolved under the Act to enable a person purchasing a flat to obtain a freehold title. The aspect that Mr. Stonier has referred to is new, and it may have been in Mr. Bourke's mind. It applies not only to "Buy your own flat" schemes, but also to unit trusts. Perhaps we can leave the matter in the hands of Mr. Stonier and Mr. Tootell to examine.

Mr. Stonier.—Very well.

The Chairman.—On behalf of the Committee I thank you, Mr. Stonier and Mr. Tootell, for your assistance. The views that you have expressed on the legislation relating to trusts and lay-by transactions will be of great help in our deliberations.

The Committee adjourned.

THURSDAY, 17TH JUNE, 1954.

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. J. S. Bloomfield, M.L.A., Barrister-at-law, was in attendance.

Mr. Bloomfield.—I gather from the evidence tendered by Judge Nelson that the Committee desires to hear evidence as to facts within the experience of witnesses, and also to receive suggestions for improvements in the law. It appears to me that the troubles associated with incorporated companies that have led to the activities of this Committee may be divided broadly into two classes, first, swindles against the investing public and, secondly, frauds perpetrated on creditors—using the term "frauds" in its widest sense. I have had practically no experience concerning frauds upon the investing public and, unless I am asked to do so, I do not propose to say anything on that subject. I have had a little experience, however, with respect to incorporated businesses which have left a trail of lamenting creditors behind them, and perhaps I may have some suggestions to offer which are worthy of consideration by this Committee.

My experience in the examination of persons who have had the direction of defaulting companies has been that the predominant excuse offered by them has been that those in charge of the companies' affairs knew nothing about bookkeeping and that they left the care of the books to others. Hence, when at some stage, troubles developed and it appeared that the business was completely insolvent and that the persons who had trusted it were left substantially unpaid, the excuse which in my experience was most frequently offered was that which I have stated.

Mr. White.—Can you elaborate a little on that aspect?

Mr. Bloomfield.—I cite the case that Judge Nelson mentioned, namely, Group Constructions and associated companies. The man behind those organizations was Mr. Peter Russell Clarke, who posed as something in the nature of an architect. Those organizations became hopelessly involved with liabilities to persons who supplied materials and with those with whom contracts had been entered into for the building of houses. Over a period of several years, Peter Russell Clarke was spending money like water and was living in a most flamboyant and extravagant fashion. Eventually, he was brought before the court, and I had the opportunity of examining him, I think for a period of nine days. Transaction after transaction was probed, where it appeared that contracts had been entered into and engagements undertaken which the companies controlled by Peter Russell Clarke had no prospect of fulfilling. Time and time again, he answered the inquiries addressed to him in this manner, "Well, I do not know anything about the books; I left them to others, such as the secretary or the accountant."

During the depression years, I had a somewhat similar experience with several smaller proprietary companies and, at a later stage, I assisted in the investigation of the Rubenstein group of companies and frequently witnesses would say, in effect, "I am not an accountant; it is true that I entered into certain contracts or engaged in such and such a form of transaction, but I really did not know the state of affairs of the company and I thought we would be able to meet our obligations." It appears to me that that state of affairs which is catered for with regard to the individual under the bankruptcy laws is something which was not fully appreciated when the formation of proprietary companies in Victoria was first authorized by legislation.

As is generally known, there are two forms of limited liability trading companies in Victoria. The first is the proprietary company, which is a private affair and which is exempt from many of the provisions which relate to public companies. The other type of limited liability company is the public company. What I have to say concerns mainly proprietary companies. Perhaps it would be as well, if at this stage, I indicated my views by giving a brief résumé of the considerable advantages that are available to persons who engage in business by their being enabled to have their undertakings taken over by a company and thus enjoy the benefits of limited liability. Under the law as it now stands, anyone engaging in business —other than a profession—can form a proprietary company.

The Chairman.—When you speak of a profession, I take it that you refer to one of the learned professions?

Mr. Bloomfield.—Yes, I have in mind professions such as that of doctor, lawyer, or dentist.

The Chairman.—Usually, the term "profession" is used in a much wider sense.

Mr. Bloomfield.—That is so. The fact is that if a man is conducting a business he can avoid personal liability by registering a company and selling his business to that company. That is the first of the advantages to be derived from the formation of a proprietary company. The second advantage is also a substantial one; by transferring shares in the company, the promoter can attain a degree of divisibility of interests and property which the personal owner would find it very cumbersome and difficult to do. In fact, that is a means that has been availed of quite frequently to avoid, for example, stamp duty on the

transfer of real estate; the shares of a company have been transferred. Similarly, a person can divide up his business between his family in a much more convenient way than could be done on a basis of partnership. None of the shareholders, of course, is subject to personal liability for any of the obligations of the company. Another substantial advantage which accrues from the formation of a proprietary company is the ability to give a debenture or floating charge over the whole of the business, and the promoter is thus enabled to proffer a security to lenders—particularly banks—and obtain credit in a way which would be much more difficult and, in some circumstances, impracticable with respect to the business of an individual.

I have pointed out the advantages that accrue from the formation of proprietary companies because I feel that there should be corresponding obligations. My first suggestion is that this Committee might well consider whether, in view of the substantial advantages to be derived by a person from transferring his business to a company, the provisions of section 123 of the Companies Act which are now applicable to public companies should also be made to apply to proprietary companies.

I shall refresh the minds of the members of the Committee of the differences in the provisions relating to public companies and proprietary companies which appear in sections 122 and 123 of the Act. Paragraph (*c*) of section 122 states:—

> This subdivision—
>
> (except sub-sections (1) and (2) and, so far as applicable to the said sub-sections, sub-section (6) of section 123 of this Act) shall not, unless otherwise expressly provided, apply to a proprietary company:

Sub-section (1) of section 123 provides:—

> Every company and the directors and manager thereof shall cause to be kept proper books of account in which shall be kept full true and complete accounts of the affairs and transactions of the company.

The Chairman.—That does apply to proprietary companies?

Mr. Bloomfield.—Yes. Sub-section (2) of section 123 reads:—

> The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

That also applies to proprietary companies. But sub-section (3) provides, *inter alia*:—

> The directors of every company shall, at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year at intervals of not more than fifteen months, lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, ...

Mr. White.—That does not apply to proprietary companies?

Mr. Bloomfield.—That is so. Sub-section (4) of section 123, which also does not apply to such companies, provides:—

> Every profit and loss account of a company not being a banking company shall show the balance of profit and loss for the period which it covers and shall in particular show separately—
>
> (*a*) the net balance of profit and loss on the company's trading;
>
> (*b*) (i) income from general investments; and (ii) income from investments in subsidiary companies;
>
> (*c*) amounts (if any) charged for depreciation or amortization on (i) investments, (ii) goodwill, and (iii) fixed assets;
>
> (*d*) any profit or loss arising from a sale or revaluation of fixed or intangible assets;
>
> (*e*) the amount transferred to the account from reserves or from provisions;
>
> (*f*) directors' fees.

Sub-section (5) directs that a duly audited balance-sheet shall be laid before the company in general meeting, and continues with further provisions relating to the balance-sheet.

The preparation and presentation of such accounts involves not inconsiderable expense, and it has been thought that from the viewpoint of the small trader who has converted his business into a proprietary company there is no need for such provisions and that the expense would be disproportionate to the benefit to be gained. But if this Committee should be of opinion that there have been such a number of instances of fraudulent trading or reckless trading by proprietary companies, I submit that it might well consider the application of the provisions to which I have referred to proprietary companies, and consequent amendment of the Act, or at any rate the drafting of other provisions to a similar, although perhaps less stringent effect.

In my experience, the failure to keep books or to have an overhaul of a company's affairs from time to time, and the consequent ability of the persons controlling the affairs of the company to say, "We did not realize what was happening," is a very frequent cause of evasion of responsibility and loss to the community. I think what I have said does not in any way conflict with the statements made by Judge Nelson, and that it is somewhat to the same effect.

The Chairman.—A problem that the Committee seem to have encountered frequently in evidence in this inquiry is that of lack of proper accounting records, and I am beginning to wonder whether a provision for a compulsory audit is the answer. An audit is to a large degree limited to a checking of the books that are kept, and the solution seems to be perhaps a more difficult one of providing legislation to ensure that books are kept and to place a personal responsibility upon the directors of a company who fail to keep books themselves or arrange for them to be properly kept.

Mr. Bloomfield.—That trouble exists, and there is also the question of specifying the books that must be kept. The provisions I have read which do not apply to proprietary companies specify that there shall be a profit and loss account and a balance-sheet.

The Chairman.—Following your suggestion that certain provisions of section 123, or some similar but perhaps less stringent provisions, should apply to proprietary companies, did you have in mind that their application would also involve an audit of such accounts as are directed to be kept before they are presented to the shareholders?

Mr. Bloomfield.—Yes.

Mr. Thomas.—If these conditions were applied to proprietary companies, do you consider any great hardship would be inflicted upon proprietary companies in general?

Mr. Bloomfield.—I should think that it would impose a very considerable burden on a number of persons, who would find themselves handicapped, but it is for this Committee to decide whether the remedy would be worse than the disease. My own view is that the advantages of incorporation as a proprietary company are so substantial that it would not be unreasonable to have some corresponding obligations, and it seems to me that the proprietary company is now doing something that was scarcely contemplated when the original legislation was brought down. The practice has become widespread for all sorts of persons to form proprietary companies, when there is no real reason

for doing so, other than the fact that they can carry on business without personal risk. For example, one can visualize very little reason of any general advantage to the community why the local baker who forms a proprietary company should not have to stand up to his obligations in the same way as the bootmaker next door who has his personal assets to meet his liabilities. Possibly, the matter has got out of hand.

The Chairman.—A proprietary company was originally intended as an instrument of trade and commerce in a big way.

Mr. Bloomfield.—I think that is so.

The Chairman.—But it has become a convenient form of carrying on any business, and although it is used by many reputable organizations for conducting a perfectly honest and straightforward business, it also encourages persons of doubtful stability to set up in business, make a good thing of it, and get out at the expense of the shareholders or, usually, the creditors.

Mr. Bloomfield.—It is only the creditors with whom I am concerned.

Mr. White.—Are most fraudulent transactions carried out in proprietary companies?

Mr. Bloomfield.—I do not know, but my impression is that that is so.

Mr. White.—Do you consider that the sections of the Act referred to prevent many fraudulent transactions in public companies?

Mr. Bloomfield.—That is undoubtedly so, but it must be remembered that there is a reason for the difference, namely, that the members of the public are interested, as investors, in public companies and they are entitled to have a general meeting every year and to have a survey of the whole position laid before them. In most cases, the shares are quoted on the Stock Exchange, investments in shares in public companies are readily marketable, and the necessity for the check which these provisions provide is obviously stronger in those circumstances than it is when there are no investors.

Mr. Pettiona.—In the case of a proprietary company which splits its shares into multiple units, thereby creating itself into a public company without recognition as such, although still obtaining subscriptions from the public, would you not think that if legislation appropriate to such cases were enacted it would protect the public?

Mr. Bloomfield.—I have had no personal experience of that form of transaction. I understand that various devices have been adopted in an attempt to evade the provisions of the Act, against dealing in securities of that nature, but I do not propose to deal with that aspect, as I can claim no personal knowledge of it. Obviously, what Mr. Pettiona says is correct. If that sort of thing does lead to the public taking an interest of some sort in proprietary companies, an annual general meeting of those concerned would be advisable. I am not sure how far, under the present law, people may go in that direction. I would think that the distance they could go would be very limited.

The Chairman.—I think there are two very clear problems involved; one, as Mr. Bloomfield has mentioned, is that of proprietary companies being used as an instrument for the purpose of defrauding creditors. The other problem, on which this Committee has heard much evidence, is that of proprietary companies using schemes, such as the issue of lot certificates, virtually to evade the provisions of the Act, which specifies that a proprietary company cannot invite the public to subscribe to its capital. That is a problem relating to the protection of the shareholders.

Mr. Bloomfield.—That, again, is a matter with which I do not propose to attempt to deal.

Mr. Thomas.—Have you looked at the provisions of the English Act relating to the prevention of frauds?

Mr. Bloomfield.—No.

Mr. Thomas.—That Act provides that the securities have to be deposited.

Mr. Randles.—Keeping strictly to the creditors' viewpoint, do you not think that the man who supplies goods to a proprietary company should recognize that the fact that he is dealing with a proprietary company is the red light and that he should be careful when he is transacting business with such a company of limited liability. If the people who comprise the company happen to be men of straw, the creditor must know that his debts will not be satisfied from the private assets of those who comprise that company.

Mr. Bloomfield.—There are other people concerned besides those who supply goods. In the Russell Clarke case, hundreds of people deposited money with his organization for the purpose of having houses built for them, but those buildings were never erected, and the depositors suffered considerable losses. The people who were thus defrauded comprised all classes of the community, and included young married couples, returned servicemen, farmers, and other people who wanted houses. It must be remembered also that there are many proprietary companies that never get into trouble, and it is not practicable for wholesale merchants to say that they will not deal with proprietary companies.

Mr. Randles.—That is another angle, but take the case of Group Constructions. Suppose it was necessary to produce a balance-sheet every year; there would be fifteen months to run and that would still be within the present Companies Act. A person would have that period in which to defraud investors. The balance-sheet would only disclose more quickly than at present to the people concerned that they had been defrauded.

Mr. Bloomfield.—A person against whom legal action might be taken to recover losses would no longer be able to use the excuse that he thought he had plenty of assets and that he thought he could meet his liabilities. Another matter arising out of the same branch of the subject is that in addition to ignorance of the company's financial position and the company's failure to keep or to understand books of account—those things have been taken as excuses in the past—there is also the fact that it is necessary in order to sheet home any swindles against creditors to establish fraud. I have had experience on several occasions of cases in which it could be said that there had been reckless negligence on the part of a man who had been carrying on business but who, in the exercise of common sense, should have seen the red light ahead but failed to do so and continued to carry on his business, incurring further liabilities which he could not meet. While in those circumstances it could, perhaps, be said that there was reckless negligence, it might not be possible to establish that there was deliberate fraud. In other branches of the law, reckless negligence can be of such a gross degree that it can be considered as deserving punishment. I refer to manslaughter, and various offences under the Motor Car Act. The Committee might consider whether the carrying on of business with negligence so gross as to be considered criminal negligence, would constitute a possible basis for further legislation in regard to companies.

The Chairman.—Is there any provision akin to that in the Bankruptcy Act?

Mr. Bloomfield.—I cannot recall any offhand.

The Chairman.—I have some recollection of a provision regarding the carrying on of business after a person had reached the stage at which he was not in a position to meet his liabilities, but apparently there is no provision of that sort in the Companies Act.

Mr. Bloomfield.—That is so.

The Chairman.—It is an offence under the Bankruptcy Act to carry on business and seek credit after the stage has been reached where the business man concerned has no prospect of paying his debts, and frequently persons who go bankrupt are punished for having carried on business in those circumstances. I cannot recall any provision in the Companies Act that is of a similar nature.

Mr. Bloomfield.—There is no such provision.

Mr. White.—Are you advising this Committee to recommend the incorporation of a similar provision in the Companies Act?

Mr. Bloomfield.—I am not presuming to advise the Committee at all. I only suggest that the Committee might consider or investigate the matter in consultation with the Parliamentary Draftsman. That does appear to me to be a weakness of the Victorian company law—the necessity of having to establish fraudulent intention. The case of Russell Clarke was a similar one. He was spending money like water, just hoping that everything would be all right.

Mr. Randles.—Do you think the Crimes Act would have taken care of Russell Clarke, considering that he had been spending money in the manner mentioned?

Mr. Bloomfield.—There is the difficulty of proof in such cases. I suggest quite urgently to the Committee that it might consider here in more detail the substance of what I submitted in the Assembly during the debate on the Crimes Act. Section 5 of the *Crimes Act* 1954 reads as follows:—

> Upon the trial of a charge for any offence against section 3 or 4 of this Act the opinion of any properly qualified auditor or accountant as to the financial position of any company at any time or during any period in respect of which he had made an audit or examination of the affairs of the company according to recognized audit practice shall be admissible either for the prosecution or for the defence as evidence of the financial position of the company at that time. . . . . .

I do not know whether that section was taken from any other Act or whether it has been judicially examined, but I gather from the marginal note that it is original. In my view, that section will lead to all sorts of practical difficulties. I would direct the attention of this Committee to the extraordinarily complicated and extensive nature of the duties of an auditor and to what is, in my submission, the meaning of the expression "recognized audit practice." In that connexion, I wish to refer to the leading case on the duties of an auditor, which is known as the City Equitable case. It is reported in 1925, Chancery, at page 407. The report extends to page 549. The case was determined by the Court of Appeal in England, and it arose from the Gerard Lee Bevan case in 1924. It created a tremendous sensation in London. In that case, the duties of an auditor were discussed by the Court of Appeal.

The duty of an auditor is not merely to examine the books, but to make extensive inquiries. In very many cases, where swindles have extended over several years or have occurred a considerable time ago, it would be impossible for an auditor to examine the affairs of the company according to the recognized audit practice. For that reason, I consider that section 5 of the Crimes Act will in operation prove to be nugatory and of no help. If I were counsel for a defendant or an accused person, I would ask the auditor who was giving evidence for the Crown as to the financial position of the company at the time if he had done certain things. His reply would be, "No, I did not and I could not because I came on the scene long after things had happened and I am unable to ascertain, according to the recognized audit practice, what the company's position was as I could not make those inquiries."

One duty of an auditor is to examine the books to see that they are properly written up but, in addition, he has to see that the books present a true record. For instance, if a bank balance of £515 is shown he has to go to the bank and see if it is correct. If the books show "Stock, £20,000" he has to make, at any rate, a cursory inspection of the stock to make sure that there is something which could reasonably be worth £20,000. The auditor might say to the manager, for instance, "You have a lot of linen sheeting; how much would it be worth? It is written down in your books at £5,000; is that a fair thing?" In other words, the auditor must get support for the figures. Again, the auditor would write to some of the people listed as debtors asking whether the debts shown on the books of the company correspond with their view of the situation. The books may show certain securities; it may be said that there is a mortgage over property owned by one debtor. The auditor would be obliged to satisfy himself that the security did, in fact, exist and that it was a mortgage. The company may claim to own real estate, shares or investments of some sort. It is the duty of the auditor to make reasonable investigations to see that the shares are registered in the name of the company whose books he is auditing.

Mr. White.—When an auditor's signature appears on a balance-sheet, does not that signify that auditing practices have been observed?

Mr. Bloomfield.—That is what is done, but I am afraid that I have not made myself clear. This part of my evidence is directed to section 5 of the Crimes Act 1954, which provides that when proceedings are taken against delinquent and possibly fraudulent operators of a company, the prosecution or the defence may tender as evidence the opinion of an auditor. Supposing that Jones is being prosecuted for a number of fraudulent transactions which took place in 1950; one difficulty facing the prosecution is to establish that in 1950 the company was in such a financial state that Jones could not possibly have believed in the promises that he was making. It is reasonable that evidence by an auditor or an accountant should be available to establish the fact that Jones could not have believed in his promise, that he incurred credit without any reasonable prospect of meeting his commitments, or whatever the position might have been. Section 5 of the Crimes Act provides that the court can accept the evidence of an accountant who says, "At that time anybody would have known that the company could not meet its obligations or the promises could not be carried out. That fact was obvious. I have examined the books and the company was hopelessly insolvent." However, that evidence can be given only by a man concerning a period in respect of which he has made an audit or examination of the affairs of the company according to recognized audit practice. In other words, before he is able to give evidence that the company was hopelessly bankrupt in 1950, the witness for the Crown has to say, "I have made an audit in accordance with recognized audit practice."

Mr. Pettiona.—There are two recognized audit practices—an audit or investigation for the purpose of issuing a prospectus regarding a certain plan, and a general audit of the books of a company.

Mr. Bloomfield.—In either event, it would be the duty of an auditor to verify the figures, not only to verify the fact that the books were correctly written up in accordance with proper accountancy procedure but also that the assets which the figures represented did in fact exist.

Mr. Pettiona.—Would you say that is ordinary audit practice?

Mr. Bloomfield.—I am certain that it is.

Mr. Brennan.—If the book entries show interest on a savings bank account of £5,000, the auditor must ascertain that the account is in existence.

Mr. Bloomfield.—That is so.

Mr. Randles.—An auditor who was asked to investigate what the state of a company was four years ago would not be in a position to say that the goods then shown on the balance-sheet did represent a fair and accurate record, because those goods might have been sold.

Mr. Bloomfield.—Exactly. In my opinion, it is not possible to make an examination in accordance with the recognized audit practice five years later because the auditor could not say whether or not the assets existed five years previously.

Mr. Brennan.—I do not agree with that contention, because if there are assets in the company—for example "goods"—the manifests, bills of lading, invoices, and sales and purchases accounts will show the disposition of those goods. Those entries could not be invented.

Mr. Bloomfield.—It would be practically impossible to audit the affairs of the company five years previously. For example, how can it be established five years later whether the goods on the shelves at a certain time represented £5,000 or £500?

Mr. Rdndles.—That could be done with fixed assets but not in the case of goods?

Mr. Bloomfield.—There are many cases in which it would not be possible. Some assistance might be obtained from manifests and invoices, but who is to know whether the goods have not in fact been pledged to somebody else in some way? An audit entails some physical examination, and that cannot be conducted five years later. I consider that the words of section 5 of the *Crimes Act* 1954 do create a real difficulty. The other aspect, which will be realized from a perusal of the case I have mentioned, is that it is the duty of an auditor not only to inspect but also to seek explanations. In his examination, the auditor will perhaps find items listed as assets, as to the value of which he cannot form an opinion. If a person is shown as a debtor to the company for £50,000, the auditor does not know whether that person is able to pay or not. In those cases, the auditor must take the opinions of other people.

If that type of information, which is gathered in conformity with recognized audit practice, is to be made available as evidence, or as the foundation of evidence, we are departing a long way from the ancient, well-established and, I might almost say, the primary rule of British justice—that hearsay evidence is not admissible. In other words, if one is standing his trial for his life or his liberty, he is not to be convicted upon conversations which the witness has had with other people; those who give the information must themselves be available in court to swear to it. Under section 5 of the Crimes Act, in the case of an audit made in accordance with recognized audit practice, the auditor would say, "I have inquired, in accordance with the recognized audit practice, into the affairs of this company, and my opinion is that it was hopelessly insolvent. I base that opinion partly on the fact that I have been able to ascertain that the value of the stock was so much, that such and such an amount of debts owing to the company was bad, and various other things." He would have obtained that information by means of hearsay.

Mr. Randles.—Every auditor relies on information of that character.

Mr. Bloomfield.—Mr. Randles has placed his finger on a fundamental weakness. But every auditor does not enter the witness box and say, in effect, "In my opinion, based on what I have heard from other people, the company is solvent or insolvent."

Mr. Randles.—Unless an offence of wilfully false promise can be proved, it must be asserted that if the promoter was able to carry on business in the face of the facts and figures disclosed, he must have known that he would eventually defraud investors.

Mr. Bloomfield.—What I am dealing with is section 5, under which the evidence of an auditor is brought along, presumably in relation to an examination that has just been concluded for the purpose of a trial. I am trying to point out the weakness of this section, as it now stands.

Mr. Pettiona.—Would not the fundamental principle be that if two auditors were appointed—one for and one against the company—the court would be able to determine the true position.

Mr. Bloomfield.—I desire to make it clear that counsel for the defence might stop evidence in that regard at the beginning by asking the auditor who was called as a witness, "Did you make this examination in accordance with recognized audit practice?" If the witness replied, "Yes, I did," the counsel for the defence would then ask, "Did you look at the stock as it was in 1950? Did you examine the book debts as they were in that year? Did you see that the securities were then there as they were stated to be?" The expert witness might have to say, "No, I could not do those things." Turning to the Judge, the counsel for the defence would then say, "Your Honour, this examination has not been made in accordance with recognized audit practice." The question arises as to what is recognized audit practice. Counsel for the defence would then most likely read reams of the proceedings in the case in *re* City Equitable Fire Insurance Company. In my humble judgment, the Judge might well have to say, "This is the best that could be done at a very late stage. It was not in accordance with recognized audit practice." Hence, section 5, which was enacted without the recommendation of this Committee, would prove to be of no assistance.

Another weakness is—from the point of view of the accused person—that if an examination is made in accordance with recognized audit practice, it will include much evidence that would be mere hearsay, inasmuch as it would consist of statements made to the auditor and explanations given to him by other persons.

Mr. Randles.—If the audit happened to be a current one, hearsay evidence would be admissible.

Mr. Bloomfield.—Possibly so. What I have said is my personal opinion, which is fallible. It may be that I am wrong. However, I consider that the personal views I have expressed may be worthy of investigation by this Committee. I have nothing more to say.

Mr. Thomas.—On behalf of the Committee, I desire to express our sincere thanks to Mr. Bloomfield for his attendance here to-day and for the evidence he has submitted on this difficult problem.

The Committee adjourned.

TUESDAY, 22ND JUNE, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. I. A. Swinburne,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles,
	Mr. R. T. White.

The following representatives of The Stock Exchange of Melbourne were in attendance:—

Mr. Harold Cuthbert Collingwood, Acting Chairman of the Committee of The Stock Exchange of Melbourne;

Mr. Gerard Noall, member of the Committee;

Mr. James Campbell Johnston, member of the Committee;

Mr. Douglas Stewart Rogers, Secretary.

The Chairman.—On behalf of the members of the Statute Law Revision Committee, I welcome again the representatives of The Melbourne Stock Exchange to our deliberations. At previous sittings of this Committee various matters arose on which it was desired to have further information, and it is the intention of the representatives to comment on those matters, which are set out in a letter that we wrote to the Secretary of The Stock Exchange of Melbourne on the 9th June. I think it might be helpful if I read the letter; it is as follows:—

9th June, 1954.

Mr. D. S. Rogers,
Secretary,
The Stock Exchange of Melbourne,
428 Little Collins-street, Melbourne.

Dear Sir,

As arranged on 29th April last when Messrs. Collingwood and Noall and yourself attended before the Statute Law Revision Committee, I now have to request that you be good enough to advise me at your earliest convenience whether arrangements can be made for representatives of The Stock Exchange of Melbourne to attend and give evidence on Tuesday, 22nd June instant, at 2 p.m., in the Legislative Council Committee Room.

I am instructed to point out the following matters upon which the Committee desires further comment by your representatives:—

1. The suggestions listed on page 5, paragraph 9, of the Committee's Progress Report (a further copy of which is forwarded under separate cover).

2. The following matters referred to in the transcript of the evidence of 29th April (a copy of which is enclosed):—

(*a*) (at p. 32) the question of the Hon. Mr. Brennan regarding a statute giving The Stock Exchange power over members;

(*b*) (at pp. 32–3) regarding companies which state in their prospectuses that they intend to apply for listing and do not apply;

(*c*) (at p. 33) the suggestion of Mr. Hollway to prohibit companies from calling for capital until such time as the documents have been submitted to The Stock Exchange and a decision made;

(*d*) (at p. 33) the desirability of a compulsory audit of the books of proprietary companies.

(*e*) (at p. 34) the desirability of compulsory publication by proprietary companies of balance-sheets;

(*f*) (at p. 34) the extension of the Companies Act to give the force of law to requirements of The Stock Exchange;

(*g*) (at p. 34) the "tightening of requirements" that the prospectus of any mining concern include an estimate of costs.

3. Any other matter upon which the representatives wish to submit argument to the Committee.

Yours faithfully,

(Signed) G. N. H. GROSE,
Joint Secretary,
Statute Law Revision Committee.

Mr. Collingwood.—A sub-committee set up by the committee of The Stock Exchange of Melbourne—comprising myself, Mr. Noall, Mr. Johnston, and Mr. Rogers—has given careful consideration to the questions submitted by the Statute Law Revision Committee in its letter of the 9th June. The sub-committee has prepared a statement setting out its answers to the questions submitted. Before proceeding to answer those questions, we wish to make some preliminary comments, which are as follows:—

(*a*) The sub-committee has not attempted to discuss any ambiguities or uncertainties which may be thought to exist in any of the existing laws bearing upon the matter involved in the questions submitted. The Statute Law Revision Committee itself and the various legal and other professional representatives who have appeared and will no doubt appear from time to time before the Committee are far better qualified to deal with such matters and make the appropriate recommendations.

(*b*) The sub-committee has ignored any question of company law reform generally. As stated by the Chairman of the Statute Law Revision Committee, such Committee is not concerned with the whole of the Victorian Companies Act.

(*c*) The sub-committee points out that the activities of The Stock Exchange are almost wholly concerned with the companies which have secured or which seek admission to the Official List of The Exchange and consequently, as will appear in certain of the sub-committee's answers, The Exchange feels unable to offer any useful comment on certain matters dealing with unlisted companies, such as proprietary companies.

The questions asked and the sub-committee's answers are as follows:—

Question (1) (*a*):

Should the provisions of section 40 and section 366 (1) (*d*) of the *Companies Act* 1938 be clarified, with a view to tightening up the provisions relating to the lodging of a statement in lieu of a prospectus and the provision relating to when a prospectus becomes stale.

Answer (1) (*a*):

(i) So far as The Exchange is concerned, we have few dealings with statements in lieu of prospectus as companies seeking a requisite spread of shares necessary for our listing purposes rarely do so on the basis of a statement in lieu. Consequently, the sub-committee feels that the professional witnesses appearing before the Committee are more equipped to tender advice on the question of amendment of laws dealing with statements in lieu. However, in principle, The Exchange is in favour of any reasonable tightening up of provisions such as section 40 dealing with the subjects in question.

(ii) The currency of prospectuses with which members of The Exchange are normally associated is for periods of substantially less than six months, and The Exchange would offer no objection to the period of six months prescribed by section 366 (i) (*d*) being reduced. The sub-committee, however, would urge that there should be no reduction below three months.

Question (1) (*b*):

Should section 123 of the *Companies Act* 1938 be amended to extend the offence in sub-section (1) to persons connected with a company other than directors and to make the offence in sub-section (6) an indictable offence,

Answer (1) (*b*):

(i) If sub-section (6) is the only law that deals with the punishment of an offence under sub-section (1), the sub-committee would agree that the manager, as defined, should also be mentioned in that sub-section.

Mr. R. T. White.—I take it that your sub-committee approves of a manager being included?

Mr. Noall.—That is the point.

Mr. Collingwood.—The second part of the answer to Question (1) (*b*) is as follows:—

(ii) For the purpose of this answer, the sub-committee assumes that offences other than indictable offences cannot be the subject of prosecution after a certain lapse of time, whereas in respect of an indictable offence no time limit applies. In view of the unavoidable delay that might sometimes occur in discovering offences of the type now under consideration, the sub-committee supports the suggestion that an offence under section 123 (1) should be made an indictable offence.

The Chairman.—A problem does arise in respect of prosecutions for offences othen than indictable offences, if there is a lapse of twelve months or more after such offences were committed?

Mr. Noall.—That is so.

Mr. Collingwood. — Question (1) (*c*) was as follows:—Should the provisions of section 142 of the *Companies Act* 1938 which prevent an undischarged bankrupt from being a director of or directly or indirectly taking part in the management of a company except with the leave of the court, be extended to prevent such a person being directly or indirectly concerned in the management of any partnership or firm?

Answer (1) (*c*):

The sub-committee feels this question should properly be left to persons more competent to advise the Committee.

Question (1) (*d*):

Should a section similar to section 142 of the Companies Act be introduced to prevent a person convicted of dishonesty from taking part in the promotion or management of such a company without the leave of the court?

Answer (1) (*d*):

In principle the sub-committee is in favour of this suggestion, but it would like to reserve the right to give further consideration of the suggestion if and when a list of offences which would constitute dishonesty were available for perusal.

Question (1) (*c*):

Should section 367 of the *Companies Act* 1938 be amended to ensure that dividends paid in cash are out of profits that are actually realized, and not from unrealized or estimated profits?

Answer (1) (*e*):

The sub-committee considers this suggestion has drastic implications and, unless upon much more extensive consideration than has been possible in the time available, the sub-committee would feel able to change its mind on the subject, it now states its firm opposition to such a proposal. Apart from the difficult legal questions involved, which the sub-committee against leaves to advisers more competent to express an opinion, the sub-committee feels that the proposal would impose an unwarranted and harmful restriction on competent and honest company administration and management.

Mr. Brennan.—There might be reserves of profit from a previous year, out of which anticipated profits might be paid, without touching capital at all?

Mr. Noall.—Your point is: The payment of profits in respect of one year out of reserves created from a previous year?

Mr. Brennan.—Yes.

Mr. Noall.—So far as The Stock Exchange of Melbourne is concerned, that still has to be disclosed —whether legally disclosed or not, I am not quite certain.

Mr. Thomas.—That would be "profit" just the same.

Mr. Noall.—Yes. Frankly, what are "profits actually realized" I do not know. I suggest that it would be almost impossible to carry on business as we know it to-day if a company was debarred from paying dividends until profits were actually realized. I would go so far as to say that many companies, if restricted to the payment of dividends out of profits that had been actually realized, would never pay a dividend until the company was being finally wound up, because, on account of the carrying of stock and various other factors, the profit of every company is estimated to some extent, and unless this Committee decided that it would alter entirely the principle of what are profits—which I think has become fairly well established, certainly throughout the British Commonwealth of Nations, and I think in America also—I do not think there would be anything but complete chaos in industry.

The Chairman.—There are some very real problems arising out of the taxation laws.

Mr. Noall.—That is so; unrealized profits are certainly subject to taxation.

Mr. Randles.—According to evidence given to the Committee share hawkers have raised money on behalf of certain companies although no work has been undertaken by such companies. Out of that money subscribed by the public, dividends have been paid by way of bait to induce other people to subscribe to the venture. That money does not represent realized profits; it is simply capital. That is the sort of practice that it is desired to prevent.

The Chairman.—In cases of that kind it is non-existent profit. It is an offence at present to pay dividends out of capital.

Mr. Noall.—That is so.

The Chairman.—I think that question relates particularly to a company such as a forestry company, which might pay a dividend out of unrealized profit. The pine trees might have grown a couple of feet, and, theoretically at any rate, the trees had reached a stage at which they represented more money for the company. It is clear that the payment of dividends out of capital is an offence now, but it is difficult to deal with the problem of the unrealized profit represented in the growth of the pine trees or, perhaps, by the revaluation of stock.

Mr. Brennan.—Consider the case of a company which might be handling merchandise. Its accounts are made out annually, and such a company would be hamstrung in its operations if after, say, nine or ten months, it was not free to pay a six-monthly dividend, if it were obvious that there would be a profit from the year's transactions. Such a transaction would be different from that of the forestry company which would be dealing in timber.

Mr. Pettiona.—If the Committee adopted the suggestion to prohibit the paying of dividends from other than realized profits, would not that in effect delay the payment for only approximately twelve months?

Mr. Noall.—I do not think so. Every manufacturing or trading company has at the end of a year certain stock which, in conservative forms of business, is probably valued at cost or less; I suggest that in normal cases the value of the stock would be considerably more than the year's profit. If the stock became valueless or the profits could not be realized until the whole of the stock had been sold, even in the following year, the business would still have that stock.

Mr. Thomas.—In your opinion, the suggestion would practically prohibit the putting of capital into reserves?

Mr. Noall.—For a considerable number of years at least. Any legislation that might possibly restrict the activities of a very small proportion of companies would, I suggest, impose an impossible burden on probably 99.9 per cent. which carry on business along normal and straightforward lines.

The Chairman.—I think it can be said that if the Committee considered suggesting any substantial alteration in the law, representatives of The Stock Exchange would be given an opportunity to examine the proposal.

Mr. Collingwood.—Question No. (1) (*f*) was—Should all serious offences under the Companies Act be made indictable offences, as it has been found in many cases in practice impossible to prosecute within twelve months of the offence having been committed? Our reply is—

On the assumption there would be no serious argument as to what constitutes "serious offences", the sub-committee is in favour of this suggestion.

Question (1) (*g*):

Should provision be made, unless the shareholders or specified majority thereof decide otherwise, for the annual audit of the accounts of a proprietary company, and should the report of the auditor, together with a certified copy of a balance-sheet, profit and loss and trading accounts be sealed and lodged with the Registrar-General and be opened only upon an order of the court where there is a prima facie case of fraud or misconduct in the operation of the company's affairs?

Answer (1) (*g*):

The Exchange has little experience with the administration and dealing of proprietary companies, and it leaves an answer to this question to others more competent by reason of their experience to deal with it.

The sub-committee feels, however, that, in principle, the question of audit and the filing with some appropriate official or in some appropriate place of a company's annual accounts should be left for decision by the shareholders of that company. The sub-committee assumes that under the present law the majority of the shareholders of a proprietary company can resolve on an annual audit and for some form of recording its annual accounts. The sub-committee, therefore, feels that there is little practical point in introducing an actual law that such audit and such accounts can be dispensed with on a vote of the shareholders or a majority of them.

Mr. Thomas.—I assume that very few proprietary companies are connected with the Stock Exchange?

Mr. Noall.—The Stock Exchange would be interested in proprietary companies only where they are subsidiaries of public companies, and in such cases our regulations provide that the accounts of the subsidiary shall be audited, or where proprietary companies are converted into public companies for issues to the public. I think we can safely say that in that case the conversion is facilitated greatly where the accounts of the proprietary company have been audited. When we submitted evidence to the Committee previously, I said that I approved of the auditing of the accounts of proprietary companies and with the issuing of accounts to shareholders. I still hold that opinion, but it is felt that it would be inappropriate for the Stock Exchange to offer any definite comment because we come into touch with the problem so rarely.

Mr. Collingwood.—My statement proceeds—

Question (1) (*h*):

Should provision be made in the Companies Act requiring the secretary of a company to have certain qualifications, to perform certain statutory duties, and to be a person other than a director of the company? Should the company file a return at the Registrar-General's office showing who is the secretary and public officer of the company?

Answer (1) (*h*):

The sub-committee supports this suggestion in relation to companies seeking capital or loan money from the public.

The Chairman.—I take it that it is not a logical implication that you would not support it in regard to other companies?

Mr. Collingwood.—That is beyond our sphere.

The Chairman.—I realize that, but you would not have any objection in regard to other companies?

Mr. Collingwood.—We express no opinion on the matter. My statement proceeds:—

Question (1) (*i*):

Should the provisions of the Companies Act be extended to ensure that devices such as the creation of lot holders and concession holders be not permitted, as such schemes enable the directors of a company to avoid the responsibilities which they normally have to shareholders.

Answer (1) (*i*):

The Exchange is strongly in favour of all effective legislation to prevent or remove the abuses outlined in the evidence already submitted to the Committee. In particular, the sub-committee realizes the weak legal position in which members of the public have found themselves in their capacity as lot holders or concession holders in relation to enterprises carried on by certain companies. However, the sub-committee urges that in formulating any legislation on the subject, every care should be exercised to ensure that by reason of the generality in which the legislation may necessarily be expressed, undue restriction is not imposed on various forms of legitimate enterprises. The sub-committee finds it difficult to give a categorical answer to the question now under consideration, particularly in the relatively short time in which it has had the opportunity of considering the matter. It feels that it would be in a better position to express an opinion on the subject if it had before it the proposed form of legislation aimed at removing the evils which have arisen.

Question (1) (*j*):

Should depositions taken before an inspector appointed under the *Companies (Special Investigations) Act* 1940 be admissible in evidence in subsequent proceedings against the person giving evidence?

Answer (1) (*j*):

The sub-committee leaves this question to others more competent to deal with it, but its own feeling is to support the suggestion.

Question (1) (*k*):

Should the opinion of an investigating officer appointed under the *Companies (Special Investigations) Act* 1940 or of a properly qualified auditor of the financial side of a company at a particular date be prima facie evidence of the company's financial position at that date?

Answer (1) (*k*):

Here again professional witnesses such as lawyers are more fitted to deal with this question, but the sub-committee feels obliged to say that laws in which the onus of proof is shifted from the Crown to the accused should only be introduced in cases clearly calling for such a drastic law.

Question (1) (*l*):

Should an investigating officer appointed under the *Companies (Special Investigations) Act* 1940 be empowered to compel persons who have left the State to answer questions and comply with summonses under the Act?

Answer (1) (*l*):

The sub-committee supports this suggestion.

Question (1) (*m*):

Should the *Companies (Special Investigations) Act* 1940 be amended to enable the Attorney-General to order at an earlier stage than is possible under the existing law an investigation of a company whose activities are suspect?

Answer (1) (*m*):

In principle, the sub-committee is in favour of the Attorney-General being placed in a position to order such an investigation at the earliest possible stage. The sub-committee, however, urges that proper safeguards should be maintained, or, if they do not already exist, be introduced to guard against action being instituted by a small group of disgruntled shareholders or ill-disposed outsiders. The sub-committee assumes that sections like sub-section (i) of section 136 of the Companies Act which require a certain percentage of shareholding interest of a company to move into action would be retained.

The Chairman.—I think you will find that safeguards exist in the *Companies (Special Investigations) Act* 1940, and the problem is purely one of time. Under the provisions of that Act action cannot be taken until the company has either proceeded to the winding up stage or has ceased business. The point made by one witness before the Committee was that very often a difficult state of affairs exists long before the stage is reached of somebody taking steps to have the company wound up, and if an investigation could be started immediately the situation would be discovered, much valuable time would be saved, and the investigation would be more likely to bring to light any irregularities.

Mr. Collingwood.—That is so. However, we do not think a small coterie of disgruntled people, who perhaps have a grudge against certain directors, should be in a position where they can throw a company into confusion by giving it undue notoriety.

The Chairman.—Of course, before such an investigation can be embarked upon, at present, a prima facie case has to be made out to a law officer, and those of us who have had experience of law officers realize that a prima facie case has to be a fairly good one.

Mr. Collingwood.—Question No. (2) (*a*) was in the following terms:—

Should a statute be passed giving the Stock Exchange power over members?

Answer (2) (*a*):

In the light of many years' experience, the Exchange is firmly of opinion that it and the committee set up under the Rules of the Exchange are in a position to provide and exercise fully adequate and effective control over the association and over its members.

The Exchange feels that its Rules and Regulations —a copy of which is already before the Committee— will, on perusal, give clear indication that prompt and effective action can be taken in maintaining the standard and prestige of the Exchange and the retention of the public confidence reposing in it.

Question (2) (*b*):

What action should be taken against companies which state in their prospectus that they intend to apply for listing and then do not apply?

Answer (2) (*b*):

The sub-committee considers that the value of the proposed securities is enhanced by a statement in a company prospectus that it intends to apply for listing. The advantages include a greater degree of negotiability for the securities, as well as an implied assurance that the company will comply with Official List Requirements. We would, therefore, favour legislation making it a punishable offence for company promoters who fail to act in accordance with such a statement made in a prospectus.

Mr. Brennan.—Would that be an indictable offence?

Mr. Noall.—I would assume that in any legislation formed along those lines there would be some provision whereby the company had to apply for listing within a certain period, which would be much shorter than twelve months.

Mr. Collingwood.—My statement proceeds—

Question (2) (*c*):

Should companies be prohibited from calling for capital until such time as the documents have been submitted to the Exchange and a decision made?

Answer (2) (*c*):

The sub-committee considers that this suggestion should only be entertained in relation to companies which propose to announce when seeking capital that they intend to apply to the Stock Exchange for official quotation of the securities. To this extent the sub-committee feels that when making such an announcement the company in question should already have submitted its Memorandum and Articles of Association and associated documents and information to the Stock Exchange, and have been told that they are in order for listing purposes.

Mr. Brennan.—I take it that the supplying of information would not mean that the company which supplied it would be entitled to be listed on the Stock Exchange?

Mr. Collingwood.—That is so, but if all the documents were in order and the shares were properly distributed, listing would follow.

Mr. Noall.—We could not give any ruling concerning the distribution of shares until allotment had been made. We do require that there shall be a sufficiently wide distribution of shares to guarantee a genuine market.

Mr. Johnston.—I might add that submission of an application for listing to the Stock Exchange could not be taken to imply that the Stock Exchange accepted any responsibility concerning the enterprise

in question. We could not sit in judgment and say whether the company was likely to be good or bad, profitable or unprofitable. All we could do would be to say that the set up of the company was such that it complied with our listing requirements from a purely technical point of view.

Mr. Collingwood.—Our consent would be accompanied by a statement to the effect that any such certificate given by the Stock Exchange would in no way imply that the Stock Exchange accepts any responsibility as to the profitable nature of the enterprise. It would be necessary to have a disclaimer clause of that character, similar to that which the Registrar-General in New South Wales has arranged to have inserted in all prospectuses issued in that State.

The Chairman.—Would you advocate that procedure in respect of all prospectuses?

Mr. Collingwood.—When we are giving our consent we would make a similar proviso in every case.

Mr. Johnston.—We can have no interest in any company which does not apply to the Stock Exchange for listing.

The Chairman.—Some companies seem to have enhanced their reputation by claiming that they intend to apply to the Stock Exchange for listing, but they do not in fact apply and have never intended to do so. This Committee desires to remove the advantage that can be derived from the use of such propaganda.

Mr. Swinburne.—Some of the firms concerned do not even comply with the rules for listing that are laid down by the Stock Exchange.

Mr. Collingwood.—I understand that under the Crimes Act provision is made for dealing with persons who make a wilful misstatement of fact.

The Chairman.—A charge of that character is very difficult to prove. It would be necessary to establish the intention of mind of the company at the time the statement was made, as well as the company's subsequent intention.

Mr. Collingwood.—My statement continues—

Question (2) (*d*):

Is it desirable that there should be a compulsory audit of the books of proprietary companies?

Answer (2) (*d*):

The sub-committee has already dealt with this in its answer to Question (1) (*g*).

Question (2) (*e*):

Is it desirable that there be compulsory publication by proprietary companies of balance-sheets?

Answer (2) (*e*):

The sub-committee feels that, in view of the fact that it has few dealings with proprietary companies, it should leave this question for others more competent by their experience to answer it.

Question (2) (*f*):

Should the Companies Act be amended to give the force of law to requirements of the Stock Exchange?

Answer (2) (*f*):

The sub-committee has carefully considered this suggestion, but does not see any necessity for it. The Exchange has by its experience over very many years formulated what it considers to be a reasonable and effective set of Official List Requirements. This, together with the Exchange's power to suspend or delist a company at any time, is quite adequate to meet any situation that develops. The Official List Requirements can be amended speedily from time to time in the light of new circumstances or events, and after consultation between the Associated Stock Exchanges of Australia. The Statute Law Revision Committee will readily agree that urgency may well exist in certain circumstances, and the sub-committee suggests that it would not be in the interests of either the community or the members of the Exchange to have the Official List Requirements embedded in an Act of Parliament which may mean that many months, if not years, would elapse before the requisite parliamentary machinery could operate in order to produce an amendment.

Question (2) (*g*):

Should there be a tightening of requirements so that the prospectus of any mining concern should give an estimate of costs?

Answer (2) (*g*):

This was touched on when the sub-committee last appeared before the Committee, but on reflection the sub-committee feels that the suggestion, though desirable, would be impracticable in many cases.

Question (3):

Are there any other matters upon which the representatives of the Exchange wish to submit argument to the Committee?

Answer (3):

In the time available, the sub-committee has been fully engaged in the consideration of the various questions put to it by the Statute Law Revision Committee, but if any other points or suggestions should later occur to the sub-committee it would like to have the opportunity of coming again before the Statute Law Revision Committee before the latter completes its deliberations. In addition, the sub-committee offers its continued assistance to the Committee should there be any other points on which the Committee might think the Exchange can supply further information.

Mr. R. T. White.—Is there an organization that embraces the Stock Exchange in the respective States?

Mr. Collingwood.—Yes, the Stock Exchanges are banded together in an organization which is known as Australian Associated Stock Exchanges; it consists of the Melbourne, Sydney, Brisbane, Adelaide, Perth, and Hobart Exchanges. The rules and regulations of the respective Exchanges vary slightly, depending on the Companies Acts which operate in the various States, but all of the Exchanges have the same objectives.

Mr. Pettiona.—Does the organization known as Australian Associated Stock Exchanges hold meetings regularly?

Mr. Collingwood.—No. Meetings are called by the central Exchange as required. For many years The Melbourne Stock Exchange operated as the central Exchange, but The Sydney Stock Exchange is now functioning in that capacity. When the central Exchange considers that the listing requirements require modification, or that there are certain matters which require deliberation, a conference is called, and it is attended by representatives from the various Exchanges.

Mr. Pettiona.—Would such meetings be held at least once a year?

Mr. Collingwood.—No. If occasion warranted it, two meetings a year might be held but, for the most part, meetings are held when the occasion demands.

Mr. Thomas.—Is The Stock Exchange of Melbourne governed by an executive?

Mr. Collingwood.—No. It is governed by a committee of nine members, one-third of whom retire annually.

The Chairman.—What is the composition of Australian Associated Stock Exchanges?

Mr. Rogers.—The Sydney and Melbourne Exchanges are represented by three delegates each, Adelaide and Brisbane by two delegates, and Hobart and Perth by one delegate each.

Mr. Brennan.—Are the Australian Stock Exchanges associated with those in New Zealand?

Mr. Rogers.—No.

Mr. Brennan.—Is there any reciprocity between them?

Mr. Rogers.—Delegates from the New Zealand Association of Stock Exchanges are always invited to attend conferences convened by Australian Associated Stock Exchanges.

The Chairman.—Do they, in fact, attend?

Mr. Collingwood.—Not always; they attend occasionally.

The Chairman.—I desire to thank Mr. Collingwood and the other representatives of The Stock Exchange of Melbourne for their attendance and for the valuable information they have furnished, which will be of considerable assistance to this Committee in the preparation of its report.

Mr. Collingwood.—Thank you, Mr. Chairman. Before we depart I desire to state that The Stock Exchange of Melbourne would be very pleased if the members of this Committee would visit the Exchange so that we may afford them the opportunity of seeing the operations on 'change.

The Chairman.—On behalf of the Committee, I have much pleasure in accepting that kind invitation, and will ask Mr. McDonald, secretary of this Committee, to make the necessary arrangements with Mr. Rogers, Secretary of The Melbourne Exchange.

The Committee adjourned.

WEDNESDAY, 23RD JUNE, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. F. M. Thomas,	Mr. Pettiona,
	Mr. Randles,
	Mr. R. T. White.

Mr. R. G. Peile, solicitor, of 99 Queen-street, Melbourne, was in attendance.

The Chairman.—On behalf of the Committee I welcome Mr. Peile to our deliberations. Acting on behalf of clients, Mr. Peile has made certain inquiries in connexion with the softwood companies that have been the subject of investigation by the Committee, and it was thought that it would be useful if he informed us of the results of those inquiries.

Mr. Peile.—I am not in a position to carry the inquiries of the Committee much further. I have read the progress report submitted by the Committee, and in that report there is a good deal more information than I can supply. My inquiries into the C.A.P. softwood business were made concerning one hundred or more contracts. As a matter of fact, there is even now a number of those contracts in my office. In the early stages, in conjunction with another solicitor, Mr. Ivens, whose practice I have since taken over, I had some success in forcing settlements or refunds.

The Chairman.—When was that?

Mr. Peile.—In about 1941. I know of two cases in which writs were issued and settlements were made by Mr. L. Oliver, then of the firm of Oswald Burt and Co., which was at that time acting for the C.A.P. softwood companies. Threats were made that the company would pursue the matter and go to trial, but, as it happened, that did not eventuate.

The Chairman.—By whom were the writs issued?

Mr. Peile.—They were issued by my clients.

The Chairman.—What relief were the clients seeking?

Mr. Peile.—They wanted a refund of their money. Actually the companies bought the lots back for £50 or £70, as the case may be.

The Chairman.—What was the basis of the request for the refund of the money?

Mr. Peile.—The whole basis of the summons drawn up by Mr. J. P. Best, of Counsel, was that there had been misrepresentation as to what the money was to be used for. It had been said that it was for the erection of plant and so on for treating softwood timber that was already grown, that the companies had contracts with the Government for the supply of pulp wood and various other wood products, wood for aeroplane manufacture, and a great number of other things. We were able to force a settlement in those cases.

The Chairman.—On what basis were the actions settled?

Mr. Peile.—The companies purchased the lots. There was no admission of liability; as a matter of fact, there were very strenuous denials of liability. I know of only two actions that were settled.

The Chairman.—Were the allegations against the companies made in relation to statements made to your clients by salesmen of the company?

Mr. Peile.—Yes.

Mr. Brennan.—Did those statements have any relation to the fixing of a time for payment in, say, 1941, or anything like that?

Mr. Peile.—No, no date was actually fixed.

Mr. White.—Did you make requests on behalf of only two clients?

Mr. Peile.—Actually numerous requests have been made since.

Mr. White.—At the time of which you speak, did you make requests on behalf of only two clients?

Mr. Peile.—Actually, I did not make them. The demands were issued by Mr. A. H. Ivens, who was then practising at 259 Collins-street, Melbourne. In 1947, I took over his practice and I carried on his business at that address until his death in December, 1952. Since that time I have been carrying on the same practice, in conjunction with my own at 99 Queen-street.

Mr. Pettiona.—Do you know the date when the contracts for which the writs were issued were taken out?

Mr. Peile.—I should say they were taken out in about 1938 or 1939. Some of the representations that were made subsequently related to the war, but in the main they referred to Government contracts and development contracts. The allegations relating to the war contracts were made subsequent to 1939. I could not give the exact dates when the contracts were taken out, and those files are not in my office. However, they are the only two cases that I know of where relief was granted. Subsequently I had numerous applications for relief but in practically all cases the time had expired before the persons

concerned came to me. It was then very difficult to obtain necessary proof not only of misrepresentation but of information relation to the lots held, as the persons concerned did not have the lot numbers. I think the Committee is aware of the fact that in practically all cases the salesmen of the C.A.P. lots represented to the purchasers that they would receive £200 in seven years. Obviously none of the purchasers read the contracts sufficiently carefully to note that all that statement meant was that the company had the right to buy the contract back for £200 in seven years. Subsequently, on behalf of a client who had some substance, I went to South Australia and made some inquiries, and later the client himself went to that State and was shown some of the pine forests.

Mr. White.—By whom?

Mr. Peile.—By representatives of the C.A.P. business.

Mr. Brennan.—Did you inspect them yourself?

Mr. Peile.—No, I did not. Actually, I did not go to Adelaide especially for that purpose, but when I was there in January, 1944, I took the opportunity of making some inquiries. I interviewed the then director of the Forestry Department of South Australia, Mr. Rodgers, who at that time was the Federal Timber Controller for South Australia, concerning the C.A.P. business. He informed me that the South Australian Crown Solicitor's office had been greatly concerned with the tie-up in regard to the financial dealings of the various individuals and groups of individuals comprising the C.A.P. business, and that the Crown Solicitor's office had been unable to get sufficient information to justify any legal action being taken against the companies or individuals concerned —in other words, to tie them down to a criminal offence. My reaction was that if the Crown Solicitor's office in South Australia could not obtain sufficient information there was not much chance of an ordinary individual getting it.

Mr. Rodgers showed me various plans of the south-east timber growing areas, and he informed me—I understand that this statement was official—that the C.A.P. people did have an interest in pine growing in the area but that it was difficult to say whether or not it was sufficient to satisfy all the lots that had been sold. That is one of the most doubtful aspects of the business. A further position was that even if timber was growing it would be many years before it would be worth anything, before it reached the stage where any production could be obtained. I also made some inquiries from the South Australian Perpetual Forests undertaking, which was recognized in that State as a genuine industry. The same view was expressed concerning the C.A.P. holdings, namely, that it would be many years before anyone would get anything at all. I was subsequently informed, actually by a salesman who earlier had sold lots, that the Livingston brothers were actually the controllers of the C.A.P. group and that McDonald, who was the signatory on the lot agreements, was merely a representative of Livingstons. I noticed in the Committee's progress report a reference to the Livingston group of companies, so I assume that the Committee is acquainted with that fact. Although I have a number of lot contracts in my office, which, in the main, belong to people who can ill afford to lose the money, I have not been able to pursue the matter further. I have made requests for information to the trustee for the lot holders or to Messrs. Oswald Burt and Co., but the reply has been that the trustees were holding the lots, that everything was in order, and that reports would be issued. I regard the lots as being more or less of doubtful value.

Mr. White.—That does not satisfy your clients?

Mr. Peile.—No. I have taken no further action on behalf of my clients. It appears that the matter has been allowed to drift to some extent. As I have said previously, I have informed my clients that some timber-growing areas are controlled by these people; it is doubtful whether the lot holders will ever get anything; in my opinion they never had any right to the £200 that it was said they would receive; and if nothing is done it is possible that a company might be formed at some later stage to mill any timber. I have further expressed the view that if they can identify their particular lots, which is very doubtful, they have the right to cut the timber.

The Chairman.—Would you be able to make available to the Committee either the contracts, or a list of the contracts showing the names of the persons concerned, the lot numbers, and the issue numbers?

Mr. Peile.—Yes. I could go through the contracts I hold, although it would involve a good deal of work.

The Chairman.—Could you let the Committee have the use of the contracts for a short time?

Mr. Peile.—Yes. I can lay my hands on half a dozen at the moment.

Mr. Pettiona.—We would like as many as we can obtain. You said that you had approximately 100 contracts.

Mr. Peile.—I would not have 100 in my possession; that is the number of which I have information. Earlier this year I was interviewed by a man from Brisbane who represented certain lot holders in that State and had been to South Australia to inspect the plantations. He undertook to get some information as to the number of lot holders in his particular district. My main worry has been to try to get information regarding the lots reported to have been sold.

Mr. Brennan.—Did you ever see Mr. Dundas Smith, the trustee?

Mr. Peile.—No. I wrote to him once but I have never been able to get access to the deed of trust that has been referred to. I remember asking Mr Burt, or Mr. Oliver, but I was never able to get it.

The Chairman.—It was not made available to you for inspection?

Mr. Peile.—It was not.

Mr. Thomas.—You took action on behalf of two clients, and their money was refunded to them?

Mr. Peile.—Yes.

Mr. Thomas.—Have you ever considered getting a joint application from a number of the other lot holders as a basis for the making of a further demand through the County Court for a refund of the money subscribed?

Mr. Peile.—That proposal was considered, but a difficulty was the legal doctrine of delay. Practically all the cases arose years before they had come into my sphere of activity. The two cases in which Mr. Ivens acted were dealt with a relatively short time after the contracts had been made.

Mr. Thomas.—In those two cases the lot holders woke up to the position in the early stages.

Mr. Peile.—Yes. Those are the only cases in which, to my knowledge, refunds were made. The difficulty appears to be that the lots were sold and the purchasers thought that they would get back £200. After having waited some years, without receiving their

£200, they then desired that some action be taken. However, the question arose whether it was too late to take appropriate action and whether they could prove that there had been misrepresentation. In most of the cases with which I was concerned the representations were more or less of a general boosting nature, and the contracts were entered into mainly on basis that the clients would get back the £200. As against that position, there was the actual document, which could be used by the company in any court case. One point was whether the company would desire to avoid any legal action, but the company made it clear that it would resist any action taken against it.

Mr. White.—I understood you to say that one of your clients inspected the forestry areas in company with an officer of the company. Did that client report to you following his inspection?

Mr. Peile.—Yes. His name was George Atkinson; his address: St. Clair, Wonthaggi.

The Chairman.—What was the nature of his report?

Mr. Peile.—He said that he was shown the areas of growing timber. His concern was the same as mine, whether there were sufficient areas to cover the number of lots sold.

Mr. White.—Did Mr. Atkinson ask where his block was?

Mr. Peile.—I do not think so. He was shown around the plantation by what I think might be described as the Moscow method. The same thing happened to the man from Queensland. When he was passing through Melbourne he called on me in connexion with the matter. He had previously visited the Forestry Department in South Australia, which had a record of my earlier inquiries—some eleven years ago. He was referred to me for information. However, I could not assist him much beyond the stage which he had already reached himself. My main concern was in trying to establish whether the number of lots were insufficient to cover the number of lots sold. If that point could have been established, there would have been a possibility of successful legal action, notwithstanding any question of delay.

Mr. Brennan.—Did Mr. Burt refuse to give you any information?

Mr. Peile.—I cannot say that he refused to supply information. Rather, his letters were written on the usual basis of denial of liability.

Mr. Randles.—His answers to you appeared to be based on the assumption that you were making certain allegations?

Mr. Peile.—Yes, and that there was no substance in those allegations.

Mr. Randles.—You were not, in fact, making any allegations in your letters to him?

Mr. Peile.—Only in the early stages of the affair, when I did claim rescission of the contracts, and so on.

The Chairman.—On the ground of misrepresentation?

Mr. Peile.—Yes.

Mr. Pettiona.—Were there any large contract holders?

Mr. Peile.—No. The biggest interest of any of my clients would have been up to about £400. One such person was a Mrs. Adams. I think I could get the contract that was entered into in that case.

Mr. Pettiona.—I suppose a number of clients had several contracts.

Mr. Peile.—That is so. Usually, a purchaser would have two or three contracts.

Mr. Pettiona.—Have you any views regarding desirable amendments of the Act?

Mr. Peile.—Only in relation to the prohibition of the selling of lots. My own view is that the law could be made effective in the same way as the prohibition of share hawking was effective. The possibility is that if the promoters of these companies are blocked in one direction, they then resort to various subterfuges. They are very shrewd people, and if one avenue is closed to them there is a possibility that they will always find some other loophole.

Mr. Pettiona.—What effect would that have on the unit trust?

Mr. Peile.—That comes to the same thing.

Mr. Pettiona.—These are the ones who are supposed to be authentic?

Mr. Peile.—Yes. I have not any particular views regarding the unit trust as I have not had any particular dealings in regard to it. However, I hold strong views concerning the sale of lots and concessions.

Mr. Pettiona.—Do you think that legislation might be enacted to give lot holders rights equal to those of shareholders of companies?

Mr. Peile.—In regard to fractional shares, Yes.

Mr. Brennan.—Have you noticed the recent High Court's decision that returns received by lot holders are not taxable as dividends, as it is a return of capital?

Mr. Peile.—Yes.

Mr. White.—Did any of those other people in whose cases you were interested know of the two instances in which the lot holders had received back their money?

Mr. Peile.—Yes; some came to me after having heard of the result of those two cases.

Mr. White.—Did you take any action on their behalf?

Mr. Peile.—I considered their cases, but the whole difficulty was that of delay, and I was not able to supply sufficient information regarding the alleged misrepresentation.

Mr. White.—In those two cases to which you have referred a refund was obtained?

Mr. Peile.—Yes.

Mr. White.—Were not all the cases identical?

Mr. Peile.—It may have been possible to use the same allegation in the other cases, but the difficulty was to obtain sufficient information to substantiate the charges.

Mr. White.—The other clients would have been happy to receive back their money?

Mr. Peile.—They would have been glad to receive a refund.

The Chairman.—I wish to thank you, Mr. Peile, for the assistance you have given the Committee. We appreciate your coming along to tell us the story you have related. If you could make available to the Committee a number of those contracts, it would assist the Committee in its further inquiries.

The Committee adjourned.

TUESDAY, 29TH JUNE, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. H. C. Ludbrook,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles,
	Mr. R. T. White.

Mr. W. J. Hopper, Secretary, Companies Auditors Board, was in attendance.

The Chairman.—I welcome to the deliberations of the Committee Mr. Hopper, who is Secretary of the Companies Auditors Board, which is set up under the Companies Act. Mr. Hopper will outline the operations and functions of the Board.

Mr. Hopper.—Basically speaking, the Board is an examining body which conducts examinations twice a year for candidates seeking to receive a licence to audit public companies. The Board consists of three members, all of whom are public accountants in Melbourne.

The Chairman.—Who are the present members of the Board?

Mr. Hopper.—Mr. E. T. Spackman, who has already given evidence before the Committee, Mr. R. A. Clarey, and Mr. W. M. Scott.

Mr. Ludbrook.—By whom are they appointed?

Mr. Hopper.—The Governor in Council.

Mr. R. T. White.—What is their term of appointment?

Mr. Hopper.—There is no term of appointment. They are members until resignation or death.

The Chairman.—Or until otherwise removed. What section of the Act applies to the Board?

Mr. Hopper.—Section 134.

The Chairman.—How long have the present members been in office?

Mr. Hopper.—Mr. Spackman has been a member for 28 years or more; the other two are comparatively new, Mr. Clarey having been a member for seven years and Mr. Scott for five years.

The Chairman.—Are there any qualifications laid down for membership of the Board?

Mr. Hopper.—I think the only qualification laid down is that at least one of them must be a public accountant who has been practising for five years immediately prior to appointment.

The Chairman.—Each of the present members of the Board is a public accountant, is he?

Mr. Hopper.—Yes.

The Chairman.—Will you outline to the Committee the procedure which is adopted in respect of licensing auditors?

Mr. Hopper.—In the first place, all qualified accountants are exempted from all subjects except one examination in company law, which is rather tight. In the case of persons holding the Bachelor of Commerce degree or diploma an exemption is granted in all subjects. On successful completion of the examination a candidate is granted the licence, subject to his being 21 years of age and being a member of an approved accounting body, and that the Board is satisfied of his general conduct and character.

The Chairman.—Which are the approved bodies?

Mr. Hopper.—At the present time they are the Australian Society of Accountants, the Institute of Chartered Accountants in Australia, the International Institute of Accountants, and the Association of Certified and Corporate Accountants, London.

Mr. R. T. White.—Who nominates the three members of the Board?

Mr. Hopper.—They are government appointments. I do not know who makes the nominations.

Mr. R. T. White.—Are they all residents of Melbourne?

Mr. Hopper.—Yes.

Mr. R. T. White.—Do they deal with the whole State?

Mr. Hopper.—Yes.

Mr. Ludbrook.—Has this Board any control over accountants in respect of the ethics of their profession?

Mr. Hopper.—In the case of misconduct, the Board has power to revoke the licence of the holder concerned.

Mr. Ludbrook.—Has that ever been done?

Mr. Hopper.—I do not think so, but two men have been called up for interrogation.

Mr. Ludbrook.—Is there anybody associated with the Board who has the responsibility of advising the Board as to whether the ethics of the profession are being upheld?

Mr. Hopper.—No.

Mr. Ludbrook.—Unless a company or private individual reported something to the Board, it would not know of a breach?

Mr. Hopper.—That is so.

Mr. Brennan.—Is there an age limit of 65 years for members of the Board?

Mr. Hopper.—I do not think that position has ever arisen.

The Chairman.—Who sets the examination?

Mr. Hopper.—The three members of the Board.

The Chairman.—Who corrects the examination papers?

Mr. Hopper.—The three members of the Board.

The Chairman.—Are there many applicants?

Mr. Hopper.—An average of between 60 and 70 twice a year.

The Chairman.—Does the Board call for applications twice a year?

Mr. Hopper.—Yes.

The Chairman.—What proportion of the candidates passes the examination?

Mr. Hopper.—The average would be about 40 to 45 per cent. of passes.

Mr. Brennan.—Is it a very keenly contested examination?

Mr. Hopper.—Yes. As a matter of fact, there were some results printed in this morning's newspaper. Twenty-three passed out of 61 who sat for the examination.

Mr. R. T. White.—Do country applicants have to come to Melbourne for the examination?

Mr. Hopper.—They can arrange for a local sitting.

Mr. Ludbrook.—Do all applicants hold accountancy qualifications?

Mr. Hopper.—They need not hold such qualifications at the time of sitting for the examination, but until they are qualified they do not receive a licence.

Mr. Ludbrook.—Would applicants be eligible to audit the books of an ordinary business prior to sitting for your examination and becoming a qualified company auditor?

Mr. Hopper.—Yes, for other than public companies. The licence only applies to public companies under the Companies Act.

Mr. Randles.—You mentioned that a Bachelor of Commerce is exempt from all subjects of your examination. Is that because company law is part of his curriculum?

Mr. Hopper.—Yes.

The Chairman.—You stated that two persons had been brought before the Board regarding their professional conduct. Over what period of time was that?

Mr. Hopper.—That goes back to the period of office of the previous secretary of the Board, who resigned about twelve months ago. His term of office was approximately eighteen years.

The Chairman.—Has the Board received any complaints in respect of licensed auditors?

Mr. Hopper.—If we received complaints, we would investigate them.

The Chairman.—Then we can assume that over the period that you mentioned, there have been only two complaints?

Mr. Hopper.—That is correct.

The Chairman.—And in each case the person against whom the complaint has been made has been brought before the Board and asked to explain his conduct?

Mr. Hopper.—That is correct.

The Chairman.—I take it that the Board considered their respective explanations to be sufficient, as it did not take any action.

Mr. Hopper.—In one case the Board decided that no further action should be taken. In the other case it decided that the conduct involved was not satisfactory, and it cautioned the man concerned. Possibly he would have had his licence revoked, except for the fact that he was between 65 and 70 years of age, and the Board did not like to revoke his licence at that stage of his career.

Mr. Randles.—In other words, a formal complaint would have to be made to the Board?

Mr. Hopper.—Not necessarily. For example, if it came to the knowledge of myself or any member of the Board that an auditor was not conducting himself as he ought to be, we could instigate an inquiry of our own volition.

Mr. Randles.—Has the Board read the evidence presented to this Committee?

Mr. Hopper.—I think the members have individually.

Mr. R. T. White.—Have you investigated the conduct of any person on your own initiative?

Mr. Hopper.—Yes. Both the cases I mentioned were brought to notice by a member of the Board.

Mr. Ludbrook.—Is there any member of the executive other than yourself who keeps in touch with your members?

Mr. Hopper.—No.

The Chairman.—What is your position in life apart from being Secretary of the Board?

Mr. Hopper.—I am in the Accounts Branch of the Public Works Department.

The Chairman.—The Secretaryship of the Board is a part-time job which you carry out in addition to your normal duties, is it?

Mr. Hopper.—Yes.

Mr. Brennan.—Does the Board investigate the work of licence holders from year to year for re-registration?

Mr. Hopper.—No, at present they are registered and, until such time as they misconduct themselves, we do not communicate with them.

Mr. Brennan.—Do you exercise any supervision over their work?

Mr. Hopper.—On a couple of occasions over the last twenty years the Board has sought to establish some system of re-registration, but it has not been permitted under the Companies Act.

Mr. R. T. White.—Does the Board carry out any duties other than those you have outlined?

Mr. Hopper.—No, only examining and registration.

The Chairman.—Registration is required for what purpose?

Mr. Hopper.—To audit a public company.

The Chairman.—There is provision in the section for an appeal to the County Court against a decision of the Board. Do you know whether that has ever been exercised?

Mr. Hopper.—It has not, because a licence has never been revoked within the time I have mentioned.

Mr. Brennan.—Is there any special salary attached to the appointments of yourself and members of the Board?

Mr. Hopper.—I receive a gratuity. The members of the Board receive a certain amount for each candidate handled. The payment to members of the Board is an examination fee. They do not receive sitting fees.

Mr. Brennan.—Is there a general meeting each month?

Mr. Hopper.—No, we hold four or five meetings a year as required.

Mr. R. T. White.—Who sets the standard of the examination?

Mr. Hopper.—The Board.

Mr. Pettiona.—If this Committee had evidence placed before it indicating that certain licensed auditors were not carrying out their duties in a faithful manner, would it be your duty to recommend to the Board that it should investigate such allegations?

Mr. Hopper.—The position has not arisen, but if such matters came to our knowledge the Board would give them careful consideration.

The Chairman.—The matter of re-registration was mentioned. What has the Companies Auditors Board in mind in that regard?

Mr. Hopper.—The present procedure is to grant successful candidates licences to audit the books of public companies but many of them never practise. I personally come within that category. The proposal is that when a candidate passes his examination a licence is issued which should be subject to renewal annually on payment of a nominal fee.

The Chairman.—You mention that the purpose for which the Board was formed was to license company auditors. Is that the only function of the Board at present?

Mr. Hopper.—Yes.

The Chairman.—I take it that the Board exercises no supervision over accountants generally?

Mr. Hopper.—That is so.

The Chairman.—Having in mind that there have been only two complaints concerning company auditors in the last eighteen years, do you believe the standard of company auditing is high?

Mr. Hopper.—I think it is, but there may be instances of unprofessional conduct not reported to the Companies Auditors Board. There may also be persons debarred from membership of the various accountants' institutes who are still licensed company auditors.

The Chairman.—In other words, if a person who is a member of an accountancy institute applies to the Companies Auditors Board and passes the prescribed examination, he will be granted a licence to audit the books of public companies and may remain a licensed company auditor even though he may later be debarred from membership of the accountancy institute because of unprofessional conduct?

Mr. Hopper.—Yes, unless the matter was brought to the attention of our Board so that an investigation concerning him could be commenced.

The Chairman.—If the unprofessional conduct related to some matter outside auditing the balance-sheet of a company, would your Board have any control over the person concerned?

Mr. Hopper.—Yes, if conduct and character were involved and the matter was brought to our attention.

Mr. Randles.—In effect, all that your Board is concerned with is the setting of examinations in company law and the receiving of fees?

Mr. Hopper.—Yes, and also issuing licences.

Mr. Randles.—Have you any interest in the candidates?

Mr. Hopper.—We have an interest in the candidates, but we have no power to deal with them.

Mr. Randles.—I take it that a person may submit himself for examination and, if successful, he will be granted a licence to practise as a company auditor even though he is not a member of an accountancy institute.

Mr. Hopper.—That is not so. A person would be granted a licence only on passing the full examination or on passing a partial examination and being a member of an institute. However, in the latter case a membership of that institute could be revoked subsequently, and the person concerned could retain his licence to operate as a company auditor.

Mr. Pettiona.—Do the accountancy institutes advise the Companies Auditors Board of the names of those persons who have been debarred from membership of their organizations?

Mr. Hopper.—No. I have spoken to the various institutes and have asked them if they would do so.

Mr. Pettiona.—If the Board were advised of the names of the persons who had been debarred from membership of accountancy institutes would your Board investigate them?

Mr. Hopper.—Yes.

Mr. Thomas.—Has your Board any power of inspection if it entertains doubts concerning a certain person?

Mr. Hopper.—Our Board has power of inspection so far as the audit of the books of public companies is concerned. If persons who were licensed as company auditors were compelled to renew their registrations annually the Board could then ascertain from the accountancy institutes whether the persons concerned were still members of those organizations. If they had been debarred from membership during the year, we would want to know the reason why.

Mr. Brennan.—Are you, personally, a qualified company auditor?

Mr. Hopper.—Yes.

Mr. Brennan.—What are your views as to the desirability of prescribing a compulsory audit for all types of companies?

Mr. Hopper.—I think that would be advantageous. There are only two types of company, namely, the very small company and the snide company, that would object to it. I do not think the objection of a few small companies should be permitted to prevent proper jurisdiction over snide companies.

Mr. Brennan.—Would you favour putting a limit on the amount of share capital to be subscribed before an audit was made compulsory by law?

Mr. Hopper.—That could be done. There is another method also. Under the Co-operation Act that was passed last year, it was stipulated that the auditors for co-operative societies were to be licensed company auditors except in those instances when the registrar of co-operative societies decided that it would not be fair to the organizations concerned. In other words, small companies could be protected.

Mr. Ludbrook.—Are you of the opinion that an audit is a safeguard for the shareholders of companies?

Mr. Hopper.—Yes. It is not necessarily a foolproof safeguard but it must help.

Mr. Ludbrook.—In your opinion, is it necessary?

Mr. Hopper.—Yes.

Mr. Pettiona.—If this Committee recommended an emendation of the law so as to make it mandatory for accountancy institutes to advise the Companies Auditors Board of the names of any persons who were debarred from membership of those organizations, would there be any logical objection?

Mr. Hopper.—From our point of view, there could be no objection. The accountancy institutes would probably require some form of protection.

The Chairman.—Have you had any experience in the audit of public or private companies?

Mr. Hopper.—No, not personally.

The Chairman.—If the Companies Act was altered in such a way as to change the form of certificate which the auditor of a public company must now give, is there not a great danger that an auditor will be impelled to subscribe to an audit although he knows that the books of account contain something that is false?

Mr. Hopper.—No. An auditor must never certify to anything he knows to be false.

The Chairman.—Would you go further and admit it is not merely a matter of overlooking certain aspects, but if the directors or other persons connected with a company set out to deceive the auditor, it would not be particularly difficult for them to do so?

Mr. Hopper.—That is possible, of course. The best auditors can be fooled.

The Chairman.—Perhaps the audit of accounts in the Public Works Department differs from the auditing of the books of companies.

Mr. Ludbrook.—Why is it that the procedure adopted by a government auditor differs from that which is adopted in a private audit? The government auditor seems to ascertain everything that is necessary. Would it not be an improvement if the Companies Act were amended so as to compel the auditors of public companies to adopt the same procedure as that of government auditors?

Mr. Hopper.—Perhaps. In many cases, auditors of public companies rely on the system of internal check within the organization concerned to a great extent.

Mr. Thomas.—If an auditor certifies that he has examined a set of accounts and regards them as presenting a correct state of affairs, is his statement taken for granted?

Mr. Hopper.—Yes.

The Chairman.—On behalf of the Committee, I desire to take the opportunity of thanking Mr. Hopper for the information he has supplied to the Committee which, I am sure, will prove helpful.

The Committee adjourned.

THURSDAY, 1ST JULY, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Messrs. R. J. McArthur, J. M. Rodd, and R. N. Vroland, members of the Council of the Law Institute of Victoria, were in attendance.

The Chairman.—We welcome Mr. McArthur, Mr. Rodd, and Mr. Vroland to our deliberations, and ask them to proceed with the additional evidence they desire to tender.

Mr. McArthur.—The special sub-committee of the Council of the Law Institute of Victoria desires to make further submissions concerning the following matters:—

In relation to statements in lieu of prospectus, there is a suggestion for tightening up the provisions of section 40 and paragraph (*d*) of sub-section (1) of section 366 of the *Companies Act* 1938.

My sub-committee considers that section 40 should be amended, but not in the manner suggested. In its report to the Attorney-General, submitted on the 12th June, 1952, my sub-committee recommended that section 40 should be amended by the addition thereto of provisions corresponding to sub-sections (5) and (6) of section 48 of the English Companies Act 1948, but with the proviso that the burden of proof of materiality must be on the prosecution.

Sub-section (1) of section 48 of the English Act corresponds to sub-section (1) of section 40 of the Victorian Act, but the English Act proceeds to provide penalties for untrue statements and misleading statements, unless they are "immaterial".

The effect of my sub-committee's recommendation is that section 40 should be brought into line with its recommendations relating to section 37 with regard to untrue and misleading statements.

Amendment of section 40 to require the filing of a statement in lieu of prospectus in many circumstances not now covered by that section is not favoured by my sub-committee. Indeed, as I have already indicated, we think that the statement in lieu of prospectus is of little value.

If consideration is to be given to the extension of section 40, it will become necessary to consider the exemptions conferred by sub-section (5) of section 35. My sub-committee, in its report, recommended that sub-section (5) of section 35 should be amended, by adding to the cases to which the section does not apply, other cases where the necessity for issuing a prospectus should not arise. Suggested examples of the cases which should be added are cases of the issue of a prospectus or a form of application for shares:—

(*a*) to employees;

(*b*) to the members of a transferror company under a scheme or contract as referred to in section 155;

(*c*) where the prospectus or form of application relates to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued or for the time being dealt in and quoted on a prescribed Stock Exchange. (See paragraph (*b*) of sub-section (5) of section 38 of the English Act).

My sub-committee has recommended in its report that section 366 should be deleted. This recommendation is a consequence of recommendations in relation to the "prospectus" sections of the Victorian Act—sections 34 to 38 inclusive. In our opinion, they appear to be redundant.

The Chairman.—In other words, they are covered by section 40 as it now stands, or as it would be amended under your proposal?

Mr. McArthur.—Yes. With the approval of the Attorney-General, I am quoting from our report to him. The relevant extracts read:—

Section 34:

(i) Sub-section 3 (*b*) of this section should be amended to make it clear that in cases coming within section 35 (5) copies of material contracts need not be filed, and also to provide for the filing, in appropriate cases, of particulars of oral contracts—see section 41 (1) (*b*) of the English Act.

I should like to explain that sub-section (5) of section 35 of the Victorian Act makes it unnecessary to issue a prospectus in certain very limited circumstances. But curiously enough, it only takes the obligations of section 35 away so that strictly speaking, it is necessary to file prospectuses or to file as prospectuses all sorts of things which, as a matter of practice, are not now filed. It is a peculiar gap in the legislation, and one which has been missed by many people. I suggest that, in considering any amendments, the attention of the Parliamentary Draftsman should be directed to that curious gap.

The Chairman.—From your evidence, and from other evidence submitted to the committee, it would appear that the whole of the prospectus provisions require overhauling.

Mr. McArthur.—Undoubtedly. I would say that they are very illogical. The next recommendation submitted to the Attorney-General was:—

Section 34:

(ii) Sub-section 3 (*c*) should be amended by repealing the provisions for a statutory declaration by directors or proposed directors. In substitution for these provisions, sections similar to sections 43 to 46 (inclusive) of the English Act should be adopted, so that the liability of directors and proposed directors is placed upon the same basis as in the English Act.

The Chairman.—Could you state the provisions of the English Act which you recommend, because this matter seems to be rather important from our point of view?

Mr. McArthur.—I regret that I have not a copy of the English Act with me.

The Chairman.—I take it that the point is that under the English Act there is a direct liability for the directors for statements they make in prospectuses, whereas under the Victorian Act they are liable only for having made a false declaration?

Mr. McArthur.—Yes, but it goes deeper than that. We all agree that directors should be under liability for false and misleading statements in prospectuses. In practice, the curious provision of the Victorian Act calling upon directors to make a statutory declaration has been a difficult thing for honest directors. They are forced to make a statutory declaration to the effect that all matters, the disclosure of which would be likely to affect to any material extent the attractiveness of the offer and so on, have been disclosed to the best of the deponent's knowledge. That is too wide; it would cover both derogatory and non-derogatory matters.

There is a let out, enabling a director who is outside the Commonwealth of Australia to escape the statutory declaration provision, and it is strange that many directors are absent from Australia when

prospectuses are issued. In my opinion, it is of no value against the fraudulent director, but it places a completely undue burden on the honest director. So far as I am aware, no other legislature in the English-speaking world has thought it necessary to attempt such a thing as this.

The Chairman.—In actual fact, I expect that it is not of much value as the director swears a declaration to the best of his belief. If he were prosecuted because he had made a false statement in the declaration, he would have a let out that it was to the best of his belief.

Mr. McArthur.—I should think it would be extremely difficult to attempt to prosecute any director concerning a declaration.

The Chairman.—That is so, unless one had a series of facts which would enable one to show the court that the director had actually constructed the prospectus himself or had given instructions as to the form in which it was prepared, and normally that does not happen.

Mr. McArthur.—In such an event, I suggest that other remedies would be available.

Mr. Rodd.—Actually the qualification that it is to the best of his belief applies only to the first part of the declaration; the next part provides that he has exercised reasonable diligence and has assured himself of all the statements in the prospectus, and so on.

The Chairman.—I think it is extraordinary the way in which people in Victoria and generally in Australia are being more and more asked to make statements in declarations which obviously cannot conscientiously be made. There is a practice in various Government Departments, if a person applies for a licence or something similar, to require a declaration which is a combination of a statement of fact and a general overall statement which obviously one cannot answer truthfully. The whole question of statutory declarations seems to be abused generally in the Commonwealth.

Mr. McArthur.—We heartily agree. It is a fallacy to think that anything can be achieved by forcing people to make statutory declarations.

Mr. Randles.—Do you know of any case in which either an honest or a dishonest director has come within those provisions?

Mr. McArthur.—No. The great need, I suggest, is to find practical means of policing the provisions.

Mr. Rodd.—They are a grave embarrassment to conscientious directors who try to carry out their duties honestly.

Mr. McArthur.—Sub-section (5) of section 35 of the Victorian Act saves certain documents from the operation of section 35, and the committee recommends extension of the saving provisions. It is of the opinion, however, that where the otherwise saved document comes within the definition—section 3—of "prospectus" section 34 may still have to be complied with, that is, the document may still have to be dated, signed, and filed. Accordingly, it may well be that, under the existing paragraph (*b*) of sub-section (3) of section 34, copies of material contracts would have to be filed with such a document. The committee is of opinion that the adoption of the English provision in paragraph (*b*) of sub-section (1) of section 41, relating to contracts not reduced into writing, is desirable.

The committee recommends that section 43 and the sections of the English Act immediately following section 43 should be adopted in lieu of section 37 and the following sections of the Victorian Act.

The Chairman.—Sub-section (1) of section 43 of the English Companies Act 1948, which deals with civil liability for mis-statements in prospectus, reads as follows:—

> (1) Subject to the provisons of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say:—
>
> (*a*) every person who is a director of the company at the time of the issue of the prospectus;
>
> (*b*) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
>
> (*c*) every person being a promoter of the company; and
>
> (*d*) every person who has authorized the issue of the prospectus.
>
> Provided that where, under section 40 of this Act, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this sub-section as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

Then there follows a number of saving provisions. My point about the section is that it imposes a liability on the persons mentioned, and it provides a right of compensation against those persons who are responsible for the preparation of the prospectus—something which the Victorian Act attempts to do, but does in a round-about and involved manner and, I would think, in a way that enables people connected with the preparation of a prospectus to escape liability.

Mr. Thomas.—Is not a weakness created by the words "after an interval of time" in paragraph (*b*) of sub-section (1) of section 43 of the English Act?

The Chairman.—Section 43 is the liability provision; it imposes a liability on a person who authorizes a prospectus or who has agreed to become a director "either immediately or after an interval of time". Therefore, they could be caught both ways. It would not be an excuse for a person to say that he did certain things six months ago but that he did not intend the prospectus to be used at the present time.

Mr. McArthur.—We mention not only section 43, but sections 44, 45, and 46 of the English Act.

The Chairman.—Section 44 deals with "criminal liability for mis-statements in prospectus"; section 45 relates to "document containing offer of shares or debentures for sale to be deemed prospectus"; and section 46 deals with the "interpretation of provisions relating to prospectuses".

Mr. McArthur.—We recommend that those four sections be adopted in lieu of the present liability provisions of the Victorian Act. Sub-section (1) of section 37 of the Victorian Act corresponds generally with sub-sections (1), (2), and (3) of section 43 of the English Act, but there are some differences. The Victorian Act alone extends the liability to cover "the wilful non-disclosure therein of any matter of which he had knowledge and which he knew to be material, or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith". The English provisions contain a proviso limiting the liability of experts consenting to act as required by the English Act. The grounds upon which a director can escape liability are much the same, in effect, in both Acts, though the two schemes differ considerably in their drafting. The Victorian Act, having created a liability for non-disclosure of material facts, has altered the escape provisions accordingly.

Sub-section (2) of section 37 of the Victorian Act corresponds with sub-section (4) of section 43 of the English Act, but the English provision contains extra words to deal with cases of consenting experts. The committee is of opinion that, as a general proposition, the English provisions that I have mentioned should be followed in preference to the Victorian sections. In particular, the committee is of opinion that the definitions in section 46 of the English Act give the shareholder sufficient protection.

Our recommendation is, really, that the substance of the English sections 43 to 46 inclusive should be adopted, preferably in the English form of drafting.

Mr. Thomas.—Have you any suggestions to make regarding the statement of time in relation to the prospectus? It has been stated to this committee that a prospectus could become "stale".

Mr. McArthur.—Yes. There is a left-handed provision in the Victorian Act in relation to stale prospectuses, which, I think, is rather peculiar to Victoria, at least in the Australian set-up. I personally am in favour of it. I would think that there is a great deal to be said in support of the contention that a prospectus should be reasonably up to date.

Mr. Thomas.—And that a renewal period should be specified?

Mr. McArthur.—No, I do not go so far as that. The time specified in the Victorian legislation—six months—seems to me to be all right.

Mr. Rodd.—Nevertheless, a statement in a prospectus that may be true to-day could become untrue after the expiration of six months, and directors could issue that prospectus, say, three months later only at their own risk.

The Chairman.—Suppose the directors issued a prospectus to-day containing certain statements. What would be the position if they were still using that prospectus six months later at which time the facts as stated in it might have materially altered? Would they still be liable?

Mr. Rodd.—My own view is that they would be.

The Chairman.—At the time the prospectus was issued the statements might have been quite correct and in that case there would be no question of liability, but after a period of six months such statements might not be in accordance with fact.

Mr. Rodd.—That could be so. For instance, a prospectus issued to-day might contain a statement that the company had a factory covering five acres of ground. Three months later, while the prospectus was still being made available, the factory might have been burnt to the ground. In those circumstances I would think that the directors would be liable for accepting applications for shares on the basis of the original statement.

Mr. McArthur.—A new provision equivalent to section 44 of the English Act should be adopted in Victoria, but express provision should be made that the onus of proving materiality shall lie on the prosecution. In the Victorian Act there is at present no exact counterpart of this English section. The committee is of opinion that section 366 of the Victorian Act shall be deleted, the reason being that we think section 44 of the English Act would, if adopted, take the place of Victorian section 366.

In the opinion of the committee, section 38 should be deleted and replaced by section 45 of the English Act. Section 38 of the Victorian Companies Act corresponds with the English section 45, the only material difference being that the Victorian Act again refers to non-disclosure. Section 46 of the English Act should also be adopted in Victoria. This English section is a new provision, which appears to the committee to be intended to have the same effect as the present Victorian provisions relating to non-disclosure of material facts. In accordance with the views that we have expressed in relation to section 37 of the Victorian Act, the committee recommends that the English provisions be followed here. The committee's report to the Attorney-General also contains numerous recommendations for detailed alterations in the Fourth and Fifth Schedules.

The Chairman.—Have you made a recommendation, respecting the provision in the Fourth Schedule, to the effect that an investigation should be made by an individual firm of accountants before a prospectus is issued to the public?

Mr. McArthur.—We have not made any direct recommendation to that effect, but we have suggested that the Fourth Schedule should be brought into line with the requirements of the English Act in four main respects. The first is that particulars of dividends paid over five years, instead of the present three years, should be necessary. Secondly, particulars of profits over a period of five years, with a report as to assets and liabilities at the most recent balancing date, should be required. The present Victorian provision is for three years. The third suggestion is that provision should be made to incorporate the results of subsidiaries—that is not in the Victorian Act—and that the report be made by the auditors of the company, instead of by accountants to be named in the prospectus, as at present provided.

The Chairman.—I may be wrong, but my impression is that the Stock Exchange requires that those accountants shall not be the auditors. In any case, the usual practice is not to have the auditors.

Mr. McArthur.—I was not aware of that Stock Exchange requirement. The other States require the auditors of the company to make a report. Members of the committee will be familiar with the normal prospectus which goes interstate. There is a dual report, one by the auditors—which is in so-called statutory form and says very little—and the other by the independent accountants generally employed. I have no very firm views about this auditor-independent accountant position, but I have strong views about extending the provisions to cover a five-year period. Speaking for myself, I am in favour of making the Fourth Schedule clear in respect of the date at which the last statement of assets and liabilities is to be shown. Under the present Victorian Act, the position is obscure and it appears to be within the law to have a report up to a date which is absolutely stale.

The Chairman.—For example, the last balancing date might be 30th June, when the prospectus is issued in May of the next year.

Mr. McArthur.—That is true. I suggest the position should be made clear. It would be reasonable to say that the balancing date must be within six months, or even a shorter period, of the date of the prospectus.

The Chairman.—Of course, it may well be that indirectly, by providing that only one firm of accountants, as auditors of the company, has to accept responsibility for making the report, a more conscientious preparation of the report might be achieved than at present with two apparently independent people.

Mr. McArthur.—I do not know; it is a matter which could be weighed in many ways. Another point I personally should like to make relates to the formation of holding companies, which is a very common and proper practice. The provisions in the Fourth Schedule as to the extent of the information which

should be given are very obscure, and it is at least arguable—and may be correct—that you can escape most of the provisions of the Fourth Schedule as it stands at present in relation to disclosing the position of the subsidiaries or the companies which become subsidiaries.

The Chairman.—The companies whose affairs are directly relevant to the proposed flotation?

Mr. McArthur.—Yes. For example "A" company has been going for many years. For very good reasons "B" company may be floated as a holding company. "B" company has no history, and at present one can comply with the provisions of the Fourth Schedule, if one desires, by saying nothing whatever about "A" company. That is wrong. Fortunately, that has not been done in practice.

There are other recommendations in my sub-committee's report to the Attorney-General relating to the Fourth Schedule to which I should like to direct the attention of the committee. This necessarily involves a consideration of the application of the prospectus provisions—whatever ultimately they may be—to foreign companies. In our Australian set-up all companies formed in other States of the Commonwealth are foreign companies so far as Victoria is concerned. At present very grave anomalies exist between the position of a foreign company incorporated, for example, in New South Wales, and a Victorian company. Curiously enough, in some respects the provisions relating to foreign companies are more stringent than they are in respect of domestic companies. I suggest for consideration of the committee that the provisions should be substantially brought into line.

Mr. Rodd.—There are specific recommendations in the report of the Law Institute relating to foreign companies. At the same time it is necessary to consider the prospectus provisions of Part II. of the Companies Act.

Mr. McArthur.—My sub-committee is wholly in sympathy with the object of the suggestion to strengthen the provisions requiring disclosure of any offer of shares—but differs as to method. It seems to my sub-committee that the "share hawking" provisions in sections 354 to 357 should be considered. It is submitted that the provisions of sub-section (2) of section 356 already provide—in appropriate cases—for a statement in writing giving certain minimum particulars to accompany any offer in writing to any member of the public of any shares for purchase.

The other far-reaching suggestion is that devices such as the creation of lot-holders and concession holders should not be permitted.

My sub-committee appreciates that there is a real evil, and would agree that safeguards are desirable.

However, it must not be overlooked that unit trusts —which have reached tremendous proportions in the United Kingdom and which are steadily growing in Australia—are in essence beneficial interests under a trust, and that to prohibit the creation of lot-holders and concession holders could interfere unduly with proper transactions.

Speaking personally, I should like to say that I consider the provisions of the New South Wales Lay-By Sales Act are desirable in Victoria.

The Chairman.—That is an aspect which is receiving attention by this committee.

Mr. Vroland.—There is another matter upon which I should like to comment. Inquiries reveal that the Queensland Trust Accounts Act is practically a dead letter so far as its application is concerned. Probably that fact is due to the Trust Accounts Act being superseded by other legislation which deals with solicitors and others who handle trust moneys. In my view, it would not prove helpful to enact in Victoria legislation similar to the Queensland Trust Accounts Act.

The Chairman.—Have you any objection to the type of legislation that now applies to the legal profession with respect to the protection of trust moneys contributed by clients?

Mr. Vroland.—None whatever.

The Chairman.—Do you believe it is preferable to have on the statute-book legislation relating to various classes of persons who handle trust moneys, such as real estate agents, building contractors, brokers and so on?

Mr. Vroland.—Yes.

Mr. Brennan.—Apart from such specialized legislation, do you not think there should be some drag-net provision that would apply to all persons who handled trust moneys?

Mr. Vroland.—That might be all right in theory, but I point to the fact that in Queensland such legislation is obviously a dead letter.

Mr. Brennan.—Do you not think that the community is entitled to protection in such matters?

Mr. Vroland.—In general, I believe that where trust accounts exist, provision for their control is desirable.

The Chairman.—Do you agree that if those who control trust accounts are not obliged to contribute to an indemnity fund, there is not much satisfaction to the clients concerned?

Mr. Vroland.—Yes. There are certain professions that can take out insurance bonds up to £5,000 in value. In many instances that factor is of material assistance.

The Chairman.—I am doubtful. My feeling is that if a man intends to defraud his clients he will probably do so in a big way.

Mr. Vroland.—I disagree.

The Chairman.—Can you express a view as to whether the Legal Profession Practice Act has operated satisfactorily in dealing with the trust account problem?

Mr. Vroland.—My personal view is that it has been most satisfactory and I believe that is also the view of all members fo the Council of the Law Institute.

Mr. Pettiona.—When was the Trust Accounts Act passed in Queensland?

Mr. Vroland.—In 1923. There were earlier enactments dealing with particular professions.

Mr. Rodd.—I might add that I consider part of the reason for the success of the Legal Profession Practice Act of 1946 is that the profession as a whole is vitally interested in the proper administration of that legislation. The legal profession has a council which spends much time in the administration of the Act and the carrying out of necessary sanctions on members of the profession. The council employs a full-time secretary. I believe that, without some such organization, legislation concerning the control of trust moneys is not of much assistance.

Mr. Vroland.—I believe that the lack of such an organization in Queensland was one of the principal reasons for the failure to administer the Trust Accounts Act in that State. No one was directly responsible and no body corporate was interested in the activities of the individuals who came within the ambit of the relevant legislation. I claim, without fear of successful contradiction, that one of the best things that ever happened in the interests of practising solicitors in Victoria was the passage of the Legal

Profession Practice Act in 1946. As was stated by Mr. Rodd, the reason for its success is that responsibility for the control of those handling trust moneys has been handed over to the Council of the Law Institute, and that body ensures that the legislation is effectively administered.

The Chairman.—Has it been found necessary to employ a large staff, with heavy administrative costs, to enable the legislation to be administered?

Mr. Vroland.—Administrative costs have been heavy. When the Act was passed, we had a staff consisting of a part-time secretary and one girl. Now there is a staff of a full-time secretary and three girls.

Mr. Rodd.—I might mention also that demands on the time of members of the council have at least doubled.

Mr. McArthur.—Another factor is that, because of the contributions made by practising solicitors to an indemnity fund, money is available for the employment of investigators when such are required. Much of the success of the Legal Profession Practice Act of 1946 has been due to the taking of immediate steps to investigate any complaints against members of the legal profession. If need be, an accountant is engaged to make a complete investigation of the affairs of a legal practitioner, and fees as high as 500 guineas have been paid in some instances. If those funds were not in the possession of those who administer the Act, the legislation would fail.

Mr. Brennan.—Do you think that there should be a limit to the contributions to the indemnity fund by practising solicitors?

Mr. McArthur.—The Act provides that the fund shall be limited to a sum of £100,000.

Mr. Brennan.—Do you think the provisions of the Legal Profession Practice Act could be applied successfully to other professions that handle trust moneys?

Mr. McArthur.—Yes, provided that the principle is preserved that the ruling body of the professions concerned will administer the legislation.

The Chairman.—I desire to express the thanks of this Committee to the Council of the Law Institute of Victoria, and to Messrs. McArthur, Rodd, and Vroland in particular, for the assistance they have given in our deliberations.

Mr. McArthur.—Thank you, Mr. Chairman. We appreciate the courteous manner in which our submissions have been received.

The Committee adjourned.

TUESDAY, 6TH JULY, 1954.

Members present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. I. A. Swinburne,	Mr. R. T. White.
The Hon. F. M. Thomas.	

Mr. F. G. Menzies, Crown Solicitor, and Mr. T. F. E. Mornane, Assistant Crown Solicitor, were in attendance.

Mr. Menzies.—I take it that to-day our attention shall be confined to the Mount Gambier forest companies and not to other issues adverted to by witnesses who have appeared before the Committee in recent days?

The Chairman.—That is so.

Mr. Menzies.—Since we last attended a meeting of the Committee, we have received from Mr. Oswald Burt statements concerning all the plantings. On the last occasion, we referred as an example to No. 12A, one of the smaller holdings of about 51 lot holders, to illustrate how the machine worked. Mr. Burt has forwarded schedules, which are referred to in his letter of 21st June, addressed to me. The communication states:—

STATUTE LAW REVISION COMMITTEE AND MOUNT GAMBIER FOREST COMPANIES.

I refer to my recent discussion with Mr. Menzies and Mr. Mornane and now hand you herewith schedules for the six companies with a summarized front sheet which brings the figures of all the individual issues together into grand totals for acres of land required, acres allocated and acres as per titles—of which there are schedules.

There are also attached to the enclosed file two explanatory memoranda prepared under my direction and addressed to me. These will be of further assistance to the Committee in understanding the schedules.

If you or the Committee desire me to reconcile or relate all or any of these schedules with or to the titles or data already placed by me before the Committee I will be pleased to attend for the purpose.

These schedules are part of normal office records available to the trustee to the external auditors and to the trustee company of which I am a director.

To complete the file of the Committee I also enclose herewith—

(*a*) sample deed of defeasance requested by the Chairman; and

(*b*) to complete the file handed to you herewith a sample deed of allocation—there being one each of these for every issue of lots to which land is allocated.

The Chairman.—The document referred to in (*a*) is the mortgage deed mentioned in evidence by Mr. Burt.

Mr. Menzies.—The various documents are attached. An accompanying memorandum states:—

It will also be noted that issues 1, 2, 3, and 4 of Pine Plantations Proprietary Limited are not referred to, the reason being that the realization of the timber on those issues is nearing completion, £117,169 having already been paid to lotholders, who subscribed £38,553.

The attached schedules reflect all of the effective contracts issued by the six forestry companies other than sections 1, 2, 3, and 4 Pine Plantations Proprietary Limited referred to above.

Another memorandum from Mr. Burt, dated 17th June, 1954, reads:—

We are handing you herewith the schedules for the six forestry companies with a summarized front sheet which brings all the figures of the individual issues together into grand totals for acres of land required, acres allocated, and acres as per titles schedules. These schedules which are part of the companies' records show how the totals already supplied to the Committee were arrived at.

You will see that every figure on the summary is marked with the reference number of the schedule from which it is taken, and that the schedules are bound in numerical order. There are three schedules for each company, of which the first shows the land and planting allocations in columns according to section or allotment number, the second shows the same according to years of planting, and the third is the detailed titles schedule.

Some of the schedules have been supplied before. You have already handed items 3, 6, 9, 12, 15, and 18 to the Committee and you have also handed items 13 and 14 to the Crown Solicitor. These items have been typed again for inclusion herewith to make a complete set.

We are also enclosing a sample deed of defeasance, namely the supplementary deed dated 10th November, 1950, between Softwood Products Treatment Company Proprietary Limited and Mr. F. Dundas Smith and Consolidated Trusts Corporation Limited and a sample allocation agreement covering issue 12A of Softwood Products Treatment Company Proprietary Limited.

There is a statement headed "Reconciliation of Titles to Planted Land with No. of Effective Contracts in Individual Issues—as at 31st March, 1954."

I submit as exhibits a series of statements prepared by Mr. Oswald Burt at the request of the Committee and of myself, as Crown Solicitor, and handed to me as enclosures to the letter of 21st June, 1954.

Mr. R. T. White.—Have the letters and schedules clarified the position in any way so far as your Department is concerned?

Mr. Menzies.—They have, inasmuch as they purport to cover the working of the whole scheme and the companies. Obviously, I cannot vouch for the figures. The only way to check them would be by conducting a very intensive survey and by obtaining information from all the lot holders, portion holders, or concession holders as to their contracts.

Mr. R. T. White.—Is there any indication how a person could locate his block or unit?

Mr. Menzies.—I should think that a contract could be identified with a particular planting shown in one of the schedules produced.

Mr. R. T. White.—If I held a unit certificate, how could I, from the information that you received, ascertain where my block was?

Mr. Menzies.—If you produced a particular contract it could be related to a particular planting and to a particular area, but you could not identify any particular acre. The contract relates to one acre of an undivided area; that is the basis of the scheme.

Mr. Randles.—The holder of a contract has an interest in an undivided area, which may consist of 100 or 1,000 acres?

Mr. Menzies.—That is so.

The Chairman.—Has Mr. Burt made available to you a list of the lot or concession holders in each issue?

Mr. Menzies.—No.

The Chairman.—Would I be right in saying that he would make such a list available to you if you required it?

Mr. Menzies.—Yes, although it would represent about six weeks' work for an experienced typist.

The Chairman.—Without undertaking that extra work, would it be possible for your officers, as a first step, to check whether the contracts of lot holders were included in the list of lot holders held by the company?

Mr. Menzies.—Only if we obtained the nominal roll, which would have to be prepared.

The Chairman.—Did not Mr. Burt give evidence to the effect that a list was held by the company but was in card index form?

Mr. Menzies.—Yes.

The Chairman.—It would appear, from his evidence, that such a check could be made.

Mr. Menzies.—Yes, I think that could be done.

Mr. R. T. White.—Is there anything to show that more contracts have not been signed for units than are actually shown in the schedules?

Mr. Menzies.—There is no evidence that contracts have been oversold or duplicated.

Mr. Pettiona.—When Mr. Burt replied to questions, he did not give a direct answer that contracts had not been oversold but more or less evaded the issue.

Mr. Menzies.—I do not think he would be in a position to say; he is not the company. He has been contending that all through. I have read through the evidence given before the Committee, and there is surprisingly little of substance in the allegations that have been made, if you disregard the fact that the company has not been very forward, to put it mildly, in giving information in its possession; that the shares or lots were sold by people not always of the highest character; and that there was a failure to fulfil what many of the investors thought they were going to get—£200 at the end of six years. They were never entitled to that, but one can entertain a suspicion that the lot hawkers represented that they would receive that. There was, in fact, no basis for that representation; it was a misrepresentation.

Mr. Pettiona.—Was Mr. Burt asked at any time whether he was the originator of the drawing up of the contracts?

Mr. Menzies.—No. I did not consider that I should question him on that matter.

Mr. Mornane.—He did say that he was not the originator, he said that the scheme was run originally by a Mr. McDonald and that he came in subsequently.

Mr. Menzies.—There is no doubt of that.

Mr. Mornane.—Reverting to Mr. White's question, one schedule shows that the C.A.P. Treatment Company Proprietary Limited, issue No. 10B., had plantings in 1943 of 99 acres in portion 91B. and in 1944 of 30 acres in section 350B. A contract between C.A.P. Softwood Industries and Verdun Clare Brindley relates to issue No. 10B. By looking at that contract one can trace the fact that the lot is situated in either section 91B. or section 350B., or it should be. Of course, unless you obtained a list of the lot holders that particular point could not be covered.

Mr. Menzies.—That would be only one lot of how many?

Mr. Mornane.—It would be one of probably 129, less a small reserve.

Mr. Menzies.—All that Mr. Brindley could be told was that his contract related to that planting.

Mr. Mornane.—There was a further planting relating to the same issue of 57 acres in 1942 on portion 493K.

Mr. Hollway.—What is the date of the contract?

Mr. Mornane.—The 16th June, 1942.

Mr. Hollway.—Mr. Brindley's contract could relate to any of those plantings?

Mr. Mornane.—Yes. He would have a share in the undivided area.

Mr. Menzies.—That is as near as you can get to identifying a contract, but you could not establish the fact that there had not been 300 sales covering the 250 acres planted.

Mr. Pettiona.—The only way in which that could be established would be by obtaining from the company or from Mr. Burt a list covering one complete issue and then advertising for information relating to persons having entered into contracts for that or a similar issue. If it were found that the contracts had been oversold, it could constitute a case for the Law Department.

Mr. Menzies.—Certainly from the point of view of the Committee it would look fishy, but it would have to be examined to ascertain whether criminal proceedings could be launched.

Mr. Pettiona.—I do not consider that Mr. Burt is responsible, but I suspect that when the originators sold the lots they oversold, and that when the undertaking became profit-making efforts were made to clean it up.

Mr. Menzies.—All I can say is that in the evidence I have read, which has been given to the Committee, there is not the slightest foundation for that belief. There have been statements and innuendoes but there is an absolute dearth of evidence.

The Chairman.—In summarizing your views on the matter, would it be fair to say that you have examined the evidence of Mr. Burt, and have sought and received additional information from him, but that you have no reason to believe that this business is anything other than that which it purports to be, namely, a properly run show, subject to the qualifications mentioned by Mr. Burt, but that it would be impossible to make a complete check unless the names of all the contract holders could be ascertained and compared with those that appear on the nominal list held by the company?

Mr. Menzies.—That is so.

Mr. Hollway.—Even if that information could be obtained, I do not think it would get us anywhere.

Mr. R. T. White.—Even if the Committee could get that information, would it help us?

Mr. Menzies.—I do not think so. I think the Committee takes the view that, even if it were intended to indulge in a heresy hunt or to undertake investigations of a semi-criminal nature, the Committee are not properly equipped to do so; it is not in a position to undertake such investigations any more than is my office. Such an inquiry would be a matter for the police. If the Committee had any suspicion about a particular matter that arose during the course of its investigations, it could refer the matter to me or to the police and then the evidence would be assessed according to its merits. This Committee have been investigating anomalies in the law and I think it has reached the stage at which it is of opinion that a particular scheme is susceptible of fraud. I am giving no certificate of character to these people; it is not the business of my Department to do so. If the Committee consider that a particular business or organization is open to fraud, its proper course would be, I suggest, to report some means of avoiding the possibility of such fraud or of making it difficult. Fraud cannot always be avoided by the enactment of laws, but it can be made difficult. I think the stage has been arrived at where the Committee, with such assistance as can be given by its professional helpers, ought to draw up a scheme for consideration by Parliament to provide that undertakings of the type in question will be put on a proper basis—something analogous to the position that obtains in relation to companies—so that lots will be brought into line with shares and prospectuses and so on and to ensure that there will be a means by which they can be properly identified. If that were done many of these transactions would then be subject to safeguards. I think it is only fair to ensure that such publicity as has been given to the Committee's investigations should not be one-sided or mischievous. This may be the best business in the world. I have with me an extract from the *Herald* of the 1st July, which reads as follows:—

MORE PINE COMPANY DIVIDENDS.

Three additional companies of the Temple Court group of six companies owning about 18,000 acres of pine forests at Mount Gambier have now joined the dividend list.

The Chairman.—The three companies mentioned are—Softwood Products Treatment Company Proprietary Limited, C.A.P. Treatment Company Proprietary Limited, and Softwood Milling and Reafforestation Company Proprietary Limited. It is stated in the report:—

The dividends, which are tax free, are from "thinnings." Milling is still going on.

Mr. Menzies.—There is a little tinge of cynicism about this thing, if this business is as good as it is supposed to be. Mr. Burt says that the timber has a ready market as flooring boards for house construction. I think his statement was drawn forth as a result of a remark by a member of this Committee concerning the quality of the timber. Mr. Burt claims that the timber from the companies' pine plantations is much better than New Zealand timber, and that it has taken the place of Baltic pine.

Mr. Ludbrook.—If the quality is as stated, Mr. Burt's claim would be quite correct.

Mr. Menzies.—I am not an advocate for the company but I suggest that if this business turns out to be profitable one, and if the Committee leave an aura of suspicion around it, it may be found at some later time that many disaffected investors had missed out on a handsome return from their investments, which in the earlier stages they did not expect.

The Chairman.—The Committee take much the same view as you have expressed. Are there any further questions that you think the Committee should ask Mr. Burt either to clear up any points that have been left in doubt or that will further your own inquiries?

Mr. Menzies.—Mr. Burt is complaining that he has not been fully heard and that he would like to have an opportunity to reply to some of the innuendoes or statements that have been made in reference to these transactions. I think he should be heard.

The Chairman.—I can give an assurance that Mr. Burt will be heard. He has already had one opportunity to have his statements placed on record but the Committee will give him a further opportunity to appear before them.

Mr. Menzies.—I think a question was asked by Mr. Pettiona regarding Vatubula. Mr. Burt might be asked what he has to say on that point.

Mr. Pettiona.—I think you have in mind the statement by Mr. Stevens regarding the 200,000 shares that were allotted to Vatubula.

Mr. Menzies.—Yes. We have looked into the matter but there does not seem to be anything in it.

Mr. Thomas.—Do you think Mr. Burt has placed the whole of his cards on the table to you?

Mr. Mornane.—We have no reason to think otherwise.

Mr. Pettiona.—If this show is so good, then why is it that, since the Committee were appointed to inquire into the matter, the proprietorship of the show has changed hands to the New Zealand people?

Mr. Menzies.—I do not think that is so; that might be in relation only to the milling aspect.

Mr. Pettiona.—Ronwells have now taken over the whole show.

Mr. Menzies.—Mr. Burt could be questioned on that point.

Mr. Hollway.—We might be able to satisfy our own curiosity about it, but I do not think it gets us very far.

The Chairman.—I think we have gone as far as we can expect to go on this inquiry. I thank Mr. Menzies and Mr. Mornane for their assistance. The Committee will examine these additional documents that have been submitted and we will give Mr. Burt an opportunity to be heard on a number of matters that he wishes to place before us. There are also some further points on which we would like additional information from him.

Mr. Byrnes.—Mr. Burt said that it would take six weeks to type the nominal roll of investors. If that were done, who would bear the expense?

Mr. Menzies.—The company would supply the list.

The Committee adjourned.

WEDNESDAY, 7TH JULY, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. I. A. Swinburne,	Mr. R. T. White.
The Hon. F. M. Thomas.	

In attendance were: Mr. A. A. Fitzgerald, O.B.E., B. Com., Chartered Accountant (Australia), Chairman of the Victorian Board of Management of Australian Fixed Trusts Proprietary Limited; Mr. C. A. Allerdice, General Manager of Australian Fixed Trusts Proprietary Limited; Mr. G. V. Briggs, a member of the Victorian Board of Management of Australian Fixed Trusts Proprietary Limited; and Mr. R. J. McArthur, a member of the Council of the Law Institute of Victoria.

The Chairman.—The Committee welcome to its deliberations Mr. Fitzgerald, Mr. Allerdice, and Mr. Briggs, who desire to give some evidence concerning Australian Fixed Trusts Proprietary Limited, and Mr. McArthur.

Mr. Fitzgerald.—Australian Fixed Trusts Proprietary Limited, one of the four companies in Australia engaged in the unit trust business, has had its attention drawn to certain evidence submitted to the Committee by Mr. T. S. Welsh, Deputy Registrar-General, and reported on pages 38–40 of the Committee's progress report, dated 7th April, 1954.

Several of the statements made by Mr. Welsh were founded upon a complete misconception of the nature of a unit trust and of the method of operation of such trusts. As the chairman of the Victorian Board of Management of Australian Fixed Trusts Proprietary Limited, I have been asked by the directors to tender evidence on behalf of the company, and I appreciate the opportunity that has been afforded me by the Committee to do so.

The statements made by Mr. Welsh which are based on a misconception of the facts are as follows:—

1. A proprietary company which is registered in New South Wales and operating in Victoria is advertising extensively and inviting the public to purchase certificates. Presumably, the company invests money in shares in Broken Hill Proprietary Company Limited, Myers, General Motors (Holden) Limited, and other well-known companies. Having collected the dividends from those companies, the proprietary company then pay the dividends on the unit certificates which the investors have obtained. By selling units instead of shares they get over completely the provisions of Part VI. of the Companies Act, which is designed to protect investors in investment companies.

2. Further, the company to which I am referring uses as part of its name the word "Trust," but no company inviting the public to subscribe for shares is entitled to do so.

3. The company was registered in New South Wales after share hawking was stopped. I do not know whether or not it was actually designed to circumvent that provision.

4. Being a proprietary company no audited accounts are filed for the protection of investors and so on.

5. Bogus promoters could register similar companies, obtain money from investors and buy no shares at all or only a token number. They could continue operating by paying dividends out of new investments. However, if there was a depression and investors wanted their money it would be discovered that there were no funds.

The facts in relation to those five aspects are:—

(*a*) Dividends from companies in which unit trust funds are invested are not collected by the company and paid to the unit certificate holders by the company. They are collected and paid by a trustee for the unit certificate holders appointed under a trust deed which is designed to afford full protection to the unit certificate holders.

(*b*) The word "trust" is used as part of the name of the company because, in fact, the operations constitute a trust in the true sense of that term. In this respect, the operations are quite different from those of the investment companies which are forbidden by Part VI. of the Victorian Companies Act from using the word "trust" as part of their name.

(*c*) Australian Fixed Trusts Proprietary Limited was incorporated in New South Wales in August, 1936—that is to say, before the present New South Wales *Companies Act* 1936, or the Victorian *Companies Act* 1938, incorporating the prohibitions against share hawking, were enacted. In any event, the company is not engaged in share hawking, as will be shown later.

(*d*) The half-yearly statements of dividends received and disbursed are audited by a reputable chartered accountant, who is also a licensed company auditor, and a copy of these half-yearly statements is sent to every unit certificate holder. Incidentally, the accounts of Australian Fixed Trusts Proprietary Limited are also audited, but these accounts are of no interest to the unit certificate holder because they merely related to the income and expenses of Australian Fixed Trusts Proprietary Limited as distinct from the income and expenses of the trust.

Mr. Byrnes.—Does that firm operate on a percentage basis?

Mr. Fitzgerald.—There is a fixed service charge, which consists of a percentage of the sub-unit price—as we call it—under the fixed trust, plus a small percentage out of the half-yearly income.

Mr. Byrnes.—Do the accounts relate only to the money received for the work involved?

Mr. Fitzgerald.—Yes. Perhaps I may make an analogy. If, instead of this kind of management of a trust, an individual investor engaged a manager to manage his investment, on the understanding that the manager would be paid a salary, or a percentage of income, or a percentage on capital, he would be wise if he arranged for an audit to be made of the receipts and disbursements of the manager in respect of the income from the investments, but I do not think such an audit should extend to the personal accounts of the manager.

(*e*) In fairness to Mr. Welsh, I ought to say that he stated he believed the company to which he, in his evidence before this Committee, referred—obviously, Australian Fixed Trusts Proprietary Limited—was a reputable concern. The facts in relation to this statement are that, by the terms of the trust deed, Australian Fixed Trusts Proprietary Limited cannot sell unit certificates before it has lodged with the trustee evidence that it has acquired the underlying securities. Dividends cannot be paid out of capital but only out of dividends received by the trustee from the companies in which the investments have been made.

Volume of business transacted by unit trusts in Australia:

At present there are four companies in Australia managing unit trusts. The largest of these is Australian Fixed Trusts Proprietary Limited.

Mr. R. T. White.—Are those companies associated with overseas interests?

Mr. Fitzgerald.—No. Investments to date in the various unit trusts which the company manages exceed £6,000,000. The next largest is Unit Trusts Limited, a company incorporated in Queensland. The amount invested in unit trusts managed by that company exceeds £4,000,000. This company also operates a subsidiary company in Victoria, namely Consolidated Units Limited, and I believe that the funds invested in its unit trusts in Victoria would not exceed £1,000,000. The fourth company is Security Units Proprietary Limited, which is incorporated in New South Wales and which manages investments amounting to about £2,000,000. Thus, altogether in Australia there are some £13,000,000 invested in unit trusts managed by these four companies. In Great Britain between 1931, when the unit method started, and the outbreak of war in 1939, more than £100,000,000 had been invested in the numerous unit trusts operating in that country.

Mr. Brennan.—Do you cover realty as well as industrial shares?

Mr. Fitzgerald.—No. The next aspect is:—

The nature of unit trusts:

A unit trust is created by the execution of a deed of trust between a management company of the first part, a custodian trustee of the second part, and the various persons who subscribe for units of the third part. The trust deed used by Australian Fixed Trusts Proprietary Limited, a copy of which I tender, sets out in detail the rights and obligations of each part of the deed. This deed relates to First Victorian Unit Trust, which was the first fixed trust launched by Australian Fixed Trusts Proprietary Limited in Victoria. This deed is typical of the trust deeds used for all the unit trusts managed by Australian Fixed Trusts Proprietary Limited.

Mr. Brennan.—Are copies distributed to each certificate holder?

Mr. Fitzgerald.—No. Each holder may inspect the deed and obtain a copy upon payment of 10s. 6d., representing approximately the cost of its preparation. On page 48 is set out a schedule of the companies in which the funds of this trust must be invested, and the number of shares in each of these companies which is contained in each unit. The schedule lists parcels of shares constituting the original stock unit.

Mr. Pettiona.—Are the prices shown those at which the shares were bought?

Mr. Fitzgerald.—No. These are the face or par values.

Mr. Brennan.—These are all first-class securities on the Stock Exchange?

Mr. Fitzgerald.—The companies are all well established, reputable concerns; they are all listed on the Stock Exchanges; and, moreover, they are all what are known in Stock Exchange circles as "market leaders." These are the stocks from which can be judged the trend of the market. Movements in these stocks will indicate general variations, up or down, in market values.

Mr. Thomas.—Is the list intended only as a sample to guide us?

Mr. Fitzgerald.—No. This is the arrangement of the portfolio for a stock unit of the First Victorian Unit Trust. Australian Fixed Trusts Proprietary Limited must invest in these companies in the proportions indicated except in very special circumstances.

Mr. Randles.—Is it hoped always that the shares will rise in value?

Mr. Fitzgerald.—Not necessarily. This portfolio of investments is fixed (hence the description "Fixed Trusts") and the management company has no power to invest the funds of the trust in any companies other than those set out in the schedule, except under special circumstances which are described in clause 5 of the deed on pages 6 to 8. The principal point there is that the custodian trustees may, at their discretion, veto any proposed new investment or variation of an existing investment. This is a fixed portfolio.

In a trust of this kind—a fixed trust—the shares in the named companies (in this case, twenty in all) constitute a unit of the trust. In turn, each unit is sub-divided into 3,000 parts called sub-units. It is these sub-units which are sold to the public. The total investment in a unit is approximately £3,000 and in a sub-unit it is therefore approximately £1. Any investor may purchase a minimum of twenty sub-units. In this way, the amount invested in a sub-unit is spread over the whole of the twenty companies, so that in effect for every £1 invested in First Victorian Unit Trust sub-units, approximately 1s. is invested in each of these twenty companies.

The company has issued a handbook entitled "Wise Investment for To-day and To-morrow," copies of which I tender. On page 7 there is a simple example of the way in which the fixed trust works. At the top of the page there is set out a portfolio of six companies. This is merely to illustrate the principle, and does not affect the fact that in the First Victorian Unit Trust the portfolio consists of 20 companies. An investment of £100 in the purchase of 100 units of the specimen trust would represent 1/30th of all the trust property at the time this investment was made, which would really mean that the investor had invested his funds in the purchase of five shares in each of four companies and ten shares in each of two companies. He would thus get a spread that it would be quite impossible for an investor with £20 to obtain in any other way.

I come to the important point of the method by which sub-units are sold to investors, and I attach a good deal of importance to this part of the evidence. In selling sub-units, Australian Fixed Trusts Proprietary Limited advertises, by medium of both radio and press, the existence of the unit trust and invites the public to ask for a copy of the company's explanatory handbook, a copy of which I have just tendered. The inside front cover shows that Australian Fixed Trusts Proprietary Limited was incorporated in New South Wales under the *Companies Act* 1899, and gives a list of the trusts which it

manages. On the next page will be found particulars of the directorate and management of the company, and the custodian trustee. The flexible trust differs from the fixed trust only in the respect that there is a wider discretion to vary the portfolio, which consists of a much larger number of companies than do those of the fixed trusts; there is no real difference otherwise, in principle. Even then the custodian trustee has power to veto any proposed change of investments.

The chairman of Australian Fixed Trusts Proprietary Limited is Mr. V. G. Watson, a former general manager of The Trustees Executors and Agency Company Limited. He is now a director of several well-known public companies, including Sargents Limited (of which company he is chairman), Wunderlich Limited, Meggett Limited, Linoleum Holdings Limited, Intercolonial Land and Building and Investment Company Limited, J. A. Brown and Abermain Seaham Collieries Limited, and Webb Industries Limited.

Mr. N. L. Cowper is a partner in the well-known legal firm of Messrs. Allen, Allen, and Hemsley, of Sydney. He is also a director of Gilbert Lodge Company Limited.

Mr. P. A. Cullen is a director of several companies, including Mainguard Australia Limited, Vanguard Insurance Company Limited, Alliance Acceptance Corporation Limited, Aldershot Investments Limited, Palgrave Corporation Limited, and Sydney Exchange Company Limited.

Mr. Palmer Kent is a retired chief inspector of the Bank of Australasia, from which he retired approximately twenty years ago.

Mr. J. A. L. Gunn is very well-known throughout Australia as an authority on income taxation law. He is a chartered accountant and was a member of the last Commonwealth Taxation Advisory Committee, and also of a similar committee which operated under the Chifley Government.

The members of the Victorian Board of Management are Mr. G. V. Briggs and myself. Mr. Briggs is a retired manager of The Trustees, Executors and Agency Company Limited.

The custodian trustee in Victoria is General Accident Fire and Life Assurance Corporation Limited, a British company with assets exceeding £60,000,000 sterling, and one of the largest insurance companies in the world—I am informed that it is the third largest in the world.

The auditors of the trust are Messrs. Wilson, Ross and Company, chartered accountants (Australia), of Melbourne.

I should emphasize that every prospective investor is supplied with a copy of this booklet, which clearly describes the trust and includes a clear and simple explanation of the salient features of the trust deed. This trust deed may be inspected by any investor at any time and he may obtain a copy on payment of 10s.—see page 20 of the booklet.

After this booklet has been sent to the inquirer, one of the company's advisory officers calls upon him to explain any point upon which he may not be clear. These advisory officers are not permitted to sell sub-units to the inquirer. Their function is to accept from the inquirer an inquiry form, which I now tender with certain other documents to which I shall also refer. These include a sample trust certificate, a running register and individual register. The inquiry form is not an undertaking to subscribe for shares; it is simply an inquiry addressed to the company and the custodian trustees. It states merely that the person signing is desirous of acquiring so many sub-units and requests the company to advise at what price these sub-units can be secured.

On receipt of the inquiry form, Australian Fixed Trusts Proprietary Limited notifies the inquirer that it can make the required number of sub-units available at that day's selling price, provided payment is made within seven days. The inquirer has thus a further seven days in which to change his mind about making the investment, if he decides to do so. After signing the form the inquirer has a further seven days in which he may change his mind about making the investment.

Mr. Thomas.—Although the shares may be purchased on the day of the application?

Mr. Fitzgerald.—The stock unit is always purchased before it is sold; it is vested in the custodian trustee.

Mr. Byrnes.—The inquirer gets the shares at their value on the day on which he made the inquiry?

Mr. Fitzgerald.—Yes, no matter what happens to the price, which may rise or fall. When payment is made by the investor, a certificate, specimen copy of which is submitted, is prepared by Australian Fixed Trusts Proprietary Limited, signed on behalf of the company and on behalf of the custodian trustee, and then sent to the investor. The price at which sub-units are sold is calculated daily in a way which I shall described later, and is published in the morning daily newspapers at the end of the Stock Exchange quotations. This price is determined by valuing each stock in the portfolio at the market selling value, as shown by the Melbourne Stock Exchange list for that day. To the total so ascertained is added the usual brokerage payable to stock exchange brokers for purchasing shares and stamp duty on the instrument to transfer them into the name of the custodian trustee. The total base value is then divided by 3,000 in order to obtain the current cost of purchase of the investments represented by each sub-unit. The selling price is then arrived at from this cost by adding 7½ per cent. of the selling price. This 7½ per cent. is the company's initial service charge, which is the major part of its remuneration for managing the trust over the fifteen-year period for which it is to run, and is the equivalent of ½ per cent. a year. The selling price is usually rounded off to the nearest 3d. above. In view of the suggestion that has been made that the company is engaged in share hawking, it should be stressed that sales are effected only at the company's office and not by the advisory officers, who are advisors and not salesmen. Australian Fixed Trusts Proprietary Limited conducts all its operations under the assumption that the share-hawking provisions of the Companies Acts do apply to the sale of sub-units. I do not know whether they do or not. That is a legal question which I am not competent to answer.

The trust:

It has been mentioned already that a unit trust is a trust in the true sense of that term. It operates under a trust deed, and the custodian trustees, who are always a company of undoubted standing, exercise full control over all the scrip relating to the whole of the investments, of which it is the registered holder in the books of all the companies concerned, over the receipt of all income from these investments, and over the half-yearly distribution of the income of the trust among the registered holders of sub-units. Dividends receivable from time to time on the investments in the underlying securities go direct to the custodian trustees, and they do not pass through the hands of Australian Fixed Trusts Proprietary Limited. Moreover, receipt of this income and the half-yearly statements furnished by the custodian

trustee to sub-unit holders, as well as the holdings of securities by the custodian trustees, are audited by the trust auditors.

I now tender a copy of one of these half-yearly statements, to which the auditors' report is appended. This statement shows the amounts of the dividends distributed, the dates when they were paid, and the total amounts of the dividends received from each of the shares in which the investments were made. The statement also shows the amount deducted as the trustees' and management fee, as provided for in clause 4 of the trust deed. In addition it sets out the amount per sub-unit, which was distributed. I direct the attention of the Committee to the "Auditors' Report to Sub-Unit Holders," which appears at the foot of the left-hand page. The auditors' report is as follows:—

> We report that we have audited the accounts of First Victorian Unit Trust relating to cash produce (as defined in the Trust Deed) received by the custodian trustees during the period ended 15th May, 1954, and that the net amount available for distribution to registered holders in respect of that period is correctly shown in the above statement at £11,719 4s., being equivalent to 8.224d. per sub-unit.
>
> We also report that we have examined the share certificates and other evidence of entitlement (in terms of clause 4 (*a*) of the Trust Deed) held by the custodian trustees in respect of the shares and cash constituting the trust fund as at 15th May, 1954, and have found them in order.

The report is signed by Wilson, Ross and Company, chartered accountants, all the partners in which firm are licensed auditors.

Mr. Pettiona.—Do you spread your share-broking business?

Mr. Fitzgerald.—Yes. We like to give our share-broking business to people who help us. A number of stock brokers, acting on behalf of clients with small capital, advise those clients to invest in unit trusts. When we receive applications through a recognized broker, we like to reciprocate.

Register of Sub-Unit Holders:

The trust deed provides that a register of sub-unit holders shall be kept. To comply with this provision, two types of registers are maintained. The first, called the running register, shows the number of sub-units that may still be sold before further shares are vested in the trustees. This register records in chronological order the various transactions which take place from day to day, and shows a running total of sub-units issued and the number in the hands of the trustee unallotted to sub-unit holders at any particular time. This register is prepared by the management company in duplicate and one copy is lodged with the custodian trustees.

The second register is analogous to the share register of a limited liability company and shows the full name, address, and occupation of each registered holder of a sub-unit, the number of sub-units held and the dividends paid to the holder whilst he has been registered as a holder of sub-units in the particular trust concerned. This register is also prepared by the management company and is audited half-yearly by the trust auditors.

Mr. Pettiona.—You stated that the second register is analogous to the share register of a "limited liability company." To what extent is the liability limited?

Mr. Fitzgerald.—It could be any limited liability company. A share register is kept in order to record the direct holdings of shares in that company. We record the holdings of units in the trust in the same way as the holdings of shares in a limited liability company are recorded.

The Chairman.—I suppose Mr. McArthur would agree that, although you adopt that system, you are under no legal obligation under the Companies Act to do so.

Mr. McArthur.—That is so; there is no such legal obligation under the Companies Act.

The Chairman.—What would be the capital invested in this First Victorian Unit Trust?

Mr. Allerdice.—There are 114 stock units, each of 3,000 sub-units, so the total number of units on issue would be 342,000. They were sold at various prices, the average being about 17s. 6d. Therefore, the actual amount of capital invested by the public would be approximately £300,000.

Mr. Thomas.—That could be classified as an asset of the company?

Mr. Allerdice.—No; it would have nothing to do with the company. It is a trust, and the assets of the trust are held by the custodian trustees. That would have nothing to do with the management of the company, and the amount of money involved would not be part of the assets of the company.

Mr. Fitzgerald.—That money, approximately £300,000, is not an asset of the company. It is vested in the custodian trustees, by whom it is held in trust for the unit holders.

Mr. Thomas.—Earlier, when speaking of assets, you mentioned a sum of £60,000,000.

Mr. Fitzgerald.—The custodian trustee is an insurance company, and that company's own funds amount to about £60,000,000.

Mr. Thomas.—Is it comprised of the speculations in that company?

Mr. Fitzgerald.—No. Those are their own funds which are used in their insurance business. In the First Victorian Unit Trusts, the £270,000 is not part of the £60,000,000.

Mr. Brennan.—Were the First Victorian Unit Trusts planned to have a life of fifteen years?

Mr. Fitzgerald.—Yes. All trusts are wound up after fifteen years, when the securities are either distributed to the sub-unit holders or sold.

Mr. Brennan.—Have the sub-unit holders the option of reinvesting in the next trust?

Mr. Fitzgerald.—Yes.

Information available to sub-unit holders:

All companies in which the funds of a unit trust are invested are public companies whose shares are listed on the recognized Stock Exchanges. Therefore, in effect, through the unit trust each sub-unit holder is a shareholder in those companies. He is not, of course, an actual holder, but his investment places him in the same position as if he had divided his capital into twenty parts and invested one part in each of the companies in the portfolio. He can secure from various sources all the information about these companies which they normally make available to their shareholders; and, should he have any difficulty in obtaining this information, the management company will make it available to him.

Each half-year the custodian trustees forward to each sub-unit holder an audited statement showing the income received during the half-year, the total amount available for distribution to registered sub-unit holders, and the amount per sub-unit.

Protection of sub-unit holders:

Sub-unit holders are protected in the following ways:—

(*a*) The companies in which their money is invested are disclosed from the outset, and are, as has been said, what are known as "market leaders";

(*b*) the custodian trustee is a company of unquestioned standing which has its own prestige to uphold, and, for this reason alone, it can be relied on to ensure that the managers of the trust carry out their responsibilities under the trust deed. Not the least of these responsibilities is that the management company cannot sell sub-units until the whole of the shares constituting a unit have been vested in the custodian trustees, and the custodian trustees will not sign a certificate for issue to any sub-unit holder until the underlying securities have been so vested. In this respect I refer the Committee to clauses 8 (*c*) and 4 (*a*) (*c*) of the trust deed;

(*c*) the price paid for sub-units may be checked by any prospective sub-unit holder, because that price is based on the market value on the Melbourne Stock Exchange of the underlying securities. If requested, the management company is obliged to make details of the calculations available to the investor;

(*d*) if at any time a sub-unit holder desires to sell his sub-units, the management company is obliged by the trust deed to repurchase these sub-units. In practice, the buying price is 9d. a sub-unit less than the selling price at that particular time—see clause 11 of the trust deed; and

(*e*) any sub-unit holder holding 1,500 sub-units or any multiple of 1,500 sub-units can call upon the custodian trustees to transfer to him the underlying securities represented by his holding. That is to say, a holder may get out of the trust and become a direct holder of shares in the underlying securities.

Remuneration of managers and trustees:

The trust deed provides that the selling price for sub-units shall include an initial service charge. In the case of First Victorian Unit Trusts, this initial service charge was 5 per cent. of the selling price of sub-units. In the case of the current fixed trust it is 7½ per cent. In addition, a half-yearly charge of one-sixth of 1 per cent. of the value of the trust fund as at the date of distributing the incomes is made against income each half-year. These charges are the total charges made to an investor for the services provided by the management company over the fifteen-year period. From them the management company meets all the expenses of operating the trust, including advertising, selling, and remuneration of the custodian trustees.

Mr. Pettiona.—Why is the period of operation limited to fifteen years?

Mr. Fitzgerald.—I do not think there is any particular reason, but it is not desirable that trusts should go on indefinitely. For example, it may happen that after fifteen years a particular portfolio of investments is not the most satisfactory obtainable. The present arrangement provides an opportunity at the end of fifteen years of reconstituting the trust.

Mr. Pettiona.—Could the same portfolio be carried on if it were satisfactory?

Mr. Fitzgerald.—Yes. It gives one an opportunity, at intervals, to examine the situation.

Mr. Swinburne.—The investments cannot be altered during the fifteen-year period?

Mr. Fitzgerald.—That is so.

Mr. Pettiona.—What has been the typical result of a winding-up at the end of fifteen years?

Mr. Allerdice.—The total sum invested in the first trust in 1936 represented 453,000 sub-units. When the period of operation of the trust expired on 31st December, 1951, the total value of the underlying securities which had to be realized, in order to pay sub-unit holders who desired to receive cash, was only £54,000. The remaining holders did not require their money, and transferred their investment from the first trust to the trust which was current at that time.

Mr. Fitzgerald.—The advantages of the system are as follows:—

(*a*) *From the standpoint of the individual investor:* From the standpoint of the small investor in particular the unit trust method offers considerable advantages. No matter how small his capital, he is able to spread his investment over as many as twenty leading companies, a facility which could not possibly be obtained except in some such way. He has the assistance of expert buying of the portfolio and he is entirely relieved from the necessity for management of his investments, accounting for dividends received and such transactions as the sale of rights to take up new issue. Even after paying the service charges to the management company he is usually better off financially than if he had invested his capital in some alternative way and had employed an agent to manage his investments.

(*b*) *Social advantages:* The unit trust method also possesses many advantages from the social standpoint. These are—

(i) it helps to bring about greater diffusion throughout the community of financial interest in industry;

(ii) it leads to greater interest in, and better understanding of, the activities of industrial concerns; and

(iii) it operates as a very effective channel through which numerous small capital funds, amounting in all to a very large figure, are made available to the investment market. The economic effects of this channelling are of the utmost importance and they are therefore elaborated in the following paragraph.

Particularly in a country like Australia in its present stage of development, there is a tremendous demand for capital for investment in expanding industry. There is also a vital necessity to effect this new investment in industry without adding to inflationary pressures. If inflationary pressures are to be avoided in an expanding economy, the volume of capital investments should be matched by a correspondingly high volume of savings in the sense of refraining from spending on consumption goods. In those circumstances, any means by which saving is encouraged and the volume of savings is expanded is desirable.

Unquestionably, some substantial part of the £6,000,000 which has been invested in unit trusts through Australian Fixed Trusts Proprietary Limited represents money which would have been saved in any event, but the comparatively high yield which has been obtained in the past from investment in unit trusts has undoubtedly been a powerful stimulus to saving. It would, perhaps, not be an exaggeration to guess that at least one-half of the £6,000,000 represents savings which might not have been made if it had not been for the existence of the unit trust method, which combines a comparatively high return with comparatively high safety of capital.

It is true that the amount of money invested through unit trusts is not directly invested in new issues by industrial companies. On the contrary, it is all applied to the purchase of shares which have already been issued. It is necessary, however, to carry the analysis a little further. Australian Fixed Trusts Proprietary Limited is a continual buyer of shares and a rare seller. This fact tends to keep up the market value of shares in well-established industrial concerns and to reduce the yield on ordinary shares in those concerns. This reduction of yield, in turn, tends to reduce the yield on bonds and other interest or dividend-bearing securities, and so operates to keep down the market rate of interest, which is highly desirable in an expanding economy. Moreover, this lower yield from investment in well-established concerns makes investment in those concerns less attractive to the "risk-bearing" investor, who is thus attracted to new enterprises offering possibilities of higher rewards. In this way, the continuous supply of savings channelled through unit trusts indirectly increases the supply of capital for new and expanding industries.

The Chairman.—On behalf of the Committee, I thank Mr. Fitzgerald and his associates for the trouble they have taken to prepare such a well-documented case for our consideration.

Mr. Fitzgerald.—Thank you, Mr. Chairman. We shall be pleased to answer any questions.

Mr. Byrnes.—Would there be objection to the enactment of legislation which would make it obligatory on unit trust organizations to do these things that are now done voluntarily?

Mr. Fitzgerald.—We would have no objection. Such legislation would not hinder us; in fact, it might be advantageous in as much as it would enable us to compete with others on a fair and equitable basis.

Mr. Pettiona.—Would there be any objection to a recommendation being made by this Committee that unit holders should be granted rights similar to those possessed by shareholders in respect of the demanding of meetings and so on?

Mr. Fitzgerald.—In principle, I see no objection. I fear, however, that a dragnet clause of that character might increase administrative costs without providing any additional protection to sub-unit holders.

The Chairman.—Would there be any objection to a provision that a list of unit holders must be lodged with the Registrar-General annually, in the same way as is a list of shareholders?

Mr. Fitzgerald.—The only objection would be on the score of expense. There is nothing to hide. There are 16,000 sub-unit holders in our unit trust organization, and the compilation of an annual list and summary would be expensive. I do not think it would provide any additional protection to sub-unit holders.

Mr. Brennan.—Many unit holders, I suppose, would be averse to it.

Mr. Fitzgerald.—I am glad that Mr. Brennan mentioned that aspect. Housewives continually come to the office and say, in effect, "I wish to invest £50 but I do not want Mrs. Smith, who lives next door, to know."

Mr. Byrnes.—Broadly, do you regard investment in a unit trust as being in a somewhat similar category as the making of a deposit in a savings bank?

Mr. Fitzgerald.—Frankly, a deposit in a savings bank is even better than a gilt-edged security. Investment in industrial concerns cannot give such almost complete security; the investor takes a little more risk, but receives a return of 6 per cent.

Mr. Thomas.—Is it possible for the yield to be higher than that percentage?

Mr. Fitzgerald.—The dividend paid on sub-units from time to time depends on the dividends paid by the companies in which the investments are made.

Mr. Briggs.—The dividend can increase according to the benefits derived from the shareholdings in the companies.

Mr. Fitzgerald.—Unit trusts are not particularly suitable for a man with a large capital who understands the share market and can manage his own investments, but are useful for a person with small capital and little knowledge of finance. Unit trusts lead to a wider diffusion of investment and ownership.

Mr. Brennan.—Such investments tend to stabilize the companies as regards their reputation on the Stock Exchange?

Mr. Fitzgerald.—Yes.

Mr. Pettiona.—Have you read the suggestions submitted to the Committee by Mr. P. H. Opas, who made two recommendations concerning amendment of the Companies Act as it affects proprietary companies?

Mr. Fitzgerald.—No.

The Chairman.—This is a legal problem. Perhaps Mr. Fitzgerald and Mr. McArthur could confer and prepare a memorandum on it for the Committee.

Mr. Fitzgerald.—Very well. The proposals seem fair and reasonable, but I should like to have more time in which to consider them.

The Chairman.—I thank you gentlemen for your assistance.

The Committee adjourned.

TUESDAY, 13TH JULY, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. F. A. Thomas.	Mr. Randles,
	Mr. R. T. White.

Mr. W. Oswald Burt, solicitor, of Melbourne, was in attendance.

The Chairman.—Mr. Burt is present to-day at our request in connexion with certain of the softwood companies and at his own request in regard to evidence that has been given in the past, which he feels is a little unfortunate, as far as he personally is concerned.

Mr. Burt.—Unwittingly so.

The Chairman.—I agree with that comment. The Committee has examined the evidence in the light of certain matters that Mr. Burt raised previously, and it is felt that there appeared to be no intention—nor did we get the impression—that any of the evidence troubling Mr. Burt was directed against him in any way.

Mr. White.—Might I also suggest—probably Mr. Burt already is aware of this fact—that this is not an inquisition?

Mr. Burt.—I am present to give the Committee all the information that I possibly can, and I shall be very disappointed if I leave to-day without every member of the Committee being satisfied.

The Chairman.—I agree with the comment made by Mr. White that this Committee is not intended to be an inquisition, nor is it conducting a heresy hunt against any one. We are concerned about things that have occurred in the past which indicate that there are weaknesses in the Companies Act and similar legislation. It may well be that on certain occasions some statements have been accepted by the Committee which perhaps have been indiscreet and which in some cases cannot be supported by fact. However, the members of the Committee are not influenced by wild accusations or statements made from hearsay but with the facts as we find them.

Mr. Burt.—I am here to help the Committee and to tender information required on any of the matters before the Committee. If any member of the Committee has any lingering doubts I would like him to tell me of them, and I will do my best to explain them.

The Chairman.—Perhaps you would first like to submit additional evidence that you did not include previously.

Mr. Burt.—Yes. When I appeared before the Committee last I had a tremendous number of matters to submit and I omitted something which I wanted to place before the Committee. I had denied categorically that either I or my firm had anything to do with the promotion, formation or conduct of a number of companies which I then listed. I obtained the names of those companies, not from the report of this Committee which had been tabled in Parliament and which I had not seen, but from various newspaper reports, and I do not know whether I covered all the companies or not. However, I have certain notes that I had prepared but which were not included in my previous evidence. First, I desire to refer to Softwood (Australia) Milling Products, a firm which I think was dealt with in the course of my evidence. There is no need for me to say any more about it.

In the press reports there was also a reference to a firm called Matured Pine Trees Limited. I did not form or advise the formation of this company. It is a company of lot holder shareholders with their own board of directors elected by lot holders. About twelve months ago I was called in by those directors to assist them in—

(*a*) solving their many problems; and

(*b*) selling their forests to New Zealand timber interests with whom I am in contact. For the information of the Committee, they are the Mason Brothers. My view is that the lot shareholders in this company have had a raw deal. They have, however, an energetic Board, which is their only hope.

I referred also to Southern Isle Canneries. Neither I nor my firm formed this company, nor have ever acted directly or indirectly or had any financial or other interest in this company at any time. I should add, however, that since the company went into liquidation, my office has been consulted by the liquidator, Mr. J. Wallace Ross, and we have been acting in the capacity of solicitors for the liquidator, endeavouring to clean the matter up.

The Chairman.—The Committee did not gain the impression at any time that you were connected with Southern Isle Canneries.

Mr. Burt.—I am glad to learn that. I thought that as a result of the press report, the Committee might have associated me with that concern.

Concerning Corio Guarantee Corporation Limited, neither I nor my firm formed or ever advised this company or any of its subsidiaries or alleged subsidiaries or any of the directors or executives of the company and subsidiaries until shortly before the Extraordinary General Meeting of shareholders held last year, and then only for the purpose of assisting the then newly constituted Board to prepare a report to be presented to shareholders at that meeting. Whatever knowledge I have of this company was gained over the period of about ten weeks while I was so advising.

When I appeared before the Committee last, I gave certain undertakings, and, if it is convenient, I shall deal with those matters now. Since my last appearance before the Committee I have—

(*a*) delivered to the Crown Solicitor a *pro forma* copy of the mortgage by way of defeasance given by each of the six Mount Gambier companies to Consolidated Trusts Corporation over approximately a total of 19,000 acres of forest lands—full particulars of titles and the like are already before this Committee; and further voluntarily and without a request from the Crown Solicitor I have handed to him—

(*b*) large tabulated sheets identifying every issue of lot contracts with titles, areas, dates of planting, &c. These are normal office records of the six Mount Gambier forest companies and show how carefully all operations of these companies have been recorded.

I do not know whether the Crown Solicitor has passed those tabulated statements to the Committee.

The Chairman.—Yes, we have seen all the information. This is really only completing the record, so far as we are concerned.

Mr. Burt.—It has been suggested here that areas planted may not be sufficient to meet the obligations to the lot holders—that, in fact, lots have been oversold. The position is that the companies have overplanted and figures already placed before you show that the surplus of planted areas is nearly 1,000 acres. If you refer to my evidence you will find that it is 800 acres.

Mr. White.—In other words, there are 1,000 acres more than the number of lots that have been sold?

Mr. Burt.—Yes.

Mr. Brennan.—There is no danger of duplication of contracts in respect of any particular lot?

Mr. Burt.—No, and I shall tell the Committee why I am absolutely certain about that. Each time a distribution of moneys is made to lot holders, the facts of the distribution are published in the press. In other words, a statement is made of the issue by the company and the amounts that are available for distribution to the lot holders.

Mr. Brennan.—Is the distribution made before the press statement is released relating to such distribution?

Mr. Burt.—The distribution takes place immediately before, or simultaneously with the press announcement, depending on when the press has space available for the statement.

Mr. Randles.—It has affected only two companies up to date?

Mr. Burt.—It has affected five of the six companies.

Mr. Randles.—Those five companies have paid something back?

Mr. Burt.—Yes. This wide publicity has several results. I submit this as an indication by which the company, or those connected with the company, would have been apprised of any oversold lots. Firstly, lot

holders not actually participating write to the company and to the trustee and ask why they have not yet had a dividend, and when a dividend may be expected. Many lot holders write in and say that they have noticed from the press reports that such-and-such a company has made a distribution, and they desire to know why they have not participated because they also are lot holders in that company. The answer is that the distribution is made out of some other issue.

Mr. Thomas.—You stated that the wide publicity had several results. How many do you mean by "several"?

Mr. Burt.—I wish to submit reasons why, in my opinion, if there had been any over-selling of lots it would have become evident long before now.

Mr. Brennan.—Regarding each of these issues, is each such issue treated as a profit and loss account by itself, in the sense that revenues accrue to it and are distributed. Each issue is kept separate from everything else?

Mr. Burt.—Yes, a comprehensive set of books is used for the bookkeeping in connexion with these transactions.

Mr. Randles.—Lot holders in one company may receive more for their investments than other lot holders in the same company, because certain lots may pay more than others?

Mr. Burt.—They may; and some lot holders may get earlier distributions, even though their trees may have been planted later than the others, the explanation being that all trees do not grow equally.

Mr. White.—Does every lot holder know exactly where his lot is located?

Mr. Burt.—If the Committee do not mind, I shall deal with that point later. I was pointing out that the publicity that is given to the distributions by the company has certain results; it has several, outstanding results. The staff in the office of the trustee have occasion to refer to the records of the company as to the lots sold, and so on, and if there had been any duplication or anything of that kind, or if a lot had been sold and had not been recorded, that fact would become apparent. Secondly, a number of letters containing cheques are returned to the trustee, through the post unclaimed, owing to un-notified changes of address by lot holders. The press notices invariably reach a number of these people who immediately write notifying their change of address. There are many people in that position. They might have bought a lot twenty years ago and had forgotten about it. They might also have forgotten to notify their change of address. East time a distribution is made, a number of cheques are returned through the post. Gradually, the news that a distribution has been made circulates, either through the press or from one friend to another, and then many people write to the company informing it of their change of address. In none of those cases has there ever been evidence of any duplication.

Thirdly, I know something of the calibre of the staff of these companies, and I am sure that if there had been any question of over-selling or of duplication I would have been promptly notified of it. I have never had any suggestion at any time from the staff, with whom I have been in fairly close contact, that anything of that kind has ever happened.

Mr. Pettiona.—Even before you became actively associated with the business?

Mr. Burt.—I am speaking of what has happened since I became associated with the companies. Naturally, I would not know what happened prior to that time.

Mr. Pettiona.—If anything had happened, it would come to your notice?

Mr. Burt.—Yes. Nothing has come to my notice at any time that there has been any duplication.

The Chairman.—It would not matter whether any duplication had occurred before you became associated with these activities; if there were any duplication it should have been brought to your notice?

Mr. Burt.—Yes.

Mr. Randles.—When did you take over control as legal adviser?

Mr. Burt.—That is rather an ambiguous question. I came actively into the business after Mr. McDonald had dropped out of it.

As a director of Consolidated Trusts, I have instituted a system of checks. I might mention that I have insisted on the introduction of that system since I have had the benefit of attendance before this Committee. There are two sets of returns—

(*a*) monthly returns covering periods of four or five weeks—according to whether it is a short or a long month—showing simply the blocks where cutting is proceeding, the approximate areas clear-felled or thinned, as the case may be, and the resultant quantity of logs, in super feet for each block, and such remarks as are necessary to indicate the currrent cutting programme. That is a monthly return, which comes right through from the mill, or where a tally clerk employed by the trustee's solicitor is operating and making records; and

(*b*) there are quarterly returns showing the quarterly aggregates of information contained in the monthly returns, together with figures for gross and net royalties payable for the three months, and the progressive totals of royalties payable to the lot holders, together with statements of account between the forestry company, the the milling company and the trustee for lot holders.

I contend, speaking as a director of Consolidated Trusts Corporation, that those returns will completely tie up with the areas and with what the lot holders are entitled to expect.

I mention those aspects to illustrate that publicity of the kind has not brought to light over the years one lot holder whose transaction was not fully recorded in the records of the company. Subsequent distributions of dividends will further confirm my contention that there has not been any over-selling. In other words, those returns that are supplied to the trustee company would quickly indicate anything that was not in order. The company has willingly undertaken to give the information and to give access to the trustee company in any form that it wishes.

The Crown Solicitor has now in his possession a fully tabulated list of issues and title references. If at any time there is any inquiry by a lot holder, such can quickly be identified with those tabulated lists—if there should be any doubt—and with other regularly audited office records. If I am communicated with, I shall obtain all necessary verifications without delay. I am here to-day as the result of some measure of persistence on my part that I should leave this Committee under no misapprehension as to the *bona fides* of the six Mount Gambier forest companies, or as to any other matters. I have answered twenty-one set questions from this Committee and many others.

My submission now is that the companies have fully and satisfactorily answered all questions submitted. If any member of this Committee still has any lingering doubts, now is the time to ask further questions. If there are no further inquiries, then I am entitled to draw the conclusion that the answers already given are considered satisfactory. I also desire to direct attention to the fact that the course which the inquiries of this Committee have taken has unintentionally, I trust, had the effect of unfairly " smearing " my client companies and myself.

I make no imputation against this Committee that they have done anything intentional at all, but *ex parte* statements made by Mr. Opas and other people were published in the Committee's interim report before an opportunity had been given for any reply to be made by the companies concerned or by myself. I repeat that I make no imputation against the Committee. I believe that it has happened quite unwittingly, due, perhaps, to the anxiety of the Committee to place a report before Parliament, but what has happened has had the effect, unfortunately, of " smearing " me and my companies.

The Chairman.—You are not referring to anything the Committee have said in their report?

Mr. Burt.—No.

The Chairman.—You are referring to the evidence given before the Committee?

Mr. Burt.—To the evidence which formed part of the report. I was before this Committee on the 9th and 10th March last. Mr. Opas made scurrilous and irresponsible attacks on me and my client companies when he appeared before the Committee on the 23rd, 24th, and 25th of March. A report containing his scurrilous attacks was issued by this Committee on the 7th of April. I again appeared before the Committee on the 29th April—not having seen the Committee's report—and was assured that there had been no attacks on me or on my client companies. Relying on rumour only that I had been attacked by Opas, I endeavoured to defend myself. Only on the 6th May did I receive a copy of the Committee's report.

Shortly, the *ex parte* scandalous and lying statements of Opas have had currency in a manner highly detrimental to me since the 24th March until to-day, the 13th July.

Mr. Thomas.—You stated that rumour had it that you had been attacked by Mr. Opas when he appeared before this Committee. How did that rumour come to you?

Mr. Burt.—My name was mentioned in the press as having given evidence before this Committee, and there were allegations—with which I shall deal later—that there was some legal brain behind all these things and, as I have previously pointed out, certain members of the public who, apparently, were in or about this building, unfortunately identified me with that person.

Mr. White.—I suggest Mr. Burt should confine his evidence to matters directly bearing on the terms of reference of this Inquiry.

The Chairman.—In my view, the evidence given by Mr. Burt to-day is of great value, but I feel that there is little need for his comments concerning Mr. Opas. I do not think the Committee wish to hear an attack on Mr. Opas or any one else, but, on the other hand, we do not wish to prevent Mr. Burt from giving any explanations which he considers are necessary.

Mr. Burt.—I should like to deal *seriatim* with Mr. Opas's allegations, later.

Mr. Randles.—I cannot see where Mr. Opas has attacked you, and should like you to refer to his evidence in detail.

The Chairman.—I suggest that Mr. Burt should direct the attention of the Committee to the specific matters he has in mind, and give his explanations without attacking Mr. Opas.

Mr. Burt.—I shall indicate where the attacks were made. For example, Mr. Opas stated that I was behind the formation of Power Fuel Industries and Pacific Oil Projects Limited, or behind the solicitor forming it, and that I acted in some way for that firm.

Mr. Randles.—In other words, that you were behind Allan Wainwright?

Mr. Burt.—Yes.

The Chairman.—It is on record that you informed the Committee on 28th April that you were not connected either directly or indirectly with those particular companies. Is there any need to add to that statement?

Mr. Burt.—I wish to give the Committee evidence that those companies were formed by some one else, and to produce the documents relating to their formation. I also wish to tell the Committee how those documents came into my possession and how Mr. Opas obtained this information from me.

The Chairman.—Proceed, Mr. Burt.

Mr. Burt.—Accordingly, to-day, my purpose is first to answer and refute the lying, irresponsible and wholly untrue accusations made by Opas; secondly, to offer comments on why he has made the attack on me; and, thirdly, to offer some helpful comments, in addition to those already made by me at previous sittings of the Committee on suggestions for reforms made by certain witnesses.

Opas in the early part of his evidence attempts to give a sketchy outline of the story of Bristo Plastics, and of its conversion to Century Industries Limited, owned and controlled wholly by former unit holders in Bristo Plastics. His sketchy outline really tells you nothing of that extraordinary legal set-up and of its eclipse, at my hands, which would be of any assistance to this Committee. He purposely did not tell you, as he well knew, of the moneys recovered over a period of years—and from shortly after its formation—from Bristo Plastics by my firm and other legal firms acting for clients who had purchased units. He purposely omitted to inform you that neither I nor my firm had any part whatever in the formation or conduct of Bristo Plastics. Opas knows, or should know, by whom it was formed and the legal firm who formed and registered it.

Opas purposely omitted to tell the Committee how my firm and other legal firms—Weigall and Crowther; Barker and Peile; Ford; Aspinwall and DeGruchy; Morgan and Fyffe; Macpherson and Kelley; Dugdale, Creber and Stevens; and Wisewould and Duncan—for some months during 1949 in co-operation with me and with the advice of Mr. (now Justice) Hudson, Q.C., pressed Cameron to hand over the remnants of the business assets of Bristo Plastics to Century Industries Limited formed and controlled by 1,200 former unit owners and their own directors. The reason why Opas did not mention my efforts and those of other legal firms co-operating with me is that a recital of the kind would not fit into the pattern of what he proposed to say about me and my firm later in his evidence.

Ignoring entirely that background of fact, ignoring also, as he knew, that over ten years my firm recovered for clients approximately £215,000 in money and assets from fraudulent companies and from fraudulent transactions of companies, and ignoring, as he well knew, that I personally was the author of the Business Investigations Act of 1949, he proceeded to defame me.

I will deal separately with each of the lying allegations of Opas—

1. First, Opas alleged that I was "behind" the formation of Power Fuel Industries and Pacific Oil Projects Limited, or behind the solicitor forming it, and that I acted in some way for that firm.

Mr. Hollway.—Where does that appear in the evidence?

Mr. Burt.—At the top of page 58, I think.

The Chairman.—It only states there that you could not act in that case because you were already acting for Gunton Cooper.

Mr. Burt.—Yes, but the inference is that I was in some way mixed up with Cooper, Robertson, and Lee. That is the way in which the matter has come back to me outside. That must have been the effect on the public mind.

The Chairman.—It certainly was not the effect on this Committee.

Mr. Brennan.—There was no suggestion that you were linked with Westernport or Sunday Island, was there?

Mr. Burt.—No.

The Chairman.—I do not think the Committee even bothered to inquire who Gunton Cooper was. You were only mentioned there because when Mr. Opas was talking about dealings he had with Messrs. Moule, Hamilton and Derham, he submitted a letter addressed to you, and I asked him why. Mr. Opas explained that it had been written to you prior to his consulting Messrs. Moule, Hamilton and Derham.

Mr. Burt.—At my request.

The Chairman.—There was no suggestion made to the Committee that there was anything improper in the approach.

Mr. Randles.—Mr. Opas made an attack on Mr. Burt before the Committee on 25th March. It appears on pages 60–61 of the Committee's progress report.

Mr. Byrnes.—I think that justifies Mr. Burt replying.

Mr. Burt.—In reply to Mr. Opas's allegations respecting my being behind the formation of Power Fuel Industries and Pacific Oil Projects Ltd., or behind the solicitor forming it, and that I acted in some way for that firm, I wish to state that neither I nor my firm directly or indirectly, or through any other solicitor, took any part in the formation of conduct or advising of either of these enterprises, and certainly did not at any time have any financial other interest therein. Allegations by Opas to that effect are, to his knowledge, untrue. My firm acted against the firm Power Fuel Industries in the following circumstances, and this is where Cooper and Messrs. Moule, Hamilton and Derham come in.

I interpolate here that my client Cooper in his lifetime requested me to inform Opas and any unit holders contemplating action of the following facts. I did so.

On the 5th November, 1945, I was consulted by one Arnold Gunton Cooper who informed me that he had for some years held a responsible position and was in receipt of a good salary when he was induced by Lee and Robertson, who were promoting Power Fuel Industries, to resign his position and become a trustee of the business under the scheme by which Lee and Robertson were collecting sums of money by the sale of unit certificates; that only a portion of the moneys received by Lee and Robertson was being invested in the business; that he, Cooper, was worried and desired to be advised by me as to legal action to be taken by him to extricate himself from the predicament in which he was being placed by Lee and Robertson.

Cooper handed me the following (2) original and (1) copy documents which I now tender:—

(*a*) An alleged "Deed of Trust" dated the 1st September, 1943, prepared by a firm of solicitors not being my firm, between one Wyatt of the first part, one Ingham and one Bishop of the second part, and Cooper, my client, of the third part. This document entirely negatives my association with the formation of the firm.

(*b*) An agreement made on the 4th July, 1945, between Cooper, of the one part, Lee and Robertson, as beneficiaries, of the other part, prepared by a solicitor, and not by my firm.

These documents are tendered by me without any particular comment as to the studious ambiguity of the first or as to the propriety of either of those documents which can speak for themselves.

Cooper also handed me a copy of an opinion of counsel dated the 21st August, 1944, as to the "legality" of the scheme of Power Fuel Industries.

Cooper informed me that he had been finally induced to leave his good job and to become a trustee after reading counsel's opinion. He had become alarmed when Lee and Robertson declined to account to him as trustee for moneys received from the sale of units. They had informed Cooper that the moneys were really theirs and that they would use only so much as they thought fit in the establishment of the business of Power Fuel Industries. Cooper was to receive £15 per week.

I advised Cooper as follows:—

(1) That, in my opinion, a Court would hold that on the proper construction of the so-called "Trust Deed" all moneys provided by unit holders should be invested in the enterprise and that it was the duty of Cooper to see that such moneys were so invested; that I was not impressed by counsel's opinion to the contrary, and, in fact, disagreed with it, and that he, Cooper, should take steps immediately to protect the moneys of unit holders and failing his doing so he would be guilty of a breach of duty.

(2) Further, I advised that he, Cooper, should immediately take either of the following legal steps:—

(*a*) Take out an originating summons in the Supreme Court, joining Lee and Robertson as defendants, to determine the true interpretation and effect of the Deed of Trust and asking for an order from the Court that all moneys from unit holders be paid to him as trustee by Lee and Robertson for investment in the business of Power Fuel Industries; or

(*b*) That Cooper, through me, should induce some unit holder to apply to the Supreme Court for his, Cooper's, removal from the office as trustee, Cooper to support the application for his own removal and facilitate the appointment by the Court of some official to act as trustee of moneys obtained from unit certificate holders.

Either course would, in my opinion, have protected both Cooper and unit certificate holders.

I pressed Cooper to take my advice and act promptly, but he raised two objections—first, the cost of legal proceedings which he said he could not afford; and, secondly, the publicity of such proceedings. I told him that it was his duty to face up to both, and that if he did so he would have nothing to fear.

Some time afterwards, Opas informed me by telephone that he would be calling to give me instructions on behalf of a number of unit holders from Tasmania who were claiming repayment of their moneys from Lee and Robertson.

I immediately informed Cooper of this development and asked Cooper to permit me to pass on to Opas any information that he, Opas, required concerning Power Fuel Industries and also to inform Opas of the advice that I had tendered to him, Cooper. Cooper readily assented and invited me to pass on to Opas all information that he, Cooper, had given me and particulars of my advice to him, Cooper. Opas called on me and I explained the position of Cooper fully to him and as to the advice I had given Cooper. I also told Opas that as his clients might have a cause of action against Cooper I could not act for Opas's clients as well as for Cooper. At my suggestion Opas then consulted Moule, Hamilton and Derham, solicitors, on the next floor of our building, and I promised Opas to give to Mr. Derham any information that he might require. A representative of that firm subsequently saw me and I discussed the position with him.

Cooper declined to act on my advice and institute Court proceedings, and I, on many occasions, warned him of his responsibilities. Cooper said he preferred to come to some private arrangement with Lee and Robertson or with a company which was to be formed by them whereby he, Cooper, would be discharged from the position of trustee. Cooper personally carried on negotiations with Lee and Robertson to that end. I telephoned Mr. Wainwright as to my objections and told him of the advice I had tendered to Cooper. Against my advice, Cooper requested me, as I did, to write a letter to Mr. Wainwright setting out the compensation he expected to receive from Lee and Robertson on his retirement as trustee. At no time did I discuss the matter with Lee and Robertson.

I did not hear from Cooper for some considerable time, and eventually Cooper telephoned me that he desired me not to act any further for him, as "he had fixed matters up" satisfactorily. I never learned what had occurred, but I assumed that the company had taken over from him. I understand that Cooper died shortly afterwards.

On another occasion I acted for a unit holder in Power Fuel Industries in an endeavour to recover his money. On that occasion I directed my attack against Ingham and Bishop, and they promptly resigned.

The foregoing is a full account of my contact with Power Fuel Industries and its acquiring company—acting as I did against and not for the principals—Lee and Robertson.

Apart from the foregoing neither I nor any member of my firm have ever had, directly or indirectly, any other contact with Mr. Wainwright in connexion with any of the companies or firms mentioned before this Committee. It is a wicked fabrication on the part of Opas to suggest otherwise.

I submit that I tendered to Cooper the only advice a decent member of my profession could tender to him, and I claim that I acted throughout ethically and in accordance with the best traditions of a profession of which I am proud to belong.

As explained, I personally told Opas all that I have just related to the Committee, and in that connexion I refer to question and answer on page 57 of Opas's evidence—

The Chairman (to Opas).—Did Mr. Cooper come within the ambit of your investigations?

Mr. Opas.—Yes, but when I was ready to spring a trap on him he "ducked."

In the light of what Opas had been informed by me, his answer to the Chairman is just so much "humbug" and melodramatic nonsense. What was and where was the necessity for the trap? What does Opas mean when he says that Cooper "ducked"? Cooper made no secret of the predicament in which he found himself, and Opas did not have to "investigate" him. I saved Opas the necessity of doing so.

I also refer to the allegations by Opas appearing at the top of page 61 of the evidence. Read in its context, it is very ugly. I quote, "Oswald Burt keeps out by putting up people like Newton Francis, Lewis Wilks, and Wainwright." I repeat that at no time did I or my firm or any member of my firm directly or indirectly form or take any part in forming any company or firm mentioned before this Committee as being fraudulent, nor did we act for or conduct or advise any of them in any other capacity. I bitterly resent any such suggestion. In particular I further say that at no time did I or my firm or any of my partners use Mr. Newton Francis, or Mr. Lewis Wilks, or the late Mr. Allan Wainwright for the purpose of forming, advising, or conducting any of such companies or firms or any other companies and firms. I have made searches and inquiries as to most of the companies and firms mentioned before this Committee and have ascertained—

(*a*) that thirteen different firms of solicitors acted in the registration of seventeen companies and firms mentioned before this Committee. My firm did not act directly or indirectly in connexion with any of them;

(*b*) that the spread of such legal representation is such as entirely to negative the existence of a "legal brains trust" devoted to the registration and formation of fraudulent companies such as provide Opas with profitable employment and cheap notoriety.

This fantastic "brains trust" pictured by Opas is just part of the grand "Opas Fantasia" as to which I shall say more later. As a "rank and file" member I am not entitled to speak for the legal profession generally on this or any other subject, but it may be of advantage to recall the evidence of His Honor Acting Judge Nelson which appears at page 7—

In cases that I have investigated I have no reason to believe that the companies did not start as genuine trading companies.

I have been associated with legal practice since 1910 and an admitted barrister and solicitor since 1918. My experience justifies the conclusion that most solicitors, when forming a company or registering a firm, assume, but, where necessary, would take steps as far as possible to insure that it will be an instrument for lawful and not for unlawful purposes. To allege otherwise is a libel on the profession.

The Committee adjourned.

TUESDAY, 20TH JULY, 1954.

Members present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Randles,
The Hon. H. C. Ludbrook,	Mr. R. T. White.
The Hon. I. A. Swinburne,	
The Hon. F. M. Thomas.	

Mr. W. Oswald Burt, solicitor, of Melbourne, was in attendance.

The Chairman.—Mr. Burt is present to continue his evidence and also to answer some additional questions that have been submitted to him. Will you continue, Mr. Burt?

Mr. Burt.—Since the publication of the Committee's first interim report, I have been asked by those who have read the report, "Why has Opas attacked you of all people?" Having regard to what I have done for Opas over 30 years, such an explanation does appear to be called for. Without that explanation, this Committee will be unable properly to assess the credence or weight to be given to his extraordinary and fantastic "evidence."

Opas has done investigation and other work of a near-accounting nature on instructions from me, mostly, and my firm over a number of years. He did a very fine job of work for us in the Barlow case, in which our client recovered £50,000 from two of our leading trading banks. On the other hand, I am able to say from a long experience of him that he has a dual or split personality and is unmistakably psychopathic, in that he cannot resist drawing the most damning inferences against innocent persons on the most slender evidence and often not on any evidence at all.

The Chairman.—Mr. Burt, do you think any further statement regarding Mr. Opas will serve any purpose?

Mr. Burt.—It would be of no use to this Committee, but he has been permitted to attack people, and I think those who have been assailed should have a right to reply.

The Chairman.—Are you replying on behalf of yourself?

Mr. Burt.—Yes, on behalf of myself, and I speak from my own experience of this man.

The Chairman.—I should like you to deal with Mr. Opas's evidence and not Mr. Opas's personality; the latter would not help the inquiry by this Committee.

Mr. Burt.—I think there are two things to be considered; one is the matter of helping this Committee, and the other is the right of a person who has been defamed before this Committee to make a personal explanation.

The Chairman.—There is no intention by this Committee to prevent you from making a personal explanation, but we will not permit you to indulge in an attack on Mr. Opas. Last week you made statements similar to those that you have already made so far to-day. I should be pleased if you would try to limit your remarks to facts.

Mr. Burt.—Unfortunately, Mr. Opas has been encouraged to a certain extent to make statements.

Mr. White.—By whom?

Mr. Burt.—I shall give a specific example. When Mr. Stephens was giving evidence he was asked, "Have you investigated Selector Pty. Ltd. and Vatubula Ltd.?" Selector Pty. Ltd. is a private company that does not own any forests. It has never sold any lot contracts, and the public are not interested in any way with it. Mr. Stephens was asked by a member of the Committee whether he had investigated these companies. Mr. Stephens reported what he had ascertained from a search at the Registrar-General's office and the matter was allowed to rest there, the inference being that there was something improper about those companies. I consider that the effect of that question and the answer thereto—a Dorothy Dix question, I suggest—is that I remain smeared by something that will appear in your final report.

Mr. White.—Is Mr. Burt suggesting that we have set up a campaign against him?

Mr. Burt.—I do not suggest that at all. I suggest, as I did at the outset, that this Committee was being used by a certain newspaper.

Mr. Ludbrook.—That is quite wrong. No newspaper will use me at any time.

Mr. Burt.—I am sorry if I was in error regarding the newspaper.

Mr. Ludbrook.—I have formed my own definite opinions as to a result of this inquiry. I do not think Mr. Burt has anything to defend.

Mr. Burt.—I shall be glad if Mr. Ludbrook's statement—that I have nothing to defend— is recorded as the considered opinion of this Committee. I have my good name, which to me is more precious than anything else. I think Opas was allowed certain liberties at the beginning of this inquiry, and the Committee can hardly blame me for wanting to reply.

The Chairman.—On behalf of the Committee, I made it clear to you that if Mr. Opas made statements that were wrong, you were at liberty to refute them. I consider that you have refuted them effectively.

Mr. Burt.—If your statement, Mr. Chairman, goes on the record, I am quite happy.

The Chairman.—I cannot see that any purpose will be served by indulging in a further attack on Mr. Opas personally. I suggest that your statement about Mr. Opas being psychopathic, or whatever expression you used, be struck out of the evidence.

Mr. Burt.—If his earlier statements about me were also to be struck out, that would be a reasonable request.

Mr. Randles.—Mr. Opas did not describe Mr. Burt as "psychopathic."

Mr. Burt.—He said something worse. He implied that I was behind the formation of a number of fraudulent companies, and that is a serious matter. I get legal work from all over Australia and from overseas, and therefore the making of a statement of that kind is very serious as far as I am concerned.

Mr. White.—The chairman has already said that you have refuted those statements?

Mr. Burt.—Yes.

The Chairman.—As far as this Committee is concerned and, I think, the general public also, there is no need for Mr. Burt to say anything further.

Mr. Burt.—If that statement is recorded in the minutes of the proceedings of this Committee, I shall be quite happy.

The Chairman.—It will be recorded.

Mr. Ludbrook.—As Mr. Burt stated previously, he is prepared to submit a roll of all the lots of the companies with which he is associated and that, I think, is an answer to Mr. Opas.

Mr. Burt.—The same witness, as a result of a question asked of him, made a statement, I understand, regarding a private company in which I am interested. I am a director of sixteen companies, and I wonder where this discussion will end.

The Chairman.—Would you like to make a statement regarding that private company?

Mr. Burt.—I would. I understand that a question by a member of this Committee was asked of Mr. Stephens, a representative of *Truth* newspaper, as to whether he had made any investigation of a company—Selector Pty. Ltd.—and another company, Vatubula Ltd. If that question and the answer thereto stands in the record, without any further explanation, the inference that would naturally be drawn would be that there was something wrong about those companies and that I was associated with two fraudulent organizations. Selector Pty. Ltd. is a private company with three shareholders. It does not own any forests, and it has not issued any lot contracts. Therefore, the public have no interest in that company. With respect, I submit that this Committee has no charter or right to inquire into my own private affairs or the private affairs of any other citizen. However, if the Committee wishes to hear anything about those two companies I am prepared to give the information.

The Chairman.—Do you wish to say anything further about Vatubula Ltd.?

Mr. Burt.—Do the Committee wish to press an inquiry into what is virtually my own private affairs? The public are not in any way interested in those companies.

Mr. Byrnes.—Are those companies associated in any way with the other afforestation companies?

Mr. Burt.—They are not, except that the purpose of Selector Pty. Ltd. was to deal in forest wastes. I had in mind that sooner or later Selector Pty. Ltd. would establish a plant at Mt. Gambier, when it would be able to use the forest waste from the Mt. Gambier companies.

Mr. Byrnes.—Those companies are private ones, formed for the purpose of purchasing forest waste?

Mr. Burt.—Selector Pty. Ltd. is a private company consisting of three shareholders, of whom I am one, and I am in control of that company.

Mr. Brennan.—That company would deal in all sorts of forest wastes?

Mr. Burt.—Yes. I could produce a parcel of miscellaneous articles the company has been producing from forest wastes. We have made numerous gadgets from forest wastes purchased by this company. One of the largest public corporations has made substantial purchases from the company, the amount of the corporation's account for the month of June being £1,575 for one item. I repeat that the public are not in the least interested with what I personally do in the conduct of my own affairs. As I said before, the question which I understand was asked by a member of this Committee of a witness and the latter's answer may have created a wrong impression.

Mr. White.—You say, in other words, that the afforestation companies would benefit as a result of the operation of Selector Pty. Ltd.?

Mr. Burt.—They would. If I could get sufficient electrical power, I would immediately shift the operation of these companies from Melbourne to Mt. Gambier to deal with forest wastes.

Mr. White.—They are operating in Melbourne now?

Mr. Burt.—Yes. We are buying sawdust from local sawmills in Melbourne.

Mr. Byrnes.—Those companies are not concerned in the selling of lots?

Mr. Burt.—Not in the slightest.

Mr. Byrnes.—They own no forest land at all?

Mr. Burt.—No. We are interested only in forest wastes. The companies at Mt. Gambier provide an excellent source of material for Selector Pty. Ltd. and I see nothing improper in the business. On the other hand, I think the operations of the private companies would be in the interests of the lot holders, in that the Mt. Gambier companies would be able to dispose of their wastes profitably.

Mr. White.—Do you receive a percentage of your wastes from Mt. Gambier at present?

Mr. Burt.—We receive none at present. As I said before, I am awaiting the supply of sufficient electrical power in the hope of establishing a factory at Mt. Gambier. Selector Pty. Ltd. has already purchased land for that purpose and to erect a small factory on it.

The Chairman.—I do not think the Committee wish to hear anything further regarding Selector Pty. Ltd.

Mr. Burt.—Vatubula Ltd. is a company that was formed by Wastewood Products Co. of America for the disposal of the rights of the Chapman process in the islands, New Zealand, and Australia. Selector Pty. Ltd. acquired the right to establish a Chapman hardwood factory in Australia, but that has not been done and the proposal is at present in abeyance for two reasons, one being that a capital of £200,000 would be required, and secondly my inquiries through the Scientific and Industrial Research Organization of Australia reveal that the market is already saturated with the particular type of board that would be produced. I have no share-holding or any other interest in Vatubula Ltd., except a contractual relationship regarding the acquisition of the Chapman rights for Australia.

Mr. Randles.—I take it that Vatubula is using island timber?

Mr. Burt.—It is not. It is purely concerned with the disposal of the Chapman rights. Vatubula Ltd. is a company engaged purely in disposal of the rights of the Chapman process to Australian and New Zealand interests, and in the islands. As far as I know, it has no forests; it certainly has none in Australia. The company is not interested in lots in any way, and has no shareholding or proprietary interests in Australia.

Mr. Hollway.—Apparently it is like a number of companies, such as Coca Cola, which merely sell their franchise to other companies?

Mr. Burt.—Yes. There is nothing improper in their operations, which follow the ordinary run of commercial practice. I have dealt with Vatubula Ltd. through a reliable firm of solicitors, Cromptons of Fiji, for whom I have great respect. Crompton shares with me the honour of being a member of the Inner Temple, London. Apart from that, we have nothing in common.

The Chairman.—Are there any other matters you wish to deal with by way of personal explanation?

Mr. Burt.—In view of your remarks, Mr. Chairman, and those of members of the Committee, I do not think I should say any more. I am quite happy now.

The Chairman.—The Committee wrote to you on 14th July, enclosing a list of matters for your consideration. Would you deal with those now?

Mr. Burt.—I did not receive the letter until last Thursday. I have obtained as much information as possible in the time available, and I am prepared to give that to the Committee now. I shall forward information on the outstanding matters to the Committee as soon as possible.

The first question was:

Would you ascertain and advise the Committee as to what instructions were given to salesmen when they were briefed to sell lots on behalf of the various companies comprising the Mount Gambier forest companies?

I have made full inquiries into this matter, but some of the companies have been in operation for twenty years and upwards and I do not know what instructions were given to salesmen. The present staff were not with the companies twenty or even five years ago. I have no means of ascertaining what instructions were given to salesmen.

The Chairman.—Mr. Peile, solicitor, mentioned in evidence two actions against one of these companies —I cannot recall which one—in which your firm acted for the company concerned and settled some claims in connexion with alleged misrepresentation of the sale.

Mr. Burt.—Without tying myself to details, my recollection of those actions is that eventually the company concerned arranged for some one else to purchase the contracts. Speaking from memory, that was the nature of the settlement.

The Chairman.—How far back do your papers go?

Mr. Burt.—I do not know. The history of my connexion with these companies is that I acted on isolated transactions while McDonald was in charge. When McDonald dropped out I became the general adviser to the companies. Until then I had no overall picture of these companies.

Mr. Thomas.—What year was that?

Mr. Burt.—1947, I think. Prior to that I was consulted in respect of isolated transactions. These companies were just clients.

The Chairman.—Mr. Piele put the date at about 1941, but he was not sure.

Mr. Burt.—That would be right.

The Chairman.—The plaintiff's solicitor was Mr. Ivers. Mr. Oliver, who is now the Taxing Master, acted for your firm. The defendant company was C.A.P. Softwoods.

Mr. Burt.—That may be so. Question 1 (*b*) was:

Were any safeguards instituted to prevent the selling of more lots than those available in each issue?

My answer is that to be effective all lot contracts had to be signed and executed by Mr. McDonald or the company. In other words, they did not become effective until they were confirmed. Receipts for deposit moneys paid by applicants for lots were given on receipt forms which bore the inscription " interim receipt only." Therefore, a lot contract was provisional until it was confirmed by Mr. McDonald or the company, and there was no danger of any salesman overselling lots committed to him for sale.

Question 1 (*c*) was:

Were any contracts adjusted to cover the case of a salesman exceeding his instructions and selling more lots than those available in any particular issue?

As each sale was not completed until the lot contracts were signed by Mr. McDonald or the company, it was impossible for a salesman to sell more lots than were available in any particular issue. Subsequent events have proved this, because no outside planted land has had to be acquired in order to fulfil any obligations.

Question 2 was:

Can you supply the Committee with the following information respecting each of the six companies comprising the Mount Gambier forest companies:—

(*a*) What is the amount subscribed by lot or concession holders?

I have asked for that information, but I do not feel disposed to give it to the Committee until such time as I have had it verified by the external auditor. When it is available I shall submit it to the Committee in the form of a memorandum.

The Chairman.—Does that apply to the whole of question 2?

Mr. Burt.—It applies to 2 (*a*). Question 2 (*b*) was:

In how many cases have lot or concession holders had their money refunded or their holdings repurchased by company and what total amount is represented by such refunds or repurchases?

This question relates probably to a period of 20 or 25 years. It has not been the practice of any of the companies to refund moneys to lot holders or repurchase holdings, but it has been done in a few isolated instances. In a number of cases the companies have found purchasers for lot contracts which holders were desirous of selling. There are records of transfers of lot contracts, and it is obvious that sales have been arranged by the companies and others dealing in lot contracts. In other words, it was not the practice of the companies to refund moneys, but that might have been done in a few isolated cases.

Mr. White—The company did act as an agent for their disposal?

Mr. Burt.—Yes.

The Chairman.—Would you check further and let the Committee have any additional information which might help it?

Mr. Burt.—Yes. It will require a good deal of research over a period of many years. The records simply disclose that there have been transfers without giving the relevant circumstances. I shall do my best to obtain information.

The Chairman.—You might do it on the basis that we do not want a complete investigation over a long period.

Mr. Hollway.—Is there any way in which you could tell whether persons had arranged transfers between themselves or whether the company concerned acted in the matter?

Mr. Burt.—No. The records merely show that a transfer was effected from A to B, and so on.

Mr. Hollway.—Then it does not seem to me, Mr. Chairman, that this will help the Committee.

Mr. Brennan.—Perhaps the relevant correspondence would give an indication.

Mr. Hollway.—That would be putting Mr. Burt to a good deal of trouble.

The Chairman.—We are only asking Mr. Burt about the moneys refunded. We certainly do not want a complete record or any statistics of lot transfers.

Mr. White.—Mr. Burt might be able to indicate the position during the time he has been in charge.

Mr. Burt.—Actually, I have never been in charge, but since 1947 I have had an overall picture of the operations of these companies. As far as it is within the province of a legal adviser, I have kept a very tight rein on things. I have known of most things which were happening. It will be a very big job trying to obtain a clue as to whether transfers were arranged by companies or others. I know that the companies frequently took such action in cases where people wanted the money.

Question 2 (*c*) reads:

What has been the total revenue derived from the marketing of timber, i.e., as thinnings or milled timber, or in the log?

The revenue derived from the marketing of timber —matured and thinnings—exceeds £157,000 for five companies out of the six. The figure would require

verification, but I know it is at least the amount I have stated. That money has actually been distributed to lot holders.

The Chairman.—Could you let the Committee have details in respect of each of the six companies?

Mr. Burt.—Yes. Question 2 (*d*) was:

What revenue has been derived from royalties and the sale of milling rights?

No money has been received by any of the companies for milling rights. Information has already been given as to the receipt and distribution of royalties received. If members of the Committee look at the contracts, they will see that lot holders are entitled to 90 per cent. of the net amount derived from the sale of timber, standing or in the log. When it is sold, either standing or in the log, to a milling company, the company has parted with possession of the timber and the actual profits from milling, if any, are made by the milling company.

Question 2 (*e*) reads:

Has any revenue been derived from sources other than those set out herein, if so, what is the nature and extent of such revenue?

The principal revenue of the company is derived from the 10 per cent. of timber sold, in accordance with the contract. Small amounts from the temporary investment of moneys standing idle have been received. Such investment has been in Government bonds and similar securities. The amount involved is relatively small compared with the 10 per cent. of timber sold.

Question 2 (*f*) was:

What is the total amount which has been received by the trustee for distribution to lot or concession holders and how much of such amount has been so distributed?

I have already given the Committee that information. The amount is not less than £157,000 in respect of five companies out of the six. I shall supply the Committee with information concerning each company later.

The Chairman.—Has all the money received by the trustee been distributed?

Mr. Burt.—Yes. I made inquiries this morning. I think there is another £10,000 going forward to the trustee within the next few days.

Question 2 (*g*) asks:

How many lots have been transferred to Securities and Equities Pty. Ltd of Sydney. and what is the total face value of the lots so transferred?

Securities and Equities Pty. Ltd. has no connexion whatever with any of the forestry companies. It buys and sells lots, and any person wishing to sell lots has been referred to that company.

The Chairman.—It acts as an agent, does it?

Mr. Burt.—That is so. There are no records of Securities and Equities Pty. Ltd. ever having purchased lots from any of these companies, but as agents they have sold lots on behalf of lot holders. In fact, lot holders desirous of selling have been invited to get in touch with Securities and Equities Pty. Ltd. because it was known that they were selling and dealing in these lots. In regard to paragraph (3) of the letter, the first portion of which reads—

When you appeared before the Committee on 28th April last you stated, *inter alia*—

> "As and when moneys have been received by the trustees from the Mount Gambier Forest Companies as a result of marketing timber a statement has been sent to lot holders showing how amounts of money distributed have been arrived at."

To which of the six companies comprising the Mount Gambier Forest Companies does this statement refer.

My statement referred to five out of the six companies mentioned. As yet, there has not been any marketing of timber of the sixth company, which is C. C. and H. Company Pty. Ltd.

The next sub-paragraph of paragraph (3) reads—

Does the statement refer to thinnings, timber in the log, or milled timber.

I should explain that for the purpose of sale there is no difference between thinnings and matured timber; they are both sold by measurement.

The Chairman.—I think the question is relevant to the impression which some members of the public have that the trees of these companies should have matured and been cut a long time ago. In your evidence you suggested that the forests of at least some companies have reached only the thinning stage.

Mr. Burt.—At the end of fourteen years' growth it becomes desirable, as a matter of forestry experience, to thin the forests. Those trees which look as though they will not mature and are holding up the rest of the forest are felled and sold for the improvement of the forest generally. Those thinnings are sold on the same basis of royalty as matured timber; so there is no distinction between thinnings and matured timber from the point of view of the lot holders.

The next part of paragraph (3) reads—

What was the approximate age of the trees from which—

(*a*) thinnings,
(*b*) timber in the log, and
(*c*) milled timber,

were obtained.

The approximate age of the timber cut for thinnings is usually about 15 to 18 years and for matured timber from 18 to 30 years. All logs are sold by the forest companies in accordance with contracts of lot holders. Up to date, none of the timber has been sold standing; it has all been sold in the log whether it has comprised thinnings or matured timber, and it has been sold according to measurement and the ruling rate of royalty.

Concerning the last part of paragraph (3), which reads—

Will you produce to the Committee a copy of each of the statements herein referred to.

I produce fair samples of statements of all of the companies from about 1946. They are copies of circulars which have gone out to lot holders with the distribution of the proportion of the royalty. Some circulars contain an additional last page. That extra page was inserted where a circular was sent to lot holders who had received advances from the companies against their share of the distribution. If there were cases of hardship—perhaps in the case of deceased estates or something of that nature—the companies made advance distributions to a number of lot holders. In those special cases, the circulars made reference to the amounts already distributed.

Mr. White.—How many companies dealing with softwoods are you interested in?

Mr. Burt.—As I have already indicated, there are six Mount Gambier companies and I have no interest in any of them, except as legal adviser.

Mr. White.—Can you indicate the approximate total acreage controlled by the six companies?

Mr. Burt.—Approximately 19,000 acres.

Mr. White.—Are all those areas planted with pines?

Mr. Burt.—Yes.

Mr. White.—Has the whole area of 19,000 acres been taken up by unit holders?

Mr. Burt.—No. There has been over-planting to the extent of about 800 to 1,000 acres.

Mr. Byrnes.—Are you satisfied that the method of selling by lots in these timber companies is satisfactory from the point of view of safeguarding the interests of the lot holders?

Mr. Burt.—With proper safeguards, I think it is probably the only method of financing a long-range project of this kind.

The Chairman.—What do you mean by proper safeguards?

Mr. Burt.—Such safeguards as these companies have instituted for the protection of lot holders—for example, the vesting of the land in separate trustees and the giving of very wide powers to the trustees to enforce the rights of lot holders. I think that is a matter of paramount importance. There are a number of subsidiary matters relating to the keeping of records and so on.

Mr. Byrnes.—Are there satisfactory safeguards to ensure that the lots are not over-sold and that everything possible is done to protect lot holders in the event of over-enthusiastic commission agents selling more than they are supposed to sell?

Mr. Burt.—All I can say in regard to these six companies is that every method of check which an external auditor can apply and which I have been able to apply in preparing facts for the Law Department and for this Committee have indicated that the rights of lot holders have been fully protected.

Mr. Byrnes.—Do you consider that there should be any amendment of the law to protect prospective purchasers in these companies?

Mr. Burt.—I think that if the law has to be amended the lot holders would be fully protected if the measures of protection which have been afforded to them in these companies were incorporated in our laws.

The Chairman.—Do you see any objection to the share-hawking provisions being applied to the sale of these lots?

Mr. Burt.—No, none at all.

The Chairman.—Would you consider it to be undesirable to provide for the appointment of a trustee, as a statutory obligation?

Mr. Burt.—I think that a trustee should be appointed and, if there must be legislation in that regard, his obligations as a trustee should be set out fully. If it would be of any assistance to the Law Department, I could supply particulars of what we have done and what I consider could be done. At the moment there is a danger of making lists of lot holders available for public inspection. Such a course might have the opposite effect to that intended. These lots, which are now maturing very quickly, should provide for lot holders a substantial sum of money which is tax free.

There are two types of people in the community. On the one hand, there are those who go about saying, "Why did you invest in this concern? You have lost your money." On the other hand, there are shrewd investors who are waiting to purchase lots from panic-stricken people so that they might reap the benefit of the tax-free provisions. For future issues, it might be all right to make a list of lot holders available, but at present, with the present climate of opinion, it would be a menace probably to those people who are not fully informed as to the value of their rights. Since the Clowes High Court decision, there has been an attempt by some people to panic lot holders into selling their lots. Within a few days of the publication of the result of that decision, a number of people rang me wanting to know where they could purchase lots. If a list of lot holders were made available, an unscrupulous salesman, representing some person desirous of getting some tax-free money, could contact the lot holders and say, "Did you not hear about the inquiry before the Statute Law Revision Committee? These are fraudulent companies and you have lost your money. I can get you a nominal sum for your lots." I have told lot holders to stick to their lots, whether they are pleased or displeased with them, because I think that it will pay them to hang on. I have told them that they should not be panicked into selling their lots. If a list of lot holders was made available to the public at the present time, it would place into the hands of a certain class of speculator an opportunity to make a profit out of people who for years have been waiting to reap some benefit.

Mr. Brennan.—You are a director of Consolidated Trusts.

Mr. Burt.—Yes.

Mr. Brennan.—As a director of that organization, are you satisfied that its interests are amply protected by the operations of the subsidiary companies?

Mr. Burt.—Yes. When I appeared before the Committee previously, I indicated the form of checks and records that have been instituted, and those records will be delivered weekly and monthly.

Mr. Brennan.—Do you consider that Consolidated Trusts has a sufficient earning capacity to ensure its solvency?

Mr. Burt.—After all, Consolidated Trusts is a trustee company which has no interest in profits at all.

Mr. Brennan.—Are you satisfied as to the safeguards over its securities?

Mr. Burt.—The whole of the titles are transferred to that company, and it can appoint a receiver for the purpose of enforcing the obligations. If any lot holder is dissatisfied with the operations of Consolidated Trusts as a trustee, he has ready access to the court.

Mr. Brennan.—Do you agree that the incidence of the war and the consequent shortages appreciated greatly the value of the holdings of lot holders?

Mr. Burt.—Yes, there is no doubt about that.

Mr. Randles.—If the plantations do not reach maturity, the lot holders suffer, and the land may be reallotted to another set of lot holders.

Mr. Burt.—That would take a lifetime. None of these companies has so far declared a dividend to its shareholders.

Mr. Randles.—When trees grow to such a height that they are suitable for felling, it seems that those who possess the milling rights will reap the benefits.

Mr. Burt.—I do not think so. It is not the miller but rather the retailer who makes the money.

Mr. Randles.—Who appoints the trustee and allots his duties, and what action can lot holders take against the trustee?

Mr. Burt.—The trustee is a man of standing who is appointed by the company. He has certain obligations imposed upon him by the trust deed, and lot holders may apply to the court to compel him to carry out those duties.

Mr. Randles.—His principal duty is to distribute assets paid to him by the companies?

Mr. Burt.—Yes. He possesses the right to enlist the aid of the court, if necessary, to compel a company to account to him for all money received from

the felling of timber. The duties of a trustee are defined in the trust deed. Mr. Dundas Smith is a retired bank manager and a man of integrity.

Mr. Randles.—I make no imputation against Mr. Dundas Smith, but he could have been loath to make information available not only to lot holders but also to their legal representatives.

Mr. Burt.—From what I have heard, there seems to have been some dilatoriness in giving information to lot holders. But certain persons have been pursuing these companies for reasons of their own. They have made requests by letter or personally in a manner that does not engender a friendly response.

Mr. Randles.—I know of many persons who demanded nothing but merely sought information concerning their investment. They were told nothing.

Mr. Burt.—That is a sweeping statement. Apparently the persons concerned have not understood their contract. If they assert the rights of a shareholder and claim a copy of the balance sheet, they will probably be informed that they are not shareholders and that they are not entitled to a copy of the balance sheet. I should like to learn more of the individual cases referred to by Mr. Randles. It is unfair to generalize concerning them.

Mr. Randles.—Allegations have been made that when balance sheets or financial statements were sought, Mr. Dundas Smith produced only a statement concerning Pine Plantations because that was the only company that had paid off. The feeling is that the results from this enterprise have been used as an inducement to people to invest in other undertakings.

Mr. Burt.—Naturally, the oldest timber from the oldest company was the first to be realized. It is impracticable to cut timber before it matures.

Mr. Randles.—Mr. Burt has stated that lot holders are regarded as speculators and not as shareholders, and that the profit they make is not taxable.

Mr. Burt.—My records reveal that in 1934 I was asked to advise on this matter and I submitted the opinion referred to by Mr. Randles. I am pleased to say that the High Court of Australia adopted the same view.

Mr. Swinburne.—On what dates were the respective companies registered?

Mr. Burt.—I can ascertain that information if it is required.

Mr. Swinburne.—I desire to assess the position of each company with respect to maturity.

Mr. Burt.—I should say that the oldest timber controlled by Pine Plantations would be about 25 years of age. In my view, information concerning the dates of incorporation of the various companies would be of little assistance.

Mr. Ludbrook.—Does the interest of a lot holder cease when his holding is cut out?

Mr. Burt.—Yes.

Mr. Ludbrook.—Some lots replant themselves.

Mr. Burt.—In that case, the lot holder would have no interest in the replanting. The obligation of the company under the contract is with respect to one planting.

Mr. Brennan.—The lot holders acquire no proprietary interest in the successory title to the land?

Mr. Burt.—That is so. Each lot holder receives a proportion of the net proceeds of one planting.

The Chairman.—On behalf of the Committee, I thank Mr. Burt for his assistance. I remind him that he promised to furnish some additional information, which will be appreciated as soon as practicable. At a later stage Mr. Burt may be invited to confer with the Committee concerning the drafting of proposed legislation.

Mr. Burt.—I shall be happy to do so. Speaking for my own client forest companies, I think there should be no objection to legislation which is aimed at protecting the rights of lot holders.

The Committee adjourned.

APPENDICES.

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APPENDIX A.

MEMORANDUM BY MR. W. OSWALD BURT.

The purpose of this letter is to inform you that I personally and my firm, through its members, will be pleased to render to your committee any assistance that we may be able to give in the forthcoming inquiry.

I offer the following preliminary matters for consideration:—

1. *Memorandum of Association—ultra vires.* It is anomalous and certainly a hindrance to business that a company which has been carrying on successfully for many years suddenly realizes that the provisions of its memorandum are no longer wide enough for its business. This difficulty was recently spotlighted by the decision in *re* International Harvester Company of Australia Ltd. 1953 V.L.R. 669 where a well known and usual provision adopted by most companies was found to be inadequate necessitating delaying court proceedings to amend.

Suggestion—insert a provision in the Act to the effect that—

(*a*) all companies (except where personal professional qualifications are necessary) shall be entitled notwithstanding the provisions of the memorandum to carry on all such businesses and objects and exercise all such powers as an adult person not under any legal disability may carry on or perform;

(*b*) give shareholders the right by special resolution to amend the memorandum from time to time, by inserting any prohibitions and limitations as may be desired.

The South Australian Act enables the company by its articles to incorporate the whole of the rather well-drawn *pro forma* objects and powers, &c.

In my opinion this does not go far enough.

2. *Proprietary Companies.*—Terminate the farce of first having to form a public company or otherwise incur expense of advertisements and loss of time. This provision as to notice of intention was in an earlier Act and repealed only to be reinserted in the 1938 Act.

3. *Redeemable Preference Shares.*—This is a "graft" copied from the English Act and requires some amendment to remove uncertainty. Section 46 authorizes the "issue" of preference shares. The draftsman has perpetuated the old error of not distinguishing between "creation," "allotment," and "issue." The word should be "allot" and not "issue." The word "issue" strictly relates only to the physical handing over of the certificate.

Throughout the Act the word "allot" is used and should be used in section 46.

As section 46 now stands it is open to the construction that the shares must be "allotted" as ordinary shares and "issued" as redeemable—some act of conversion not specified, having to be performed between allotment and issue. See *Mosely* v. *Koffyfontein Mines* 1911 A.C. 409.

4. *Conversion of Shares to Stock Units*—section 51. There should be an amendment to the effect that stock (which is being fully paid) may be allotted as such. At present shares have first to be allotted and then converted.

This is most inconvenient and the right to have stock units means a considerable saving of labour and time.

5. *Statement in Lieu of Prospectus in Certain Cases* —section 40. There is much uncertainty as to the scope of this section and if interpreted literally could occasion much unnecessary delay and inconvenience.

6. *Dividends*—section 367. This important provision prohibiting the payment of a dividend out of capital should be extended to prevent the payment (*in cash*) of a dividend out of estimated or "unrealized" profits. There should be no objection however to paying a dividend *by the issue of shares* in the case where the profit is unrealized in the sense of being estimated or arising from a *revaluation* (as distinct from a *realization* by sale) of a capital asset. I have heard of a public company alleged to be paying dividends out of estimated and unrealized profits. There is every prospect of the directors of this company occasioning serious loss to shareholders. Such a course should be an offence under a redrafting of section 367. There is much case law on the subject but section 367 should be extended.

7. *Directors' Remuneration*—section 127. The real intention and purpose of this section has been taken away by the words "as such" in sub-section (5). Those words should be deleted as executive directors may receive large payments in some other capacity. Those payments in another capacity are not payable to the director *as such.*

There can be no hardship in cutting out the words "as such" as section 148 gives a coterie of shareholders a right to demand the information. That being so, the information should be given in the accounts.

8. *Consolidated Profit and Loss Account of a Holding Company*—section 125. The words in 125 (1) (*a*) (ii) —"and in addition a statement showing the *total* losses (if any) of the subsidiary company or companies"—are ambiguous and should be clarified.

For example if a holding company (A) has three subsidiary companies (B, C, and D), two making a profit and one a loss?—

A { —B —£100 loss
  —C —£200 profit
  —D —£200 profit

what are the "total" losses? Is it £100 or is there *no total* loss? Accountants and lawyers have adopted varying interpretations. My own view is that there is no total loss as the section deals with consolidated accounts and profits and losses must be consolidated to arrive at total losses.

The matter is important and requires clarification.

9. *Prospectus.*—When does a prospectus become "stale." See section 366 (1) (*d*). The words "specified in the prospectus" seem to produce an absurdity and accordingly it would seem that there may be no offence.

10. *Share Hawking and Fraudulent Sales of Securities.*—Sections 354 and 357 are hopelessly inadequate and in England have been superseded by *Prevention of Fraud (Investments) Act* 1939.

Consideration should be given to adopting that Act in Victoria. It might not be entirely acceptable to the members of the Stock Exchange as it would set up a special class of licensed share brokers.

Experience in England suggests that the adoption of the Act has been worth while.

Following on my clearing up Bristo Plastic for unit holders I prepared the first draft of the *Business Investigations Act* 1949. That Act was intended to deal with a limited type of case but is of little or no use as a general protection to the public. There is a very well-considered speech in *Hansard*—the contribution of Mr. Crean to the debate on that Bill.

If you are taking suggestions from the legal profession generally kindly let me know and I will endeavour to bring under your notice other matters which call for consideration.

From 1934 to 1937 I acted in conjunction with two representatives of the Stock Exchange on a joint committee of accountants and others and assisted in drawing up comprehensive recommendations many of which were eventually incorporated in the 1938 Act.

I feel certain that there is still much in that report still worthy of further consideration.

The Wilfred, Green, and Cohen reports and comments thereon in Accountancy Journals are also most informative.

18th January, 1954.

APPENDIX B.

MEMORANDUM BY MR. G. E. FITZGERALD, B.A., B.COM., CHAIRMAN, COMPANY LAW RESEARCH COMMITTEE, AUSTRALIAN SOCIETY OF ACCOUNTANTS.

In earlier evidence I indicated that I would submit to the committee particulars of some of the recommendations which my committee has in draft in connexion with the matters coming within the scope of the inquiry of your committee. These recommendations are only a small portion of those of which my society propose to suggest to all State Governments in Australia.

Taking those relating to the accounts provisions, the first recommendation is designed to replace the present Victorian section 123.

Suggested new sub-section (1) *to present Victorian section* 123.

"Every company and the director and manager thereof, shall cause to be kept such accounting and other records as will sufficiently explain the transactions of the company and enable full, true and fair profit and loss statements and balance-sheets to be prepared from time to time and shall cause them to be kept in such manner as to enable those records to be conveniently and properly audited, whether or not the company has appointed an auditor."

This is a compromise between the existing Victorian and English provisions.

It is considered undesirable to define with great particularity matters which should be included in the accounting records. In attempting to do this the English provision is itself thought defective.

The Victorian provision, imposing the obligations on directors and manager as well as the company, is preferred to the English enactment.

"Accounting and other records" is preferred to "books of account," in view of the extent of mechanization of accounts and of the use of other labour-saving methods of keeping records tending to dispense with books properly so called.

"Full, true and fair" is preferred to "full and fair" as in the English Act, as being more definite and because, used in this context, it directs emphasis to the profit and loss statement and balance-sheet rather than to the "accounts" described as "full, true and complete" in the Victorian section.

"Statement," in lieu of "account," is in keeping with the trend toward the vertical form of presentation. This has been applied generally throughout the draft recommendations.

Although it is felt that rather general wording is needed, it is considered desirable to establish a standard by which the adequacy of the records may be measured. Experience has shown that Rule 25 of Victorian Solicitors' (Audit and Practising Certificate) Rules, which provides that the trust accounts of solicitors shall be kept "in such a manner as to . . . . enable the trust accounts to be conveniently and properly audited" is a satisfactory measure of the adequacy of the records. Such a standard would not impose hardship on the company.

The same standard is imposed in the draft section whether or not the company has appointed an auditor. This proposed requirement has been included because of the view of my committee that there should be no variation of present Victorian Law to compel proprietary companies to have their accounts audited.

Suggested new sub-section (2) *to present Victorian section* 123.

"For the purposes of this sub-division and of the schedule—

(*a*) The accounting and other records required to be kept shall be kept in the English language;

(*b*) The profit and loss statement and balance-sheet required to be prepared shall be prepared in the English language; and—

(*c*) The currency (if other than Australian currency) in which the balance-sheet is made up and the bases of conversion of other currency into that currency shall be stated in the balance-sheet, or by way of footnote thereto."

Clauses (*a*) and (*b*) are in line with the requirements of section 262 (*a*) of the Commonwealth Income Tax Assessment Act. They would not prevent records being kept in some other language in addition if desired.

Clause (*c*) is directed towards ensuring full and fair disclosure and is in line with the requirements of other legislation, e.g., Commonwealth Banking Act and Commonwealth Life Insurance Act.

New sub-section (3) *to replace existing Victorian sub-section* 123 (2).

"The accounts and other records shall be kept at the registered office of the company, or at such other place as the directors thinks fit and shall at all times be open to inspection by the directors: provided that, if accounting and other records are kept at a place outside Victoria, there shall be sent to and kept at a place in Victoria and be at all times open to inspection by the directors such statements and returns with respect to the business dealt with in the accounting and other records so kept as will enable to be prepared, in accordance with this Act, the company's balance-sheet, its profit and loss statement and any document annexed to any of these documents giving information which is required by this Act and is thereby allowed to be so given: provided, further, that the court may, in a particular case, order that such accounting and other records be open to inspection by an accountant acting for a director, but only upon an undertaking in writing being given to the court that information acquired by such accountant during his inspection shall not be disclosed by him save to such director."

The proposed sub-section is wider than the existing Victorian sub-section, dealing, in addition to matters covered in the existing sub-section, with branch and agency records. It incorporates the provisions of sub-section 7 of the existing Victorian section, because it is considered to be better placed here. Certain of the provisions of the English section 147 (3), have not been adopted, as being redundant and confusing, in view of the recommended drafting of other portions of the Act and the proposed sub-section being clear and unambiguous.

New sub-section (4) *to replace existing Victorian section* 123 (6).

"If any person being a director or manager of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has, by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of such offence, be liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding Two hundred pounds; provided that—

(*a*) In any proceedings against a person, in respect of an offence under this section consisting of failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

(*b*) A person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully."

This follows the English section 147 (4), which is thought to be more comprehensive than the Victorian section 123 (6), but it includes "manager" in view of the obligation imposed on him by proposed sub-section (1) of this section.

Proposed section to replace Victorian section 274.

Having regard to the substitution of "accounting and other records" in lieu of "books of account" as in English section 147 (1) and Victorian section 123 (1), it will be necessary to make consequential amendment of Victorian section 274, which it is suggested should also be extended and strengthened to read as follows:—

274 (1) "If, upon an investigation pursuant to subdivision 8 of division 5 of this Act, or the Companies (Special Investigations) Act, or where a company has been wound up, it is shown that proper accounting and other records sufficient to explain the transactions of the company and enabling full true and fair profit and loss statements and balance-sheets to be prepared from time to time, have not been kept by the company throughout the period of two years immediately preceding the commencement of the investigation or the winding up as the case may be, every director, manager, or other officer of the company who was knowingly a party to, or connived at, the default of the company shall, unless he shows that he acted honestly, or that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction on indictment to a penalty of not more than One hundred pounds, or to imprisonment for a term of not more than one year, or, on summary conviction, to a penalty of not more than Fifty pounds or to imprisonment for a term of not more than six months."

(2) "For the purpose of this section proper accounting records shall be deemed not to have been kept in the case of any company if there have not been kept such records as are sufficient to exhibit and explain the transactions and financial position of the company and if such records have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor."

(3) "Where the commencement of the investigation, or the winding up of any company registered under this Act, is less than two years after the commencement of this Act, the reference under sub-section (1) of this section shall be read and construed as if it were a reference to the period between the date of the registration of the company and the commencement of the investigation or the winding up."

In the case of a going concern company, the directors and shareholders have means, under other proposed sections, of ensuring that the provisions of the proposed

section to replace Victorian section 123 (1) will be complied with. The provisions of sub-sections (1) and (2) of the existing English and Victorian sections and that proposed, may be compared with section 213 of the Commonwealth Bankruptcy Act, except that pecuniary penalties (as alternatives to imprisonment) are provided for breaches of the section.

The extension of the proposed new section to apply to the case of an investigation is designed to create, in relation to an investigation, the same offence as is at present committed only upon a winding up. It is thought that such a provision would be more effective than a compulsory audit in achieving what your committee desires, i.e., a deterrent against neglect in the maintenance of proper records.

Retention of accounting and other records.

Under the Commonwealth Income Tax and Social Services Contribution Assessment Act, 1936-1953, all companies must retain, for a minimum period of seven years after the completion of the transactions to which they relate, the records of income and expenditure and, irrespective of the amount of income, must file annual returns. It would therefore not impose any additional burden upon any company to require that, for the purposes of the Companies Act, it must retain those records, a copy of those income tax returns and all accompanying attachments, plus the other records mentioned in the proposed new section. These records would be much more valuable, if ever required for any purpose referred to in proposed section 274, than mere copies of annual financial statements and the private balance-sheets of public companies now required to be filed with the Registrar-General, because they contain much more detail than the balance-sheet and profit and loss statement. Under sections 136 and 137 such documents would have to be produced under liability of penalty for failure so to do.

Most companies continuing business would retain their records for very much longer periods than specified in the draft section but, having regard to problems of storage which may arise in particular instances, it would be unreasonable to prescribe their compulsory retention for any longer period. The proposed new section should, it is suggested, be inserted in a new subdivision of division 5 of Part I. of the Act following the present subdivision (10), and made to apply to all companies whether subject to audit or not and whether or not incorporated under Part I.

The suggested new section is as follows:—

(1) "Every company (whether a company within the meaning of this part or not) and the directors, managers, and officers thereof, shall cause—

(*a*) copies of the company's profit and loss statements and balance-sheets;

(*b*) copies of the company's returns of income (including supporting schedules thereto) submitted by the company for income tax purposes; and

(*c*) all accounting and other records required by this Act to be retained by the company for such period as, in the opinion of the directors, they might be required for any purpose relating to the company's activities or the interests of members or debenture holders and, in any case, for a period of not less than seven years after the completion of the transactions, acts, or operations to which they relate."

(2) "Every company and every director, manager, or officer thereof, who makes default in complying with this section, shall be guilty of an offence and shall—

(*a*) in the case of corporations be liable to a fine not exceeding One thousand pounds;

(*b*) in the case of any other person be liable on conviction on indictment to imprisonment for a term not exceeding six months or to a fine not exceeding Two hundred pounds, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding One hundred pounds.

Capital Profits and Losses and Application Thereof.

Supplementing what has already been said about the suggestion to amend section 367 of the Companies Act to prohibit the payment of a dividend in cash out of estimated or unrealized profits, the following under-mentioned revision of section 48 and proposed addition of three new sections have been prepared by my committee as part of its general revision of the *Companies Act* 1938 and are here suggested as possibly being within the scope of your committee's terms of reference.

For purposes of identification a proposed new section 48 is referred to as section (A) and the three proposed new sections are referred to respectively as (B), (C), and (D).

Proposed Section (A).

(1) "The directors of a company shall not make a first or, until the company has been established at least twelve months, any issue of shares in such company at a premium."

This represents the present Victorian provision; there seems no valid reason why this provision should not be retained, notwithstanding the fact that the English Act had no corresponding sub-section.

(2) "Where a company issues shares or debentures at a premium, whether for cash or otherwise, a share premium or other capital reserve account shall be credited with the amount of the premium and, save as provided in section (C), no portion of that amount shall be available for distribution as dividend."

The Victorian enactment is considered defective in that it provides only for cash premiums and ignores the premiums at present being obtained when there is a share consideration given for the acquisition of assets, the shares being valued above par (c.f. Henry Head and Co. and Ropner Holdings Ltd. (1951) W.N. 593). The English Act contains provisions wide enough to cover this situation, but its provisions subjecting the "share premium account" to the sections permitting a reduction of capital are thought to be unduly restrictive—but it is sufficient to stipulate that, with some exceptions, no portion of that premium shall be available for distribution as dividend. This suggested provision accordingly seeks to embody the best features of both the English and Victorian Acts.

(3) "Where a company has, before the commencement of this Act, issued any shares at a premium and any identifiable portion of the amount of the premiums on those shares remains in the company's accounts, such amount shall be included in the reserve account referred to in sub-section (2) of this section."

Substantially similar to the English provision, although not so severe; it is thought that this suggested provision goes as far as is necessary to prevent evasion of the requirements of suggested sub-section (A) (2).

Proposed Section (B)—Capital Reserve and Capital Loss Accounts.

(1) "All profits of a company arising from the sale or revaluation of any assets not acquired for the purpose of profit making by sale, shall be credited to a capital reserve account."

The whole of this proposed section is new. It is considered desirable to clarify the position as to the uses to which surpluses such as envisaged in sub-section (1) of this proposed section and sub-section (2) of the preceding proposed section may be put with a view to preventing their improper use. A first step is to require that such items be brought together into separate accounts here designated capital reserve or capital loss accounts. This is the aim of sub-sections (1) and (2).

(2) "All losses of a company, resulting from the disposal, revaluation, disappearance or destruction of any assets not acquired for the purpose of profit making by sale, shall to the extent to which any such loss has not been charged in the profit and loss statement of the then current or any earlier accounting period, be debited to either a capital reserve or a capital loss account."

The words "not acquired for the purpose of profit making by sale" are suggested by section 26 (*a*) of the Commonwealth Income Tax Assessment Act. They define the kind of asset envisaged and avoid the use of the ambiguous phrase "fixed assets."

(3) "For the purpose of ascertaining the amount of profit or loss referred to in sub-sections (1) and (2) of this section, the value of any asset immediately prior to its disposal revaluation disappearance or destruction shall be taken to be the cost thereof to the company, less the amount of any reduction already brought to account in the company's records."

By stipulating what is to be taken as the value of an asset prior to its disposal revaluation disappearance or destruction this sub-section will go a long way towards preventing any improper "adjustment" of the profit or loss arising in such circumstances.

(4) "Every capital reserve account and every capital loss account shall bear a title descriptive of its nature."

It is intended to ensure that the name of the accounts in question will be an indication of the source of the profit or loss, whether from a share premium or revaluation, &c.

Proposed Section (C).

"Notwithstanding anything contained in section (B), the recoupment or recovery of any expenditure charged to revenue of the then current, or any prior accounting period, shall not be credited to a capital reserve account or capital loss account unless it shall have been first disclosed as a separate item in the profit and loss statement covering the accounting period in which it is recovered or recouped."

This section also is new. Its purpose is not to prohibit a company which recovers expenditure which had previously been charged to revenue from crediting the amount to a capital reserve or capital loss account, but to prohibit the company from so crediting it without first disclosing the fact of the recovery through the profit and loss statement.

Proposed Section (D).

"The capital reserve accounts referred to in sections (A) and (B) may, to the extent of the amount or amounts at credit thereof, be applied by the company—

(1) in writing off capital losses;

(2) in writing off the preliminary expenses of the company;

(3) in writing off the expenses of, or commission paid, or discount allowed in any issue of shares or debentures of the company;

(4) in writing off goodwill, patents, trademarks, and/or copyrights;

(5) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares; or

(6) in providing for the redemption of any redeemable preference shares or of any debentures of the company and any premiums payable thereon. Provided that the amount or amounts at credit of such reserve accounts shall not be applied in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares or in providing for the redemption of any redeemable preference shares or of any debentures of the company and any premiums payable thereon until all the capital losses shall have been written off."

This is somewhat similar to English section 56 (2), but deals not only with the share premium reserve but with the capital reserve and capital loss accounts covered in proposed section (B) as well. The object is twofold, first to control the use which may be made of credit balances in those reserve accounts (which is achieved by clauses (1) to (6), and, second, to make it clear that a company having both capital reserve and capital loss accounts must not be allowed to ignore the amount of the capital loss account in determining to distribute the capital reserve in the way described in clauses (5) and (6) (which is achieved by the proviso).

Paragraph (6) will require a consequential amendment of present Victorian section 46 (1).

Matters Considered More Important than Audit of Accounts.

Evidence given to the committee establishes that, after nearly 60 years experience of filing private balance-sheets, the practice has proved valueless as an aid in any investigations or proceedings for suspected fraudulent activities or even in supplying a satisfactory record of the state of affairs of the company at the dates to which those accounts had been made up. It is the view of my committee that the amendments it has suggested to sections 123 and 274 of the *Companies Act* 1938 and the proposed new section regarding custody of accounting records, which would apply to all companies, would, in practice, prove more satisfactory than the measures proposed in relation to one class of company only. I have already said, in reply to questions arising in earlier evidence, that in view of its terms of reference, your committee might, with advantage, concentrate more upon the provisions relating to prospectuses and share hawking than upon sections relating to the audit of accounts.

Statement in Lieu of Prospectus.

In the view of my committee it would be definitely advantageous if there was added to the Fifth Schedule to the *Companies Act* 1938, an additional question to be answered, viz., "particulars of all other matters not already referred to hereon, the disclosure of which would be likely to affect to any material extent the attractiveness of the offer or issue of shares in or debentures of a company."

It is, of course, a fact that under section 40 a statement in lieu of prospectus must be signed by every person named therein as a director or proposed director, and accompanied by the statutory declaraton made by each such person to the effect (with necessary modifications) of sub-paragraphs (i) and (ii) of paragraph (*c*) of sub-section (3) of section 34 of the Act.

It is the belief of a member of my committee who has had experience where a statement in lieu of prospectus was filed which had not in fact disclosed all matters which would be likely to affect to a material extent the attractiveness of an issue of shares then contemplated, that the form and the covering statutory declaration was made by at least two of the persons concerned in the full belief that they had complied with all requirements of the law. While this may seem incredible in the light of after-knowledge, it seemed at the time, to these people who were not well versed in such matters, that if full and complete answers were given to all the questions asked in the Fifth Schedule required they had in fact conscientiously complied with the requirements of the law and with a clear conscience could sign the form and statutory declaration.

Prospectuses and Share Hawking.

In connexion with the matter of prospectuses I refer to a report dated 5th December, 1934, made to the Attorney-General by two inspectors appointed to investigate the affairs in Victoria of Southern British Trust Ltd., which made a number of suggestions for amendments of the Companies Act in relation to prospectuses and share hawking.

A number of these suggestions were embodied in the 1938 Act, but others do not appear to have been acted upon. It is suggested that the report referred to be obtained from the Crown Law Department and the suggestions designed to achieve the under-mentioned objects examined, viz:—

(1) To prevent intending investors being deceived into believing that the appearance in a prospectus of the names of prominent brokers, auditors, solicitors, or trustees for debenture holders is some guarantee of the bona fides of the company; to prevent names of such persons being used in a prospectus without their consent; and to make them accept civil liability for statements contained in the prospectus unless they make it clear that they do not accept responsibility for any such statements.

(2) To ensure that the term "to the public" which appears in several places in the act, is clearly defined.

(3) To provide that where the dividends or interest on any shares or debentures offered for public subscription are guaranteed by any other company, the financial position of the guarantor company should be disclosed.

(4) To ensure, by the insertion in a prospectus of a short summary of the principal provisions of all material contracts, that intending investors are placed in a position to obtain a broad understanding of their nature.

(5) To make it an offence to issue a prospectus containing any statement false to the knowledge of the company or person issuing it, or to omit, with false intent, information which might affect the nature or extent of the attraction which the prospectus holds out.

(6) To make it an offence to mislead the public into a belief that an issue of shares or debentures was well regarded, by making false statements or intimations as to the extent to which such shares or debentures had been subscribed.

(7) To reduce into positive legal form some definitions of the duties of a trustee so far as is reasonably possible.

None of the foregoing suggestions has been examined by my committee, but *prima facie* they appear to be worth considering.

But in suggesting concentration upon the provisions relating to prospectuses and share hawking, I wish to make it clear that my committee does not have in mind any course of action which will interfere with the raising of capital for co-operative companies or with legitimate investment schemes.

Further Evidence.

Since the evidence given to this point was prepared, my committee has had an opportunity of perusing the evidence (exclusive of any by Mr. R. M. Eggleston, Q.C., and Mr. T. Mornane, Assistant State Crown Solicitor) given up to 6th April, 1954. It finds that some of the evidence placed

before this committe is misleading; in some instances seriously so. My committee would therefore like an opportunity to make submissions regarding the evidence mentioned, and also to give its views on certain recommendations which have been made by some of the earlier witnesses, and which have not been covered in evidence given on behalf of my committee.

APPENDIX C.

COPY OF CIRCULAR LETTER SENT TO MEMBERS OF AMALGAMATED INSTITUTE OF SECRETARIES.

Company Law Reform.

The Victorian Parliamentary Statute Law Revision Committee was appointed pursuant to the provisions of the *Statute Law Revision Committee Act*, 1948, to examine anomalies in the statute law which appear to permit—

(*a*) persons interested in the promotion and/or direction of companies, and

(*b*) firms—to engage in fraudulent practices;

with a view to reporting to Parliament upon the measures deemed necessary to afford adequate protection to shareholders, creditors, and members of the public.

The above Committee has continued the inquiry, and to date evidence has been received from persons concerned with the operations of companies. As the number of persons appearing before the Committee must necessarily be limited, this Institute is compiling some data on Company matters to ascertain the views of members and others engaged in company work and commerce.

Some questions have been drafted for your consideration and reply. The President and Council of the Amalgamated Institute of Secretaries would greatly appreciate your co-operation in submitting the desired information.

It is felt that a summary of replies will assist the Institute to gauge the feelings of the commercial community as to any amendments it considers should be made to existing company legislation. You are invited to include any additional information you may desire.

Replies will, of course, be treated with the strictest confidence.

By Direction of the General Council,

E. T. SPACKMAN, F.A.I.S.,

General Registrar.

Melbourne, 9th August, 1954.

QUESTIONNAIRE.

In answering questions, please head your answers on your letter in reply as follows:—

Answer to Question One.

(Then state answer and comments (if any) and so on for each answer.)

1. Writers on accounting have expressed the opinion that public companies should, in published accounts and reports, furnish more information to shareholders than that required by the Companies Act and the Stock Exchange. Some of the recommendations are:—

Balance Sheet—Assets.

To group separately intangible assets, fixed assets—at original cost less depreciation to date—current assets, different classes of investments.

Balance Sheet—Liabilities.

To set out separately the different classes or liabilities, to show accretions to reserves each year, total of shareholders' funds.

Profit and Loss Account.

To state separately total trading receipts, total trading expenditure, trading profit, other income, provision for taxation, proposed dividends and appropriations to reserve.

Report.

To contain comparative figures for three years, the rate of dividend, in shillings and pence instead of percentages, the rate of earnings on capital and also on shareholders' funds.

What are your views?

2. Should proprietary companies also be compelled to publish an annual balance sheet and a profit and loss account and file a copy of each with the Registrar-General?

3. Should there be a compulsory audit of the accounts of all Victorian proprietary companies? (In the other States, auditors must be appointed.)

4. Should the disqualifications for appointment as auditor be enlarged as required by the Stock Exchange Regulations for companies "listed" on the Exchange?

5. Should the above disqualifications for appointment as auditor apply also to proprietary companies, notwithstanding that the accounts of most Victorian proprietary companies are not at present required by law to be audited?

6. In the case of *Morris* v. *Kanssen*, 1946 A.C. page 459, no general meeting of a company was held one year and accordingly—by the effect of the Articles (see Table "A", Article 76)—there were thereafter, no *de jure* directors.

Should proprietary companies therefore be required to have at least three members to facilitate holding a general meeting if one member should be incapable of attending the meeting?

7. Should persons dealing with companies through directors in fact registered at the Registrar of Companies' office as such, be entitled to treat the company as bound by the registered directors, whether there is fraud, defect or irregularity in the affairs of the company or not?

8. Should it be obligatory for the names of directors to be on the letterheads of companies?

9. Where an existing business is being converted into a company, should the promoter be required to have the assets valued by a competent valuator(s) and file an audited financial statement of the affairs of the business by a properly qualified auditor?

10. Should a Trust Fund be established for the investigation of doubtful companies and research in Company Law and Procedure, by means of an annual levy on all companies registered at the Registrar-General's office?

At the 30th June, 1954, registered companies in Victoria comprised:—

Public	2,739
Proprietary	11,290
Guarantee	410
Mining	202
Foreign	1,277
Total	15,918

NOTE.—A Levy of £1 would produce £15,918, and a levy of 10s. £7,959, annually.

11. Should the secretary of a company be required to have certain qualifications to perform certain statutory duties?

12. Where there is a sole director of a proprietary company, should he be debarred, as under the English Companies Act, from appointing himself secretary of the company?

13. Should Liquidators of companies be licensed?

14. Where a creditor is the principal shareholder, holding more than one-half of the issued capital of an insolvent company, should the claim of the creditor be deferred until the claims of the other creditors have been satisfied according to their respective priorities?

APPENDIX D.

PROGRESS REPORT OF REPLIES TO QUESTIONNAIRE ON COMPANY LAW REFORM.—AMALGAMATED INSTITUTE OF SECRETARIES.

A number of business executives, in forwarding replies, thanked the Institute for the opportunity of expressing views on Company Law Reform and commended the Institute for the research undertaken.

Nearly 1,000 copies of the Questionnaire were circulated and replies are now gradually being received. It has been stated that careful attention and consideration is necessary to frame replies to the questions and this might be the reason, in a number of cases, for the delay in forwarding replies.

Some replies were the majority views of boards of directors of companies, parent companies and their subsidiaries and it would therefore be difficult to estimate the number of persons taking part in the Questionnaire.

A progress report has been compiled from the replies so received. It is hoped that this summary will be of interest and prove of some assistance in indicating the trend of thought in connexion with Company Law Reform.

It is desired to thank the contributors for their kind co-operation in forwarding their views on the questions submitted.

Answer to Question One. (Accounts and Reports.)

Generally the views expressed were in favour of Public Companies furnishing more information than that required by the Stock Exchange for companies "listed" on the Exchange.

Balance Sheet—Assets.

Fixed assets at original cost less depreciation to date.

Comment *Against.* (*a*) Some old companies might experience difficulties in ascertaining original fixed asset costs. Suggested that, as an alternative, the amount of expenditure for year and the amount of depreciation charged for year be shown.

(*b*) This information may be misleading, particularly in these times of fluctuating values and the apparently permanent increase in all values of fixed assets as compared with their pre-war costs.

Balance Sheet—Generally.

Comment: (*a*) If public companies furnished the information required by the Stock Exchange, it should be sufficient. Although no doubt it is advisable in the companies' own interests that full information be disclosed.

(*b*) Balance Sheets should conform to the provisions of the English Companies Act relating to accounts.

(*c*) The Victorian Act does not go quite far enough, but the English Act goes much too far in relation to published accounts, with the consequence that, although the intention behind the Act was clarity and full disclosure, the result is that most English company-accounts are quite unintelligible to the ordinary man and at best, extremely difficult to read, even for the expert.

(*d*) There should be a reasonable compromise between the present minimum required by the Companies Act and the maximum suggested by the most extreme thought on the subject.

Profit and Loss Account.

There was strong opposition to showing total trading receipts and trading expenditure.

Comment: Such information was considered to be the concern of administration. The information could be of too great an advantage to competitors. No doubt every company would be extremely interested in such figures of its competitors.

Report: There was opposition to publishing comparative figures for three years.

Comment: (*a*) Such comparison would require many qualifications as to current trading conditions, many of which are beyond management control and are mainly history. Comparative figures arouse little interest unless there is wide variation.

(*b*) Companies under the English Act, indeed one well-known company (name not stated) reveals in a statement attached to the Balance Sheet, corresponding figures for the past eight years, affording shareholders useful comparative summary of the progress of the company.

The rate of dividend in shillings and pence instead of percentages, it was agreed, would be desirable, but the matter was considered to be of little importance.

Rate of Earnings on Capital and also on Shareholders' Funds.

There was strong opposition to stating rate of earnings on Capital and on Shareholders' Funds.

Comment: (*a*) It would be an excellent guide to investment and at the same time would prevent some of the present ridiculous reports published in the press.

(*b*) These figures could be misleading to the layman and in any event could be easily calculated from the published figures should occasion demand.

(*c*) It is not desirable as it tends to focus the shareholders' attention on dividends and could arouse opposition if the directors desired to implement a policy of building reserves.

(*d*) It would require a valuation of the fixed assets each year before the true value of the shareholders' interest could be ascertained.

Answer to Question Two. (Proprietary Company Balance Sheets.)

There was almost unanimous objection to a proprietary company (not being a subsidiary of a public company) being required to publish an annual Balance Sheet and Profit and Loss Account and file a copy of each with the Registrar-General thus being available for public inspection.

Comment: (*a*) No. This would defeat the whole object of a proprietary company which, primarily, is privacy.

(*b*) Yes. The public would at least know what profit (if any) these companies are making each year.

(*c*) Some replies stated that: Every proprietary company should file with the Registrar-General a copy of the annual private balance sheet in a sealed envelope, which could be opened by an order of the Supreme Court and further, by an official liquidator in a winding-up by the Court.

(*d*) The publication of these documents may have a restraining effect on unscrupulous people.

Answer to Question Three. (Audit of Victorian Proprietary Companies.)

There were only a few objections to a compulsory audit of the accounts of all Victorian Proprietary Companies.

Comment: (*a*) No. This could be an embarrassing expense to many companies. The recommendation would not serve any good purpose.

(*b*) A private balance sheet filed, in a sealed envelope, with the Registrar-General, could be valueless unless the accounts of the company were subject to a compulsory audit.

(*c*) Yes. Victoria should fall into line with the other States and make audits compulsory.

(*d*) Yes. Any proprietary company of any repute has an audit.

(*e*) Audited accounts more surely show where the company is going financially.

Answer to Questions Four and Five. (Appointment as Auditor.)

The disqualifications for appointment as auditor enlarged by the Stock Exchange Regulations for companies "listed" on the Exchange, did not appear to be widely known.

Answer to Question Six. (Number of Members.)

There was some opposition to requiring family proprietary companies to have at least three members, otherwise, favourable replies.

Comment: (*a*) A number of replies suggested that: All companies should be required to have five members.

(*b*) No. Some, or a large proportion of proprietary companies have developed from one-man business, that is, family-man businesses, who usually bring in a member of the family as a member of the company.

(*c*) Family companies are formed to evade taxation.

(*d*) As so many proprietary companies are purely family affairs, it seems unreasonable to require that there be three members. This would, in many cases, lead on to a third person holding one share only and would encourage dummying.

(*e*) Family companies believe in keeping everything in the family. They are too mean to allow an employee to become a shareholder and thus receive a modest share of the profit.

(*f*) Having three members would probably ensure a General Meeting being held in the prescribed time, but in the case of a one-man company, it would be undesirable for it to be made compulsory.

(*g*) In these days of collective effort of capital, labour, and management, the one-man company is an anachronism.

(*h*) The minimum number of members should not be three. The Articles of Association of a proprietary company should provide for the appointment of a representative or substitute of a shareholder.

(*j*) As practically all proprietary companies are now first registered as Public Companies (with five members) and then converted into proprietary companies, there does not seem any point in the Act permitting a proprietary company to have less than five members.

Answer to Question Seven. (Company bound by Registered Directors.)

The answers were favourable but with some reservations; others wanted clarification. The result was inconclusive.

Comment: (*a*) Persons dealing with companies whose directors are registered at the Registrar of Companies' Office should be entitled to treat the company as bound by the registered directors, unless they have a personal knowledge of any fraud or defect in the affairs of the company, in which case this would be a debarment from claiming privilege under this section.

(*b*) This question poses difficulties. Whilst the idea is good in practice, it may easily lead to difficulties. Take the case of a director who resigns but the company purposely fails to register the resignation. Is a person under these circumstances entitled to assume that the director is still registered as exercising control? It appears that it would involve a retiring director personally lodging a change of directors Form with the Registrar-General.

(*c*) No. It would be difficult, and not desirable, to establish a legal basis for *ultra vires* transactions either to the Memorandum or Articles of the Company concerned, by such legal assumption of authority of directors registered at the Registrar-General's office.

Answer to Question Eight. (Directors' names on letterheads.)

This question was answered in the negative.

Comment: (*a*) Yes. We already have this regulation in operation in England.

(*b*) Yes. It would be advisable, so the public would know who the directors of the company were, and for its protection.

(*c*) No. Letterheads may be out of date or fictitious—in any case, much later and more correct information as to who are the directors of a company can often be obtained at the Registrar-General's office.

Other replies referred to the cost of making and altering the letterheads when there was a change in the Board.

Answer to Question Nine. (New Company filing audited Statement.)

The answers to this question were favourable.

Comment: (*a*) Yes. This would be an answer consistent with Question three.

(*b*) Where an existing business is being converted into a company, the promotors should be required to have the assets valued by a competent valuator and should file an audited financial statement of affairs by a properly qualified auditor. This is most desirable and should be enforced in all instances.

(*c*) No. The shareholders were the previous partners, know all the valuations probably far better than any outside valuator, and were fully aware of the financial position of the firm.

(*d*) This recommendation has some merit but in many cases would not be necessary and only cause expense.

Answer to Question Ten. (Research on Company Law.)

Answers to Question Ten were generally in favour of a small levy.

Comment *Against*: (*a*) No. I can see no reason for honest companies to subsidize the investigation of doubtful companies and research in Company Law and Procedure is far better carried out by the present Institutes of Secretaries and Accountants than it would be under an organization set up by the Government, as it must necessarily be if a compulsory levy were instituted.

(*b*) We do not think such a trust fund should be established. Any investigation should be a matter for public expense and not for reputable companies to have to carry the cost of investigating doubtful companies.

(*c*) I would be opposed to a trust fund being established for the investigation of doubtful companies, as this would be really an excuse for another Government appointee who, in turn, would endeavour to build up a rather large department to justify his existence. Past experience has proved that any Government appointment of this nature eats up all the levy in administration expenses, without any great or durable benefit to the community in general.

(*d*) No. There are enough fees payable at present which should be sufficient for the purpose. I have no doubt that if such a levy were imposed the bulk of the receipts would be eventually absorbed in consolidated revenue.

(*e*) The research in Company Law and Procedure should be undertaken by the Institute; the funds being provided by voluntary annual subscription.

Answer to Question Eleven. (Secretary.)

The replies were generally favourable.

Comment *Against*: (*a*) If the qualifications mentioned mean academic, the answer is "No." The knowledge required to perform statutory duties of a secretary can be obtained by experience and study.

(*b*) No doubt desirable in big companies, but should not be essential for small ones.

(*c*) Yes. In the case of competent persons having occupied the position for some years, it would perhaps be harsh to disqualify them, but new appointments after a certain date should be filled by persons with the necessary qualifications.

Answer to Question Twelve. (Sole Director.)

Almost all the replies were in favour of debarring a sole director of a proprietary company from appointing himself secretary of the company.

Comment: (*a*) All companies should have three directors.

(*b*) All directors should retire at the age of 70 unless otherwise resolved by the company in general meeting.

Answer to Question Thirteen. (Licensed Liquidators.)

The replies were practically unanimous that liquidators should be properly qualified and licensed.

Comment: (*a*) Yes. Their responsibilities are such that the licensing of liquidators would confer considerable added protection to the public.

(*b*) It is considered that a Liquidator of a company, if not licensed, should be at least a public accountant of some standing. The practice of appointing a liquidator from amongst shareholders of a proprietary company does not always prove satisfactory and experience shows some protection should be given to the creditors.

(*c*) They should have some qualifications but surely there are enough institutes to provide qualified men without having them licensed as liquidators and, I have no doubt, having to pay a registration fee.

(*d*) An employee, officer, auditor or solicitor of the company should be disqualified for appointment as liquidator in a creditor's winding-up.

(*e*) There should be a compulsory audit of all company liquidation accounts.

Answer to Question Fourteen. (Shareholder-creditor's Claims.)

Strong support was given for deferring the claim of the creditor who is a principal shareholder, until the claims of the other creditors have been satisfied.

Comment *Against*: (*a*) No. This proviso would be unreasonable unless the principal shareholder was also a director, and even then it might not be satisfactory.

(*b*) Not if he was not engaged in the management.

(*c*) No. Where the principal shareholder of the company is a creditor by virtue of goods supplied or money advanced, the claims of such shareholder-creditor should have equal right with the claims of all other creditors unless it can be shown that the goods purchased from the creditor by the company were so purchased at a fictitious price.

(*d*) It is not considered under these circumstances that the shareholders' claims should be deferred, but it should be the subject of a very close scrutiny by the liquidator of the company.

The opinions expressed in the progress report should not, of course, be taken as necessarily representing the official view of the Amalgamated Institute of Secretaries (Incorporated).

R. A. CLAREY, B.Com., F.A.I.S., President.
E. T. SPACKMAN, F.A.I.S., General Registrar.

Melbourne, 15th September, 1954.

APPENDIX E.

MEMORANDUM SUBMITTED BY MR. R. J. MCARTHUR AND MR. A. A. FITZGERALD ON BEHALF OF AUSTRALIAN FIXED TRUSTS PROPRIETARY LIMITED.

Our attention has been drawn to the suggestions made by Mr. P. Opas in evidence before this Committee on 4th May, 1953, for amendments or additions to sections 356 and 358 of the *Companies Act* 1938, with the object thereby of placing the holders of so called "trust certificates" in the same position in relation to the trustees as if the certificate holders were shareholders and the trustees were directors of a company.

Section 356 of the *Companies Act* 1938, is the provision against "share-hawking," which although expressed to apply to "shares," includes a wide definition of that term, so that—

> "Shares" means the shares of a company . . . . and includes debentures and units . . . . . and all such documents (commonly referred to as "bonds") as confer or purport to confer on the holder thereof any claim against a company . . .

It will be observed that, despite this wide definition, "Shares" are still identified with "a company," as "unit" of a share or debenture means any right or interest (by whatever term called) therein (see section 3) and "bonds" must confer a claim against a company.

But the essence of "trust certificates" is that they do not confer any claim against a company, but only against trustees for the holders of the trust certificates.

Mr. Opas would extend the definition of "Shares" to—

shares (1) of a company;
(2) of a firm registered under the Business Names Act; and
(3) of a partnership,

"by means of which the owner of such shares is entitled to receive some aliquot part of, or participate in, the profits of such company, firm or partnership, or to share or participate in the assets of such company,

firm or partnership in the event of its being wound up or ceasing to carry on business, or to share or participate in the losses sustained by such company, firm or partnership" . . .

With great respect to Mr. Opas, the definition would clearly fail of its purpose to prevent "hawking" of "trust certificates", as they are not rights to interests in companies, firms or partnerships.

Section 358 of the *Companies Act* 1938, is the prohibition against unincorporated companies, associations or partnerships carrying on any business that has for its object "the acquisition of gain."

It is relevant to remark that unincorporated associations (e.g. clubs) consisting of more than twenty members, which do not carry on a business with the object of the acquisition of gain are quite properly established, and in fact are numerous.

Mr. Opas suggests that a company, association or partnership shall be deemed (for the purposes of the section) to consist of more than twenty members "where more than twenty persons *appoint* trustees or agents less than twenty in number to carry on business on their behalf *and* where the carrying on of such business by such trustees or agents entitles more than twenty persons as beneficiaries or principals of such trustees or agents to share in the profits or losses gained or suffered as a result of such carrying on of business or to share in the assets acquired by such trustees or agents as a result thereof."

We respectfully disagree with the suggestion, which we think must not only fail of its purpose, but prove a deep embarrassment to many legitimate associations and activities.

Upon analysis of the proposed addition to section 358 it immediately becomes evident that the conditions of its operation against "trust certificate" activities include—

1. the appointment of trustees or agents by the trust-certificate holders;

   (In the case of unit investment trusts, the trustees are appointed by the company which establishes the trust.)

2. the carrying on of business by the trustees or agents.

   (The trustees do not carry on business; the company does.)

Assuming, however, that such an amendment were applicable to trustees for "trust certificate" holders, *the result would be that those holders would be an illegal association.*

It would follow that the trustees of any will or settlement (at any rate where those trustees carried on a business) *would become an illegal association if there were more than twenty beneficiaries.*

We pass on to a consideration of the effect of the proposed amendments upon the activities of unit trusts such as those established in Australia by Australian Fixed Trusts Proprietary Limited.

The system followed by Australian Fixed Trusts Proprietary Limited and the advantages which it offers to the individual investor and the social advantages which the unit-trust method possesses, have already been explained to the Committee. We assume that the Committee is satisfied that unit-investment trusts established and conducted upon the sound and well-tried lines which are followed in England and Australia should not be hampered by any legislation directed against "trust-certificate" activities.

We also assume that this Committee would not contemplate any legislation which would interfere with legitimate trusts and settlements.

We feel that we should endeavour to make constructive suggestions to this Committee as to possible amendments to the *Companies Act*, 1938, which would operate to prevent the exploitation of the public by means of "trust certificates."

We suggest firstly that any such legislation must be directed against "hawking" rather than against the formation of companies, associations, firms, partnerships or trusts. In themselves any of these media of business initiative are legitimate and to be encouraged rather than stultified.

If that be accepted, an amendment or addition to section 356 of the *Companies Act* 1938, should first be considered.

Section 356 is directed against share-hawking and would, in our opinion, prove effective against "go-getting" methods of selling "units" if its provisions were extended so as to apply to units. It is suggested that this could most conveniently be achieved by inserting a new section on the following lines:—

"356A. The provisions of the preceding section shall, with necessary adaptations, apply to rights or interests under any scheme or arrangement established for the purpose or having the effect of providing facilities for the participation by persons as beneficiaries under a trust or otherwise in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever."

This very wide definition, which would include unit trusts, would make all unit-trust arrangements subject to the provisions of section 356, with which legitimate unit-investment trusts comply.

We recognize that this amendment would not overcome the problem that holders of "trust certificates" may be unable to obtain proper information.

Consideration should therefore be given to the introduction of legislation designed to force trust-certificate ventures into maintaining proper registers, giving information to beneficiaries and providing suitable trustees.

It is submitted that such legislation should be so designed as not to interfere with legitimate unit-trust schemes still less with normal trusts arising under wills or settlements made by individuals. Accordingly there must be some *public* nature in any scheme which is to be subjected to the legislation.

We suggest—

"Where any member of the public is a beneficiary under any unit-trust scheme the trustee thereof shall—

(*a*) allow the holder of any unit to inspect the trust deed at any time without charge;

(*b*) furnish to the registered holder of any unit a copy of the trust deed on payment of an amount not exceeding £1 for each copy;

(*c*) furnish to the registered holder of any unit at intervals not exceeding six calendar months a copy of a statement of income received and disbursed under the trust; such statement shall be audited by an auditor holding a licence to audit the accounts of companies incorporated under this Act;

(*d*) maintain a register of unit holders so arranged as to show at any time the total number of units issued, the full name, address and description of each unit holder, and the number of units registered as held by each holder;

(*e*) furnish to any registered unit holder on request a complete list of the investments in which the funds of the trust are invested; and

(*f*) in any case in which any part of the funds of the trust is invested in a company whose shares are not listed on a recognized stock exchange in Australia, furnish to any registered unit holder on request a copy of the balance sheet and profit and loss account of that company made up to a date not earlier than eighteen months prior to the date on which the request is made."

APPENDIX F.

AUSTRALIAN ASSOCIATED STOCK EXCHANGES.

Agreement to be Made Part of Application for Official Listing.

The .....

(Name of company)

in consideration of the official listing on The .....

.....of the securities covered by this application, agrees with the committee of such Stock Exchange that the company shall remain on the official list, subject to the pleasure of the committee, and as follows:—

1. To post or deliver to the shareholder or his agent share or stock certificates within one month of allotment or of the date of lodgment of a transfer and to issue balance certificates, if required, within the same period.
2. To pay any stamp duty that may be incurred on the issue of share, stock, or debenture certificates.
3. To issue forms of renunciation of rights to new capital issues, on which shall be stated the registered address and telephone number of the share register on which the new shares will be allotted; to forward a supply promptly to the Stock Exchange; and, on request, to endorse any such form when executed by a shareholder, "Renunciation No.....noted for.....shares on the.....Register," or other similar marking to the same effect.

   To fix the closing date for a new issue of capital, in which shareholders are given the right to participate, not earlier than 21 days after the date on which transfer books close to determine such rights.
4. To endorse transfers, on production of the necessary documents by shareholders or by members of the Stock Exchange, "Power of Attorney Exhibited"

and/or "Probate Exhibited," and on lodgment of relative certificates, to endorse transfers to the following effect:—

"Certificate No.....is held in the company's office against this transfer No. .....for..... shares (stock units) on the.....Register. This transfer must be completed and returned within 42 days from this date.

(Name of company).....

.....

(Official(s) Signature(s)).....

.....

Date....."

5. To have the company's share register and branch registers (if any) audited at intervals of not more than three months.
6. To notify the Stock Exchange without delay—
   (i) of any changes in the directorate;
   (ii) of any proposed change in the general character or nature of the business of the company or of any subsidiary thereof.
7. To notify to the Stock Exchange by letter (or telegram or telephone) immediately the board meeting has been held to decide the same—
   (i) all dividends and/or cash bonuses recommended or declared, or the passing of any dividend;
   (ii) short particulars of any issue of new capital whether to be issued as a bonus or by way of right to shareholders or debenture holders;
   (iii) short particulars of any other alterations of capital, including calls.
8. To notify to the Stock Exchange by letter (or telegram or telephone), simultaneously with announcement of declaration, or of recommendation, or of the passing of the final ordinary dividend, the net profit figures (or aggregate net profit figures if a holding company) as determined for the year (with comparison with previous year) even if this calls for the qualification that such profit figures are provisional, or subject to audit.
9. To forward to the Stock Exchange as soon as possible after the first six months of each financial year, a report by the directors concerning the company's activities for that period, stating broadly any special matters that had occurred to affect profits to any material extent, and when practicable, giving a general survey of operations for the six months in comparison with the same period of the previous year.
10. To notify the Stock Exchange promptly of any other material information necessary to avoid the establishment of a false market in the shares.
11. To supply promptly (without application and free of cost) to the Stock Exchange all periodical and special reports, and two copies of the balance-sheet of the company, as soon as issued, and at least seven days before date of meeting.
12. To supply, upon application, reports and balance-sheets to members of the Stock Exchange.
13. To publish periodical statements of account and balance-sheets in a form complying with the listing requirements of the Stock Exchange, and in particular—
   (i) To set out separately in the company's balance-sheet, and in the balance-sheet of any subsidiary company or companies, the amount of intangible assets.
   (ii) Where an option exists over unissued shares, to append to the balance-sheet a footnote showing the number of shares under option, the price of issue, and the date of expiration of such option.
   (iii) Where the company has a controlling interest in another company or companies, to annex to the company's accounts—
      (*a*) A separate balance-sheet and profit and loss account of each subsidiary company; or
      (*b*) A consolidated balance-sheet and a consolidated profit and loss account of the company and of its subsidiary company or companies, eliminating all inter-company transactions and containing a statement of the total losses (if any) of the subsidiary company or companies.
   (iv) Where the company does not own the whole of the capital of a subsidiary company or companies, to disclose in any consolidated balance-sheet and profit and loss account the extent of the interest of outside shareholders in capital, reserves and profits.
14. To state separately in profit and loss account (or, in the case of a holding company, in the consolidated profit and loss account) the amount charged to revenue by way of—
   (i) Provision for depreciation, renewals and diminution in value of fixed assets.
   (ii) Provision for and/or payment of income tax.
15. To have the accounts of each present and future subsidiary company audited and to have requirements to the following effect embodied in the articles of every such subsidiary:—
   (i) No person shall be appointed or act as auditor for the subsidiary company unless his qualifications would permit of his appointment as auditor for the parent company.

   A director or officer of the parent company or of the subsidiary company or a partner in any business with or an employer or employee of any such director or officer shall not be capable of being appointed or of acting as auditor of the subsidiary company.
   (ii) No director (other than a managing or other executive director) shall be remunerated by a commission on or percentage of profits or of turnover, and no director shall be remunerated by a commission on or percentage of turnover.
   (iii) No director, except a managing director, shall be appointed for a fixed term, and in the case of a managing director, a fixed term appointment shall not exceed five years.
16. Should the company hold as its main asset shares in another company or companies, to furnish shareholders at time of issue of the company's balance-sheet with the latest balance-sheet and profit and loss account of such company or companies.
17. (i) To advertise in the press, and to give to the Stock Exchange at least fourteen days' notice of intention to close transfer books, (or, where transfer books are not to be closed, of the date up to which transfers will be received for registration), stating the time and date of closure, and the period and purpose or purposes for which the books are to be closed.

   (ii) Subject to the right of refusal to register a transfer in accordance with provisions contained in the company's articles of association, to register every duly completed transfer of shares, stock, or debentures that is lodged at the company's office up to the advertised time of closure of books, and to defer registration, until the books have reopened, of any transfer which may be received after such closing time.
18. To accept for registration transfers of the company's shares which may be executed on the common form of transfer.
19. To permit the Stock Exchange to make available immediately to the press and to its members, any information supplied by the company in compliance with any of the above-mentioned requirements.
20. To furnish to the Stock Exchange, on demand, such reasonable information regarding the company as may be required.
21. To give the Stock Exchange prompt notification of intention to alter the capitalization or to amend the articles of association of any subsidiary company.
22. To submit a recommendation to shareholders, in event of the company falling within the classification of a "private" company for taxation purposes, as a result of share transfers subsequent to official listing, that the existing scale of voting rights be modified in order that the company may revert to the status of a "public" company.
23. To pay the prescribed annual listing fee not later than 31st January in each year.
24. To comply within a reasonable time with such further requirements as may, subsequent to the company's listing, be promulgated by the Stock Exchange as a general requirement for new listings, or, failing compliance with any such new requirement, to request the Stock Exchange to de-list the company.

The seal of the company is hereto affixed in the presence of—

..... Chairman.

..... Director.

..... Secretary.

APPENDIX G.

AUSTRALIAN ASSOCIATED STOCK EXCHANGES.

Application for admission to the official list of the.....

Official quotation of the following classes of shares is requested.....

Name of company.....

Registered under.....Companies Act.....at .....on .....

Authorized capital £.....in.....shares of.....each.

(If any of the shares carry special privileges state same.)

.....

.....

.....

Capital unissued, ...

Subscribed capital (ordinary), £.....in .....shares of.....each, paid to.....

(preference), £.....in.....shares of.....each, paid to.....

.....ordinary shares alloted to the public for cash, Nos.....to.....paid up to.....

.....preference shares allotted to the public for cash, Nos.....to.....paid up to.....

.....( ) Shares alloted for consideration other than cash, Nos.....to.....

.....( ) Shares alloted to vendors, Nos.....to..... paid up to.....

.....( ) Shares allotted to promoters other than vendors, Nos.....to.....paid up to.....

Consideration stated in registered contract.....

.....

Debentures: Amount, £.....rate of interest.....due date .....price of issue.....

Security .....

Recent capital issues.....(If any portion underwritten, state amount and terms).....

.....

Has any option been granted over the whole or portion of unissued capital?.....If so, supply full particulars.....

.....

Has the company a controlling or 50 per cent. interest in another company? .....

If so, will balance-sheet and profit and loss account of such company be published with the accounts of the holding company? .....

Does the company hold as its main asset shares in another company?.....

If so, will balance-sheet and profit and loss account of such company be published with the accounts of the holding company? .....

Is scrip available for transfer?.....Is scrip transferable free of charge?.....

Are transfers of shares subject to any restrictions?.....

Are shares transferable from one register to another, without restriction and without payment of fee?.....

Has application for quotation been made to any other Stock Exchange?.....If so, state result.....

Date of closing of financial year.....month or months in which annual or half-yearly meetings are held.....

Month or months in which dividends are usually payable .....

Percentage of total voting power attaching to the twenty largest holdings of shares carrying full voting rights.....%

Names of directors.....

.....

Share qualification of directors.....Is there any director, other than the managing director, continuing in office without election for a period of more than three years after date of this application?.....If so, who and upon what terms?.....

Are directors, under any circumstances, remunerated by a commission on, or a percentage of, profits or turnover?

.....

Name and business address of secretary.....

Address(es) of Australian Share Register(s).....

Herewith we hand you certified copies of the undermentioned documents—

1. Prospectus (or statement in lieu of prospectus).
2. Contracts (or short statement of contents thereof).
3. Memorandum and articles of association.
4. The registrar's certificate of incorporation.
5. Scrip certificate for each class of share.
6. List of shareholders at this date, showing their holdings.
7. Balance-sheets (if any) of each of the five latest years.
8. Short history of the company.
9. Form of agreement.

and cheques for £.....in payment of listing fees.

We agree that the company shall remain on the official list subject to the pleasure of the committee of the Stock Exchange.

We also request you to obtain quotation upon the official lists of the Stock Exchanges of Adelaide, Brisbane, Hobart, Melbourne, Perth, and Sydney.

(A separate form of application and set of documents is required for each Stock Exchange upon which quotation is desired.)

.....Chairman.

.....Secretary.

APPENDIX H.

THE STOCK EXCHANGE OF MELBOURNE.

Official List Requirements.

Upon the formation of a company, where it is intended to apply later for Stock Exchange listing, the requirements of the Australian Associated Stock Exchanges, especially those governing the prospectus and memorandum and articles of association, should be kept in view.

On application being made for quotation in the official list, a company must furnish certain particulars, as enumerated in the prescribed form of application. The information given thereon is necessarily brief, and particular attention is therefore directed to the following requirements:—

(*a*) The company shall be of sufficient magnitude and importance; and the shares, or other securities for which official quotation is desired, shall, in the opinion of the committee, be sufficiently distributed.

(*b*) A company intending to apply for listing on the Stock Exchange or a listed company making an issue of new securities, whether to shareholders or the public, should not state in the relevant prospectus or circular its intention to apply for quotation of the securities unless the prospectus or circular in draft form has first been submitted to and approved by the committee of the Stock Exchange.

The prospectus shall have been dated, and circulated, and shall set forth:—

(i) Particulars of the property acquired, or to be acquired;

(ii) the amount paid, or to be paid (whether actual or contingent) in money or otherwise, to vendors, promoters, concessionaries, owners of property, or others, on the formation of the company, or to contractors for work to be executed;

(NOTE.—Particulars of any royalty payment or compensation to landowners, as apart from consideration payable to holders of mining leases and/or lease applications, must be stated separately.) When a company is being formed to acquire an option over a property, the prospectus of such company must contain particulars of all payments to be made upon exercise of option, whether by the original company or by another company to be formed;

(iii) a statement showing the specific interest (if any), direct or indirect, in the vendor and/or promoter's consideration, of any person named in the prospectus as director, promoter, broker, legal manager, or secretary, or whose report or certificate is being used for the purpose of the prospectus;

(iv) particulars of the price at which any property purchased or to be purchased out of the proceeds of the issue has changed hands during two years prior to the date of the prospectus, and the direct or indirect interest in any such transaction, of any person named in the prospectus as director, promoter, broker, legal manager, or secretary, or whose report or certificate is being used for the purpose of the prospectus;

(v) the terms on which the capital will be issued;

(vi) whether the shares are preference, ordinary or deferred, and any privileges or conditions attaching thereto;

(vii) Upon the issue of debentures or similar securities, essential particulars of security for principal and interest, and terms of redemption;

(NOTE.—It is an accepted principle of the Stock Exchanges that debenture issues should be secured by a trust deed and reference made in the prospectus to the place, or places, where a copy may be inspected.)

(viii) the amount paid or to be paid for goodwill, patent rights, trade names or other assets of a like character;

(ix) the rate of brokerage and of underwriting (if any), and to whom payable;

(x) the minimum subscription on which the directors may proceed to allotment.

(Quotation will be refused if, in the opinion of the committee, allotment has been made on such a minimum as to be detrimental to the interests of subscribers by either providing insufficient working capital, or overloading the capital with shares issued, in whole or in part, for a consideration other than cash.)

(xi) a report by an accountant (who shall not be interested directly or indirectly in the vendor consideration and who shall be qualified for appointment as an auditor under the Companies Act) with respect to the following matters:—

(i) the profits or losses of the company (and of subsidiary companies if any) in respect of not less than each of the five financial years immediately preceding the issue of the prospectus, or in respect of each of the years since the company's incorporation if it occurred within five years.

NOTE.—If no accounts have been made up in respect of any part of such period ending on a date more than three months before the issue of the prospectus, a statement to that effect must be made in the prospectus.

(ii) The assets and liabilities of the company (and of subsidiary companies if any). In making such report, the accountant shall make such adjustments (if any) as are in his opinion appropriate for purposes of the prospectus.

If the proceeds of the issue (or any part thereof) are to be applied directly or indirectly in the purchase of a business or shares of a company which will, by reason of such purchase, become a subsidiary company, the prospectus shall include a report on that business or company on the lines mentioned above.

(xii) A statement (in the investigating accountant's report or in the body of the prospectus) of the tangible asset backing of each class of share, after making allowance for introduction of the new capital.

Reports in Prospectus.—Any report published in a prospectus shall be dated, and shall state by whom, for whom, and for what purpose such report was made. Extracts (to be referred to as such) from a report shall be a fair representation of the full statement, a copy of which must be available for perusal at the company's office.

NOTE.—Where the prospectus makes reference to a valuation of fixed assets and the valuer's report is not published in full, the prospectus shall state specifically the basis of valuation (e.g., present-day value, or replacement value); and in the case of freehold property, any special condition governing the valuation, such as vacant possession.

(*c*) Share or stock certificates shall comply with the under-mentioned conditions, viz.:—

(i) There shall be printed thereon, the title of the Act or other authority under which the company is incorporated; the amount and constitution of the authorized capital and designated as such; the address of the principal register of the company or of the branch register (as the case may be) on which the securities are registered;

(ii) unless the nominal value of the company's shares be £5, or more, certificates shall be for 100 or for 50 shares each; the number to be printed in words in the body of the certificate, and in figures in the margin to the left and right; certificates for less than 50 shares shall have the number written in words in the body of the certificate, and in figures in the margin to

the left and right, in spaces provided for that purpose, and "under.....shares" to be printed in a prominent position on the face of the certificate;

(iii) stock certificates shall conform to the above, and shall read "£.....stock" instead of "shares."

Companies other than mining may issue certificates for larger numbers than 100 shares or £100 stock, provided the company will allow division by transfer deed, and will, on lodgment of the relative certificate, endorse transfers to the following effect:—

"Certificate No.....is held in the company's office against this transfer No.....for.....shares (stock units) on the.....register. This transfer must be completed and returned within 42 days from this date.

(Name of company).....

(Official(s) signature(s)).....

Date....."

(iv) Certificates for preference shares shall bear on the face the conditions of the preference;

(v) certificates shall be impressed with an embossed or engraved seal of the company;

(vi) shares allotted to vendors, promoters, or upon exercise of a share option, must be issued in consecutive numbers, and until such time as the particular shares have been granted official quotation on the stock exchange, there shall be printed on the face of the relative certificates the words "vendors' shares," "promoters' shares" or "option shares" as the case may be.

(vii) certificates shall state the amount to which the shares are paid up. Scrip in mining companies for fully paid shares must be marked as such;

(viii) certificates for new shares, on which the next dividend will be of a different amount per share to that payable on other shares of the same class and of the same paid-up value, shall specify the date from which the dividend accrues.

(*d*) Debenture or debenture stock certificates shall comply with the undermentioned conditions, viz.:—

There shall be printed thereon, in addition to statutory requirements, the under-mentioned particulars:—

(i) The authority under which the company is incorporated;

(ii) the authority under which the issue was made (i.e., articles of association and resolutions);

(iii) the issued capital of the company;

(iv) the due dates of payment of interest in each year and the date of repayment of principal;

(v) the total amount, order of priority, and due date for repayment of principal, of each series of debentures or debenture stock;

(vi) the conditions of security, issue and transfer.

(*e*) Articles of association (or rules) must contain provisions to the following effect:—

(NOTE.—These requirements are intended as the minimum protection to be afforded shareholders in listed companies, and should be read in conjunction with the provisions of the Act under which the company is, or is to be, incorporated.

The committee will take exception to any provisions contained in the articles of association which may, in any way, restrict free dealings in the shares or which, in the committee's opinion, may be unreasonable in the case of a public company.)

Funds.

(1) That none of the funds of the company, or of any subsidiary thereof, shall be employed in the purchase of, or in loans upon the security of, the company's shares;

(2) That the company's lien on shares and dividends from time to time declared in respect of such shares shall be restricted to unpaid calls and instalments, upon the specific shares in respect of which such moneys are due and unpaid, and to such amounts as the company may be called upon to pay under Government statute or legislative enactment in respect of the shares of a deceased or other member;

(3) that in the event of any shares being forfeited and sold within twelve months, any residue, after the satisfaction of the unpaid calls and accrued interest and expenses, shall be paid to the person forfeiting, his executors, administrators, or assigns;

Share Certificates.

(4) that share or stock certificates shall be issued gratis to shareholders; and that, if so desired, a shareholder shall be entitled to receive several certificates in reasonable denominations;

(5) that the charge for a new certificate issued to replace one that has been worn out, lost, or destroyed, shall not exceed one shilling;

(6) that all certificates shall be issued under the seal of the company, and shall bear the manuscript signatures of one or more directors and the secretary or legal manager;

Transfers.

(7) (i) that there shall be no restriction on the transfer of paid-up shares in the case of a limited liability company, nor on the transfer of any shares in a no liability company;

(ii) that, where a company takes power to refuse to register more than three persons as joint holders of a share, such power shall not apply to the executors or trustees of a deceased holder;

Form of Transfer.

(iii) that share transfers may be executed on the common form of transfer;

(8) that, if capital consists of stock, there shall be stated the unit of face value in which such stock shall be transferable;

Voting Powers.

(9) that in the case of joint holders of shares or stock any one of such persons may vote; but if more than one of such persons be present at a meeting, in person or by proxy, the person whose name stands first on the register of members shall alone be entitled to vote;

(10) that a shareholder shall be entitled to be present and to vote on any question either personally or by proxy or as proxy for another shareholder at any general meeting or upon a poll, and to be reckoned in a quorum, in respect of any fully-paid-up share or shares and of any share or shares upon which all calls due and payable to the company shall have been paid;

Where the capital of a company consists of shares of different denominations, voting rights shall be fixed in such a manner that a unit of capital in each class when reduced to a common denomination shall carry the same voting power when such right is exercisable.

NOTE.—A company may be refused official quotation of its ordinary shares if, at time of application, shares carrying more than 66 per cent. of the voting power are beneficially held by, or held directly or indirectly on behalf of, or for the benefit of, twenty or less persons.

Unsecured Notes.

(i) The term "unsecured note" shall be used to describe a document (being one of a series of such document) constituting either expressly or by implication an acknowledgment of indebtedness

of a company in respect of money borrowed by it but not secured by any mortgage or charge over all or any of the company's assets;

(ii) the word "debenture" shall not be used in any document to describe unsecured notes;

(iii) the terms of the issue of unsecured notes shall be set out in a deed of trust acceptable to the committee, and a trustee or trustees must be appointed.

NOTE.—The committee may refuse to grant official quotation to an issue of unsecured notes where the note issue exceeds one-half the total amount of shareholders' funds, after deducting intangible assets (if any).

Directors.

(11) That the minimum number of directors shall be three; and that, where two directors form a quorum, the chairman of a meeting at which only such a quorum is present, or at which only two directors are competent to vote on the question at issue, shall not have a casting vote;

(12) that directors shall hold a share qualification which must not be merely nominal;

(13) that directors shall hold their requisite share qualification at time of election or appointment; provided that in the case of first directors one month may be allowed in which they shall acquire their qualification;

(14) (i) that fees payable to a director or directors (other than a managing director or managing directors) shall be by a fixed sum and not by a commission on or percentage of profits or of turnover;

(ii) that payment to a managing director, or other executive director, shall not be by a commission on or percentage of turnover;

(15) that fees of directors shall not be increased except at a general meeting and where notice of the suggested increase shall have been given to shareholders in the notice convening the meeting;

(16) that the continuing directors may act, notwithstanding any vacancy in their body, but so that if the number falls below the minimum fixed by or pursuant to the regulations of the company, the directors shall not, except in emergencies or for the purpose of filling up vacancies, act so long as the number is below the minimum;

(17) that a director, by consent of a majority of his co-directors, shall have power to appoint another person to act as his alternate;

(18) that a director must disclose the nature of his interest in any contract or arrangement at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest, and that he shall not vote in respect of any such contract or arrangement;

(19) (i) that the company in ordinary or extraordinary meeting may, by ordinary resolution, remove any director before the expiration of his period of office;

(ii) that the directors shall have power at any time, and from time to time, to appoint any other person as a director, either to fill a casual vacancy, or as an addition to the board, but so that the total number of directors shall not, at any time, exceed the maximum number authorized by the articles of association; but that any director so appointed shall hold office only until the next following ordinary general meeting of the company and shall then be eligible for re-election;

(20) (i) that at least one-third of the directors (except a managing director), or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office each year;

(ii) that no person, not being a retiring director, shall be eligible for election to the officer of director at any general meeting unless he or some other member intending to propose him has, at least eleven clear days before the meeting, left at the office of the company a notice in writing, duly signed by the nominee giving his consent to the nomination, and signifying his candidature for the office or the intention of such member to propose him; provided that in the case of a person recommended by the directors for election, nine clear days' notice only shall be necessary.

(iii) that at least fourteen days' notice of meetings shall be given by advertisement in the daily press and in writing to each Stock Exchange on which the company is listed, and that notice of each and every candidature for election to the board of directors shall be served on the registered holders of shares at least seven days previous to the meeting at which the election is to take place;

(21) that no person, being a partner or employer or employee of any auditor of the company, shall be eligible to be appointed or elected a director or alternate director of the company;

(22) (i) that the term of appointment of a managing director of the company shall be limited to five years;

(ii) that a managing director shall be subject to the control of the board;

(iii) that a managing director may have his appointment determined by the board during his term of office should he become lunatic or of unsound mind or bankrupt;

(NOTE.—The same provisions must be incorporated in the articles of association of each subsidiary company.)

(23) that, on the sale of the company's main undertaking or on the liquidation of the company, no commission or fee shall be paid to a director or directors or liquidator unless it shall have been ratified by shareholders. Prior notification of the amount of such proposed payments shall be given to all registered holders of shares at least seven days prior to the meeting at which any such payment is to be considered;

(24) that the borrowing powers of the board shall be expressed;

Auditors.

(25) that the auditors (other than the first auditors, and those appointed to fill casual vacancies) shall be appointed, and their remuneration be fixed, by the company in general meeting; and that notice of candidature of any person, other than a retiring auditor, shall be given to the company at least eleven days before the meeting at which the appointment is to be made;

(26) that a director or officer of the company, or a partner in any business with, or an employer or employee of, a director or officer of the company, shall not be capable of being appointed or of acting as auditor of the company;

(27) that copies of an auditor's qualified report, which, in the opinion of the auditor, should be made known to shareholders, shall be supplied forthwith by the directors to each Stock Exchange on which the company is listed;

(28) that the company's share register and branch registers (if any) shall be audited at intervals of not more than three months.

Meetings.

(29) that an ordinary general meeting of the company shall be held once at the least in every calendar year, except in the year of incorporation, and not more than fifteen months after the holding of the last preceding ordinary general meeting or (as the case may be) the incorporation of the company;

(30) that, subject to the provisions of the companies act as to special resolutions, at least seven days' notice of any ordinary or extraordinary general meeting (exclusive of the day on which notice is served or deemed to be served, but inclusive of the day for which the notice is given) specifying the place, day and hour of meeting, and, in case of special business, the general nature of such business, shall be given to all registered holders of shares, and to such other persons who may be entitled to receive such notices from the company, and that at least fourteen days' notice of every such meeting shall be given by advertisement in the daily press, and in writing to each Stock Exchange upon which the company is listed;

(NOTE.—Notice of any meeting called to consider any resolution shall be accompanied by a statement clearly showing the effect of such resolution.

Where shareholders are overseas or in remote areas of Australia with infrequent ordinary mail services, notices dealing with important matters, such as new issues of capital, shall be sent air mail.)

Accounts.

(31) (i) that the accounts shall be balanced once at least in every year and at intervals of not more than fifteen months; and that the balance-sheet and profit and loss account, duly audited, shall be laid before shareholders in general meeting;

(ii) that a printed copy of such balance-sheet, profit and loss account, and directors' report, shall, at least seven days previous to the general meeting, be sent to the registered address of every member of the company; and that two copies of each of such documents shall at the same time be forwarded to the secretary of each Stock Exchange upon which the company is listed;

(32) that balance-sheets issued by the company shall be accompanied by a profit and loss account, a general report of the directors, and by a statement as to the amount (if any) which they recommend to be paid out of profits or reserve fund by way of dividend or bonus, and the amount (if any) which they proposed to carry to reserve fund;

[The committee strongly recommends that companies follow the practice set by the leading banking and industrial companies of issuing to their shareholders full reports of proceedings at their general meetings.]

(33) that the company shall disclose in its published accounts, the total remuneration (including fees, percentages and other emoluments) paid or payable to all directors of the company and of subsidiary companies (if any) during the period to which the accounts relate;

(34) (i) that, if the company be a no liability mining company, dividends shall, subject to the rights of the holders of shares issued upon special conditions, be paid to shareholders in proportion to the number of shares held, irrespective of the amount paid up thereon;

(ii) that where capital is paid up on any shares in advance of calls, upon the footing that the same shall carry interest, such capital shall not, whilst carrying interest, confer a right to participate in profits;

(35) that the rights attaching to shares issued upon special conditions shall be clearly defined;

Preference Shares.

(36) that preference shareholders shall have the same rights as ordinary shareholders as regards receiving notices, reports, and balance-sheets, and attending general meetings. Preference shareholders shall also have the right to vote, either in person, or by proxy, at any meeting convened for the purpose of reducing the capital, or winding up or sanctioning a sale of the undertaking, or where the proposition to be submitted to the meeting directly affects their rights and privileges, or when the dividend on the preference shares is in arrear more than six months after the close of the company's financial period;

NOTE.—The committee of the Stock Exchange is strongly of opinion that on the issue of preference shares on formation of a company, or by a company already established, preference shareholders should have the right to elect a representative to the board of directors, if their voting rights differ in any way from those of ordinary shareholders.

(37) (i) that in the event of a portion of the company's issued capital consisting of preference shares the repayment of such preference capital or any alteration of the rights attaching thereto shall in no case be made unless agreed to by the holders of at least three-fourths of the issued shares of the class affected. Such repayment of capital or alteration of rights must be agreed to by a resolution of the holders (in person or by proxy) of at least three-fourths of the issued shares of the class, at a special meeting of such holders called for the purpose. Provided, however, that in the event of the necessary majority not having been obtained in the manner aforesaid, consent in writing may be secured from members holding at least three-fourths of the issued shares of the class and such consent, if obtained within two months from the date of the special meeting, shall have the validity of a resolution carried by vote in person or by proxy;

(ii) that the total nominal value of issued preference shares for the time being shall not exceed the total nominal value of the issued ordinary shares for the time being.

It shall be clearly defined whether the company has power to issue further preference capital ranking *pari passu* with preference shares already issued.

Sale of Undertaking.

(38) that, except in the case of a mining company, any sale or disposal by the directors of the company's main undertaking shall be subject to ratification by shareholders in general meeting;

Winding up.

(39) that in the winding up of a no liability mining company any distribution to shareholders shall, subject to the rights of the holders of shares issued upon special conditions, be made on all shares alike, irrespective of the amounts paid up or deemed to be paid up thereon, provided all calls made have been paid; excepting that in the event of any mining syndicate or mining company being wound up within six months of its "listing" on the Adelaide, Brisbane, Hobart, Melbourne, Perth, or Sydney Stock Exchanges, share capital issued for cash shall, in a distribution of assets, rank in priority to that issued to vendors and/or promoters for other considerations than cash, to the extent of the capital contributed by subscribing shareholders.

(40) That the basis on which shareholders would participate in a distribution of assets on a winding up shall be clearly defined.

The committee of the Stock Exchange would take exception to any provisions contained in the articles of association (or rules) to the following effect:—

(1) That shares to which a person may become entitled by transmission shall be liable to forfeiture in the event of such person failing to apply to the company for registration within a prescribed period;

(2) that a fee may be charged on the transfer of shares;

(3) that the directors may fix an allowance for the chairman in addition to the amount of the directors' fees as authorized by shareholders in general meeting;

(4) that a director may be appointed for life, or that any other permanent appointment may be made to the board of an irrevocable character, or revocable only by special meeting of shareholders;

(5) that the directors may remove one of their number without the consent of shareholders in general meeting;

(6) that the directors may not remove solicitors at their discretion;

(7) that a resolution of the directors, approved in writing by a portion of the shareholders, shall be as valid and effectual as a resolution of a general meeting;

(8) that unclaimed dividends shall be forfeitable.

(*f*) A short history of the company shall be furnished, setting forth its origin, progress, record of dividends and bonuses (if any), and particulars as to the various classes of shares issued, stating in respect to each allotment, the date of allotment, price of issue, and number of shares allotted.

(*g*) Copies of all agreements mentioned in the prospectus or filed with the Registrar-General, shall be supplied; also copies of any underwriting agreements, accompanied by a statement as to whether the directors were directly or indirectly interested in the underwriting.

(*h*) a statement shall be furnished setting forth whether brokerage was limited to members of recognized Stock Exchanges, and whether any brokerage or consideration was paid or is payable to the directors or provisional directors.

(*i*) a listing application must be supported by a copy of each of the five latest balance-sheets of the company, or of such lesser number of balance-sheets as has been issued since the company's incorporation.

(*j*) The interval between the close of a financial period of a local company and the issue of accounts relating to that period should not exceed three months.

(*k*) At least fourteen days' notice of intention to close transfer books shall be advertised in the press and given in writing to each Stock Exchange upon which the company is listed, stating the time and date of closure, and the period and purpose or purposes for which the books are to be closed.

(*l*) The interval between the date of closing of transfer books and the date of payment of dividend or bonus, or between the date of closing of transfer books and the allotment of bonus shares, should not exceed 30 days.

By order of the committee,

R. A. ROWE, Chairman.

G. D. BROWN, Secretary.

NOTE.—(1) No company is eligible for official listing unless it has adopted and printed complete articles of association or rules. Any clause incorporated from a schedule of the Companies Act must be set out in full.

(2) Quotation on the official list may be withheld from any limited liability company where the character of the shares as determined by the rights or privileges attaching thereto makes them subject to arbitrary variation.

(3) No company with shares of different denominations will be eligible for official listing unless the shares issued to the public for cash carry not less than 60 per cent. of the total voting power of the company.

For the purposes of this requirement, shares issued in such a manner as may be regarded by the committee of the Stock Exchange as constituting vendor shares shall not be treated as an issue to the public for cash, notwithstanding that some cash may have been paid for them.

(4) Particular care will be exercised by the committee of the Stock Exchange when dealing with an application for quotation of preference shares which appear to have inadequate backing of ordinary capital. Excepting in special circumstances, security for preference capital must be in the form of surplus tangible assets equivalent to a book value of at least twice the nominal value of each preference share.

(5) Excepting in special circumstances, quotation will be granted only to the fully-paid shares of a limited liability mining company, other than coal, and provided the number of fully-paid shares (excluding promoters' and/or vendors' shares) is equal to at least 25 per cent. of the total issued capital of the company.

(6) The Australian Associated Stock Exchanges are opposed to the general principle of an option over unissued shares in favour of an underwriter, broker, vendor, or promoter of a company, and, as a general rule, any such arrangement may prejudice a company's official listing.

Under certain circumstances, the Stock Exchanges may not object to a share option held for a reasonable period by a vendor or promoter (but not underwriter or broker as such) provided it could not be exercised within twelve months after date of issue, unless during that period the company decided to raise further cash capital, in which event the option holder could have the right to subscribe to such further issue to the extent of and towards satisfaction of his option.

Quotation of any shares issued pursuant to such option would be withheld for a period of at least three months after allotment.

(7) In the event of any fractional parts of shares resulting from new issues of capital such fractional parts shall be aggregated and sold by the directors through members of recognized Stock Exchanges, and the surplus proceeds, if any, paid to shareholders in accordance with their respective rights.

(8) The committee of the Stock Exchange favours the principle of new issues of capital being offered in the first instance to existing shareholders in a definite ratio to the number of shares or class of shares held.

(9) Companies applying for official listing are required to enter into a form of agreement to abide by various practices concerning such matters as issue of share certificates, notification of dividends and of alterations to capital, issue of accounts and the like. Copies of this form may be obtained on application at the Stock Exchange.

(10) Where a company makes an issue of shares to employees and allots any portion to a director holding office in an executive capacity either with the company or a subsidiary thereof, official quotation of the whole issue will be withheld until such time as shareholders have approved of the specific allotment made to any such director.

NOTE.—Unless a director holds office in an executive capacity he should not participate in an issue of shares to employees.

428 Little Collins-street, Melbourne.

1st October, 1952.

APPENDIX J.

MEMORANDUM BY E. T. SPACKMAN, ESQ. F.C.A.(AUST.), F.A.S.A., F.C.I.S.

AUDIT OF PROPRIETARY COMPANIES.

In the other States of Australia, proprietary companies must appoint auditors but there is no similar statutory requirement in Victoria. Unfortunately, under this State's Companies Act, Section 122, proprietary companies are exempt from audit. It is, however, the practice of a large number of proprietary companies here to have their accounts audited. Directors, shareholders, and bankers are assured by an independent auditor that the annual balance-sheet is a true statement of the affairs of the company. Further, an "outside" experienced view of the finances of the business is invaluable to the management.

Usually, the main reason for company formation is to obtain limited liability for those concerned. Obviously, if a business can stand the expense of being formed into a company, it should be able to provide, in its own interests, for an audit of the accounts.

When these companies get into difficulties, it is a frequent experience to find that there is no proper record of assets and liabilities, no proper register of members, inadequate minutes (if any) of directors and shareholders and no secretary. Though a company is required to appoint a secretary, the filing of a return of his appointment or any change, at the Registrar-General's office, appears to have been overlooked. A secretary should have some qualifications for the position and not be some innocent clerk.

The annual return should state the name and address of the secretary, the name and address of the managing director, and also the name and address of the auditor and date to which the books have been audited.

It is therefore suggested that the exemption from audit of proprietary companies be deleted from the Companies Acts and the following provisions adopted:—

1. That the auditor be required to file an annual report with the Registrar-General. The report shall state:—

(*a*) That he has audited the books and accounts of the company to.....

(*b*) That he is of opinion that the balance-sheet and profit and loss account of the company have been properly drawn up and exhibit a true and correct view of the state of the company's affairs, according to the best of his information and the explanations given to him and as shown by the books of the company.

(*c*) That he has delivered a signed balance-sheet and profit and loss account to the secretary of the company.

(*d*) That the statutory books, i.e. Register of Members, Minutes of Shareholders' and Directors' Meetings, Register of Directors and Managers, &c., have been kept up to date.

2. That if no auditors' report is filed with the Registrar-General within a prescribed period, the Registrar-General, or some authority, shall have power to order an investigation of the affairs of the company.

3. That the cost of the investigation shall be defrayed out of a small fee payable with the filing fee at the Registrar-General's office on each report of the auditor of a proprietary company. The directors jointly and severally and then the company shall be liable to refund the cost of the investigation. In the event of liquidation, any cost not so refunded shall be included as a cost incidental to the winding up of the company.

A solicitor is required by the Legal Profession Practice Act to keep proper trust accounts and have them audited by a qualified auditor who makes a report that the solicitor's trust accounts are in order, have been regularly kept and properly written up, to the Law Institute each year before the institute grants a practising certificate enabling the solicitor to continue practising as such.

There is some similarity between clients entrusting solicitors with their funds and creditors supplying goods on credit. "Credit" is, of course, trust in a person's ability and intention to pay for the goods.

The public is more or less compelled to trust solicitors and companies in its relations with them. Why solicitors should be compelled to have their trust accounts audited and proprietary companies' accounts be exempted from audit is difficult to understand. A member of the legal profession is bound by a code of ethics and his conduct may, at any time, be reviewed by the Law Institute. There is nothing comparable in the case of a proprietary company.

As a proprietary company is exempt from filing a copy of its balance-sheet with the Registrar-General, it is enabled to keep its affairs confidential and creditors are usually unable to ascertain the real position of the company.

In regard to credit extended to the company, creditors seem to rely on the promises, financial standing and trade reputation of the persons in control. Often, no inquiry is made by creditors from trade associations where some information might be available. In the absence of proper books of account, promises of the persons in control might be made without reliable knowledge of the company's ability to carry them out.

As the proprietary company was invented in Victoria in 1896, so that the small private company could be differentiated from the public company by the exemption from filing balance-sheets, it is not proposed that the concession should be taken away. The proprietary company has been of great use in helping the development of small concerns and has functioned successfully in almost every avenue of business activity.

Many large commercial undertakings to-day were incorporated as proprietary companies but, with the expansion of business activities, have been converted into public companies.

There should, nevertheless, be some protection for the public against possible fraudulent trading and neglect by persons in control of duties imposed by the law. A short amendment to the Companies Act providing for the audit of accounts of proprietary companies is long overdue.

APPENDIX K.

Memorandum by Mr. W. J. Taylor, Registrar-General and Registrar of Titles.

Powers and Duties of Inspector in Registrar-General's Department, New South Wales.

In evidence before your committee, Mr. Quinlivan, Deputy Registrar-General, mentioned that in Sydney there was an inspector in the Registrar-General's Department. I was requested to ascertain the scope of his activities and whether he had any special powers under the Companies Act.

The office of inspector was established in the Sydney office in the year 1917 for the purpose of more effectively policing the provisions of the *Registration of Firms Act* 1902. In 1926 his duties were enlarged to permit him, on the Registrar-General's instructions, taking steps for the recovery of penalties in cases of default by companies in respect of the requirements of the Companies Act.

There is no statutory provision, authorizing the appointment of this officer or governing his duties, other than section 7 (2) of the *Companies Act* 1936 which provides for the appointment of such Deputy Registrars-General, clerks and servants as may be necessary for, *inter alia*, the carrying out and performance of the duties, powers and functions committed to the Registrar-General by the Act.

In addition to his duties in relation to *Business Names Act* 1934, and inquiries regarding registration of births, deaths, and marriages, the inspector—

(*a*) investigates all breaches of the Companies Act in respect of filing of returns, &c., by companies having a registered office in the metropolitan area;

(*b*) endeavours, by means of personal interview or by telephone, to have the outstanding documents filed;

(*c*) initiates proceedings, when necessary, for recovery of penalties; and

(*d*) conducts the prosecution in the appropriate Court of Petty Sessions.

At the present time, the two inspectors so employed are instrumental in procuring compliance with the Companies Act with a minimum of prosecutions. They have their own cars for which they receive a mileage allowance.

The duties of such an inspector are therefore, very similar to those of the police officer permanently attached to our companies branch except that he does not now conduct prosecutions as formerly but instructs a prosecuting officer on the staff of the Crown Solicitor. In this State, prosecutions are few as the default is generally remedied in consequence of the notice forwarded in the name of the Crown Solicitor or of the interviews of the police officer. It is obviously an advantage to have inquiries made by a member of the police force.

Only one officer on this staff serves notices, &c., on companies relative to non-filing of returns, &c., due to staff shortages, therefore, this part of the work has, for many years, been considerably in arrears.

My views were sought in relation to amending legislation, if necessary, covering the appointment of an inspector or other officers who would be available to investigate certain complaints by shareholders and others against companies. I respectfully submit that even the preliminary inquiries leading to a fuller investigation and subsequent prosecution could, in my opinion, be better handled by the Police Department. This viewpoint is supported by the success which has attended the loan, for several years past, of a police constable to the Companies Branch.

5th May, 1954.

APPENDIX L.

Statement Submitted by the Retail Traders' Association of Victoria.

Report of Sub-Committee Appointed to Consider the New South Wales Lay-by Sales Acts.

1. In general the Committee considered that the Act was a very reasonable piece of legislation, and if the Statute Law Revision Committee considers that legislation is necessary, then something along the lines of the New South Wales Act seems to provide reasonable safeguards.

2. Specific comments:—

(*a*) Section 3, sub-section (2) makes elaborate provision for conditions governing the sale by lay-by of goods not in existence, or not in the possession

of the vendor at the time of sale. This is a very cumbersome provision, and would be difficult and costly to carry out in practice. In most cases a large department store would certainly not bother to sell standard goods on lay-by when not in possession of the vendor if they have to carry out the provisions of this sub-section. It is felt that this section will penalize the smaller trader who is limited in his space and available capital. It would probably not affect the department store because they would certainly abandon this type of trading.

(*b*) Section 4 makes provision for the keeping of a register in which certain particulars must be recorded. This is considered a common sense precaution, but it suggested that section 4 (4) (*a*) be amended to provide that each card shall contain the name and address of the purchaser or be based on some numerical indexing system which would provide this information readily if required. It is also felt that subsection 8 (*a*) may raise difficulties for the retailer in checking the bona fides of the person authorized.

(*c*) The Committee considers that the information required under section 5 (*a*) should be supplied without the use of the sales docket. This subsection virtually requires the retailer to adopt a system of triplicate dockets. It is considered that the receipt folder should be adequate.

Section 5 (3) is considered to be completely unworkable, firstly because of the difficulties of ascertaining how the goods have been selected, and secondly because a statement of "quality" is meaningless. The same objection applies to section 15 (2).

This latter appears quite unnecessary.

(*d*) In section 8 (2) seven days notice is given to the purchaser, but in section 9 (2) only four days notice need be given to the vendor. It is considered that seven days notice should be provided under section 9 (2).

(*e*) It is considered that the necessity to serve notice by registered mail as provided in section 12 (*c*), would be an additional expense, and that ordinary first-class mail should be sufficient.

(*f*) Section 17 (1) appears to give the intention of applying only to lay-by sales, and it is considered that the word "lay-by" should be inserted between "every" and "contract." Otherwise this section could be held to apply to hire-purchase contracts and this would involve many retailers in considerable difficulties.

(*g*) Section 18 (2) is consistent with similar sections throughout the Act, giving a retrospective character to many of the provisions of the Act. It is considered that the legislation should endeavour to avoid imposing retrospective obligations on retailers, and that reasonable notice of the date of operation of the Act should be given when the Act is proclaimed.

18th August, 1954.

APPENDIX M.

MEMORANDUM BY A. M. DUNCAN, ESQ., C.M.G., CHIEF COMMISSIONER OF POLICE.

Fraud, Special Investigations and Companies Squad, Criminal Investigation Branch.

When Mr. S. H. Porter, Chief Commissioner of Police designate, and I appeared before the Statute Law Revision Committee on Tuesday, the 7th September, 1954, we were requested to give thought to any specialist assistance we would require for our Company Squad to more effectively investigate company defalcations and alleged frauds. The suggestion was that we might consider the appointment of an accountant and/or a lawyer to be associated with the investigations at their inception and to guide the members of the Force. It was also suggested that we discuss the matter with Mr. Winneke, Q.C., Solicitor-General.

We have given thought to this proposal and also to ways and means to make the functions of the members of the Force more effective in combating company frauds. We think that, if a scheme were evolved whereby a course in accountancy could be taken by members selected for that particular duty, the Company Squad would be more efficiently equipped to deal with their tasks.

Obstacles which would have to be surmounted are the present police promotion system and the fact that there is a Regional (authorized) strength for stations and branches, which make it necessary for a member on promotion to a higher rank to be transferred in order not to exceed the authorized strength of his particular section. The only way in which he can remain in a particular position he is occupying is to forego promotion.

To overcome this difficulty Mr. Porter and I are formulating a plan which we feel, when in operation, will enhance the efficiency of the specialized branches (such as the Criminal Investigation Branch and the Scientific, Finger-Print and Technical Sections). The intention of the plan is provision for highly qualified men engaged in these particular phases of police work to receive promotion in their turn, without having to be transferred to other branches. If such a scheme can be implemented, we feel that it will greatly help to raise efficiency and eliminate the loss of good talent from the specialized branches.

We consider that such a scheme would meet the position better than appointing outside accounting and legal assistance in the Criminal Investigation Branch. Any additional specialist assistance, if required, could no doubt be obtained from the Audit Office and/or Crown Law Department.

Mr. Winneke is in agreement with these suggestions.

23rd September, 1954.

APPENDIX N.

TRUST DEED RELATING TO FIRST VICTORIAN UNIT TRUST.

DEED OF TRUST made the first day of June, One thousand nine hundred and fifty-one, between Australian Fixed Trusts Proprietary Limited, a company duly incorporated under the Companies Act of New South Wales and having its head office in New South Wales, at 8-14 Bond-street, Sydney, and its registered office in Victoria, at Melbourne (hereinafter called "managers"), of the first part and General Accident Fire and Life Assurance Corporation Limited, a company duly incorporated under the Companies Acts of the United Kingdom, and having its chief office in Perth, Scotland, and its registered office in Victoria, at 10-12 Queen-street, Melbourne (hereinafter called "custodian trustees"), of the second part and the several persons who have executed or shall hereafter execute this deed or shall sign an application for sub-units containing an agreement (whether under seal or not) with the managers and the custodian trustees whereby any such applicant for sub-units agrees to be bound by the provisions of this deed of the third part.

Whereas the managers have purchased or agreed to purchase the block or portfolio of shares mentioned in the First Schedule hereto and intend that the parcels of shares constituting it shall be transferred to or otherwise vested in the custodian trustees on the terms that all the said shares shall be held by the custodian trustees upon the trusts and subject to the terms and conditions hereinafter declared and contained of and concerning the same.

And whereas the managers may pursuant to the provisions hereinafter contained purchase further parcels of shares and vest the same in the custodian trustees to the intent that the same shall be held upon the like trusts and subject to the like terms and conditions as aforesaid.

And whereas this deed is made with the intent that the benefits thereof may enure not only to the managers, but also to the extent provided herein to every registered holder hereinafter mentioned who shall before being registered as hereinafter mentioned have signed an agreement (whether under seal or not) with the managers and the custodian trustees whereby such registered holder agrees to be bound by the provisions of this deed.

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:—

Definitions.

1. In this deed and the certificates issued hereunder unless there be something in the subject or context inconsistent therewith the expressions following shall have the meanings hereinafter mentioned that is to say:—

"Stock unit" means the block or portfolio of shares consisting of the parcels of shares specified in the First Schedule hereto as altered from time to time in accordance with this deed together with all accretions and additions (if any) thereto which may arise by any bonus distribution received by the custodian trustees in respect of such block or portfolio and retained by them in accordance with this deed (hereinafter referred to as "the original

stock unit"); and also means every other complete block or portfolio of shares (identical in all respects with the original stock unit as constituted at the date of the vesting determined in accordance with clause 4 hereof of such other complete block or portfolio) which the managers may vest or cause to be vested in the custodian trustees for the purpose of being held by the custodian trustees upon the trusts of this deed.

"Cash" includes cheque.

"Cash produce" means all cash received by the custodian trustees by way of dividend bonus interest or otherwise in respect of the stock unit whether the same represents income or capital (other than the proceeds of sale or redemption of shares sold or redeemed under the provisions of clause 5 hereof where such proceeds are by that clause required to be reinvested) and also all cash received in respect of any sale of property under sub-clause (*c*) of clause 27 hereof.

"Certificates" means the certificates to be issued under the provisions hereinafter contained and for the time being outstanding.

"Registered holder" means the person for the time being registered under the provisions of these presents as the holder of a sub-unit as hereinafter described and includes persons jointly so registered and also for some purposes stated in clause 9 hereof includes the managers even if not actually registered.

"Sub-unit" means a one undivided three-thousandth part of a stock unit.

"Custodian trustees" includes the custodian trustees or custodian trustee for the time being of this deed.

"Managers" includes any managers or manager appointed under the provisions of clause 39 hereof.

"Month" means calendar month.

"Person" includes a corporation firm or body of persons.

Words importing the singular number include the plural and vice versa.

Masculine gender includes the feminine and vice versa.

The marginal notes and headings of this deed are for convenience only and shall not affect the construction thereof. Save where the context otherwise requires all references in this deed to other provisions or clauses of this deed shall be deemed to be references to such other provisions or clauses as varied from time to time under the provisions of clause 42 hereof.

STOCK UNITS.

Stock Units to be Vested in Custodian Trustees.

2. The managers shall with all due dispatch after the execution hereof vest the parcels of shares specified in the First Schedule hereto (comprising the original stock unit) in the custodian trustees and may from time to time vest in the custodian trustees further stock units to be held upon the trusts of this deed each of such further stock units to be identical with the existing stock units as the same shall be constituted at the date of vesing of such further stock unit; provided always that—

(*a*) on the deposit of any further stock unit by the managers the managers shall also deposit with the custodian trustees such sum in cash as may be necessary to ensure that the sum distributable in respect of the further stock unit at the next date of distribution shall be identical with the sum so distributable in respect of each of the existing stock units and accordingly if under the terms of the purchase of any of the shares comprised in such further stock unit the custodian trustees will not be entitled to receive the next ensuing dividend to be paid thereon the managers shall on the vesting of such further stock unit in the custodian trustees pay to them in cash the amount of such dividend;

(*b*) the managers shall pay all expenses of and in connexion with the deposit of each further stock unit;

(*c*) the custodian trustees shall be under no liability to keep separate or distinct any of the shares and cash (if any) constituting the several stock units; and

(*d*) the maximum number of stock units to be issued under this trust deed shall be three hundred (300).

Declaration of Trust.

3. The custodian trustees shall retain the original stock unit and all further stock units which shall be vested in them in safe custody and shall hold them in trust for the registered holders upon the terms of this deed.

Time of Vesting of Stock Units.

4. (*a*) A stock unit shall be deemed to have been vested in the custodian trustees as soon as all the shares comprised therein have been registered in the name of the custodian trustees or their nominees as hereinafter provided or transfers in respect thereof duly stamped where necessary and certified as registrable to the satisfaction of the custodian trustees have been delivered to the custodian trustees or contract notes by brokers satisfactory to the custodian trustees evidencing the purchase of such shares have been delivered to the custodian trustees accompanied by cash satisfactory to the custodian trustees sufficient to complete such purchase and transfer including stamp duty (if any) or an undertaking by a bank approved by the custodian trustees to the effect that effective provision has been made for the transfer or delivery of such shares to the custodian trustees free of charge.

(*b*) Nothing in this clause shall be deemed to exonerate the managers from liability to have transferred or vested in the custodian trustees or their nominees as hereinafter provided the shares comprised in a stock unit until such shares have actually been registered in the name of the custodian trustees or their nominees as hereinafter provided: provided that the custodian trustees shall have the right to have shares vested in their nominees instead of themselves but only such shares as the custodian trustees are unable or consider it undesirable to hold in their own name.

(*c*) No certificate of sub-units (as provided in clause 13 hereof) shall be issued by the custodian trustees until the shares constituting the stock unit to which such sub-units belong have been vested in them.

Variation of Investments.

5. (*a*) If at any time or from time to time in the opinion of the managers it shall be in the interests of registered holders undesirable to retain the shares of a particular company for the time being comprised in the stock units (including shares purchased under the provisions of this clause) the managers shall certify in writing to the custodian trustees to that effect and shall require the custodian trustees to sell such shares and to reinvest the net proceeds of such sale in the purchase of shares designated by the managers and the custodian trustees shall subject to sub-clause (*c*) of this clause thereupon act accordingly and on such sale and reinvestment the custodian trustees in order to secure that the number of shares bought by way of investment is a convenient number may add to such net proceeds of sale such sum as may be required out of any moneys in their hands which apart from this provision would be cash produce or may treat a part of such net proceeds of sale as cash produce and distribute the same accordingly.

(*b*) If any of the shares for the time being comprised in the stock units shall at any time during the continuance of the trust be redeemed by the company or other body or person by which they were issued either by payment in cash or with an option to convert the shares to be redeemed into some other shares the managers shall be entitled to call upon the custodian trustees in writing either—

(i) to convert the shares so to be redeemed into such other shares in pursuance of such option provided that such other shares are in the opinion of the managers similar in kind to the shares so to be redeemed and are not shares to which any liability is attached; or

(ii) to accept repayment of the shares so to be redeemed in cash and to reinvest all or any of the moneys becoming payable whether in respect of capital premium or otherwise by reason of such redemption or repayment in cash in the purchase of shares designated by the managers to be added to the stock units.

(*c*) Provided however that the custodian trustees may at their discretion veto any proposed new investment or variation of an existing investment.

Restriction on Sale of Shares.

6. Except as herein expressly provided the custodian trustees shall not until the determination of the trust sell (or, in the case of shares held by nominees authorize their nominees to sell) any of the shares comprised in a stock unit.

Limitation on Holdings of Shares.

7. Notwithstanding anything herein contained no stock unit shall at any time be constituted (either originally or as the result of a variation under clause 5 hereof) so that the market value of the shares of any particular company comprised therein exceeds fifteen per centum (15%) of the market value of all the shares comprised therein; nor shall the stock units generally be constituted so that at any time the nominal value of all the shares of a particular company comprised in all stock units for the time being vested in the custodian trustees hereunder exceeds five per centum (5%) of the nominal value of all the shares of the same class for the time being issued by that company.

SUB-UNITS.

Beneficial Interest in Stock Unit Divided into Sub-Units.

8. (*a*) The beneficial interest in a stock unit shall be divided into three thousand sub-units.

Managers May Sell Sub-Units.

(*b*) In accordance with and subject to the provisions hereinafter contained the managers may sell sub-units.

Managers to Nominate Holders of Sub-Units.

(*c*) When the shares constituting a stock unit have been vested in the custodian trustees the managers may nominate persons (being either themselves or other persons) to be entered upon the register hereinafter mentioned as the holders of sub-units of that stock unit: provided that when any other person has been nominated as the holder of a sub-unit the power of the managers to nominate shall cease as regards that sub-unit, unless and until it be comprised in a request for repurchase made under clause 11 hereof and mentioned in a statement referred to in clause 14 hereof.

(*d*) Upon such nomination the custodian trustees shall forthwith consent to the registration in the said register by the managers of the persons so nominated and shall cause a certificate in favour of such persons in the form hereinafter mentioned to be signed as hereinafter provided. Such consent shall be signified by the attorneys in Melbourne for the time being of the custodian trustees (or some other person authorized by the custodian trustees and of whose authority the managers shall have received written notice from the custodian trustees) initialling the entry made by the managers in the register.

Managers Entitled to Sub-Units Until Some Other Holder Registered.

9. (*a*) The managers shall at all times be entitled without registration to the benefit of any sub-unit except during such periods as there shall be some other holder registered under the provisions hereof as the holder of the sub-unit or entitled to be so registered under the provisions of clause 16 hereof.

(*b*) In so far as the managers are entitled to the benefit of any sub-unit they shall so far as concerns the provisions of this deed relating to the distribution of cash produce the rights on the determination of the trust and other beneficial rights attached to the sub-units be deemed to be included in the term "registered holder."

Maximum Selling Price for Sub-Units.

10. (*a*) The managers shall not sell sub-units at a price per sub-unit greater than the selling price calculated as follows:—

> To the Melbourne Stock Exchange "seller" price (on the day prior to that on which a quotation is made to an intending purchaser) of all the shares for the time being comprised in a stock unit there shall be added stamp duty brokerage and other usual charges (if any) transfer fees and accrued dividends in respect of such shares. The total sum thus derived is hereinafter referred to as "the basic sum." The selling price per sub-unit shall be one three-thousandth part of £X, where £X represents the aggregate of the basic sum and an initial service charge of such amount as the managers shall from time to time fix, but not at any time exceeding 10 per cent. of £X: provided always that the selling price may be made up to the nearest 3d. above the price so calculated and in making the above calculations £X shall be adjusted accordingly.

(*b*) The managers shall upon demand produce for inspection by any registered holder of sub-units being the applicant therefor a statement in writing showing how the price paid to the managers for such sub-units was made up; and if the price so paid exceeds the selling price which should have been charged in accordance with sub-clause (*a*) of this clause the managers shall refund the excess to such registered holder.

(*c*) The sums which shall be received by the managers by way of initial service charges included in the prices of sub-units shall be dealt with as hereinafter provided in clause 32 hereof.

Repurchase of Units by Managers.

11. During the continuance of the trust created by this deed any registered holder may in writing request the managers to repurchase all or any of the sub-units represented by his certificate and shall at the same time hand the managers the relevant certificate and the managers shall within seven days of such request and certificate being received by them repurchase such sub-units at a price per sub-unit not less than the repurchase price made up as follows:—

> From the Melbourne Stock Exchange "buyer" price (on the day following that on which such request and certificate are received by the managers or if on such following day the Melbourne Stock Exchange be closed on the first succeeding day on which it shall be open) of the shares for the time being comprised in a stock unit plus the amount of any cash produce attributable to such stock unit then in the hands of the custodian trustees there shall be deducted stamp duty in respect of the shares, brokerage and other usual charges (if any) and the repurchase price per sub-unit shall be one three-thousandth part of the resulting balance. From the repurchase price the managers shall be entitled to deduct the stamp duty (if any) payable upon the request to repurchase and promptly pay the same to the proper authority.

12. Notwithstanding anything herein contained the managers shall not sell sub-units nor shall they purchase them during any period when the Melbourne Stock Exchange is closed.

CERTIFICATES.

Form of Certificate.

13. (*a*) The certificate to be issued as hereinbefore and hereinafter provided shall be in the form specified in the Second Schedule hereto or to the like effect. Every certificate shall be signed on behalf of the custodian trustees by their attorneys in Melbourne for the time being or by some other person authorized by the custodian trustees and of whose authority the managers shall have received written notice from the custodian trustees and shall specify the name of the registered holder and the number of sub-units to which it relates and shall bear a distinctive number or letter. Before being signed on behalf of the custodian trustees it shall be signed by or on behalf of the managers in a manner approved by the custodian trustees.

(*b*) No certificate shall be valid unless it is signed as aforesaid.

(*c*) Before the custodian trustees sign a certificate the managers shall certify to them in a manner approved by them that the applicant for a sub-unit has become entitled thereto in accordance with the provisions of this deed.

(*d*) The custodian trustees accept responsibility for the validity of all certificates signed by them or on their behalf in accordance with this deed and for holding the stock unit to which such certificates relate.

Cancellation of Certificates and Reissue of Sub-Units.

14. (*a*) Upon delivery to the custodian trustees of a certificate together with a written statement signed by or on behalf of the managers to the effect that all the sub-units or a specified number of the sub-units represented by the certificate have been repurchased by the managers, the custodian trustees shall forthwith cancel the certificate and shall consent to the removal by the managers of the name of the registered holder from the register in respect of the number of sub-units represented by the certificate and mentioned in such statement and shall cause a certificate for the balance (if any) of the said sub-units to be signed as provided in clause 13 hereof and shall in accordance with clause 8 hereof consent to the registration of the said registered holder in respect of such balance (if any).

(*b*) The managers shall be entitled in accordance with clause 10 hereof to resell the sub-units represented by the certificate and mentioned in the statement referred to in the preceding sub-clause hereof.

CERTIFICATE REGISTER.

Managers to Keep Register.

15. (*a*) The managers shall keep a register in one or more books or binders in which they shall enter the names, addresses, and descriptions of the registered holders

of the sub-units and the number of sub-units in respect of which they are registered and the date on which the name of every registered holder was entered in respect of any sub-unit standing in his name and any other details considered necessary by the managers. Such register shall be kept by the managers in duplicate. The original shall be retained by the managers and a duplicate copy thereof deposited with the custodian trustees. All entries in both the original and duplicate registers shall be initialled by an employee of the managers and by the attorneys in Melbourne for the time being of the custodian trustees or by some other person authorized by the custodian trustees and of whose authority the managers shall have received written notice from the custodian trustees. The auditor shall from time to time if required by the custodian trustees certify as to whether or not the original and duplicate registers correspond.

Applications.

(*b*) Applications for sub-units shall be in writing signed by the applicant and addressed to the managers and the application forms shall be delivered by the managers to and retained by the custodian trustees in safe custody for the purpose *inter alia* of enabling the signatures of registered holders to be identified. Each application shall be numbered with the distinctive number or numbers of the certificate or certificates issued in pursuance thereof and shall be filed by the custodian trustees in numerical order and the files shall be open to the inspection of the managers but shall not be removed from the custody of the custodian trustees.

Custodian Trustees to be Notified of Changes.

(*c*) Any change of name or address of a registered holder shall be notified in writing by the managers to the custodian trustees and the register shall be altered by an entry therein by the managers accordingly. The entry shall be initialed on behalf of the custodian trustees in the manner provided by sub-clause (*a*) of this clause.

Registration of Nominee.

(*d*) Upon the nomination of any person by the managers under clause 8 hereof such person shall be registered as the holder of the sub-units in respect of which he is so nominated.

No Entry of Trusts.

(*e*) No notice of any trust express implied or constructive shall be entered upon the register.

Alteration of Register Under Clause 14.

(*f*) Upon delivery to the custodian trustees of a certificate which has been cancelled in accordance with clause 14 hereof the custodian trustees shall consent to the removal of the name of the registered holder from the register in respect of the sub-units represented by the certificate such consent to be signified as mentioned in clause 8 (*d*) hereof.

Sub-Unit Transfer not to be Registered.

(*g*) No transfer or purported transfer of a sub-unit shall entitle the transferee to be registered in respect thereof nor shall any notice of any such transfer or purported transfer be entered upon the register.

Custodian Trustees have Access to Original Register.

(*h*) The custodian trustees shall have access to the original register whenever required.

(*i*) The custodian trustees shall be entitled to accept the duplicate register kept in accordance with sub-clause (*a*) of this clause as being a correct register of the registered holders for the time being and the custodian trustees shall not be required to inquire further into the authenticity of the duplicate register nor shall they incur any liability or responsibility on account of any mistake in either of such registers.

REGISTERED HOLDERS.

Joint Holders.

16. (*a*) In the case of the death of any one of joint registered holders of any sub-unit the survivor or survivors will be the only persons recognized by the managers and the custodian trustees as having any title to or interest in such sub-unit.

Deceased Holders.

(*b*) The executors and administrators of a deceased registered holder of sub-units (not being one of several joint holders) shall be the only persons recognized by the managers and the custodian trustees as having any title to such sub-units.

Transmission on Death or Bankruptcy.

(*c*) Any person becoming entitled to any sub-units in consequence of the death or bankruptcy of a registered holder of such sub-units upon producing such evidence that he sustains the character in respect of which he proposes to act under this sub-clause or of his title as the managers and the custodian trustees shall think sufficient and in the case of a legal personal representative of a deceased registered holder (not being one of several joint holders) upon making a declaration in the form set out in Part I. of the Third Schedule hereto shall on delivering up the certificate comprising such sub-units to the managers for cancellation be registered himself as the holder of such sub-units and be entitled to a new certificate in his name.

Legatees and Next of Kin Entitled to be Registered.

(*d*) In case of the death of a registered holder (not being one of several joint holders) his legal personal representatives may (whether or not they have themselves become registered as the holders of the deceased holder's sub-units) at any time require the managers to register the person or persons who shall have become entitled to the said sub-units by virtue of the will or upon the intestacy of such deceased registered holder and the managers may upon being furnished with a declaration by the said legal personal representatives in the form set out in Part II. of the said Third Schedule hereto and a request by the person or persons stated in the said declaration to be so entitled as aforesaid in the form also set out in the said Part II. of the said Third Schedule and upon the certificate comprising the said sub-units being delivered up to the managers for cancellation register such last-mentioned person or persons as the holder or holders of the said sub-units.

Registered Holders and Legal Representatives Only Persons Recognized.

17. The managers and the custodian trustees will recognize the registered holder or his executors or administrators as the only persons having any right or interest in the sub-units in respect of which he is registered or in the certificate representing the same and shall not save as ordered by a court of competent jurisdiction be bound to take notice of any trust or equity affecting any sub-unit or certificate or the rights incidental thereto and the receipt of such registered holder his executors or administrators for any money payable hereunder or any property transferable hereunder to a registered holder shall be a good discharge to the managers and the custodian trustees and for the purpose of this clause the managers shall as regards any sub-units of which no person is for the time being registered as holder or entitled under the provisions of clause 16 hereof to be so registered be deemed to be the registered holders thereof.

CONVERSION OF SUB-UNITS INTO SHARES.

Custodian Trustees to Exchange Sub-Units for Shares.

18. (*a*) Upon delivery to the custodian trustees by the managers of certificates comprising either one thousand five hundred or three thousand sub-units together with an application in writing by the managers or other registered holder of the sub-units comprised in such certificates for the conversion of such sub-units into shares the custodian trustees shall subject to the payment by the managers or other registered holder as the case may be of all stamp duty (if any) and other expenses payable in respect of or in consequence of the transaction transfer to the managers or other registered holder as the case may be their or his aliquot proportion (in accordance with the number of sub-units comprised in the certificates so delivered up) of the shares comprising the stock units; and upon such transfer the name of the managers or other registered holder of the sub-units so converted shall be struck off the register in respect of their holding of such sub-units and likewise the particulars of such sub-units shall be struck off and the certificates comprising them shall be cancelled.

Fractional Part of Share.

(*b*) If upon a conversion under the next preceding sub-clause the applicant would be entitled to a fractional part of a share the custodian trustees may make such arrangement in regard thereto as they think fit and in particular may retain such fractional part on account of the applicant or sell it to the managers for such sum as the custodian trustees shall think fit and the custodian trustees shall not in any case be obliged to sell shares constituting the remainder of a stock unit for the purpose of realizing such fractional part. In dealing with such fractional part the custodian trustees may determine any

questions arising in respect thereof and their actions in respect thereto shall not be questioned by the applicant or other registered holders.

Sub-units of Different Stock Units.

(*c*) The right given by this clause shall be exercisable notwithstanding that the sub-units to be exchanged belong to different stock units and that the number of sub-units in a particular stock unit is not 1,500 or 3,000.

Realization if Transfer not Practicable.

(*d*) If the custodian trustees shall be of opinion (which opinion shall not be open to question or objection) that it is not practicable to transfer to such applicant any of the shares comprised in a stock unit by reason of the fact that he is or is presumed to be a foreigner or a foreign corporation or a corporation under foreign control or is otherwise unable or fails to comply with the regulations in connexion with transfers of shares of the company or corporation (the shares of which are included in the stock unit) then in such case the custodian trustees shall realize such shares and pay the net proceeds of sale to such applicant.

Completion of Stock Unit by Managers.

(*e*) Where as a result of this clause a stock unit is rendered incomplete the managers may vest in the custodian trustees the shares necessary to make it up to a complete stock unit and in such case the provisions hereof relating to the deposit of new stock units shall apply with all necessary variations.

Completion of Stock Units by Custodian Trustees.

(*f*) Where as a result of this clause stock units are rendered incomplete the custodian trustees may reorganize the stock units for the purpose of obtaining complete stock units or stock units of which the deficiency is an exact multiple of 1,500 sub-units.

Application of Clause.

(*g*) The provisions of these presents relating to stock units shall apply with all necessary variations to stock units rendered incomplete as a result of this clause.

Limitation of Right of Conversion.

19. Save as by clauses 18 and 20 hereof provided no registered holder shall be entitled to require the transfer to him of any of the property comprised in a stock unit or be entitled to interfere with or question the exercise by the custodian trustees or the managers of the rights of the custodian trustees as owners of such property.

PERIOD OF TRUST AND DETERMINATION THEREOF.

Period of Trust.

20. (*a*) The trust created by these presents shall commence on the date hereof and determine on the 15th day of December, 1966 unless the same shall have been determined by the custodian trustees prior to that date under the provisions hereinafter contained.

Termination on Liquidation of Managers.

(*b*) If the managers shall go into liquidation or shall cease to carry on business or if a receiver shall be appointed of the undertaking of the managers or if the managers shall fail or neglect to carry out their duties hereunder to the reasonable satisfaction of the custodian trustees the custodian trustees may if they shall consider it to be in the interests of the registered holders so to do determine the trust hereby created: provided always that the custodian trustees shall not be bound to determine the same and shall not be liable for any failure to determine the same.

Termination on Transfer to Investment Company.

(*c*) If at a meeting of registered holders duly convened by notice given by the managers to all the registered holders for the time being and held within the last three years of the trust period created by sub-clause (*a*) of this clause a resolution is passed by a majority of not less than 75 per cent. of the votes of those present authorizing the managers and custodian trustees to exchange the shares constituting the stock units for fully-paid shares in an investment trust company with limited liability formed or to be formed to take over all or part of the property held in trust under these presents then the custodian trustees shall determine the trust hereby created by transferring the said shares to such investment trust company and otherwise carrying out the provisions of this clause; provided however that if any registered holder who has not voted in favour of such resolution by writing signed by him and addressed to the custodian trustees or the managers and left at the registered office for the time being of the custodian trustees or managers not later than seven days after the meeting at which such resolution was passed expresses his dissent therefrom such dissentient registered holder may require the custodian trustees to do one of the following things as the custodian trustees may decide, that is to say:—

(i) Find a purchaser of the sub-units of the dissentient registered holder at a price per sub-unit not less than the price calculated in accordance with clause 11 hereof as at the day before the date of completion of the purchase; or

(ii) apply the provisions as to sale calling in and conversion contained in clause 21 (*a*) hereof to the dissentient registered holder's aliquot proportion of the shares and cash (if any) constituting the stock units and pay him the proceeds against the surrender of his certificate or certificates: provided that with the consent of the dissentient registered holder all or any of the shares constituting such aliquot proportion may be transferred to him in specie instead of being sold and the proceeds paid to him; or

(iii) apply the provisions as to transfer of shares against surrender of his certificate or certificates contained in clause 21 (*c*) hereof if the dissentient registered holder is one to whom those provisions apply and carry out such transfer without the necessity for notice as provided for in the said clause.

Any registered holder (whether present at the said meeting or not) who does not dissent from such resolution in the manner and within the time hereinbefore provided and every registered holder who being present voted in favour of such resolution shall be deemed to have agreed thereto and shall be bound thereby.

Termination if Less than 50,000 Sub-Units in Issue.

(*d*) If at any time after the expiration of one year from the date hereof the managers notify the custodian trustees that less than 50,000 sub-units are held by registered holders other than the managers and recommend that the trust hereby created be determined the custodian trustees may if in their absolute discretion they consider it to be in the interests of the registered holders so to do determine the trust hereby created.

(*e*) Any such determination as aforesaid shall take effect by service on the registered holders in manner hereinafter provided of a notice stating the determination of the trust the reason therefore and the date thereof.

Custodian Trustees to Sell Shares on Determination and Distribute Proceeds.

21. Upon determination of the trust under clause 20 (*b*) or (*d*) hereof the following provisions shall have effect:—

(*a*) The custodian trustees shall as soon as practicable sell call in and convert into money all the shares constituting the stock units and (after the expiration of three months from the giving of the last of the notices to registered holders provided for in the next sub-clause hereof) divide the proceeds of sale less all proper costs, charges, and expenses among the registered holders in proportion to the number of sub-units of which they are respectively registered as the holders upon the surrender by such registered holders to the custodian trustees or to such persons as they shall appoint for cancellation of the certificates held by them respectively.

Notice of Distribution to Registered Holders.

(*b*) The custodian trustees shall as soon as practicable after the determination of the trust give to each registered holder not less than three months notice of the impending distribution and such notice shall draw the attention of each registered holder to the rights given to him under the next following sub-clause.

Registered Holders' Option for Transfer of Shares Instead of Sale.

(*c*) Any registered holder who is registered as the holder of 1,000 or more sub-units may in respect of the said 1,000 sub-units and of any additional 1,000 sub-units in respect of which he is registered by notice in writing to the custodian trustees given not less than one month after the date of such notice of the impending distribution (as aforesaid) require the custodian trustees upon the determination of the trust to transfer to him his aliquot proportion of the shares comprised in the stock unit and of any

cash belonging thereto and the custodian trustees shall carry out such transfer accordingly upon surrender by such registered holder of his certificates and shall in making such transfer have power to adjust fractions either by making or receiving cash payments or otherwise and to settle any question in any manner which appears to them to be just: provided always that if the number of shares of any company comprised in the stock units does not permit of a transfer of an aliquot proportion thereof to him or if the custodian trustees shall be of opinion (which opinion shall not be open to question or objection) that it is not practicable to transfer to any such registered holder the shares or some of the shares included in such aliquot proportion by reason of the fact that he is or is presumed to be a foreigner or a foreign corporation or a corporation under foreign control or is otherwise unable or fails to comply with the regulations in connexion with transfers of shares of the company or corporation (the shares of which are included in such aliquot proportion) then the custodian trustees shall realize such shares and hand over the net proceeds of sale to such registered holder.

Registered Holder Exercising Option Precluded from Other Distribution.

(*d*) A registered holder to whom an aliquot proportion of the shares comprised in the stock units has been transferred under the last preceding sub-clause shall have no right to participate in the proceeds of realization of the remaining shares and shall pay all stamp duties (if any) and other costs charges and expenses of the custodian trustees of and in connexion with the transfer to him.

(*e*) The custodian trustees accept the responsibility of realizing (if possible) any shares comprised in the stock units and not claimed by the holders of a unit or sub-unit as soon as practicable after the determination of the trust and of paying the proceeds to the persons entitled thereto or if they be not ascertainable or their whereabouts are unknown of disposing of them as provided by law in respect of unclaimed moneys held by trustees.

22. The custodian trustees hereby covenant with the managers and with the intent that the benefit of the said covenant shall enure not only to the managers but to the registered holders jointly and to each of them severally that they will act continuously as such trustees under the trusts herein set forth until such trusts are determined as aforesaid or they have retired from the trusts in the manner hereinafter provided.

RETIREMENT OF CUSTODIAN TRUSTEES.

23. The custodian trustees may retire upon giving twelve months' notice to the managers of their desire so to do and by registered deed appointing in their stead new trustees approved by the managers and vesting the stock units in such new trustees and delivering to such new trustees all books, documents, records and other property whatsoever relating to the stock units.

EXERCISE OF VOTING AND OTHER POWERS.

Custodian Trustees' Voting Powers Exercisable by Managers.

24. (*a*) The custodian trustees may appoint the managers to represent them in respect of the exercise of all rights which may appertain to the custodian trustees as owners of the stock units including the right to attend and vote at meetings of shareholders and to take part in or consent to any corporate or shareholders' action and for that purpose the custodian trustees may execute such proxies powers of attorney or other documents as may be necessary to enable the managers or their nominees to attend and vote at any such meetings.

(*b*) No registered holder shall have any right with respect to the stock units to attend meetings of shareholders or to vote or take part in or consent to any corporate or shareholders' action.

25. Save as by clause 18 or clause 21 hereof provided no registered holder shall be entitled to require the transfer to him of any of the property comprised in a stock unit or be entitled to interfere with or question the exercise by the custodian trustees or the managers on their behalf of the rights of the custodian trustees as owners of such property.

INCOME OF THE STOCK UNITS, DISTRIBUTION OF CASH PRODUCE.

Custodian Trustees to Receive Income.

26. (*a*) The custodian trustees as owners of the stock units shall receive all moneys rights and property which shall be paid or distributed by way of dividend bonus or otherwise in respect of the stock units but shall not be under any obligation to enforce such payment or distribution or to take any other proceedings in connexion therewith unless they shall think fit and then only upon receiving any indemnity which they may require against liability for costs charges expenses or otherwise.

(*b*) Any moneys received under the preceding sub-clause may be placed on interest-bearing deposit with any bank pending distribution.

Custodian Trustees to Distribute Cash Produce.

27. (*a*) The custodian trustees shall half-yearly namely on the 15th day of June and on the 15th day of December in each year or if the half-yearly audit is not then completed as soon as possible after the completion thereof distribute among the persons who one calendar month prior to each of such respective dates namely on the 15th day of May or the 15th day of November as the case may be were the registered holders of sub-units the cash produce which has arisen in respect of the stock units during the half-year immediately preceding the said 15th day of May or 15th day of November as the case may be subject to the deduction of the half-yearly service charge as provided by clause 31 and to any deduction to be made in respect of tax or duty.

(*b*) Such cash produce shall be distributed among such registered holders in proportion to the number of sub-units of which they were respectively registered as the holders. The first distribution shall be made on the 15th day of December, 1951.

Fractions, &c., not Consisting of Cash.

(*c*) All rights, fractions, benefits, or other property in any shape or form (not consisting of cash and not being shares resulting from a conversion effected under clause 5 (*b*) hereof) which may be received by the custodian trustees as owners of the stock units may subject to the proviso next hereinafter contained be sold by the custodian trustees for the benefit of the registered holders and the proceeds thereof shall (unless the managers with the approval of the custodian trustees shall decide to reinvest the same and add such reinvestments to the stock units) be treated as cash produce accruing at the date of such sale: provided always that—

(i) if any shares (other than rights or fractions) are received by the custodian trustees by way of bonus in respect of any of the shares for the time being comprised in the stock units then (unless there be in respect of such bonus shares any liability for calls or instalments or future contributions to the assets of the company concerned) such bonus shares shall be retained by the custodian trustees and treated as part of the stock units; and

(ii) any shares (other than rights or fractions) received in respect of the stock units (not being shares in respect of which there is any liability for calls or instalments or for contributions to the assets of the companies concerned) from the amalgamation or reconstruction of any company shall at the option of the managers either be retained by the custodian trustees as part of the stock units, or sold by the custodian trustees and the proceeds reinvested and added to the stock units.

Cash Produce not Distributable until Succeeding Half-year.

(*d*) If any cash produce shall accrue at such a date that it is not in the opinion of the custodian trustees practicable to distribute the same on the next following half-yearly date for distribution the same may be treated by the custodian trustees as having accrued immediately after such next following half-yearly date and if owing to the smallness of the sum involved or for any other reason the custodian trustees omit to distribute any such cash produce on the date for distribution on which the same should have been distributed the custodian trustees may treat the same as cash produce accrued immediately after such date for distribution and distribute the same accordingly.

Accounts.

28. (*a*) The custodian trustees shall cause proper accounts to be kept of all dividends interest income and other moneys received by them and the books of account shall be kept at the offices of the custodian trustees and shall be open to the inspection of the managers. Half-yearly accounts shall be prepared by the auditor in

accordance with the form set forth in the Fourth Schedule hereto with such variations, augmentations, or limitations as the auditor shall deem proper and a summarized copy of such accounts in so far as they affect registered holders shall be forwarded half-yearly on behalf of the custodian trustees to each registered holder and to the managers with the cheques representing the distribution of cash produce as hereinbefore provided (hereinafter referred to as "dividend cheque") and shall be open to inspection at the office of the custodian trustees.

Auditor.

(*b*) Each half-year such accounts shall be examined and the correctness thereof ascertained by an auditor who shall be a chartered accountant. The auditor shall be appointed by the managers but shall be subject to removal by the custodian trustees at the request of the registered holders as hereinafter provided. The auditor shall also be required to certify that the shares and the cash for the time being constituting the stock units have been examined and found in order. The cost of the audit shall be borne by the managers. The audit shall for each half-year be completed before dividend cheques for that half-year are forwarded to the registered holders. A copy of the auditor's certificate that he has conducted the audit and is satisfied as to the correctness of the accounts shall appear on all summarized printed copies thereof.

(*c*) If at any time at least 75 per cent. of the registered holders in writing signed by them request the auditor to retire or if by a majority of not less than 75 per cent. of the votes of those registered holders present at a duly convened meeting of which notice has been given to the custodian trustees and managers as well as the registered holders for the time being a resolution is passed to that effect then and in any such event the custodian trustees shall remove the auditor and appoint such other auditor as a majority of the registered holders present at a duly convened meeting of which notice was given as aforesaid shall have nominated or failing any such nomination such other auditor as the managers shall nominate.

PAYMENTS TO REGISTERED HOLDERS.

Payments not Affected by Claims Between Managers and Custodian Trustees.

29. All sums payable hereunder to a registered holder other than the managers and all property transferable hereunder to such registered holder will be paid or transferred without regard to any equities rights of set-off or claims between the custodian trustees and the managers.

Authorized Method of Payment.

30. (*a*) Any moneys payable by the custodian trustees to a registered holder under the provisions of these presents may be paid by cheque sent through the post to the registered address of such registered holder or in the case of joint registered holders to the registered address of that one of the joint holders who is first named on the register. Every such cheque shall be made payable to the order of the person to whom it is sent. Provided that on the written instructions of a registered holder—

(i) the cheque may be made payable to bearer (in which case a receipt for the amount thereof shall be furnished by the registered holder);

(ii) the cheque may be made payable to any other person nominated by the registered holder (in which case either the cheque shall be endorsed by the nominee or a receipt for the amount thereof shall be furnished by him); or

(iii) the moneys may be paid by cheque to the credit of the registered holder with any bank which he has specified.

Payment by any of the foregoing methods shall be a satisfaction of the moneys payable.

Joint Holders.

(*b*) If two or more persons are entered in the register as joint holders of any sub-units then without prejudice to the preceding sub-clause hereof the receipt of any one of such persons for the moneys from time to time payable in respect of such sub-units shall be as effective a discharge to the custodian trustees as if the person signing the said receipt were the sole registered holder of such sub-units.

REMUNERATION AND EXPENSES OF CUSTODIAN TRUSTEES AND MANAGERS.

Half-yearly Service Charge and Initial Service Charge.

31. (*a*) In addition to the initial service charge received by the managers on the sale of sub-units as provided by clause 10 hereof a further charge (called "the half-yearly service charge") shall be deducted each half-year from the cash produce in order to provide the remuneration of the custodian trustees and the managers for their services during the continuance of the trust.

(*b*) The half-yearly service charge shall be deducted by the custodian trustees from the cash produce immediately prior to each half-yearly distribution of such cash produce and it shall be equal to one-sixth (1/6th) of one per cent. (1%) of the value as at one month prior to the half-yearly distribution date provided by clause 27 hereof of all the stock units then lodged with the custodian trustees. For the purpose of this paragraph the value of a stock unit shall be the Melbourne Stock Exchange "seller" price of the shares comprised in the stock unit together with an adjustment for brokerage, stamp duties, and transfer fees in respect of such shares.

(*c*) The amount of each half-yearly service charge so deducted shall be applied by the custodian trustees firstly in paying to themselves a fee equal to two and one-half per cent. (2½%) of the cash produce which has arisen in respect of the stock unit during the half-year which ended one month prior to the said distribution date or equal to £3 15s. for every stock unit vested in the custodian trustees at the end of such half-year, whichever is the greater amount and secondly (as to the balance of such half-yearly service charge) in paying it to the managers as remuneration for their services.

(*d*) Except as provided in the last preceding sub-clause and in the next clause the custodian trustees shall not be entitled to any remuneration for their services hereunder.

32. The initial service charge received by the managers on the sale of sub-units as provided by clause 10 (*a*) hereof shall be applied—

(i) In the first place in paying to the custodian trustees a fee at the rate of five shillings (5s.) for every one hundred pounds (£100) of the value of each stock unit lodged with the custodian trustees by the managers such value being the Melbourne Stock Exchange "seller" price of the shares comprised in the stock unit at the date of lodgment together with an adjustment for brokerage, stamp duties, and transfer fees in respect of such shares;

(ii) in the second place in reimbursing the custodian trustees for all costs charges and expenses which they may have incurred in or about the collection or receipt of any moneys or property received by them in respect of the stock units and otherwise in and about the execution or exercise of their duties and powers hereunder and for all loss or damage which they may have incurred or sustained in connexion with or arising out of their trusteeship hereunder; and

(iii) in the third place (to the extent to which it is not required for the foregoing purposes) the said initial service charge shall be retained by and belong to the managers in reimbursement of all costs, charges, and expenses which they may have incurred and of all loss or damage which they may have incurred or sustained in and about or as incidental to the execution or exercise of their duties and powers hereunder and as remuneration for their services hereunder.

33. Except where otherwise specifically provided for in this deed the remuneration and expenses of the custodian trustees and of the managers shall be borne out of the said service charge and except as aforesaid no additional charge shall be made to registered holders on any distribution of income or capital hereunder.

MANAGERS' DUTIES.

Managers to Prepare Cheques, Certificates, &c.

34. Notwithstanding anything herein contained it shall be the duty of the managers to prepare all dividend cheques or notices which the custodian trustees have to issue as hereby provided to stamp the same and to produce the same to the custodian trustees so as to afford the custodian trustees ample time to examine and check the same and to sign such dividend cheques and return them to the managers for dispatch on the day on which they ought to be dispatched. It shall also be the duty of the managers to prepare all certificates and to produce the same to the custodian trustees for signature.

NOTICES.

Method of Giving Notice.

35. (*a*) Any notice required to be given to a registered holder hereunder shall be deemed to have been duly given if it be in writing and either delivered or sent

by post in a prepaid envelope addressed to him at his address appearing in the register and any such notice shall be deemed to be served on the third day following that on which the same is delivered or posted.

Joint Holders.

(*b*) Service of a notice or document on any one of several joint registered holders shall be deemed effective service on the other joint registered holders.

Deceased Holder.

(*c*) Any notice or document delivered at or posted to the registered address of a registered holder shall notwithstanding that such registered holder be then dead and whether or not the custodian trustees or the managers have notice of his death be deemed to have been duly served and such service shall be deemed a sufficient service on the executors and administrators of the deceased registered holder and all persons (if any) registered as joint registered holders with him in respect of the units concerned.

MEETING OF REGISTERED HOLDERS.

36. (*a*) Either the custodian trustees or the managers may convene a meeting of the registered holders.

(*b*) Not less than ten days' notice shall be given of any such meeting in accordance with clause 35 hereof and such notice shall specify the general nature of the business to be transacted.

(*c*) At a meeting convened by the custodian trustees some person nominated by them (whether a registered holder or not) shall preside and at a meeting convened by the managers some person nominated by them (being a registered holder) shall preside. The chairman shall have a casting vote (in the event of an equality of votes) in addition to the vote or votes to which he may be entitled as a registered holder.

(*d*) Every question arising shall be decided in the first instance by a show of hands unless—

(i) it be a question which under this deed must be decided by a majority being a percentage of the votes of those present in which case a poll shall be taken; or

(ii) a poll be demanded.

(*e*) A poll may be demanded before or immediately after any question is put to a show of hands.

(*f*) A poll may be demanded by registered holders not being less than ten in number and holding (or representing by proxy) between them not less than 3,000 sub-units.

(*g*) Upon a poll every registered holder present in person or by proxy shall have one vote for every sub-unit held by him.

(*h*) Votes may be given either personally or by proxy. Without the consent of the managers no person shall be appointed a proxy who is not a registered holder, provided that where a corporation is a registered holder the proxy may be any officer of such corporation.

(*i*) In the case of joint registered holders any one of such joint holders may vote either personally or by proxy as if he were solely entitled to the sub-units comprised in the joint holding but if more than one of such joint holders be present at any meeting either personally or by proxy that one of the persons so present whose name stands first on the register in respect of the joint holding shall alone be entitled to vote in respect thereof. Several executors or administrators shall for the purpose of this sub-clause be deemed joint holders.

(*j*) Every instrument of proxy whether for a specified meeting or otherwise shall as nearly as circumstances admit be in the following form or to the like effect:—

I, ..., being a registered holder of sub-units in First Victorian Unit Trust hereby appoint....., of ....., as my proxy to vote for me and on my behalf at the meeting of registered holders to be held on the.....day of....., 19..... and at any adjournment thereof.

Signed by the said....., on the.....day of....., 19.....

in the presence of—

....

(Witness' signature.) (Signature.)

(*k*) The instrument appointing a proxy shall be deposited at the office of the managers not less than 24 hours before the time of holding the meeting or adjourned meeting as the case may be at which the person named in such instrument proposes to vote.

(*l*) The quorum for a meeting shall be registered holders personally present not being less than ten in number and holding (or representing by proxy) between them not less than 3,000 sub-units.

(*m*) The chairman may with the sanction of the meeting adjourn it to such time and place as he shall determine. The chairman shall adjourn any meeting at which a quorum is not present.

DEFACED AND LOST CERTIFICATE.

New Certificate in Lieu of Defaced or Lost One.

37. (*a*) If any certificate issued pursuant to these presents be worn out or defaced then upon production thereof to the custodian trustees and upon the custodian trustees being satisfied that it is worn out or defaced and upon such indemnity (if any) being given as the custodian trustees shall deem adequate they shall instruct the managers to cancel the same and to record such cancellation in the register and to prepare a new certificate in lieu thereof to be issued by the custodian trustees and if any such certificate be lost or destroyed then upon proof thereof to the satisfaction of the custodian trustees and such indemnity being given as the custodian trustees deem adequate the managers shall prepare and the custodian trustees shall issue a new certificate in lieu thereof to the person entitled to such lost or destroyed certificate.

Separate Certificates.

(*b*) A registered holder shall on delivery to the managers of his existing certificate be entitled to receive in exchange for his existing certificate two or more separate new certificates each representing a part of the holding to which the existing certificate relates and together representing the whole of such holding.

Entry of New Certificate and Payment Therefore.

(*c*) An entry as to the issue of a new certificate under this clause and of the indemnity (if any) given shall be made on the register, and initialed as provided in subclause (*a*) of clause 15. There shall be paid to the managers for any such new certificate such sum as the managers shall determine not exceeding the sum of 2s. 6d. and also all stamp duty (if any) payable on the new certificate.

(*d*) The provisions of clause 13 shall apply to the new certificates mentioned in this clause.

POWERS AND LIABILITIES OF CUSTODIAN TRUSTEES.

Custodian Trustees Indemnity.

38. In addition to all powers privileges and indemnities given by law to trustees and by the preceding provisions of these presents to the custodian trustees and by way of supplement thereto it is hereby expressly declared as follows:—

Professional Advice.

(*a*) The custodian trustees may in relation to these presents act upon the opinion or advice of or information obtained from any lawyer broker or other expert and shall not be responsible for any loss occasioned by so doing.

Advice by Telegram, &c.

(*b*) Any such advice, opinion, or information may be sent by letter telegram, cablegram, or radiogram and the custodian trustees shall not be liable for acting on any advice opinion or information purporting to be conveyed by any such letter telegram, cablegram, or radiogram although the same shall contain some error or shall not be authentic.

Custodian Trustees Not Liable for Acts of Others.

(*c*) The custodian trustees shall not be responsible for any loss incurred through any act, neglect, mistake or default of the managers or of any agent.

Custodian Trustees Not Liable for Acts of Appointees.

(*d*) The custodian trustees shall not be responsible for any misconduct, mistake, oversight, error of judgment, forgetfulness, or want of prudence on the part of any attorney, banker, lawyer, agent, or other person appointed by them or bound to supervise the proceedings of any such appointee.

Discretionary Exercise of Powers.

(*e*) The custodian trustees shall as regards all the powers, authorities, and discretions vested in them have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of and time

for the exercise thereof and in the absence of fraud they shall be in no wise responsible for any loss costs damages or inconvenience that may result from the exercise or non-exercise thereof.

Determination of Questions Hereunder.

(*f*) The custodian trustees shall have full power to determine all questions and doubts arising in relation to any of the provisions hereof and every such determination whether made upon a question actually raised or implied in the acts or proceedings of the custodian trustees or the managers shall be conclusive and shall bind the managers and all persons interested under these presents.

GENERALLY.

Discharge of Managers and Appointment of Others.

39. If at any time or times the managers shall go into liquidation or cease to carry on business or a receiver of their undertaking shall be appointed or they shall wish to retire from the management thereof or if at least seventy-five per cent. (75%) of the registered holders by writing signed by them request the custodian trustees to discharge the managers or to terminate the trust or if by a majority of not less than 75 per cent. of the votes of those registered holders present at a duly convened meeting of which notice has been given to the custodian trustees and managers as well as the registered holders for the time being a resolution is passed requesting the custodian trustees to discharge the managers or to terminate the trust then and in any such event (but without prejudice to the powers of the custodian trustees under clause 20 (*b*) hereof) the custodian trustees may if they think fit either discharge the managers from their position as managers hereof and appoint any new company or person to be the manager hereof in their place (whereupon the company or person so appointed shall be entitled to exercise the powers and bound to carry out the duties conferred or imposed upon the managers by these presents) or determine the trust. The managers shall be entitled before they are so discharged to be themselves registered as the holders of any sub-units as regards which no person is registered as holder or is entitled under the provisions of clause 16 hereof to be so registered.

Discharge and Indemnity for Managers.

40. The custodian trustees shall be entitled to settle with the managers the amount of any sums payable by the managers to the custodian trustees under the provisions hereof and to give to the managers a discharge in respect thereof and any such agreement or discharge shall be conclusive and binding upon all persons claiming hereunder and in particular if the managers shall cease to be managers under the last preceding clause hereof or if they shall go into liquidation or for any other reason cease to be capable of conducting the management hereof even though no new managers shall be appointed in their place the custodian trustees may make such arrangements as they shall think fit for the discharge of the managers from any existing liability and any liability which might thereafter arise under the provisions hereof and may discharge the managers in accordance with such arrangements and any such discharge shall be conclusive and binding as aforesaid except in the case of fraud.

Notice, &c.

41. The custodian trustees shall without delay forward to the managers all notices of meetings, reports, circulars, and other documents received by them as holders of any shares comprised in the stock units. All instructions, consents, requests, and notices required by this deed to be given by the managers to the custodian trustees or by the custodian trustees to the managers shall be given in writing and signed by a duly authorized person on behalf of the party giving the same.

VARIATION OF TRUST DEED.

Variations of Trust Deed.

42. The custodian trustees may from time to time if in their absolute discretion they shall think fit assent by deed supplemental hereto to any modification or variation of this deed (including if thought fit the revocation or restriction of this present clause) which in the opinion of the managers may be expedient for the more convenient economical simple advantageous or profitable working or management of the stock units and the trusts and provisions herein declared and contained concerning the same which the custodian trustees may think proper having regard to all the circumstances of the case and upon such assent being given this deed shall take effect as modified or varied accordingly.

Trust Deed Open to Inspection.

43. (*a*) Copies of this deed and of any supplemental deed executed under clause 42 hereof and a statement containing particulars of the parcels of shares for the time being constituting the stock units shall at all reasonable times be open to inspection by any intending applicant for the purchase of sub-units or registered holder at the offices of the custodian trustees and managers, and the managers shall at the request of a registered holder and payment by him to the managers of a sum of Ten shillings supply such registered holder with copies of this deed and/or any supplemental deed and/or of the said statement.

Notice of Variation to be Sent to Registered Holders.

(*b*) As soon as possible after the execution of any such supplemental deed as aforesaid notice thereof containing a short summary of the effect of the supplemental deed shall be sent by the managers to the registered holders but not later than the next succeeding half-yearly income distribution date hereinbefore mentioned in clause 27 (*a*).

Particulars of Trust Fund.

(*c*) Any registered holder may by notice in writing to the managers given not less than one month prior to one of the half-yearly dates fixed for distribution of cash produce under clause 27 hereof require to be notified of the shares comprising the stock units one month prior to such half-yearly date and the managers shall thereupon supply him with a list of such shares.

Registered Holders Bound by Trust Deed.

44. All registered holders shall be entitled to the benefit of and shall be bound by the terms and conditions of this deed and any supplemental deed.

45. The original stock unit and any further stock units which may be held by the custodian trustees upon the terms of this deed may be denominated "First Victorian Unit Trust."

Provisions for Future Statutory Requirements in Relation to Bonds, &c.

46. If at any time during the trust period the managers and/or the custodian trustees shall be required by the Federal or State Government or by any Act of the legislature to lodge approved deposits securities or bonds for the additional protection of registered holders the managers will provide the same from their own resources and they shall have no claim on the funds of the custodian trustees for such purposes: provided always that unless the managers comply with all such requirements as aforesaid or if any statutory obligation shall be placed upon the custodian trustees which the custodian trustees are not willing to accept then the custodian trustees shall be at liberty to retire and resign from the trust or to wind up the trust as if the trust period had expired by effluxion of time or to appoint or engage other managers who are willing to comply with such requirements as aforesaid in the place of the managers who shall be deemed immediately upon such appointment or engagement to have retired as managers and who shall thereupon deliver all registers, books of account, and all other books, deeds, documents, and writings in any way relating to the trust to the custodian trustees.

Custodian Trustees May Exercise Powers by Attorneys.

47. The custodian trustees may appoint their attorney in Victoria for the time being or such other persons in Victoria as they may from time to time decide (whether jointly or severally) to exercise for or on behalf of the custodian trustees all or any of the powers and authorities exercisable by the custodian trustees under the provisions of this deed.

In witness whereof these presents have been executed in Canberra in the Australian Capital Territory the day and year first above written.

FIRST SCHEDULE.

List Showing Parcels of Shares Constituting the Original Stock Unit.

The Commercial Bank of Australia Ltd.
100—10s. ordinary shares.
The Australasian Paper & Pulp Co. Ltd.
50—20s. ordinary shares.
Australian Cement Ltd.
50—20s. ordinary shares.
Australian Consolidated Industries Ltd.
50—20s. ordinary shares.
Bradford Cotton Ltd.
50—20s. ordinary shares.

The Broken Hill Pty. Co. Ltd.
50—20s. ordinary shares.

Burns Philp & Co. Ltd.
50—20s. ordinary shares.

Clyde Industries Ltd.
50—20s. ordinary shares.

Drug Houses of Australia Ltd.
50—20s. ordinary shares.

Dunlop Rubber Australia Ltd.
50—20s. ordinary shares.

Electricity Meter & Allied Industries Ltd.
50—20s. ordinary shares.

Electrolytic Zinc Co. of A/sia. Ltd.
50—20s. ordinary shares.

Felt & Textiles Ltd.
50—20s. ordinary shares.

G. J. Coles & Co.
100—5s. ordinary shares.

General Industries Ltd.
50—12s. 6d. ordinary shares.

Goldsborough Mort & Co. Ltd.
50—20s. ordinary shares.

Henry Jones Co-Operative Ltd.
50—20s. ordinary shares.

Industrial Acceptance Corporation Ltd.
100—5s. ordinary shares.

McPhersons Ltd.
50—20s. ordinary shares.

Broken Hill South Ltd.
100—5s. ordinary shares.

Front.

SECOND SCHEDULE.

Form of Certificate.

No. of certificate.....

No. of sub-units.....

FIRST VICTORIAN UNIT TRUST.

CERTIFICATE.

General Accident Fire & Life Assurance Corporation Ltd.

Custodian trustees of a trust deed dated the..... day of.....one thousand nine hundred and fifty-one made between Australian Fixed Trusts Pty. Limited (herein called the "managers") of the first part itself (therein called the "custodian trustees") of the second part and the several persons therein mentioned of the third part hereby certify that.....

of .....

.....

is the registered holder of.....sub-units part of the 3,000 sub-units into which the stock unit constituted by the said trust deed is subdivided, such sub-units being held subject to and with the benefit of the terms and conditions of the said trust deed.

Dated this.....day of.....19....

Signed for and on behalf of Australian Fixed Trusts Pty. Ltd., managers of First Victorian Unit Trust—

.....
Manager.

Signed for and on behalf of General Accident, Fire, & Life Assurance Corporation Limited—

.....
Manager for Australia.

NOTE:—(1) Under the trust deed the custodian trustees have power in certain circumstances to vary the provisions of the trust deed by a supplemental deed. Any such variation will be binding on the registered holders.

(2) Under the trust deed the managers covenant to repurchase the sub-units represented by this certificate.

(3) Copies of the trust deed and any supplemental deed can be inspected by any registered holder at the offices of the managers or of the custodian trustees in Melbourne at all reasonable times (Saturday excepted) and the managers will supply each such holder with copies of such deeds on payment of the sum of 10s.

(To be Endorsed on Back of Certificate.)

PANEL SHOWING THE PARCELS OF SHARES COMPRISING THE ORIGINAL STOCK UNIT.

FORM OF REQUEST TO REPURCHASE.

To: Australian Fixed Trusts Pty. Limited.
Managers of First Victorian Unit Trust.

I/We .....

.....

of .....

.....

being the registered holder(s) of the sub-units comprised in this certificate hereby request you to repurchase *the whole of } the said sub-units and hand you this certificate accordingly for cancellation *and the issue to me (us) of a new certificate for the balance of the said sub-units.*

Dated this.....day of.....19....

Signature of registered holder.....

Witness to above signature.....

Address of witness.....

Description or occupation.....

Signature of registered holder.....

Witness .....

Address of witness.....

Description or occupation.....

Signature of registered holder.....

Witness .....

Address of witness.....

Description or occupation.....

The signature(s) of the above registered holders is(are) verified by.....

(This verification must be signed by a justice of the peace, a bank manager, or a member of a recognized Stock Exchange.)

N.B.—In the case of joint holders all must sign.

*If you wish to sell *all* the sub-units comprised in this certificate, draw a line through the space and words underlined. If you wish to sell only *part* of the sub-units comprised in this certificate, draw a line through the words "the whole of" and insert beneath them the number of sub-units you wish to sell.

When a registered holder desires the managers to repurchase all or any of the sub-units comprised in this certificate he must complete the above form of request and leave this certificate at the offices of the managers, Australian Fixed Trusts Pty. Limited,

Melbourne—*three clear days* for examination.

THIRD SCHEDULE.

Part I.

DECLARATION.

FIRST VICTORIAN UNIT TRUST.

To General Accident Fire & Life Assurance Corporation Limited, the custodian trustees of a trust deed dated the.....day of.....one thousand nine hundred and fifty-one, and made between Australian Fixed Trusts Pty. Limited of the first part itself of the second part and the several persons therein mentioned of the third part.

I/We, being the executor(s) of the will (administrator(s) of the estate) of.....deceased the registered holder of.....sub-units, being part of the 3,000 sub-units into which by virtue of the above-mentioned trust deed the beneficial interest in a stock unit is subdivided hereby authorize and request you to register me/us as holder(s) of the said sub-units and to issue to me/us a certificate for the same in my/our name(s).

Dated this.....day of.....19....

Signature(s).

Part II.

DECLARATION.

FIRST VICTORIAN UNIT TRUST.

To General Accident Fire & Life Assurance Corporation Limited, the custodian trustees of a trust deed dated the.....day of.....one thousand nine hundred and fifty-one, and made between Australian Fixed Trusts Pty. Limited for the first part itself of the second part and the several persons therein mentioned of the third part.

I/We, being the executor(s) of the will (administrator(s) of the estate) of.....deceased the registered holder of .....sub-units, being part of the 3,000 sub-units into which by virtue of the above-mentioned trust deed the beneficial interest in a stock unit is subdivided hereby certify and declare that under the will (intestacy) of the said.....deceased .....of ....is now entitled to the benefit of the said sub-units and I/we hereby authorize and request you to register the said..... as holder of the said sub-units and to issue to him/her a new certificate in his/her name for the said sub-units.

Dated this.....day of.....19....

Signature(s).

I, the above-named.....being the person entitled to the benefit of the above-mentioned sub-units in consequence of the death of the above-named .....hereby request you to register me as the holder of the said sub-units and to issue to me and in my name a certificate for the said sub-units.

Dated this.....day of.....19....

(Signature)

FOURTH SCHEDULE.

Statement of amounts distributable in respect of the half-year ended , 19 , (or period from , 19 , to , 19).

Dividends		
Sale of rights, bonus shares, &c. (Detailed)		
Proceeds of sale of securities and other capital receipts not reinvested (Detailed)		
Less trustees and management fees provided for in clause 31 of the trust deed ..		
Net total for distribution	£	
Equivalent to d. per sub-unit		
Add amount brought forward from previous distribution	d.	
	d.	
Less amount now distributed ..	d.	of which d. is in respect of capital— (State basis)
Carried forward ..	d.	

(c.s.) NORMAN COWPER,
Director.

The common seal of Australian Fixed Trusts Proprietary Limited was hereunto duly affixed by order of the board in the presence of—

(Signed) R. G. BAILEY, solicitor, Canberra.

(L.S.) H. W. T. JOHNSON,

Signed, sealed, and delivered by Henry William Thorpe Johnson, the duly appointed attorney of General Accident, Fire, and Life Assurance Corporation Limited in the presence of—

(Signed) CYRIL W. DAVIES, solicitor, Canberra.

APPENDIX O.

MEMORANDUM BY MR. T. F. E. MORNANE, ASSISTANT CROWN SOLICITOR, RE THE TRUSTS ACCOUNTS ACTS 1923 TO 1952 OF THE STATE OF QUEENSLAND.

As requested, I set out hereunder a report on the above-mentioned Acts.

These Acts consist of (1) The Trust Accounts Act of 1923 (14 Geo. V. No. 4), (2) The Trust Accounts Act Amendment Act of 1925 (16 Geo. V. No. 2), and The Trust Accounts Acts Amendment Act of 1952 (1 Eliz. II. No. 27).

The general scheme of the Acts is to require monies received by trustees on behalf of other persons to be paid into trust accounts and to provide that such monies shall not be available for the creditors of trustees. Banks are required to disclose such accounts to auditors appointed pursuant to the Act and to permit them to make copies (Section 3).

In certain cases, such as where the name or whereabouts of the beneficiary are unknown, the trustee is required to make an annual statement of the trust property to the Attorney-General (Section 3A).

If the Public Curator is of the opinion that any trustee—

(*a*) is an undischarged bankrupt; or

(*b*) has stolen or fraudulently misapplied any trust moneys; or

(*c*) has a general deficiency in his trust account—

the Public Curator may control the operations of all trust accounts held by that trustee (Section 3C).

If the Public Curator is of the opinion that any trustee—

(*a*) has died; or

(*b*) is because of mental or physical illness incapable of operating on a trust account; or

(*c*) cannot be found—

the Public Curator may act as trustee of his trust accounts (Section 3D).

For the purpose of these provisions "trustee" is defined as meaning legal practitioners, public accountants, auctioneers, commission agents, farm produce agents and every person or class of persons declared by the Governor in Council to be a trustee or trustees (Section 2).

It seems to be questionable whether any great advantage is to be derived from introducing these provisions into Victorian legislation.

As regards legal practitioners and farm produce agents provision is made in their own special Acts (cf. Legal Profession Practice Acts and Farm Produce Agents Acts).

As regards the other named categories the normal practice is for them to retain monies for a short time and then pay them over. In the event of their converting the monies to their own use they would normally bring themselves within the scope of one or other of the appropriate sections of the *Crimes Act* 1928 (Sections 142, 150, 153, and 155).

The Queensland Acts do not seem to be aimed at persons who accidentally become trustees but rather at persons who by virtue of their calling are likely to receive trust monies. If the necessity arises they could be more adequately covered in their own special Acts which would take into consideration the particular nature of their calling.

Before considering the remaining provision of the Queensland Acts, Section 3E, it may be desirable to glance briefly at the existing evil. It is the receipt of money on an undertaking to supply goods or services in the future.

A typical case of the undertaking to supply goods is that of Bernco Products Proprietary Limited. The cure here would seem to be legislation along the lines of the Lay-by Sales Act No. 36 of 1943 of New South Wales. I may add that no direct criminal proceedings were available against anyone associated with the company. By a side wind, as it were, B. L. Foley, the company's managing director, was successfully prosecuted and sentenced to six months imprisonment for failing to keep proper books of account. Had these books been kept, the same fraud could have been perpetrated and he would have remained immune.

With regard to the undertaking to supply services in the future, of recent years complaints have been made of failure to carry out the undertaking in building cases (e.g., Omar Construction Proprietary Limited, and Constructional Engineering Company Proprietary Limited) in connexion with the provisions of architectural services (case of Simpson, present whereabouts unknown) and in connexion with the undertaking to provide or procure finance for home-building or the purchase of homes (Australian Home Finance Company Proprietary Limited).

Section 3E of The Trust Accounts Act of 1923 was enacted by Section 6 of The Trust Accounts Acts Amendment Act of 1952 and constitutes Queensland's attempt to cover the building cases.

The section centres around the duties of "a contractor who receives any money on terms requiring him to apply it in or towards defraying the price of any contract."

The section seeks to ensure that—

(*a*) all such monies are paid into a trust account and that only such monies shall be paid into the trust account;

(*b*) all monies withdrawn from the account shall be withdrawn by means of a "not negotiable" cheque made out in favour of the person to whom the monies are to be paid, or, in the case of monies required to be paid for wages in connexion with the contract, by such a cheque payable to himself;

(*c*) withdrawals shall only be made—

(i) for paying a person other than the contractor for any work, labour or materials actually performed or supplied for or in connexion with carrying out the contract;

(ii) for paying himself lawful progress payments for or in connexion with carrying out the contract; and

(iii) for payment of wages;

(*d*) the provisions of the earlier sections as to the keeping of trust accounts and their inspection are made applicable.

Penalties by way of fine and imprisonment are provided.

I think that these provisions would be effective in so far as they would tend to reduce the number of people that an unscrupulous builder would be able to defraud. In the past the police have received numerous complaints about delays in completion of contracts. They have strong suspicions that the builder is using monies deposited for his own purpose but have been powerless to do anything beyond make inquiries from the builder. The result has been that it is only where a company is the builder and its activities bring it within the scope of the *Companies (Special Investigations) Act* 1940 that any effective investigation is possible. Investigations under this Act can only be carried out if a *prima facie* case is established that they are necessary for the protection of the public creditors or shareholders. They have been almost invariably followed by the winding-up of the company but by the time this stage is reached many people have been defrauded. Moreover, in most cases the conduct of such companies does not constitute a punishable breach of the law.

I think your Committee might very well consider recommending legislation on the lines of Section 3E together with the incorporated provisions contained in Section 3 (2) and (3).

Minor additions and alterations which occur to me are that there should be a provision requiring a person who receives money in such a contract to notify the Attorney-General within a stipulated period of the bank in which he keeps his trust account and that instead of the accounts being available for inspection by an auditor they should be made available for inspection by any person on the written authority of the Attorney-General. It would be mainly a police job and one would expect the person authorized to be a member of the police force.

This leaves untouched what may become a major field of exploitation—the receipt of money on an undertaking to supply services other than those covered by Section 3E or to supply monies.

The operations of the Australian Home Finance Company Proprietary Limited, illustrate the case of the receipt of monies on an undertaking to supply services or monies. The facts appear from a copy of advice dated 1st September, 1954, given to the Attorney-General and a copy of an interim report of Senior Detective Garvey who was appointed to investigate the company under the *Companies (Special Investigations) Act* 1940.

The upshot is that within a period of seven months, only five of which were spent in active trading, the company has lost £3,500 of creditors' monies without ever having been in a position to carry out its agreements. The greater part of the depositors' monies has been saved owing to the stand taken by the Commonwealth Bank and to the immediate steps taken to have the company wound up.

It is difficult to meet such a position by legislation without unduly interfering with legitimate and long-established business practices. Thus insurance companies and banks undertake to supply services or monies in return for the deposit of monies. The position may be met by passing general legislation and providing for the Governor in Council to exempt certain persons and classes of persons from the operation of the legislation.

The matter is raised here for consideration by your Committee as it is one that would not be cured by the introduction of legislation similar to the Queensland legislation under review.

12th October, 1954.

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

1954

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VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

PROPOSALS CONTAINED IN THE

TRANSPORT REGULATION BILL

TOGETHER WITH

MINUTES OF EVIDENCE

Ordered by the Legislative Council to be printed, 3rd November, 1954.

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10858/54.—D.—No. 3.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

THURSDAY, 25TH FEBRUARY, 1954.

8. 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.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

THURSDAY, 25TH FEBRUARY, 1954.

6. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Hollway, Mr. Mitchell, 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.

18. TRANSPORT REGULATION BILL.—Motion made, by leave, and question—That the proposals contained in the Transport Regulation Bill be referred to the Statute Law Revision Committee for examination and report (*Mr. Shepherd*)—put and agreed to.

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 Transport Regulation Bill—a Bill to consolidate the Law relating to the Regulation of Transport —which was initiated and read a first time in the Legislative Assembly on the 29th September, 1954. On the 12th October, 1954, the debate on the second reading was adjourned and the Legislative Assembly referred the proposals contained in the Bill to the Statute Law Revision Committee for examination and report.

2. The Bill was drafted by Mr. Andrew Garran, Assistant Parliamentary Draftsman, who appeared before the Committee, and whose evidence is appended to this Report.

Also appended is evidence given to the Committee by Mr. E. V. Field, Secretary, Transport Regulation Board.

3. Mr. Garran certified that the Bill contains in consolidated form the whole of the statute law comprised in the Transport Regulation Acts and, apart from certain evidence given by him before the Committee relating to clause 31 of the Bill, that the Bill involves no substantive alteration of the existing law and only such changes as were found necessary to ensure a proper consolidation.

4. Section 22 of the *Transport Regulation Act* 1933, No. 4198, relates to the granting of certain commercial goods vehicle licences " as of right ". Included in paragraph (*f*) thereof, is provision for the granting to the owner of a butter, milk or cheese factory of a licence to operate a commercial goods vehicle for purposes enumerated in the paragraph including " the carriage of goods from the factory to a depot or creamery thereof or from such depot or creamery to the factory ".

When drafting the present Bill this provision was omitted from clause 31 at the request of the Transport Regulation Board which was of the opinion that the provision was obsolete and might be open to an interpretation not intended when the Act was passed.

The Committee consider that the relevant provision should be included in the consolidation but accept the suggestion of the Board that amendment to the Bill should be in the following form:—

Clause 31, page 16, line 24, after " or " insert—

" for the carriage of goods from the factory to a local depot or creamery thereof or from such local depot or creamery to the factory; or ".

This amendment will give effect to the obvious intention of the legislature to provide that the holders of these licences may carry goods to and from a focal point conveniently situated to meet the requirements of a number of primary producers residing in the same locality.

5. The Committee also draw attention to an alteration in paragraph (*f*) of clause 31 by the inclusion of the words " course of such business " in place of the words " course of trade ".

Mr. Garran stated in evidence that this alteration was made for the sake of consistency of reference and also because the word " business " was deemed to have a wider interpretation than the word " trade ". The Committee are satisfied with the reasons given for this change and are of opinion that the same should properly be included in a consolidation in accordance with established practice.

6. The Committee therefore recommend that the Bill be proceeded with, and with the amendment outlined in paragraph 4 of this Report, be passed into law during the present Session.

Committee Room,

27th October, 1954.

TRANSPORT REGULATION BILL

MINUTES OF EVIDENCE

TUESDAY, 19TH OCTOBER, 1954.

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. I. A. Swinburne,	
The Hon. F. M. Thomas.	

Mr. A. Garran, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—On behalf of the Committee, I welcome Mr. Garran to our deliberations on the Transport Regulation Bill, which was recently brought down in the Legislative Assembly. This measure is aimed at consolidating the law and, in such cases, it is usual to ask the draftsman who was responsible for the preparation of the Bill to appear before the Committee and tender evidence concerning its contents. I now ask Mr. Garran to proceed.

Mr. Garran.—I have tried, in drafting this Bill, to make an exact consolidation of the law relating to transport as it appears in the Transport Regulation Acts. It might interest members of the Committee if I indicate some minor difficulties that arise in making a simple consolidation. The legislation is all comparatively recent; none is more than 25 years old. About fifteen Acts are concerned, and the task is really to put those Acts together into a reasonable whole. The Acts with which I have dealt are those mentioned in the First Schedule. It will be noted that there is one part of one Act that I have not consolidated, namely, Part I. of the *Transport Act* 1951, which relates to the Co-ordinator of Transport. It is difficult to predict where that Act will ultimately be consolidated; it will probably remain on its own. The ambit of that measure is much wider than transport regulation, although the relevant provisions appeared in a transport Bill.

I think the best procedure might be for me to go through the Bill and indicate the minor alterations that have been made. At the outset, I might state that, apart from one point which I shall mention later, there is no alteration of the Bill apart from that which became necessary because of the drafting for consolidation purposes.

The first point is one of uniformity. If members refer to the definitions of "commercial aircraft", "commercial goods vehicle", and "commercial passenger vehicle" contained in sub-clause (1) of clause 3, they will observe a similarity. Originally, they were the same. In Act No. 5761, passed last year, some amendments were made to the definitions of "commercial goods vehicle" and "commercial passenger vehicle", relating to vehicles used on hire or in the course of any trade or business whatsoever. Those amendments were not carried forward into the interpretation of "commercial aircraft", which was in a different Act. But, when the interpretations were put side by side in the consolidation, the anomaly was obvious and I made the same alteration in the definition of "commercial aircraft" as that which has been made concerning "commercial goods vehicle" and "commercial passenger vehicle", although possibly it will not operate to nearly the same extent.

Mr. Thomas.—Would that interpretation apply to aircraft that carry passengers on Saturdays and Sundays?

Mr. Garran.—The Transport Regulation Act will apply to those aircraft, so long as they operate intrastate.

Mr. Brennan.—That implies that they are not merely aircraft that are operated physically inside Victoria; they would have to be aircraft whose ownership was in Victoria.

Mr. Garran.—Not necessarily. It is the matter of operation that counts.

Mr. Brennan.—Trans-Australia Airlines operates from one State to another. I take it, therefore, that the aircraft will be subject to these regulations while it operates within Victoria.

Mr. Garran.—That is so. The regulations would not apply if the aircraft were in Victoria as part of an interstate trip.

Mr. Brennan.—In other words, the start and finish of its journey must be in Victoria?

Mr. Garran.—Yes. Again, in the interpretation of "owner", I have included a reference to aircraft, which is necessary to complete the consolidation. On page 5 of the Bill, I have not included certain transitory provisions of section 4 of the *Transport Regulation Act* 1933 relating to the reconstitution of the Board. I have also omitted two or three other transitory provisions, which are now spent, notably sections 54 and 55 of Act No. 4198 and the whole of Act No. 4753.

The Chairman.—I take it that those transitory provisions are no longer of any importance.

Mr. Garran.—That is so. Act No. 4753 related to the payment of compensation on certain vehicles that had lost their licence a long time ago; the matter has been fully administered.

In paragraph (*b*) of sub-clause (2) of clause 9—line 35 of page 6 of the Bill—I have changed the word "session" to "meeting." The word "session" is often used loosely to indicate that Parliament is sitting, but the word "meeting" is preferable because

a session may continue through the whole of the year. Possibly, clause 11, on page 7, could be omitted. This clause states that—

> The members of the Board shall not as such be subject to the provisions of the Public Service Acts.

This provision is probably unnecessary in view of paragraph (*a*) of sub-clause (2) of clause 6, which is in this form—

> No person shall be capable of being appointed or continuing as a member of the Board who—
> (*a*) is an officer or employee in any Government department;

It is just possible that the two provisions are not quite in line, and for that reason I retained them in the Bill. One problem that continually faces the consolidator, in his efforts to clear the decks, so to speak, is in deciding whether a particular provision should be retained or whether it may be omitted.

Mr. Swinburne.—If the provision were omitted, objecions might be raised.

Mr. Garran.—That is so.

Mr. Randles.—There are certain employees in the State Service, who are not under the jurisdiction of the Public Service Board.

Mr. Garran.—That is so. Clause 11 is the narrower field of the two. The point is probably covered by paragraph (*a*) of sub-clause (2) of clause 6. However, if the Committee thinks fit, clause 11 could be eliminated without loss.

Mr. Byrnes.—Circumstances might arise in which it would be desired to appoint a person who was a member of the Public Service.

The Chairman.—Under paragraph (*a*) of sub-clause (2) of clause 6, such a person would not be eligible for appointment.

Mr. Garran.—There is a degree of overlapping. If it is desired that clause 11 should be deleted, that could be done. However, I did not feel justified in doing it on my own responsibility. On page 13 there are a number of amendments that should be noted. Owing to the passage of time there have been some changes in titles. What was once the Court of Industrial Appeals is now the Industrial Appeals Court. The *Factories and Shops Act* 1928 is now the *Labour and Industry Act* 1953. Conciliation Commissioners have been appointed within the Commonwealth Arbitration system. Therefore, those three matters needed attention. I have left out a paragraph that previously appeared in relation to third party insurance of commercial passenger vehicles, because that matter is now covered by the Motor Car Act.

Mr. Thomas.—Would that apply in connexion with commercial aeroplanes also?

Mr. Garran.—Third party insurance does not apply in that case. There are some rules under the international agreements on air navigation in relation to this matter, but I cannot speak of them in detail. Of course, the purpose of third party insurance is mainly for the protection of people who use the roads, but in the case of aircraft it is more a question of insuring those who are using the vehicles. On page 14 I have omitted sub-section (2) of section 14 of Act 4198. That sub-section was a facultative provision that enabled the Board to classify vehicles in certain categories. Now, the Board has gone far beyond that provision and it classifies vehicles in a more complicated manner. The old three-fold classification is now obsolete. Under the terms of the old section 14 commercial passenger vehicles could be classified in three groups, as follows:—(*a*) touring omnibuses, (*b*) stage omnibuses, and (*c*) special service omnibuses. As we all know, it is evident, by the number of stickers, that the classification is now much more comprehensive. Therefore, section 14 is now unnecessary.

On page 16 there is an alteration, which, to my mind, goes beyond direct consolidation. I would not have made the alteration myself, but the Transport Regulation Board persuaded me that, in effect, the provision that I have omitted is obsolete, on account of changes in the method of collecting and delivering milk. There is a provision which provides that a licence as of right would issue in respect of any vehicle which was carrying milk between a depot of a factory and the factory itself. When the original Act was passed, the word "depot" was understood to mean a little wayside house at the end of a lane at which farmers in that locality left their milk cans for collection. Nowadays, the collection of the milk is done at the gates to the farmers' properties, and the depots, as they were understood to be formerly, do not now exist. On the other hand, there is some fear that factory operators might claim that they have a depot in Melbourne and therefore could run freely between, say, Melbourne and Warragul, or Melbourne and Warrnambool.

Mr. Byrnes.—Has the Board knowledge of any case in which that has happened?

Mr. Garran.—I do not know. I understand that one such case arose, but I do not know whether it was taken seriously. The Board would be able to give further information on that aspect. I mention the point because it is one on which I went a little further than the limits of actual consolidation.

Mr. Swinburne.—Milk is now collected from a sort of central point, but whether it can be called a depot I do not know.

Mr. Ludbrook.—I would say that the collection of milk from a central point is the practice in almost every district. Not every farmer who is supplying milk has a depot at his own gate. He takes his milk cans to the nearest depot where there is a suitable loading stage from which the big trucks can load the milk.

Mr. Swinburne.—That is so.

The Chairman.—I suggest that the point is rather outside Mr. Garran's sphere. The Transport Regulation Board could inform the Committee fully on the matter.

Mr. Swinburne.—What is the provision of the original Act that is being amended?

Mr. Garran.—It is paragraph (*f*), section 22, of Act 4198. After clause 37, I have omitted a provision relating to the classification of goods vehicles. The provision that has been omitted is sub-section (2) of section 29 of Act 4198. An interesting point arises regarding clauses 42 and 43, which cover three pages of the Bill. In the existing legislation these clauses are contained in one section, which has grown from constant amendment. I managed to break the provisions of the amended section into two, but it was difficult to go any further.

The Chairman.—You are certifying that the two clauses contain the material in the existing section and that there is no change in the law?

Mr. Garran.—That is so. I have omitted from clause 47 the transitory provision which appears in section 4 of Act No. 4298. That provision relates to certain licences which were granted in the years

1933 and 1934. It was necessary to alter the marginal note of clause 48 in view of an amendment made to section 38 of Act No. 4198. The provision originally applied only to the Victorian Railways Commisioners, but was extended to cover the Melbourne and Metropolitan Tramways Board and other authorities. Further, I omitted from clause 48 the provision relating to third party insurance on commercial goods vehicles, as was done in clause 24.

Section 41 of Act No. 4198 has been omitted. That section was to come into operation on a proclaimed day, but it was never proclaimed in view of a subsequent amendment to the Motor Car Acts. The provision related to motor-vehicles from other States operating within a distance of 20 miles of the Victorian border. That position is now covered by a provision of the Motor Car Acts.

I have no further comments to make on the Bill. It can be seen that even in a simple consolidation minor matters arise for determination. However, apart from the one aspect relating to depots, I can certify, so far as a draftsman can, that the Bill contains the same law as at present stands on the statute-book.

Mr. Thomas.—The aspect you have mentioned concerning the depots is to give a wider interpretation?

Mr. Garran.—That is the idea. The word "depot" was originally used in one sense, but now depots, as used in that sense, are becoming almost extinct and it is feared that some other meaning might be read into it.

Mr. Thomas.—It may be possible to substitute another word for "depot" so that it will apply only to the people concerned.

Mr. Garran.—The position of the primary producer who has his milk and cream carried from his farm to the factory is already covered, whether the cans are picked up at his own property, at the farm of his neighbour, or at the end of a lane.

The Committee adjourned.

THURSDAY, 21ST OCTOBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Hollway,
The Hon. I. A. Swinburne,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. A. Garran, Assistant Parliamentary Draftsman, and Mr. E. V. Field, Secretary of the Transport Regulation Board, were in attendance.

The Chairman.—I welcome Mr. Field to the deliberations of the Committee on the Transport Regulation Bill. It will be recalled that during his evidence Mr. Garran referred to the omission of the following portion of sub-paragraph (ii) of paragraph (*f*) of section 22 of Act No. 4198:—

for the carriage of goods from the factory to a depot or creamery thereof or from such depot or creamery to the factory.

The provision relates to licences as of right which the Transport Regulation Board issues under the section. Mr. Garran advised the Committee that when he prepared clause 31 of the Bill this particular provision was omitted as it was regarded by the Transport Regulation Board as redundant. Mr. Garran further explained that in his opinion such omission was not justified as part of a true consolidation of the law and that, therefore, he could not certify that such omission was part of the task of consolidating. Yesterday it was arranged that Mr. Field should appear before the Committee to give the views of the Transport Regulation Board on the omission of the provision referred to and the reason therefor. After some discussion it was suggested to Mr. Field that his Board should reconsider its recommendation that the provision be omitted because it appeared to the Committee that by its omission certain rights which at present exist in respect of licences as of right would be removed from the law. Mr. Field undertook to confer with his Board and Mr. Garran, and to submit to the Committee this morning a proposal concerning the omission.

Mr. Field.—As directed, I explained to the Board the views of the Committee, and subsequently had a discussion with Mr. Garran, as a result of which we now suggest that the original provision be included in the Bill with the addition of the word "local" before the word "depot". In other words, the Board recommends that the following words be added to sub-paragraph (ii) of paragraph (*e*) of clause 31 of the Bill in line 24 after the words "such factory; or":—

for the carriage of goods from the factory to a local depot or creamery thereof or from such local depot or creamery to the factory; or.

The Chairman.—Mr. Garran, would you care to comment?

Mr. Garran.—I consider that the amendment will bring the Bill into line with the existing legislation. The addition of the word "local" gives to the word "depot" the meaning that it was intended to carry by the original legislation.

The Chairman.—It will carry out the spirit, if not the letter, of the 1933 Act.

Mr. Garran.—That is so. As I have stated previously, the absolute letter cannot be followed in a consolidation, particularly when one is endeavouring to bring it up to date.

Mr. Pettiona.—Do any of the members of the Committee who are lawyers consider that any difficulty could arise in the courts over the meaning of the word "local"?

The Chairman.—I would not be prepared to anticipate what might happen in any argument before a court, nor do I believe Mr. Hollway would be.

When considering clause 31, the Committee noticed that the original provision contained in paragraph (*g*) of section 22 of Act No. 4198 had been adopted but that the expression "goods of such person in the course of such business" had been used.

Mr. Garran.—That represents a tidying up of the provision. I invited the attention of the Committee to the introduction of the word "business" in the interpretation of commercial goods vehicles and other vehicles. The interpretation was extended by addition of the expression "or in the course of any trade or business whatsoever", "business" being a wider term. If anything the new wording will give a wider scope, but I do not consider that it alters the law because, in effect, it refers back to the expression "in business" appearing in line 36. Transport "in the course of trade" must also be "in the course of business" provided it is a bona fide use. The purpose was really to tidy up the operation of the interpretations. If the Committee think otherwise, of course the matter could be referred back.

The Chairman.—The amendments to the interpretation clauses were introduced by previous legislation, were they not?

Mr. Garran.—Yes, section 2 of Act No. 5761 covered commercial goods vehicles. However, that legislation did not extend to altering the interpretation of "commercial aircraft." Therefore, I brought that interpretation into line with that of "commercial goods vehicle".

Mr. Byrnes.—Has there been any substantial alteration in the meaning?

Mr. Garran.—No, it is purely a drafting amendment. Having used the word "business" I thought it necessary to continue to do so. The expression "in the course of any trade or business whatsoever" is used in the interpretation of "commercial goods vehicle". The words "or business whatsoever" were introduced into the legislation by Act No. 5761.

The Chairman.—Do you consider that the term "in the course of trade" means the same thing as "in the course of his own business"?

Mr. Garran.—The word "trade" has been looked upon as having a rather narrow meaning like some kind of barter—giving and taking; any two-sided operation such as buying and selling. However, a man could be carrying samples for inspection and not for selling. He could be carrying any type of goods not for buying or selling. That was the reason why the word "business" was introduced into the Act. The general trend of the legislation has been to move from the use of the word "trade" to use the word "business".

Mr. White.—It appears to me that the use of the word "business" widens the scope.

Mr. Garran.—If anything, it widens it a little. It would mean that a man would have a licence as of right possibly of a slightly wider scope. Personally, I do not think the scope is any wider, but if anything it would be.

The Committee adjourned.

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

1954

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

PROPOSALS CONTAINED IN THE

TRANSFER OF LAND BILL 1954

TOGETHER WITH

MINUTES OF EVIDENCE AND APPENDICES

Ordered by the Legislative Council to be printed, 30th November, 1954

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

THURSDAY, 25TH FEBRUARY, 1954.

8. 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.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

THURSDAY, 25TH FEBRUARY, 1954.

6. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Hollway, Mr. Mitchell, 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.

WEDNESDAY, 15TH SEPTEMBER, 1954.

17. TRANSFER OF LAND BILL.—Motion made, by leave, and question—That the proposals contained in the Transfer of Land Bill be referred to the Statute Law Revision Committee for examination and report (*Mr. Merrifield*)—put and agreed to.

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 proposals contained in the Transfer of Land Bill—a Bill to amend and consolidate the Law relating to the Simplification of the Title to and the Dealings with Estates and Interests in Land, and for other purposes—which was initiated and read a first time in the Legislative Assembly on 15th September, 1954. On the same day, after the Honorable the Commissioner of Public Works had explained the Bill in a speech upon the second reading, the debate was adjourned and the proposals contained in the Bill were referred to the Statute Law Revision Committee for examination and report.

2. The Bill as introduced differs in many respects from Bills with similar titles which were before Parliament in the years 1949 and 1953 and which were the subject of exhaustive examination by previous Statute Law Revision Committees. The following Victorian Parliamentary Papers indicate the reports made upon the subject of transfer of land since 1949:—D. No. 3, September, 1949; D. No. 3, November, 1950; D. No. 4, July, 1951; D. No. 4, August, 1952; D. No. 6, October, 1952; D. No. 4, November, 1953.

3. The Assistant Parliamentary Draftsman, Mr. A. Garran, informed the Committee that, in his opinion, the present Bill may be termed pure law reform with consolidation as an incidental aspect. In drafting the Bill he had aimed at simplification generally of the existing transfer of land legislation and, in addition to the omission of many obsolete provisions and the revision of the existing legislation as a whole, had given effect in the main to recommendations made by the Statute Law Revision Committee.

4. The evidence given by Mr. Garran, which is appended to this Report, contains a detailed explanation of the main essentials of the Bill.

Also appended to the Report is the evidence given by Mr. W. J. Taylor, Registrar-General and Registrar of Titles; Mr. P. Moerlin Fox, Solicitor, on behalf of the Law Institute of Victoria; Mr. A. D. G. Adam, Q.C., of the Victorian Bar, representing a sub-committee of the Honourable the Chief Justice's Committee on Law Reform; and Mr. F. W. Arter, Surveyor-General, and Mr. H. S. McComb, representing the Surveyors Board of Victoria and the Institution of Surveyors, Australia.

5. During their investigations the Committee had placed before them a number of suggested alterations to the Bill, and, after full examination of these proposals, are of opinion that it is desirable or necessary to make certain amendments to the Bill.

6. The amendments recommended by the Committee are as follows:—

(*a*) *Clause* 4, sub-clause (1), line 33, after the interpretation of "Land" insert the following interpretation:—

"'Licensed surveyor' has the same meaning as in the *Land Surveyors Act* 1942."

(*b*) *Clause* 4, sub-clause (1), page 5, line 14, after the interpretation of "Sheriff" insert the following interpretation:—

"'Survey' has the same meaning as in the *Land Surveyors Act* 1942."

These two amendments are recommended to ensure that references to licensed surveyors and surveys in the transfer of land legislation have the same meanings as in the *Land Surveyors Act* 1942.

(*c*) *Clause* 9, page 8, sub-clause (1), paragraph (*e*), line 20, at the end of the paragraph insert " if the application contains a direction that the certificate of title is to issue in the names of such infant lunatic patient or infirm person."

This will clear up a doubt raised by Mr. Adam, Q.C., in evidence before the Committee as to whether the title will issue in the name of the person on whose behalf the application is made in the case of an application to bring land under the operation of the Act by a guardian of an infant, by the committee of any lunatic or by the Public Trustee on behalf of any patient or infirm person.

(*d*) *Clause* 21, page 14, sub-clause (5), lines 1-8, omit this sub-clause and insert the following new sub-clause:—

" (5) A person shall be entitled on payment of the prescribed fee to inspect the Registrar's minutes relating to any land."

Under clause 21 of the Bill the Registrar's minutes setting out any defects in a limited certificate of title issued under Division 2 of Part II. of the Bill could only be inspected if the authority of the registered proprietor is obtained or the Court or the Registrar authorizes such inspection. The Law Institute submitted in evidence that this was an undue restriction on the right of a person to make a full search of interests in land registered in the Titles Office and the Committee accept this view.

(*e*) *Clause* 42, page 23, sub-clause (2), paragraph (d), line 16, omit " acquired by enjoyment or user or " and insert " howsoever acquired ".

This amendment relates to the provisions which set out the interests to which the title of a registered proprietor is not paramount and, if amended in the form suggested, paragraph (*d*) will include easements arising by implied grant.

(*f*) *Clause* 43, page 24, sub-clause (2), lines 7-11, omit this sub-clause.

This sub-clause was inserted in the Bill to remove a doubt as to whether any person dealing with a registered proprietor would before registration of the instrument giving effect to the dealing be in any way bound contractually or in equity to observe rights of any unregistered interest of any party of which he did at some time have notice.

Mr. Adam, Q.C., pointed out to the Committee that certain other difficulties unforeseen by the draftsman arise from the inclusion of this sub-clause. The Committee therefore recommend that the sub-clauses be omitted and that the law remain as in the present form of section 179 of the *Transfer of Land Act* 1928.

(*g*) *Clause* 45, sub-clause (2), page 25, lines 1-4, omit all words commencing " and as such proprietor " to the end of the sub-clause.

Although the words of sub-clause (2) of clause 45 appear in section 121 of the *Transfer of Land Act* 1928 it would seem that there is some confusion in the wording of that section, and the Committee, after considering the views of Mr. Adam, Q.C., and Mr. Garran on clause 45, recommend the omission of the words set out.

(*h*) *Clause* 51, sub-clause (3), line 33, omit " if for value and without fraud " and insert " with any person dealing *bona fide* and for value with him ".

It was suggested to the Committee that the use of the words " without fraud " might indicate that it is the state of mind of the bankrupt who is dealing with the land rather than that of the purchaser from him which is relevant. The amendment will clarify the meaning of the sub-clause.

(*i*) *Clause* 52, page 28, sub-clause (4), lines 27-35, omit all words commencing " but until service " to the end of the sub-clause and insert " but until a memorandum of the service of the copy has been entered in the Register Book as aforesaid no sale under the writ judgment decree or order shall be made by the sheriff or other officer ".

It appeared to the Committee that the clause does not provide whether, in the event of the sheriff selling prematurely (his actions thus being outside the framework of the clause), the rights of a purchaser for valuable consideration would prevail against the transferee from the sheriff even after registration. In such an event much difficulty could be caused to innocent parties. The Committee therefore recommend the prohibition of sales by the sheriff before a memorandum of the service upon the Registrar of a copy of the writ of *fieri facias* has been entered in the Register Book.

(*j*) *Clause* 57, page 32, sub-clause (4), line 9, omit " in respect of the operation " and insert " resulting from compliance by the authority with the provisions ".

This amendment restricts the immunity from liability of Authorities to a reasonable compass.

(*k*) *Clause* 66, sub-clause (2), line 34, after " No " insert "registered ".

This amendment is necessary to make it clear that sub-clause (2) of clause 66 re-enacts the provisions of section 121 of the *Transfer of Land Act* 1928.

(*l*) *Clause* 72, page 40, sub-clause (2), line 6, after " or " insert " award of an ".

This amendment corrects an omission in drafting.

(*m*) *Clause* 72, page 40, sub-clause (3), line 7, omit " any certificate of title or instrument contains " and insert " in any certificate of title or instrument an easement is referred to or created or reserved by the use of ".

This amendment ensures that the short form of words to express " easements of way " is applicable whether the easement is created by grant or by reservation.

(*n*) *Clause* 81, sub-clause (1), line 8, after " him " insert " as mortgagee ".

This amendment will remove any doubt as to whether this provision places the first mortgagee under the Torrens system in a similar position to that of the legal mortgagee under the general law.

(*o*) *Clause* 87, line 7, omit " estate and ".

These words have been included in the Bill in error and should be deleted.

(*p*) *Clause* 90, sub-clause (1), lines 17-26, omit this sub-clause and insert the following sub-clause:—

> "( ) Subject to this Act every such caveat except a caveat lodged by the Registrar shall lapse as to any land affected by any transfer or other dealing other than—
>
> (*a*) a transmission under Division two of Part IV.; or
>
> (*b*) a transfer or dealing as to which the caveator or his agent has lodged with the Registrar his consent in writing; or

(*c*) in the case of a caveat lodged by or on behalf of a beneficiary claiming under a will or settlement—a transfer or dealing giving effect to the appointment of a new trustee or to any other transaction which in the opinion of the Registrar is not inimical to the interests of the beneficiaries—

upon the expiration of thirty days after notice given by the Registrar to the caveator that a transfer or dealing has been lodged for registration."

This sub-clause gives effect to a recommendation of the Committee in their 1953 Report on the Transfer of Land Bill 1953. (D. No. 4 of 1952-53, paragraph 9 (*c*).)

Mr. Garran, Assistant Parliamentary Draftsman, advised the Committee that, when the Bill was drafted, his own views on this sub-clause were at variance with those of the Registrar and that he had deferred to the Registrar's views. However, subsequent discussions have resulted in both Mr. Garran and Mr. Taylor being in complete accord with the proposed new sub-clause.

(*q*) *Clause* 91, sub-clause (2), paragraph (*b*), lines 18-24, omit this paragraph.

In view of the re-wording of sub-clause (1) of clause 90 this paragraph becomes unnecessary.

(*r*) *Clause* 95, sub-clause (1), line 24, omit " survey " and insert " surveys ".

(*s*) *Clause* 95, sub-clause (2), lines 28-30, omit this sub-clause and insert the following sub-clause:—

"( ) All surveys required by the Registrar and all plans of subdivision lodged under this Division shall be made and certified by a licensed surveyor and, subject to the requirements of the *Land Surveyors Act* 1942, shall comply with any requirements of the Registrar."

This amendment, which was suggested by the Surveyor-General, provides that all plans for subdivisions as well as surveys shall be made and certified by licensed surveyors, and shall comply with the requirements of the *Land Surveyors Act* 1942.

(*t*) *Clause* 95, sub-clause (3), line 32, omit " in " and insert " to ".

This amendment, which was suggested by the Surveyor-General, will enable the Registrar to make use of survey information available to the Office of Titles whether from an inside or outside source.

(*u*) *Clause* 97, sub-clause (2), lines 16-21, omit this sub-clause and insert the following new sub-clause:—

"( ) The Registrar may refuse to accept for lodgment any plan of subdivision unless the council of every municipality concerned certifies in writing that any consent to the subdivision required by section five hundred and sixty-eight of the *Local Government Act* 1946 or section fifty-nine of the *Water Act* 1928 has been given or that no such consent is necessary."

The new sub-clause provides that the municipal council rather than the Registrar shall be the authority to determine whether the subdivision has been consented to if any consents are required. When this sub-clause was drafted the power of a water authority under section 59 of the *Water Act* 1928 to require that certain water rights were included in a subdivision of land was overlooked and the amendment remedies this position.

(*v*) *Clause* 97, sub-clause (5), lines 33-36, omit this sub-clause and insert the following new sub-clause:—

"( ) The Registrar, pending survey of or proof to his satisfaction of title to any land proposed to be subdivided, may approve a plan of subdivision subject to notification on the plan and on the certificates of title of the allotments to the effect that such plan and certificates may be subject to amendment or adjustment, and the Registrar may in due course without any application in that behalf amend or adjust any such plan or certificate of title and may when satisfied as to the plan remove any such notification."

This amendment was suggested by the Registrar of Titles and should expedite the approval of plans of subdivision.

(*w*) *Clause* 98, paragraph (*a*), lines 5-8, omit " of way and drainage and for the supply of water gas and electricity and for sewerage services and for underground telephone services ".

Paragraph (*a*) of clause 98 enumerates the easements which are included in the transfer of allotments in a subdivision but the Committee consider that the reference to specific easements may limit the easements implied as necessary for the reasonable enjoyment of the allotment transferred.

(*x*) *Clause* 98, paragraph (*b*), line 14, omit " other easements of " and insert " easements of way and ".

When this paragraph was drafted easements of way were apparently overlooked and the Committee consider that they should be included.

(*y*) *Clause* 103, sub-clause (2), page 58, paragraph (*b*), line 7, omit " except as regards " and insert " but without prejudicing any rights accrued from ".

In the opinion of the Committee this amendment will clarify the meaning of the paragraph.

(*z*) *Clause* 116, sub-clause (1), line 15, after " If " insert " upon any application to bring land under the operation of this Act or to have any instrument registered or recorded or to have any certificate of title foreclosure order or other document issued the Registrar refuses so to do or if ".

This amendment is necessary to enable section 248 of the *Transfer of Land Act* 1928 to be re-enacted as intended.

(*aa*) *Seventh Schedule*, page 77, clause 6, before " unless and until " insert " other than his right to sue for the recovery of any moneys then owing ".

This amendment was suggested by the Law Institute and will clarify the meaning of clause 6 of the Seventh Schedule.

(*bb*) *Seventh Schedule*, page 79, clause 14, omit this clause and insert the following new clause:—

" 14. (*a*) Where the consent or licence of any person or body is required to the sale, the vendor shall at his own expense apply for and use his best endeavour to obtain such consent or licence. If such consent or licence is not obtained by the date upon which the purchaser becomes entitled to possession of the land sold or to the receipt of the rents and profits thereof as the case may be (in these Conditions called ' the settlement date ') the contract shall be null and void and all moneys paid hereunder by the purchaser shall be refunded to him.

(*b*) If the land sold is leasehold, the rent and other monetary obligations payable by the vendor (except capital payments payable under any Crown lease) shall be adjusted between the parties in the same manner as is provided by these Conditions for the adjustment of rates. The purchaser shall indemnify the vendor against all claims in respect of all the obligations under the said lease which are to be performed after the settlement date."

Clause 14 of the Seventh Schedule, as drafted, was confusing and the Committee consider that in its new form any doubts as to the meaning of the clause will be removed.

7. The Committee consider that, in view of the evidence attached to this Report in which are set out the reasons for and against the suggestions received by the Committee, it is not necessary to refer to them all in detail. The Committee, however, desire to comment on the following matters:—

(*a*) Mr. Adam, Q.C., on behalf of the Chief Justice's Sub-Committee, suggested that clauses 53 and 56 should be re-drafted to provide for compensation to be paid to a purchaser who suffers by the failure of an acquiring authority to comply with the provisions of this Bill. The Committee consider that this is not a proper matter for inclusion in the present Bill.

(*b*) The Law Institute suggested that clauses 92 and 93 of the Bill, dealing with search certificates and stay orders, could be omitted as in practice the procedure provided for under these clauses was rarely used. The Committee consider that the clauses should be retained but may require amendment when the Titles Office is in a position to carry out its plans to provide photographic copies of documents in the Register Book to persons desiring to search.

8. The Committee recommend that, subject to the amendments set out in this Report, the Bill should be passed into law in the present Session.

9. The Committee desire to express their appreciation to all those who gave evidence before them and to make particular reference to the excellent work of Mr. Andrew Garran, Assistant Parliamentary Draftsman, in preparing the new Bill which substantially gives effect to the recommendations of the Committee arising from five years of investigation into transfer of land legislation and sets out in a modern and compact form the legislation necessary to enable the Torrens system to operate efficiently in this State.

Committee Room,
25th November, 1954.

TRANSFER OF LAND BILL 1954

MINUTES OF EVIDENCE

TUESDAY, 26TH OCTOBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles.
The Hon. I. A. Swinburne,	
The Hon. F. M. Thomas.	

Mr. A. Garran, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—On behalf of this Committee I again have pleasure in welcoming Mr. Garran, the Assistant Parliamentary Draftsman, to aid our deliberations. It will be remembered that the Transfer of Land Bill has been the subject of previous inquiries by this Committee, and no less than four or five reports have been made on a Bill which was originally submitted as far back as 1949. Following our final report, the question of revising the draft Bill was considered by the Government, and I understand that Mr. Garran was commissioned to prepare a new Bill in accordance with certain instructions which were given to him. Mr. Garran is present to-day to explain to this Committee the Transfer of Land Bill 1954, which is the successor to a number of other Bills which have been before both Houses of Parliament.

Mr. Garran.—This Bill is completely different from the Bill on which evidence was last given. The last Bill was the Transport Regulation Bill, which was a pure consolidation. This Bill may be termed pure law reform with consolidation as an incidental aspect. The instructions I received, and these instructions were given to me in the presence of the Chairman of this Committee, were to redraft the Bill previously before this Committee and the House in the light of reports prepared by this Committee, and generally to overhaul the existing legislation in the light of the comments of this Committee. In the drafting of the Bill I have had considerable assistance from the Registrar and the Commissioner of Titles, from the Examiners of Titles, and from the Conveyancing Branch of the Crown Law Office. I have had the opportunity of reading the second-reading speech which was made in the Legislative Assembly on this Bill, and that fully and correctly sets out the general aspect of the proposed legislation. It is presumed this Committee does not desire me to recapitulate what is set out there.

The Chairman.—The inquiry on which we are engaged at the moment is slightly different from the usual inquiry which faces this Committee; consequently, this Committee would be glad of a fairly full report of what is in the Bill so that it can be understood. I think it is fair to say that the Minister's speech dealt with the matter generally and not in detail, and it is to you we turn for some indication of the details of the Bill.

Mr. Brennan.—Does this Bill differ in many respects from the Transfer of Land Bill that this Committee had before them on a previous occasion?

Mr. Garran.—If the two Bills were placed side by side, at first glance I do not think one would recognize them. When one comes to the detail, there is not much difference except in relation to (*a*) the omission of obsolete material, (*b*) the inclusion of the recommendations of this Committee, except for two or three matters which I desire to mention later, and (*c*) the general revision, re-arrangement, or redrafting of the legislation. In short, its contents are the existing legislation in regard to the transfer of land as modified by the recommendations of this Committee.

Mr. Brennan.—To all intents and purposes, so far as the Committee are concerned, it is practically a new Bill?

Mr. Garran.—I do not think so, so far as the Committee are concerned, because the Committee have already gone some three-quarters of the way towards this Bill.

Mr. Pettiona.—It follows more closely the reports of this Committee than perhaps any other straightout Government Bill.

Mr. Garran.—It follows the reports of this Committee in all respects except in three matters. It does not contain one of the earlier recommendations of this Committee that there should be a Rules Committee to lay down rules for the guidance of the office. I will give my reasons for that later. It does not go as far as this Committee went on its recommendation as to the registration of easements, and it goes further than the advice of this Committee in relation to the witnessing of documents. In other respects I can say that the Committee have before them in substance, though not in full, the Bill seen before subject to the recommendations of this Committee.

The Chairman.—You will remember, gentlemen, that one of the important recommendations made by this Committee was the unity of control in the Titles Office, the control being vested in one person. That in itself was an almost revolutionary proposal so far as the existing law was concerned, because the old Bill had provisions whereby a certain part of the Titles Office carried out one provision, and another part carried out a further provision.

Mr. Garran.—I would like to add that there are some half a dozen occasions where, if I had a clean field on which to work, I would have preferred to move in a different direction. But in view of the continuity of administration, I left matters unchanged as the Titles Office works satisfactorily under the present provisions.

Page 2 of the Bill sets out the arrangement, which is a re-arrangement of the existing *Transfer of Land Act* 1928. The present arrangement is haphazard, and I have taken this opportunity of trying to bring some sort of order into the form of the Bill.

The Committee will notice the division into Parts begins with the Office of Titles. That Part deals with the organization of the administrative body which has to administer the Bill.

Part II. then proceeds to the legal requirements to bring land under the operation of the Torrens system. It includes the existing system of application by owners of land and other persons to bring under the Act land in which they have an interest, and it also includes a new provision which was not in the previous Bill. This is based on South Australian and New Zealand precedents for the compulsory bringing of all land in Victoria under the Act.

Part III. deals with the general principles of registration in the Titles Office.

Part IV. in effect sets out all the various types of dealings that may be registered or dealt with in the Titles Office.

Part V. deals with incidental provisions which are not dealings in themselves, but are incidental to dealings.

Mr. Thomas.—Is there any change in acquisition of possession in regard to the thirty-year period?

Mr. Garran.—No. The last part deals with the financial aspect; that is to say, the Assurance Fund, and miscellaneous matters.

Clause 3 is an important clause; it in effect puts the transfer of land legislation into its proper perspective in relation to other legislation and rules of law. Sub-clause (1) for the first half of it follows the legislation as it now stands. The second half of that sub-section is an expansion of the existing law. The first half of the sub-section says that " No Act or rule of law, so far as inconsistent with this Act, shall apply or be deemed to apply to land under the operation of this Act." The second half originally said that " This Act shall not be construed as limiting or abridging any provisions of the Married Women's Property Act." Now there are other Acts that are in a similar position in relation to this Act as the Married Women's Property Act; for instance, particularly the Property Law Act. Even as late as 1952 there was argument in the Court as to whether or not a well-known rule of property law applied to the Transfer of Land Act. I refer to *Watson's case* reported in 1952 V.L.R., page 470, where it was decided that the rule of *Otto* v. *Lord Vaux* applied to registered land as well as unregistered land. In consultation with the Solicitor-General (who appeared in Watson's case), he agreed that I should include in the draft a wider provision, and I have put in the counterpart of other State legislation to the effect that not only the Married Women's Property Act, but all legislation and rules of law relating to land should apply to land under the operation of this Act unless otherwise implied or provided. I have said, " but save as aforesaid any Act or rule of law relating to land, unless otherwise expressly or by necessary implication provided by this or any other Act, shall apply to land under the operation of this Act whether expressed so to apply or not." I have used the words " expressed so to apply or not," because in the Property Law Act there is some confusion.

Mr. Randles.—Is there likely to be a clash in that particular clause? In the first part it says the Act shall be the guiding principle, and in the second part a rider has been more or less added to it.

Mr. Garran.—I do not think so. The first part is the " strong leg " and the other is only a rider. I have argued that point out.

Sub-clause (3) of clause 3 is also new. In the Victorian legislation there is no reference at all as to whether or not the Transfer of Land Act can apply to the Crown; but there are thousands of titles registered in the Office of Titles relating to Commonwealth ownership, and thousands of titles relating to ownership by Crown instrumentalities in Victoria. There are some titles registered as being owned by the Victorian Crown itself. So it will be seen that the provision justifies modern practice.

In the *Transfer of Land (Acquisitions) Act* 1948 there was a reference to the Commonwealth, in effect a requirement that the Commonwealth should do certain things. This was put in in consultation with the Commonwealth Crown Solicitor but, if put to a test, might have been difficult to uphold. Consequently, that requirement has been omitted in a later stage of the Bill and a more general provision inserted earlier, to the effect that this Act does not *bind* but *applies* to and in relation to the Crown. In other words, the Commonwealth may have the benefit as well as being requested to observe the requirements of the Act.

Mr. Pettiona.—Without any obligation?

Mr. Garran.—If provision was made in respect of an obligation it might not be upheld in a dispute. The Commonwealth cannot be bound but, on the other hand, I have some support on this at page 137 of Mr. Baalman's *Commentary on the Torrens System in New South Wales*, where reference is made to the problem, and he says it is probable without such a provision as this the Acts would apply to the Commonwealth and the State. Probably omission of this sub-clause would not be noticed, but it was thought desirable to have it there to tell the story, particularly in view of what now stands in the *Transfer of Land (Acquisitions) Act* 1948.

Mr. Randles.—Could it be said that the Commonwealth would be bound if it had land registered under the 1954 Transfer of Land Bill?

Mr. Garran.—If the land was registered, I do not see how it could be said that the Commonwealth was not bound, in so far as there would be certain requirements under that Act in relation to registration and certain rights and duties flowing from registration. I do not think the Commonwealth would dispute it, and it is my belief that, in a procedure like this, we can go fairly close to binding the Commonwealth, if the word " apply " instead of the word " bind " is used.

Mr. Randles.—In other words, the Commonwealth would not accept the privileges without the burdens?

Mr. Garran.—That is so. It will be noticed in the interpretation of " Court " I have given effect to one of the recommendations of the Committee, namely, Item 35 at page 10 of the 1951 Report, by including a reference to " a Judge thereof." It will also be noticed that " Court " is defined as " the Supreme Court." There are other Acts under which the County Court may act instead of the Supreme Court for the purposes of registering land. The Housing Act is one such example.

The Chairman.—What is the effect of that?

Mr. Garran.—So far as that Act is concerned, it means the County Court can act instead of the Supreme Court; that provision operates from outside this Bill.

The Chairman.—It does not cut across any principles?

Mr. Garran.—No. I have endeavoured to keep this Bill entirely to matters that are essential in relation to transfer of land and, where other Acts cut across it in special particulars, to leave the provisions in those Acts to avoid confusion. The exact demarcation is difficult in many instances.

Similarly, the definition of "instrument" gives effect in a wider form to one of the recommendations of this Committee. When dealing with clause 236 of last year's Bill, this Committee recommended, in their 1953 Report (Item 9 (*e*), page 7) that the definition of "instrument" should be widened. I have looked into the question, and the definition can be widened for the purpose of the whole Act and, in that respect, it follows the South Australian Act and, to a lesser extent, the New South Wales Act. "Instrument" has now been defined as every registerable document instead of, as before, a list of certain documents, and not an all-inclusive list.

Clause 4 (2) at page 5 of the Bill is new and is taken from a South Australian precedent. In effect, it provides that any reference to a transferor or other dealer in land refers also to his executors, administrators, transferees, and so on. This one simple proposition saves endless repetitions of a string of words in lengthy passages throughout the Bill.

Part I. of the Bill gives effect to the recommendation of the Committee in their 1951 Report (Item 14, pages 5 and 6) that the offices of Commissioner and Registrar of Titles should be combined. Effect has been given to that recommendation with one variation. Without laying it down, the Committee appear to have envisaged that "Commissioner" would be the word retained. However, after consideration and consultation, it was considered that "Registrar" is the more appropriate word, and it was thought preferable that that title should be retained. In addition, I have put the whole of the Office of Titles, including the Registrar, under the Public Service Act. Consequently, appointments will be made in the normal Public Service manner and, where necessary, conditions of suitability will be laid down in the Public Service Regulations.

Mr. Swinburne.—Did the staff come under the Public Service Act previously?

Mr. Garran.—The staff as a whole and the Examiners of Titles, with certain statutory qualifications, did come under the Public Service Act, but the Commissioner did not.

Mr. Randles.—Did not the Commissioner have the right of acquiring unto himself certain temporary employees?

Mr. Garran.—I think he could acquire temporary employees only under the Public Service Act, but I do not know what was the nature of his arrangements with the Public Service Board or the head of the Law Department. Mr. Taylor would be better qualified to speak on that particular aspect.

The Chairman.—Is it correct to say that, under the old law, the Commissioner of Titles, the Examiners of Titles, the Registrar and the Assistant Registrars were appointed by the Governor in Council and were not subject to the Public Service Act?

Mr. Garran.—I think that is going a little too far. The Registrar and Examiners are under the Public Service Act now, but the Commissioner of Titles is not. Before dealing with that, I should like to mention one kindred point. Clause 5 (3) at page 6 of the Bill repeats almost *verbatim* what is in the existing Act, and it says that anything required to be done or signed by the Registrar may be done or signed by an Assistant Registrar. The Registrar will now also be performing duties which previously were the duties of the Commissioner, and some of the duties of the Commissioner were looked upon as being quasi judicial. In effect, it means that two or three of the senior officers could, if so required by the Registrar, perform the duties of the Registrar in this respect, but it should be a matter of discretion and internal administration. I do not think any difficulty will flow therefrom, but that fact is pointed out to the Committee. This is one case where I have not altered the law but the law alters itself against the background of the redraft.

Prior to the *Public Service Act* 1946 appointments were made by the Governor in Council; subsequent to the passing of that Act they have been made by the Public Service Board. At the present time all appointments, with the exception of the Commissioner of Titles, are made by the Public Service Board. There are certain specific statutory references to the Examiners of Titles which will disappear, and they will become public servants, in the same manner as the Crown Solicitor, the Parliamentary Draftsman, and so on, are public servants.

The Chairman.—Is there any requirement in this Bill that the Registrar of Titles shall have some particular qualifications?

Mr. Garran.—No; that would be provided for entirely by the Public Service Regulations and by the Public Service Board, as in the case of other professional officers in the Public Service, whether they be lawyers, doctors or engineers.

The Chairman.—There was a provision in the old Act that the Commissioner of Titles should be a qualified lawyer?

Mr. Garran.—Yes, but he is not under the Public Service Act, and it had to be stated.

There is nothing more of consequence in Part I., the remainder of that Part following closely on the existing Acts.

Part II., which begins at the bottom of page 7 of the Bill, deals with bringing land under the Act, and Division 1 follows the existing legislation. Clause 9 sets out the people who may bring land under the Act, and one class of person has been left out of that clause. The class to which I refer appeared in the previous Bill at paragraph (*d*), but no such class of person has brought any land under the Act, so far as I have been able to ascertain. I do not know to whom it refers, unless it is to the incumbent under an entailed estate. There is no such provision in the New South Wales or South Australian Acts, so it was treated as surplusage. It read: "The person claiming to be the owner of the first estate of freehold if the owner of the first vested estate of inheritance consents to the application."

The Chairman.—Reverting to clause 9 for a moment, I notice that there was a provision in the 1953 Bill for a mortgagee in possession to bring land under the Act and also a provision for a person authorized by a Power of Attorney to bring land under the Act. Has that been omitted intentionally?

Mr. Garran.—So far as it concerns the person acting under Power of Attorney, there is no need for that because the Part dealing with Powers of Attorney has been rewritten. It is not the person *qua* attorney who has the power; it is the person who has given the Power of Attorney. The actual formula is gone through by the grantee of the power, so it is not a new person bringing in the land. I have cut down "Powers of Attorney" to a bare minimum and, in

effect, Powers of Attorney apply in the case of a transfer of land as in the case of other land. This was one reason for redrafting clause 3 (1).

The Chairman.—What is the position in regard to mortgagees in possession?

Mr. Randles.—That is covered by the second part of 9 (1) (*f*).

Mr. Garran.—I would like to see the Act. I think you are right, Mr. Randles. I have gone back to the original.

The Chairman.—The answer is that the mortgagee in possession would be the person who is in the position of being a trustee for sale, in sub-clause (*d*).

Mr. Garran.—He is the owner of fee simple subject to an equity of redemption. I have gone back to the original Act of 1928, which is quite clear on the subject. I have not followed the variation put in in the previous draft Bill. The mortgagee of land must be the owner at law or (if a second mortgage) in equity, in respect of general law land, but not in respect of registered land.

The Chairman.—On page 1 of the Minutes of Evidence of the 1949 Report, Mr. Wiseman referred to the fact that he had added "who is mortgagee in possession." When Mr. Schilling attempted to question him as to why he put it in, Mr. Wiseman suggested that the question be left to later, but never came back to it.

Mr. Garran.—This was checked at the time with the Office of Titles, and they register such a person subject to the Act.

Clause 10 follows the present Act, except that in sub-clause (3) I have left out that portion relating to dealings in land and have restricted it to the bringing of land under the Act. The dealings in land have been covered by clause 102, which is the appropriate place to deal with it.

Sub-clause (4) is an example of where, if I had the redrafting of the Torrens system, I would have approached the matter in a different way. However, the system here works well, so I have not touched it. The position is like this: Suppose X brings under the Transfer of Land Act land which is subject at that time to a general law mortgage to B who enforces his mortgage by sale; although the land is already registered, the practice at the Titles Office under these provisions is to bring it under the Act again, although the sale is a sale by mortgagee as referred to in clause 9, instead of proceeding on the basis of it having already been registered.

Mr. Randles.—B is the mortgagee?

Mr. Garran.—Yes. This is based partly on the fact that the mortgage in general law and under the Torrens system is a completely different transaction. The practice works and the officers at the Titles Office are happy; therefore it has been left untouched. The use of the provision does not happen very often.

Mr. Thomas.—It is merely a question of change, say, from Jones to Brown, a change of personnel?

Mr. Garran.—Yes.

Clause 11 requires certain notices to be given. I would like to point out to the Committee that throughout the existing legislation there are many references to notices, and generally different kinds of notices are required. This has been co-ordinated as far as possible by setting out in clause 113 the general principles relating to the giving of notice, and only incorporating elsewhere in the Bill any variation where it is really required. That saves a lot of overlapping and a lot of confusion.

Clause 12 (2) gives effect to one of two of the recommendations of this Committee. In the 1951 recommendation, Item 15 (*a*) on page 6, this Committee suggested that in the case of a caveat the place for service could be anywhere within 3 miles of the Titles Office instead of an address in the City of Melbourne. In 1953 in Item 9 (*b*) on page 7 of the recommendations of this Committee, the Committee went further; it was suggested there should be an address anywhere in Victoria. Consequently, the wider proposition has been taken.

There is nothing further in Division 1 to which the attention of the Committee should be invited.

Division 2 appeared in the previous Bill under the heading of "Compulsory registration of land", and on the earlier recommendation of this Committee, in 1951, Item 16 (*a*) on page 6, this has been changed in the Bill to "by direction."

Mr. Brennan.—It is rather ironical to see, in the opening paragraph, "with all convenient speed."

Mr. Garran.—Actually it is not ironical. The problem was: In what period can one bring the land in Victoria under this Act? In New Zealand it was aimed to be done in a ten-year period, but it was found it simply could not be done. The problem is: The outstanding land is the most difficult land to bring in; most easy lands have already been brought in. It is costing more now to bring the land in, and people feel if they have to face large legal fees to meet the problems of title, they would rather leave things under the present circumstances.

Mr. Thomas.—They have obtained it under the general law originally, when the surveys were not up to standard.

Mr. Garran.—It is not only the survey, but also the complication of the legal chain of title.

Mr. Randles.—If it came to a question of the survey under the general law conflicting with the survey under the Transfer of Land Act, which would prevail?

Mr. Garran.—The Commissioner would have to be satisfied as to the survey before the land is brought under the Act. In bringing it under by direction the expense side disappears, because, except for a small fee of about £1 or 30s. to bring the land under the Act, all the other fees are on the State if it is brought under the Act compulsorily.

Mr. Swinburne.—Do you think that that may still prolong it?

Mr. Garran.—It is a question of staffing.

Clause 19 says "shall give such other notices as he thinks fit." That is a recommendation of the Committee, as shown on Item 16 (*b*), page 6, of the 1951 Report.

Clause 21 indicates where the drafting has been altered somewhat, but I hope not the over-all result. The previous drafts emphasized more the acts or matters that would have to be done to justify registration of the ordinary Certificate of Title. This division stresses that if one can prove the title, then one can get an ordinary Certificate of Title, but if there are any doubts, difficulties, or defects in the title, then a limited Certificate of Title is issued, subject to the defects in the title.

Mr. Thomas.—Would that limited certificate continue for long?

Mr. Garran.—It could continue for some time, but normally if the defects are not cured in 30 years, it will be registered as an ordinary certificate.

Mr. Thomas.—Why 30 years as against the question of acquisition by possession?

Mr. Garran.—Thirty years was in the South Australian Act.

The Chairman.—The Committee may remember that when we were in South Australia, Mr. Jessop showed us some of the certificates that had been issued and revised in accordance with the additional information that had come to light. They were changed from limited certificates to unlimited certificates as the result of such information.

Mr. Garran.—This follows South Australia.

Mr. Randles.—Instead of looking back 30 years, it is looking ahead 30 years?

Mr. Garran.—Yes.

Clause 21 (5) at page 14 of the Bill gives effect to the recommendation of the Committee in their 1951 Report (Item 16 (*c*), page 6) as to who may inspect the Registrar's minutes of defects in titles.

That brings me to Part III. on page 16 of the Bill, and this Part is really the vital Part legally as to the establishment of titles. It has not been divided into divisions but, instead, there are three cross-headings. The clauses under the first cross-heading deal with Grants and Certificates; the clauses under the second cross-heading deal with Instruments; and the clauses under the third cross-heading deal with the effect of registrations of Grants, Certificates and Instruments.

Clause 28 (2) is new and is taken from the South Australian legislation. There is nothing in the existing Victorian legislation to show the status of the duplicate Certificate of Title and, in effect, its status must be equal to that of the certificate registered in the Office of Titles. The provision in the South Australian legislation has been copied in this Bill to the effect that, where there is any conflict between the entries on the original and the duplicate certificate, the entries on the original certificate shall prevail. Of course, it must be remembered there is power to correct errors on the original. Consequently, if it so happened that the duplicate was correct and the original incorrect, the matter could be rectified. However, it is preferable to have as the ultimate source of registration the official copy in the Office of Titles, rather than to give equal status to a document circulating far and wide.

Mr. Randles.—I can understand the original Certificate of Title should be the ultimate source of registration, but I cannot understand the reason for there being no provision in the Torrens system to look behind it. How could there be proof if the original was not correct?

Mr. Garran.—There is provision in all Torrens systems for corrections, and some systems go a little farther than others.

Mr. Randles.—Is not the duplicate certificate made from the original certificate?

Mr. Garran.—Both are made from a common document.

Mr. Brennan.—I know of at least one instance where two Titles have been issued bearing the same number, and one has been recalled and numbered "B."

Mr. Garran.—That would appear on both original and duplicate.

The Committee adjourned.

THURSDAY, 28TH OCTOBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council:	*Assembly:*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. A. Garran, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—At the last meeting of this Committee Mr. Garran had just commenced to refer to Part III. "The Register Book," clause 28 of the Transfer of Land Act 1954 Bill.

Mr. Garran.—The remainder of the clauses under the heading "Grants and Certificates" on page 16 of the Bill follow the existing legislation. These clauses are vital to the whole operation of the legislation; the original Crown grants, new grants, or the certificate of title issued when land is brought under the Act, or on the issue of a new title, are the basic documents on which the whole system operates. In effect the State, with each registered grant or certicate of title, guarantees the title to the proprietor and to each new proprietor as the certificate is transferred to him or a new certificate is issued.

The Chairman.—What has been done with this Part; has it been re-arranged?

Mr. Garran.—It has been re-arranged.

The Chairman.—There are no particular aspects on which you desire to enlarge?

Mr. Garran.—There are no particular aspects to which I need call the attention of the Committee. These clauses deal with the registration and grants of certificates of titles, their cancellation, lost grants, and the issue of new certificates of title and the like.

The next group of clauses, clauses 33 to 39, are under the heading of "Instruments." This group deals with the instruments that are used to effect dealings with land under this Act whether by way of transfer, lease, mortgage, or the like. Again there is no real alteration in these clauses.

Clause 34 is an important clause because it lays down the rule that instruments are entitled to priority according to the date of lodgment for registration at the Titles Office. This provision unfortunately is subject to certain exceptions in other Acts, such as those relating to Closer Settlement and Wire Netting. In many cases where a public authority is authorized to take a charge over land, it is also provided that registration of that charge operates to give priority over previously registered charges.

Mr. Byrnes.—Is that a new proposal?

Mr. Garran.—No, it is an old system. I have left it untouched but I have directed the attention of this Committee to it because it is a difficult aspect in administration; it takes away the ultimate idea of certainty of title.

Mr. White.—Is there any recommendation you have in mind?

Mr. Garran.—I have no recommendation; I am only bringing this matter to the notice of the Committee. It has been put there over the years by Government policy, and it does operate against the basic requirement of absolute certainty of title.

The Chairman.—In fairness I think I should say that the Committee were attempting to tackle this problem, though I doubt whether we reached any satisfactory solution to it. I think the wish of this Committee, or the wish of the previous Committee, Mr. Garran, was that so far as possible the Register Book should be certain and the only charges which would have a priority were those that could be conveniently obtained by a search and/or by the issue of a certificate that would be binding on the authority concerned.

Mr. Garran.—I think there were two different aspects, that aspect relating to notice of the charges and notice affecting and binding the purchaser or the person dealing with the land. These charges of public authorities and Government instrumentalities are not binding on the land till registered. When registered they move forward in time.

The Chairman.—Do they have priority over anything else?

Mr. Garran.—Yes; each one is stated to have first priority. I do not know how they get on with each other if ever they clash.

The Chairman.—Can you tell this Committee what these charges are?

Mr. Garran.—I cannot tell the Committee all of them. For example, I have put references to two cases in the margin. At the bottom of page 18 one of these references is to Closer Settlement, and I do not know whether there is a similar provision in Soldier Settlement. The other reference is to Wire Netting.

The Chairman.—Do you know whether there are any others?

Mr. Garran.—There are others; I think there is a case in Vermin and Noxious Weeds.

Mr. White.—Why in the case of Wire Netting now?

Mr. Hollway.—That is an old depression provision; it goes back to about 1930.

The Chairman.—Would there be any convenient way of getting over that problem?

Mr. Garran.—From a drafting point of view it could be done by a general provision in the Bill which could be taken up by a consequential amendment later. Of course, it is a Treasury problem and one about which I could do nothing on my own.

The Chairman.—I appreciate that. Could it be done conveniently in this Bill?

Mr. Garran.—It could be done in this Bill.

Mr. Hollway.—Now would be the time to do it.

Mr. Byrnes.—One would be up against the Crown in advances made by the Soldier Settlement Commission.

Mr. Hollway.—I cannot see why that would be so. Take, for instance, one may finance a person to go on the land and lend whatever may be required; it may be a first mortgage, and one may find the whole of the security completely destroyed by the person getting some sort of advance from the Lands Department. Why should they have priority?

The Chairman.—I suppose one would get the rather extreme situation with a State Savings Bank mortgage, which could be destroyed by advances made by the Crown. That is a state of affairs which I presume is not realized by the public.

Mr. Garran.—That is quite true. It became a habit to put this provision in.

The Chairman.—I have a suspicion that it is still a habit.

Mr. Garran.—No. We have to put it in under pressure.

The Chairman.—You cannot think of any legislation before the House at the moment?

Mr. Garran.—There is no legislation before the House involving this, but there may be in some Acts that are being amended by legislation before the House; I think it may be involved in the Vermin and Noxious Weeds Act.

The Chairman.—I do not think it would be so in that case. There was, I think, a question of proof.

Mr. Byrnes.—It became a charge on the land.

The Chairman.—Would it be possible for this Committee to obtain a list of the Acts?

Mr. Garran.—The Titles Office should be able to provide it.

The Chairman.—Would it be more convenient for this Committee to make the request of the Titles Office, or would you do it?

Mr. Garran.—I would do it for the Committee.

The Chairman.—If that is the case, then this Committee can look at this point later.

Mr. Hollway.—Possibly this Committee could check up with the Lands Department to see how much would be involved.

The Chairman.—It would be better to obtain the information from Mr. Garran and then consider whether this Committee should call someone from the Lands Department or the Treasury to see what is involved. The cases of the Vermin and Noxious Weeds, and the Wire Netting should not provide any great difficulty.

Mr. Garran.—The Soldier Settlement Act has no such provision.

The Chairman.—They register mortgage in the ordinary way and lend advances if there are no other charges on the land.

Mr. Thomas.—How does it affect the Housing Commission?

Mr. Garron.—I do not think any cases would arise there because the Housing Commission owns the properties.

Mr. Hollway.—What would be the position if someone obtained a Soldier Settlement block with an ordinary mortgage and then got a new advance from the Soldier Settlement Commission; would they take the property? It could happen that a person may possibly run short of money.

Mr. Garran.—Could they get the money? I do not think they could. Therefore, the problem would not arise.

The Chairman.—It may be more convenient if this Committe were to leave this aspect at the moment and reserve the matter for further consideration. Mr. Garran can now carry on with the further clauses.

Mr. Garran.—Clause 36 gives effect to the recommendation of this Committee in their 1953 Report (Item 12, page 8), when they suggested that the Queensland provision should be followed. That has been given effect to.

Mr. Brennan.—It enables the Registrar to simplify the entries.

The Chairman.—Going back for a moment to clause 35 (4); what is the procedure with regard to replacing duplicate instruments; is the procedure being simplified in any way?

Mr. Garran.—There is no simplification other than a verbal alteration. The loss has to be proved.

These clauses then proceed to deal, as in the existing legislation, with the prevention of entries of trusts in the Register Book, and certain entries to be made when land is held in joint tenancy without any survivorship.

Clauses 40 to 44 appear under the cross heading "Effect of Registration," and are really the whole core of the legislation. Clause 40 provides that no instrument dealing with land under the Act shall be effectual until it is registered and, when it is registered, it shall have the same effect as a deed made under the general law.

Clause 41 provides that the certificate of title shall be conclusive evidence of the title of the proprietor.

Mr. Randles.—Does not that apply in all cases?

Mr. Garran.—Under the Housing Acts (No. 4568, section 67 (1) (*c*)) a certificate signed by the Registrar of Titles that any person's name appears in the Register of the Office of Titles shall be *prima facie* evidence.

Clause 42 is a most important clause, and one on which this Committee spent some time last year. It provides that the estate of the registered proprietor is paramount except in respect of instruments registered on the Certificate of Title or in the case of fraud or in the case of certain matters set out in clause 42 (2) at page 23 of the Bill, which may be described generally as matters that can either be discovered by searching some other Register or else matters that are fairly obvious as a result of looking at the land itself.

Dealing with clause 42 (1), this Committee, in its 1953 Report (Item 7 (*c*) on page 5), made some recommendations on evidence furnished by me last year. I gave that evidence when I was dealing with the question of acquisition by the Housing Commission and other authorities, and the general purpose of the Committee's approach was that notice of acquisitions and pending acquisitions by such authorities should appear on the Register. I thought assistance in that direction could be given by including certain words in section 42. I suggested two sets of words, the first set having the effect of amending sub-clause (1) by saying "Notwithstanding anything in this Act." However, these words are unnecessary because, in lines 32 and 33 on page 22 of the Bill, the words "which but for this Act" give exactly the same effect. The second suggestion made by me in that connexion was that on line 35, after the word "fraud", there should be inserted the words "or in relation to any encumbrance as to which at the time of the acquisition of the estate or interest he had notice". The effect of these words has been included in clauses 57 and 88 of the Bill, with which I shall deal later. However, the reason why one cannot protect estates or interests, of which there is notice but which do not appear on the Register, by putting such a provision in this clause, is that this clause is the basic clause which says there is to be no notice of anything not on the Register except as otherwise provided. It is better to put the provision in its proper place rather than to put in this clause a general provision such as was first suggested by me. It would go too wide for the effect of this clause, so I have left sub-clause (1) as set out in the original Act and taken up the Committee's other aspect in the appropriate places, dealing particularly with acquisition by public authorities and other bodies.

Clause 42 (2) departs from the previous Bill and goes back to the Act with two alterations. This was in accordance with recommendations of this Committee, contained in its 1951 Report (Item 18, page 7) and its 1953 Report (Item 5, page 4). With the permission of the Committee, in the first place I propose to deal with the second recommendation. In the previous draft, Mr. Wiseman had redrafted the sub-section, omitting some of the prior exceptions partly because of the way in which he had approached leases, concerning which I shall speak later, and partly for other reasons set out in the Report of the Committee. The Committee recommended that there should be a return to the original legislation subject to the two alterations I have mentioned. The first of these appears in sub-clause (2) (*e*), which provides that where an option to purchase is contained in a lease, where a tenant is in possession of the land, it shall not run against the registered proprietor. Such an option is something that runs counter to the title and it should appear on the title as such. A lease is something that expires in due course; an option of purchase, if the option is taken up, is something that can override the ownership of the registered proprietor. The other amendment was to include in paragraph (*f*) a list of charges which may be discovered by searching at municipal, water, and land tax offices, and provision is made to include other enactments where authorities set up registers which can be considered suitable and sufficiently certain for the purposes of this legislation.

The Chairman.—The power to declare their suitability rests in this legislation?

Mr. Garran.—It rests under this legislation with the Governor in Council.

Mr. Thomas.—Have there been any difficulties in regard to defining the other charges?

Mr. Garran.—The matter has not arisen yet, because this is new.

Mr. Thomas.—Is this absolutely new?

Mr. Garran.—Not absolutely new. There is a difficult provision in section 72 of the *Transfer of Land Act* 1928, which reads—

> . . . and to any unpaid rates and other moneys which without reference to registration under this Act are by or under the express provisions of an Act of Parliament declared to be a charge upon land in favour of any responsible Minister or any Government department or officer or any public corporate body . . .

In short, there is a vague provision relating to the rates and charges. The amendment makes the provision certain and defined.

Mr. Thomas.—I know of certain disputes that have arisen concerning wire netting.

The Chairman.—If those interested in wire netting feel sufficiently strongly about this matter, they can set up a proper system of registration and issue a certificate showing the amount owing, which will be binding upon them. If that is done, the authorities can bring them into this category.

Mr. Randles.—The initiative rests with them.

Mr. Garran.—They have an option of registering or setting up a register of their own which satisfies the Government as being sufficient for the purpose. In England the stage has been reached where a local register for many of these matters is being compiled. I think it is a little premature in this State, although, ultimately, it may be found desirable. I discussed the matter a couple of years ago with local government authorities. It is possible to find most of these charges at one place, because the water authority, the sewerage authority and the municipality are usually to be found in the same building in a country town.

Mr. Randles.—In England, of course, the Council does much of the work which, in Australia, is split up between three or four different authorities.

Mr. Garran.—That makes it less difficult to institute such a system.

The Chairman.—Does this clause fit in with clause 34, where reference is made to the fact that under various Acts the Crown has priority?

Mr. Garran.—Under these other Acts the Crown either has to legislate or come within the list set out in this Bill. Priority is a different aspect from notice.

The Chairman.—You have left the position as it was under the 1928 Act except that option of purchase now requires to be registered?

Mr. Garran.—That is so; that overrules the case of *McMahon* v. *Swann,* 1924 V.L.R., page 398.

Clause 43 is another most important clause. Sub-clause (1) is the law as it now stands, and sub-clause (2) is new. Sub-clause (1) is something like section 92 of the Constitution; everyone knows what it means, but the Courts have decided that it means something else. In *Lapin* v. *Abigail,* Gavan Duffy and Starke, *J.J.*, said, at page 196, " We accept also as settled law —though without much enthusiasm—the proposition that the protection given by section 43 of the *Real Property Act* 1900 to persons dealing with or taking or proposing to take a transfer from the registered proprietor is only effective when such persons become registered and not before." The point is this: Sub-clause (2) says anyone dealing with a registered proprietor of land is affected by notice only of what is registered in the Titles Office or of these matters in the preceding clause, notwithstanding that other matters do come to his knowledge or notwithstanding that he has made no attempt to search other matters. The Courts have said in effect that it is abolishing the old common law rule that if you have a notice of an equitable interest you are bound by it. The Court has said, " Yes, we will see that any notice you get which is outside registered interests and outside the matters referred to in clause 42 is not binding so long as you get it after and not before the registration of the instrument which gives effect to your dealing," and you quite probably have notice.

Mr. Randles.—That is offering them nothing, in effect.

Mr. Garran.—That is not quite right.

Mr. Thomas.—Does not that put " notice " paramount?

Mr. Garran.—To use your own expression, it makes it " paramount " over the register. Mr. Baalman, in his *Commentary on the Torrens System in New South Wales,* states on page 177—

> If the courts had held that section 43 means what it says, protection against notice would have commenced to apply from the time of commencement of dealing with the registered proprietor, and section 43A would have been unnecessary.

New South Wales sought to meet this by putting in section 43A into their Act, which provides—

> For the purpose only of protection against notice, the estate or interest in land under the provisions of this Act, taken by a person under an instrument registrable, or which when appropriately signed by or on behalf of that person would be registrable under this Act, shall, before registration of that instrument, be deemed to be a legal estate.

I share the views of Mr. Baalman; first of all, section 43A is very difficult to understand unless one is a conveyancing lawyer and knows the whole story of the doctrine of notice. Secondly, it is an intricate approach to the matter and has only qualified application. The effect of it is this: That after an instrument has been signed but before registration one is protected against notice. It goes back to the signature of the instrument but no further.

Mr. Baalman complains—

> . . . to confer the protection in the qualified manner that section 43A has done may amount to a capitulation to the settled law which will preclude section 43 from ever being given its literal meaning . . .

In consultation with the experts of the Conveyancing Branch of the Crown Law Office, I have put in sub-clause (2) with the object of giving sub-clause (1) what was its original intended meaning. That provision says—

> Notwithstanding anything in any provision of this Act the operation of this section shall not be affected or delayed by the fact that no instrument to give effect to such contract dealing or transfer has been executed or registered.

The effect is to overrule the decision of the Court which looked at the whole of the Act and found that registration was the basic principle. The Courts have said: " We will not give effect to 43 (1) until registration is effected." The new sub-clause (2) says that the operation of clause 43 (1) shall not be delayed or affected by the fact that as yet no instrument is registered or even prepared. In other words, it says that this overriding of the doctrine of notice shall apply at all times. It goes further back than the New South Wales Act and puts back the legislation to where it was understood to be in the original draft of Torrens.

Mr. Randles.—If one had a notice of equitable interest under this section, one would not take subject of that equity?

Mr. Garran.—No, it means that the doctrine of notice is cancelled.

Mr. Randles.—That seems strange, considering one cannot register a trust or equity.

Mr. Garran.—That is so, but after all in a trust you have a trustee as owner of the capital and the beneficiaries look to the trustee in whatever form is the capital. There is the power of the caveat to prevent any improper dealing. The whole object is to keep the trust off the register.

Mr. Randles.—That is true; you can put a caveat on it.

The Chairman.—Here any equitable interest can be protected by caveat, but if not so protected it would lose its priority.

Mr. Garran.—It means that the beneficiary still looks to the trustee, but you may find that the capital is in a different form. That is one of the arguable matters that has been in debate since the beginning of the Torrens system. Some systems allow trusts to be registered, but Victoria has always refused it.

The Chairman.—I was thinking of equitable interests other than trust interests.

Mr. Garran.—Such as what? They are mainly trusts or under settled land.

The Chairman.—What about the equitable right to use land for a certain purpose.

Mr. Garran.—Then one has the covenants; there is provision in this Bill to register other covenants and rights in the nature of easements.

The Chairman.—I am not very concerned about it; I was merely thinking that if there is anything that has not been covered it could always be covered by caveat. A simple form would be the deposit of a title deed with a solicitor to secure payment for costs.

Mr. Garran.—Is that an equitable interest?

The Chairman.—Strictly speaking, I would say it is not, but it is loosely referred to as an equitable assignment.

Mr. Randles.—This is not a new idea?

Mr. Garran.—No. Sub-clause (1) is in the original Torrens legislation. Sub-clause (2) is one towards which New South Wales has gone some distance.

The Chairman.—It was the original object of the 1949 Bill to achieve this.

Mr. Garran.—Yes.

The Chairman.—It did do so in a somewhat roundabout and intricate method.

Mr. Garran.—Yes.

Mr. Randles.—Once an agreement has been made you have no notice at all of any equities, but even if one received notice of that later, it would not affect the title.

Mr. Garran.—Even if you knew of it before you made the agreement, in the process of reaching agreement, it does not affect you as long as it is not registered or among the classes of non-registrable but binding items as set out in clause 42.

The Chairman.—We will no doubt hear some further views on this matter.

Mr. Garran.—Clause 44 is the final clause in this particular group. It provides that a certificate is void in the case of fraud, and it " shall be void as against any person defrauded or sought to be defrauded thereby and no party or privy to the fraud shall take benefits therefrom." I have read those words because they replace a rather amazing drafting slip that has been in Torrens legislation from time immemorial. As the words appear now in the Victorian legislation, certificates of title obtained by fraud are void "as *against* all parties or privies to the fraud." The New South Wales legislation says " as *between* all parties or privies to the fraud ", but, of course, " as between the fraudulent parties " in the New South Wales legislation is obviously wrong. When one looks at it, the Victorian legislation " as against all parties " is also wrong. As Mr. Baalman says, probably what was intended in the legislation of both States was that the fraudulent title was void as against the person actually suffering as the result of the fraud.

Mr. Thomas.—What is the meaning of " party or privy "?

Mr. Garran.—The party to the fraud is the one who actually perpetrates the fraud; the privy is the one who has aided him.

Part IV. deals with detailed matters concerning registration. The Bill has dealt with the general principles of registration, and Part IV. proceeds to provide for ten different methods of dealing with land by instruments, which are registrable under the legislation. At this stage I should like to invite the attention of the Committee to a new article by Mr. T. B. F. Ruoff, Assistant Land Registrar, Her Majesty's Land Registry, England, who has appeared before this Committee. The article appears in Volume 28, *Australian Law Journal*, at page 243, the monthly instalment for September of this year, and it stresses a fourth concept of the Torrens system. Members of the Committee may remember that, in his speech, the Minister made reference to certainty, simplicity and indefeasibility. Mr. Ruoff also stresses elasticity, i.e., one must have a system capable of dealing with all occasions and all times.

Division 1 of Part IV. deals with the straightout transfer by one owner to a purchaser or to somebody else by way of gift or otherwise—a straightout transfer of the whole interest of the proprietor. It may be the transfer of his fee simple or it may be the transfer of a less estate, for example, a lease or a mortgage or charge. These transfers are to be executed in the form of the Sixth Schedule, which has been altered in accordance with recommendations of this Committee, contained in their 1951 Report (Item 20, page 8) by leaving out any reference to " the sum of " which has been a matter in dispute for a considerable time.

The Chairman.—Mr. Taylor explained to the Committee the difficulties experienced because of the form in the old Eighth Schedule, which had been taken to mean that a monetary consideration had to be expressed in all transfers, and he furnished the Committee with examples of transfers which were perfectly legitimate transactions but where no monetary consideration existed.

Mr. Garran.—When such an instrument is executed it is registered at the Office of Titles and, in the place of the transferor, the transferee becomes the registered proprietor of the estate or interest concerned.

Clause 47 enables the Registrar to make a vesting order where there has been a completed purchase and no transfer if he has sufficient evidence to show what was intended. Paragraph (*c*) gives effect to a recommendation of this Committee, contained in its 1951 Report (Item 30, page 9) relating to the impracticability in certain cases to obtain a signed instrument.

Clause 48 makes use of what is called " Table A." I do not know why it is called Table A, but it appears in the Seventh Schedule and, in accordance with a recommendation contained in the 1951 Report (Item 33, page 9) the table in the Seventh Schedule has been brought up to date in consultation with the Law Institute Council.

The Chairman.—Does it incorporate the provision of the Statutes Amendment Act relating to fencing?

Mr. Garran.—The Schedule gives effect to last year's Statutes Amendment Act in respect to fencing, but it has put back the time period to where it was before that Act in relation to the answering of requisitions, objections, &c. The new periods of 14 and 28 days have been put back to the original periods of 7 and 14 days.

The Committee adjourned.

WEDNESDAY, 3RD NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council:	*Assembly:*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles.
The Hon. F. M. Thomas.	

Mr. A. Garran, Assistant Parliamentary Draftsman, was in attendance.

Mr. Garran.—Mr. Chairman, when I last appeared before the Committee, in commenting on clause 34, I mentioned that certain charges were, by other Acts, made a first charge on the land and so would operate with preference over previously registered charges, and I was asked to ascertain in which legislation such a provision exists. The number of Acts containing this provision is not as extensive as I thought. The main operating charge is contained in section 63 of the *Land Tax Act* 1928, which is covered by a certificate which need not be registered; sections 11 and 22 of the *Wire Netting Act* 1928 provide a first charge; paragraph (*b*) of sub-section (1) of section 13 of the *Closer Settlement Act* 1938 provides for priority over

some charges; sub-section (3) of section 5 of the *Farm Water Supplies Advances Act* 1944 provides priority over all previous charges; and section 10 of the *Slum Reclamation and Housing Act* 1938 provides a first charge. I think that is a complete list.

The Chairman.—Those charges become effective on registration and take priority over other charges?

Mr. Garran.—Yes, except in regard to the Land Tax Act where there is no need for registration.

Mr. Brennan.—Is there any hint of survival of the unemployed occupiers' provisions, which even now are the subject of requisitions of titles?

Mr. Garran.—I do not think so, but the Registrar, Mr. Taylor, could give a definite answer to that question. Division 2 of Part IV. of the Bill deals with three cases where the title of a proprietor to land—whether he is owner in fee simple or lessee—is handed down by operation of law, first, to his personal representatives on death; secondly, to the survivors of joint proprietors on the death of one of them; and, thirdly, in the case of bankruptcy. The provisions contained in this Division follow the existing law except that in clauses 49 and 51 I have given effect to the Committee's recommendations Nos. 21 and 22 of the 1951 Report, by adopting the new provisions inserted in the previous Bill.

I was inclined to redraft the law contained in Division 3 of Part IV. but on consultation with the Registrar I forebore because he intimated that the present provisions were understood and acted upon in the office. This Division deals with sales by the sheriff. In this respect, the Committee made an important recommendation in Item No. 23 of the 1951 Report, to adopt the provision in clause 214 of the previous Bill, that overrules the case of *Rowe* v. *Equity Trustees*, 21 V.L.R., page 762, and other cases. As the law now stands, the sheriff sells the actual interest of the proprietor in the land, not necessarily the interest that appears in the titles book.

Mr. Brennan.—There may be an unregistered dealing.

Mr. Garran.—That is so, or there may be trusts that are unregistrable, so the purchaser buys a "pig in a poke," with the result that a lesser price is received for the land. This Committee adopted the suggestion that what should be sold was the title as appearing in the Titles Office, subject, of course, to those matters that do not require registration—easements, leases and the like. That has been provided by inserting in sub-clause (4) of clause 52 the words—

> in all respects as if the transfer were a transfer for valuable consideration.

Whatever course is adopted some difficulty is created, because under the new provision a beneficiary under a trust may lose his security unless he enters a caveat. I consider that the Committee adopted the proper course when it was faced with a difficult situation.

Division 4 deals with the acquisition of land by statutory authorities and the like, which was the subject of considerable discussion by the Committee last year. I have given effect to the recommendations of the Committee, as contained in Item No. 7 of the 1953 Report.

The first part of this Division contains what is now the *Transfer of Land (Acquisitions) Act* 1948. To some extent, that is an unfortunate enactment; if I had the responsibility of drafting similar legislation, I would try to approach the matter in a different way. That particular Act was drafted as a result of consultation between several interested parties, including the Registrar of Titles, the Commissioner of Titles, the Commonwealth Government and certain statutory corporations. I believe a simpler working method could have been devised if certain difficulties had not arisen between the parties concerned. Nevertheless, the Act, as evolved, is working satisfactorily, and I have made no attempt to alter its provisions except to give effect to the recommendations of this Committee, and also to clear up one point that was in doubt.

Mr. Baalman, at page 210 of his *Commentary on the Torrens System in New South Wales*, points out that the Transfer of Land Acts do not say whether an unregistered resumption by a statutory authority is to prevail over the title of a registered proprietor; it is generally assumed that it does. Mr. Baalman indicates that to some extent this is a technical argument as, sooner or later, the machinery of resumption will operate irresistibly against someone; but the question often does arise, particularly in respect of compensation. With the view of settling this matter in one way—I cannot say whether the Committee will agree with my action—I have inserted in the Bill sub-clause (3) of clause 53 in the following terms:—

> Apart from the operation of Part III. nothing in this Act shall affect or delay the vesting in any acquiring authority of any land by virtue of any Act or law.

Part III. is the part of this measure that requires registration for dealings to be effective. So, until registered, the acquisition of land would not be a *fait accompli* under the Bill as I have drafted. In other words the acquiring authority will have to proceed to registration or adopt another procedure which is referred to later in the Division. If no action is taken the proprietorship of the land remains unchanged.

Mr. Thomas.—Is there any stated period of time for resumption?

Mr. Garran.—No. Resumption operates entirely outside of this measure; it applies to both registered and unregistered land.

Mr. Pettiona.—The Committee wanted provision made with respect to notice.

Mr. Garran.—That has been done. In clause 54, the expression "(which application shall be made as soon as practicable after the vesting)" has been inserted on the recommendation of the Committee. Those words are aimed at providing registration at as early a date as possible. They are reinforced by the sub-clause to which I have just referred. Clause 57 relates to the matter mentioned by Mr. Pettiona. I shall not read it in full, but the first two sub-clauses are as drafted in this Committee's 1953 Report. The clause provides, in effect, that an acquiring authority shall give notice to the Registrar of any intention to acquire land compulsorily, notice of which intention has been served under any other Act. The Registrar will make an appropriate endorsement on the titles concerned, or will display a map in the case of more complicated acquisitions.

The Chairman.—The ordinary citizen will have a reasonable chance of ascertaining from the Titles Office whether his land is subject to acquisition?

Mr. Garran.—Yes, if he searches. Sub-clauses (3) and (4) were not included in the recommendations of this Committee, but I have included them as a necessary corollary on the advice of the Conveyancing Branch of the Crown Solicitor's Office. Sub-clause (3) provides that the endorsement of the notice on the certificate or the display of the map will operate as notice for the purposes of clause 42 of the Bill, which means that anyone dealing with the land will have notice of that fact and be affected thereby.

The other corollary is one to make certain that the owner of the land at the time when the first notice of intention to take is issued will not be able to obtain compensation from the acquiring authority because of any lessening of value resulting from the publication of this notice in the Titles Office. Possibly that provision is unnecessary, but the Crown authorities suggest its insertion in the Bill as a reasonable safeguard.

The Chairman.—Is that all that it means?

Mr. Garran.—Yes, that is all it is intended to mean.

The Chairman.—If the Housing Commission failed to give notice, would it not be relieved of any obligation because of sub-clause (4) of clause 57?

Mr. Garran.—I do not see how failure to give notice would arise from the operation of the provision.

The Chairman.—Sub-clause (1) states, in effect, "Where any acquiring authority proposes to acquire, it shall lodge a notice with the Registrar." Assume that it fails to lodge such notice.

Mr. Garran.—I still do not see how that failure would render the relevant provision operative.

Mr. Pettiona.—If the provision did not operate, would it be within the power of an owner to sue the Housing Commission?

Mr. Garran.—I doubt whether he could do so. The operation of the provision is really in sub-clause (3).

Mr. Pettiona.—Does not sub-clause (4) mean that no person can seek damages if an authority has given notice that it intends to apply for acquisition?

Mr. Garran.—Yes, but the failure to give notice would not cause compensatable damage to the land concerned.

The Chairman.—Take a simple case. "A" owns a block of land, which he considers is worth £200. He sells it to "B" for £300. "B" searches at the Titles Office and finds that no notice has been lodged. Therefore, he reasonably assumes that the block is free from encumbrance, and pays the £300 to "A." After completing the transaction, "B" goes to South America. Later, he discovers that, by the operation of the Housing Acts, he has bought a right to compensation, which may be worth only £120 instead of a block of land worth £300. In those circumstances would not "B" have suffered substantial damage, and would not sub-clause (4) relieve the Housing Commission from any liability?

Mr. Garran.—I do not see that there is any liability attaching to the Housing Commission, which is acquiring land on the basis of compensation to be determined by arbitrators.

Mr. Randles.—Sub-clause (1) of clause 57 specifies that the acquiring authority *shall* give notice of its intention to acquire the land. If the authority neglected to give such notice, and if as a direct result thereof, "B" bought land and suffered loss, surely he would have some claim for compensation against the Commission.

Mr. Garran.—On second thoughts, I think your point may be well taken.

The Chairman.—Perhaps Mr. Garran would like to reconsider sub-clause (4). When this point was previously discussed the consensus of opinion was that some degree of certainty should be provided for purchasers, and that is one of the reasons why the Committee recommended that there should be an obligation on the acquiring authority to give notice of its intention to acquire land. We consulted the Housing Commission and it was agreed it would be reasonable that the authority should indicate its intention by displaying a map or by giving notice by some other appropriate means, thus providing a prospective purchaser with an opportunity of knowing that he would be buying a block of land with a right to compensation.

Mr. Garran.—In that case, you would probably suggest that sub-clause (4) should be restricted to the operation of sub-clause (3).

The Chairman.—Yes. I can see no objection to an acquiring authority being relieved from any liability for damage, but we believe that it should have an obligation and duty to give such notice of its intention to acquire any land.

Mr. Garran.—The point can be covered by a simple amendment of sub-clause (4).

The Chairman.—We will leave it to Mr. Garran.

Mr. Garran.—Clauses 58 and 59 are other provisions contained in the 1928 Act relating to vesting orders and registration of dispositions effected by the operation of statutes. They operate in addition to the previous clauses. Possibly, if they had been strengthened, they could have taken the place of the previous clauses, but as I have already mentioned, the Transfer of Land (Acquisitions) Act is now working satisfactorily and I have incorporated it unchanged, except as mentioned.

Mr. Thomas.—How far can a vesting order go?

Mr. Garran.—There must be an authority under which a vesting order is made, for example, an order of the court. It is hard to say how far it can go.

Mr. Thomas.—It depends on the circumstances of each case?

Mr. Garran.—Yes. For instance, a court might make an order in respect of property held by trustees or beneficiaries.

The Chairman.—These clauses merely provide the machinery for registering a vesting order? The orders are not made under this measure, but by other Acts?

Mr. Garran.—That is so. Division 5 relates to acquisition by possession, which follows the provisions under the existing Act. I might mention—for the benefit of Mr. Thomas, who raised the point at the last meeting—that the 30-year period still applies. Division 6, which replaces about sixteen sections of the Transfer of Land Act, makes provision for all cases brought to the Titles Office under the provisions of those sections.

In this Division I included the recommendation of the Committee, as contained in Item 14 of the Committee's 1953 Report, in order to remedy the position where there does not exist the necessary right-of-way over the whole of the cul-de-sac existing for the benefit of any estate owners concerned.

The Chairman.—That is the point about which Mr. Taylor was most concerned.

Mr. Garran.—Yes. Division 7 relates to leases. It will be remembered that, by virtue of clause 42 of the Bill, leases do not require to be registered.

Mr. Randles.—Does that apply to all leases?

Mr. Garran.—Yes. The previous Bill required registration of all leases if they were to have effect, but the Committee decided against that proposal in view of the problems involved, particularly in relation to leases of flats, rooms and small parts of land which would require thousands of subdivisions and all the complicated machinery involved in such subdivisions.

I refer to Item 18 on page 7 of the Committee's 1951 Report. The provision included in the Bill reverts back to what was contained in the 1928 Act, setting aside proposals contained in the previous Bill.

Mr. Randles.—Does sub-clause (2) of clause 66 represent a change from the provision contained in section 131 of the 1928 Act in respect of registration?

Mr. Garran.—No, but it would be as well to remove any doubt by inserting the word "registered" after the initial word "No."

Mr. Randles.—If it is registered, the person concerned takes it subject to notice?

Mr. Garran.—Not only the question of notice, but also consent is involved. For instance, "A" owns land and mortgages it to "B". Then "A" leases it to "C". In certain circumstances the latter action may reduce the value of "B's" security. The proposition contained in the clause is that "A" shall not lease it to "C" without first obtaining the consent of "B", who may thus safeguard his security.

In other respects Division 7 follows the 1928 Act. Division 8 is one of the cases in which the Bill does not give effect to the Committee's recommendations. In Items 15 (*b*) and 17 on page 6 of its 1951 Report, the Committee recommended the adoption of the provisions contained in the previous Bill relating to easements. Those provisions represented a drastic change of the existing law, whereby if anyone claimed an easement, the Registrar, if he were satisfied that such an easement existed, was required to register it on the title. In effect, the Registrar would be required to hear and determine difficult questions concerning property, which he is very loath to undertake. The Division has been redrafted on the basis that any such person may obtain a decision from a Court as to whether or not he possesses an easement over any land. If the Court finds in his favour the Registrar will enter such an easement on the title. It is considered that the matter is properly one for decision by a Court and not by a Government officer. Incidentally, the redrafting had reference *inter alia* to a Western Australian precedent, as mentioned in the marginal note to clause 73.

The Chairman.—I presume it comes to the Court under sub-clause (2) of clause 72?

Mr. Garran.—That is so. It should read, "by an order of any court or award of an arbitrator". That is a draftsman's omission. There will have to be a written document, which will be like any other instrument dealing with land. In cases where the easement is claimed apart from the written document—such as by the user—an order of the Court is necessary before it can be placed on the register book.

The Chairman.—Will you prepare amendments on the various points which arise?

Mr. Garran.—Yes. Provision is made in clause 73 for the removal of abandoned and extinguished easements. It is similar to acquisition by possession in reverse form. The clause also provides for abandonment by grant.

Mr. Randles.—Do you consider that clause 73 may clash with the Committee's intent as contained in clause 72, namely, that it is not desired that the Registrar shall have to adjudicate between conflicting interests? Under sub-clause (3) of clause 73 it is the Registrar who grants permission.

Mr. Garran.—That matter was discussed. There is a difference. In the first case, under clause 72, there is no entry in the register book. It may or may not be that there is some interest to register. In the second case something is contained in the register book, which may be removed by the consent of all parties concerned or possibly by non-user. It may be that the question of abandonment by non-user should be referred to a Court, but persons are much less likely to worry about that question than about easements which they claim. In other words, the intention of the provision is to enable the Registrar to clear his register book in cases where individuals will not take the necessary steps to do so. It is only a "may", not a "shall" proposition. If the Registrar is not satisfied, he will not remove the easement from the register book. Anyone who obtains an order of a Court can have it given effect to—if not under clause 72, then under a later provision contained in the Bill.

Mr. Randles.—Naturally, if any application is made to the Registrar for the removal of an easement the caveat provision would apply.

Mr. Garran.—Yes, the caveat provision would apply. Then the Registrar has the option of looking into the matter himself or of saying, "This is too hard for me; I will let it go to the Court."

The Chairman.—From the Registrar's point of view, it is a useful discretion to have, but it is one that is rarely exercised.

Mr. Garran.—"Rarely exercised" may be an expression that is too strong, because I understand that there is a certain amount of cluttering up to be handled.

The Chairman.—It is only exercised when there is clear proof before the Registrar that nobody could be harmed.

Mr. Garran.—Division 9 of this Part deals with the one transaction which is in a form materially different from that under the general law. I refer to the mortgaging or charging of land. Under the general law, if a person wishes to mortgage land to another person, the land is transferred to the second person, who becomes the owner. In return, the first person receives what is called an equity of redemption—the right to recover the land when he has paid the money he owes. If he wishes to put a second mortgage on the land, all that he has left to mortgage is his equity of redemption. He can proceed with equitable mortgages on his equity of redemption in its diminishing state. This is a very complicated branch of the law that has been evolved through the Court of Chancery and by Acts of Parliament. Torrens said, "Why not handle these transactions in the same way as charges on ships are handled, just register a charge and then the second charge can be registered similarly." The first charge has priority over the second, but they are both the same kind of transaction. In each case the charge is a legal charge on the land. Therefore, all general land principles have been set aside and a simple registrations system has been adopted. The division follows the existing law subject to certain matters which I will indicate. In clause 77 I have written into the Bill the effect of the case *Pendlebury* v. *The Colonial Mutual Life Assurance Company*, 13 C.L.R., page 676. The words I have inserted are contained in lines 5-7, and are "in good faith and having regard to the interests of the mortgagor grantor or other persons." It appears on the face of the existing provision that when the mortgagee sells he can sell for just enough to cover his mortgage and clear himself, but the Court decided that he must sell in good faith.

Mr. Randles.—Did the case you have quoted decide otherwise?

Mr. Garran.—No, the decision in effect said that the mortgagee must sell in good faith, and I have written in those words in order to make clear in the text what the courts have in fact held.

Sub-clause (3) of clause 77 adopts the local government provisions as to the application of purchase money as being more up to date than the existing transfer of land provisions.

The words in brackets in line 18 of page 43 have been inserted to write into the text the effect of the decision of *R* v. *Registrar of Titles, ex parte Watson,* 1952 V.L.R. 470, where the courts held that the doctrine of *Otto* v. *Lord Vaux* applied to registered land as well as to other land. I mentioned that case in respect of clause 3.

Sub-clause (2) of clause 84 was put in on the recommendation of Item 17 of the 1953 Report, and is taken from the South Australian legislation mentioned in the margin.

Clause 86 raises some questions as to whether or not the provisions of the Property Law Act should be redrafted, having regard to the Transfer of Land Act. The Property Law Act, so far as it relates to mortgages, commences by saying that it does not apply to mortgages under the Transfer of Land Act. It then makes certain exceptions. It has been recommended that some of the provisions that apply to general law land should be adapted to apply to registered land. In the previous Bill, there was provision for the extension of two of the Property Law Act sections to registered land, namely, sections 91 and 95. It has been suggested to me also that sections 93, 94, 99, 100 and possibly section 113, should be applied. That would require a substantial redrafting of that whole Part in the Property Law Act. I have not included it in this Bill, and it should be the subject of an independent inquiry. In the meantime, I understand the ordinary, skilled conveyancer has no great difficulty as he can make all necessary provisions in his documents and the forms have been adapted to that purpose.

Finally, clause 87 raises a further question which also ties up with the Property Law Act and should be investigated. The question is, has a second mortgagee a right to notice of intended sale by the first mortgagee? That was raised many years ago in the case of *Hoole* v. *Smith* reported in 17 Chancery Division, page 434, and it has not yet been solved.

The Committee adjourned.

THURSDAY, 4th NOVEMBER, 1954.

Members present:

Mr. Rylah in the Chair;

Council:	*Assembly:*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. I. A. Swinburne,	Mr. R. T. White.
The Hon. F. M. Thomas.	

Mr. Garran, Assistant Parliamentary Draftsman, was in attendance.

Mr. Garran.—I was asked to reconsider sub-clause (4) of clause 57, which was inserted for the reason I explained. A public authority might send to the Registrar notice of intention to acquire and the Registrar publicly advertise the matter. However, the public authority might decide not to proceed with the acquisition and, in the meantime, the holder of the land could suffer loss because of the threat of its compulsory acquisition. I think the clause is also open to the interpretation put forward by Mr. Randles. I suggest for the Committee's consideration that sub-clause (4) be amended by omitting the words "in respect of the operation of", and inserting the words, "resulting from compliance by the authority with the provisions of". That would overcome the difficulty envisaged by Mr. Randles.

In Division 10 clause 88 is a new provision in Victorian transfer of land legislation. There is no specific provision in existing legislation enabling the registration of restrictive covenants but the practice has been adopted of endorsing lengthy restrictive covenants on titles. In the previous Bill, a provision was inserted to authorize this procedure. The Committee at Item 24 on page 8 of their report of 1951, recommended that a simpler provision similar to that contained in South Australian and New South Wales legislation should be adopted. Effect has been given to this suggestion in the new Division 10.

The Chairman.—What would be the effect of that?

Mr. Garran.—It would enable a simple method of administration, to be adopted in the Titles Office instead of writing out the terms of the restrictive covenant at length, or making a lengthy precis thereof. All that is done is a memorandum of the fact of the covenant is endorsed on the title and that may be referred to if further details are required.

The Chairman.—It should save a good deal of work.

Mr. Garran.—Yes.

Mr. Thomas.—Would there be many restrictive covenants?

Mr. Garran.—Mr. Taylor would be in a position to supply that information. Restrictive covenants occur frequently in subdivisions. Effect has also been given to Item 7 (*c*) of this Committee's Report of 1953, which was mentioned earlier in relation to clause 42.

Sub-clause (3) of clause 88 provides specifically that registration in the Register Book acts only as notice of the existence of the covenant. The covenant is not given any greater strength than it has under the instrument or Act creating it. There are various statutes in which restrictive covenants are given certain effect. I refer to sub-section (2) of section 235 of the *Local Government Act* 1946 and to sections 65 to 68 of the *Land Act* 1928 as examples. That completes the survey of Part IV. which deals with the transactions that may be entered into and registered in respect of land under the Transfer of Land Act.

Part V. deals with incidental matters relating to the registration of transfers and dealings. Division I is the safety valve for the Act. Any person who has an interest in land can register a caveat against any dealing with that land without reference back to him. This is particularly necessary as there are certain dealings in land, such as the creation of trusts, which are not registered at the Titles Office. Clause 89 follows the existing law, with the incorporation of two recommendations of the Committee. Provision has been made for lodgment of caveats by agents, in accordance with recommendation 9 (*a*) of the 1953 Report, and the Sixth Schedule, which is referred to in that clause, has been altered in accordance with recommendation 9 (*b*) of the same Report to allow the address for service of the caveator to be anywhere in Victoria instead of in a limited space in the city of Melbourne.

The Chairman.—I think I am correct in saying that the first recommendation of the two mentioned by you related to withdrawal rather than the lodging of a caveat. In the existing legislation provision is made for lodging by an agent but the caveat cannot be withdrawn by the same agent.

Mr. Garran.—That is so. But as well as withdrawal there is also a provision, which is made in clause 89, for an agent of the caveator to consent to a dealing despite the caveat. Clauses 90 and 91 provide a case where my views differ from those of the Registrar of Titles, but I have given way to his ideas. In those

clauses I have included recommendations 9(*c*), 9(*d*), and 9 (*e*) of the Committee's 1953 Report. Item No. 9 (*c*) dealt with the agent having powers in relation to preventing a lapse of the caveat; 9(*d*) provided a period of thirty instead of fourteen days during which the caveator could take any action if he had notice of an intended dealing; and 9 (*e*) dealt with the question of the agent as covered in sub-clause (1) of clause 91.

Clause 90, as now drafted, follows the form of the same provision in the previous Bill, and it differs from the existing legislation in that there is introduced into clause 90 some provisions relating to caveats by beneficiaries. Previously, this matter was covered to some extent by paragraph (*b*) of sub-section (2) of section 91, which was inserted in the transfer of of land legislation after the provision which gives rise to clause 90. There are some problems in regard to paragraph (*b*) of sub-section (2) of section 91 in that it does not cover the field sufficiently on its face. It provides for continuation of a caveat on dealing to provide for change of trustees and similar formal transactions, but its operation really depends upon the issue by the Registrar of a notice for which there is no statutory provision. I might add that the Registrar, in his administration, does other things for which there is no statutory provision. For instance, the red ink number, which is the vital be all and end all of conveyancing has no mention at all in the Act, The question is whether the present practice will continue or whether there should be a redraft of the provision to omit what is now paragraph (*b*) of sub-section (2) of section 91 and to include in what is now sub-section (1) of section 90 a full code to cover the safeguarding of caveats lodged on behalf of beneficiaries claiming under a will or settlement.

Division 2 is another safeguard which appears in the present legislation but is seldom used. It provides that any person proposing to deal with a proprietor of land may obtain a search certificate from the Registrar as to the exact status of that land, as shown in the books, and a stay of all dealings with the land for a period of 48 hours to enable his transactions to be fully registered without any intervening transaction taking preference.

Division 3 relates to powers of attorney. I have not adopted the provisions of the previous Bill, which sought to give a special form of power of attorney. Rather, I have taken advantage of clause 3 of the Bill, which states that except as otherwise expressly provided, existing Acts and rules of law applying to general land will apply to registered land. I have done this particularly, because powers of attorney may include provisions relating both to general land and to registered land and also to personal property. In other words, when a man is exercising powers under a power of attorney, there is no provision under the Transfer of Land Act that needs altering; it is only that the donee of the power should be recognized as entitled to deal with the land in the name of the registered proprietor. That is all that need be said.

There is one further item to which I invite the attention of the Committee. In sub-clause (3) of clause 94 I have provided that the Registrar may register any instrument signed pursuant to a power of attorney, if the instrument is lodged not later than two days after the revocation of the power. Mr. Taylor will explain that aspect to the Committee in greater detail. In administrative practice it is impossible, if a power is revoked, to stop all dealings under the revoked power immediately on the revocation of the power. Consequently, if a power of attorney is given, the revocation of it must be, in effect, with 48 hours' notice.

Division 4 commences with matters of survey, and then passes to the important question of subdivisions. Clauses 95 and 96 follow the existing legislation as to survey, with the inclusion in sub-clause (3) of clause 95 of the Committee's Report of 1951, Items 16 and 28, which appear at pages 6 and 9 of that Report. These recommendations relate to dispensing with surveys if sufficient information is available in the Titles Office.

Clause 97, together with clause 98, deals with the all-important administrative question of registration of subdivisional allotments. It is this aspect of administration that, at the moment, is causing the Registrar more anxiety than any other part of his functions. There has been a spate of subdivisions with which, under the existing administration, he has been unable to cope, and he is slowly losing ground.

Mr. Randles.—As to sub-clause (2) of clause 97, is section 568 of the Local Government Act the provision which deals with the minimum of feet that must be allowed for in subdivisions?

Mr. Garran.—Yes.

The Chairman.—Perhaps it would be better to let Mr. Garran complete his explanation, and to question him later.

Mr. Garran.—I shall defer mentioning own-your-own flats until I come to clause 98, although, some words in clause 97—I refer to the words in brackets—lead up to that matter.

The main problem arises from the point on which Mr. Randles has put his finger, as it were. Section 568 of the Local Government Act provides, that in many cases, no land is to be subdivided without the consent of the Council, which consent is given or refused after taking into account many matters relating to frontage, access by roads, drainage and the like.

Mr. R. T. White.—Their general planning?

Mr. Garran.—Yes, and building by-laws. By the *Local Government Act* 1944, what is now clause 97 was amended by the insertion of the provisions that appear as sub-clauses (2) and (3) of clause 97. These provisions are to the effect that the Registrar will not accept lodgment of a plan of subdivision unless he is satisfied that the provisions of section 568 of the Local Government Act have been observed; and further, the Registrar may, whether or not section 568 of the Local Government Act is applicable, refer to the council the question of whether it wants to give its consent to the plan. But, actually, the powers of the council are those which are comprised in section 568 of the Local Government Act. Members of the Committee may recall a recent court decision which allows persons who own terraces of houses which are in separate occupation to obtain subdivisions in fee-simple. That matter is being dealt with in a clause of the Local Government (Amendment) Bill that is now before the House.

So far, one alteration in the law is proposed in this Bill; it will be effected by the insertion of sub-clause (5), which will enable the Registrar to refuse to accept for lodgment any transfer or other dealing in respect of an allotment until the plan of subdivision is approved. The present procedure, as members are aware, is for a subdivider to lodge his plan of subdivision and then to sell the allotments. The purchasers mortgage them to the banks so that they may build on them, transfer them, and so on. At the moment, all of those transactions have to be held up pending the registration of the plan of subdivision and, consequently, the registration of the certificates of title for the allotments. Accordingly, there are thousands of applications at the Titles

Office which can get no further. Sub-clause (5) provides one method of meeting that situation, namely, to stop the subdivider from subdividing and selling until his plan is registered. That provision would help the Titles Office, but it might also prove to be an undue restriction on the landowner and on the subdivider.

The Registrar is suggesting two amendments to this clause, of which I have drafts before me. The first one is in the following terms:—

Clause 97, line 36, at the end of the clause insert the following new sub-clause:—

(6) The Registrar, pending survey of or proof to his satisfaction of title to any land proposed to be subdivided, may approve a plan of subdivision subject to notification on the plan and on the certificates of title of the allotments to the effect that such plan and certificates may be subject to amendment or adjustment, and the Registrar may in due course without any application in that behalf amend or adjust any such plan or certificate of title and may when satisfied as to the plan remove any such notification.

Actually, the proposed new sub-clause will permit the Registrar to do little, if anything, more than that which he may do at present, but it gives him statutory authority to proceed. At present, subdivisions are often held up pending detailed surveys. The land might have been sufficiently surveyed for the purposes of the municipality, but minor alterations in the internal boundaries may be necessary and, possibly, in the external boundaries also, but in most cases any such alterations are almost nominal. In the meantime, houses and fences might be erected.

Mr. Randles.—I do not think that even the suggested new provision would prevent many transactions from being held up, because lending authorities would not be prepared to advance money on those titles.

Mr. Garran.—I do not think that would be so. Frequently, it would only be necessary for some adjustment or modification of the boundaries to be made, on account of an error in survey.

Mr. Randles.—Is the Town and Country Planning Act silent on that point?

Mr. Garran.—The Town and Country Planning Act does not operate in connexion with the actual subdivision; that aspect comes within the sphere of the Local Government Act. A plan emanates from the operation of the Town and Country Planning Act, and the execution of it comes within the provisions of the Local Government Act. If a person bought a property he might find that the measurements might not coincide exactly, to inches and degrees, with those shown on the plan, but before the Registrar would operate, he would require to be satisfied that the plan was approximately correct.

Mr. R. T. White.—In other words, this new provision will help.

Mr. Garran.—Yes. It will enable the Registrar to go straight ahead with thousands of plans, many of which have been held up for a long time, and that will permit of dealings and allotments to proceed.

Mr. Byrnes.—It would not necessarily have the effect mentioned by Mr. Randles; it would not prevent the negotiation of finance?

Mr. Randles.—What I have in mind is that when a terrace of houses is sold, the individual buyers split the title. The difficulty arises later when the old dwellings fall down, and the individual owners will not be permitted to build on those blocks.

Mr. Garran.—That is a Local Government problem; it is not one that comes within the Transfer of Land Act.

The Chairman.—In regard to subdivisions there are two points. First, the Registrar can refuse to register a plan of subdivision unless it has the municipal council's approval, and the power that the council has depends on the provisions of the Local Government Act. At the moment—as a result of a court decision—subdivisions of terraces cannot be interfered with, and it is proposed to amend the law to overcome the difficulty. However, that is outside the scope of this Committee. The other point is that the Registrar can refuse to accept a document for lodgment until the plan has been adjusted.

Mr. Garran.—Until he is satisfied that the council's plan is close enough to absolute accuracy.

Mr. Thomas.—Does that mean that the Registrar is the final authority?

Mr. Garran.—It must be remembered that an appeal can always be made to a court of law. The Registrar will leave to the council the administrative authority of the council in deciding what subdivisions should be made. He can still adhere to his duty of registering exact details of ownership of the allotments in accordance with the subdivisions.

Mr. Brennan.—There is often a difference of opinion between the local governing authority and the Registrar as to what details may be omitted or should be included in respect of a subdivision.

Mr. Garran.—That is so.

Mr. Brennan.—You do not intend that the Registrar shall be merely an executive officer to implement what the council submits to him?

Mr. Garran.—No, because he will conduct his own survey. He will not be concerned as to whether the requirements of the Local Government Act or the municipal by-laws have been observed. It has been suggested by Mr. Taylor that in respect of sub-clause (2) of clause 97, there should be substituted a provision authorizing the Registrar to submit to the council concerned any plan of subdivision that is placed before him and to ask the council to advise him whether it has consented thereto, or alternatively, whether its consent is necessary. In other words, instead of the Registrar policing a plan on behalf of the council, it will be necessary for the council to say whether the relevant provisions of the Local Government Act have been fully observed or whether the council's consent is or is not required.

Mr. Swinburne.—Would there be any land in respect of which the consent of the Council would not require to be given?

Mr. Garran.—Yes, in subdivisions of large areas in which no allotment would be less than 2 acres. Another point is that consideration is being given, I understand, to the question whether the Local Government Act applies to horizontal as well as vertical subdivisions; in other words, the question arises whether it is necessary for a council to consent to "owning your own flat."

Mr. Brennan.—Municipal councils are concerned with living conditions. They are concerned with seeing that the subdivision of properties does not interfere with standards of decency and living conditions, and that proper family boundaries are maintained.

The Chairman.—How would the machinery of this proposal work? Would the Registrar require that all plans of subdivisions lodged with him indicated that they complied with the requirements of the Local Government Act or, alternatively, that the council's consent was necessary?

Mr. Garran.—Normally, a plan would be submitted, with the consent of the council, but if consent had not been given the Registrar might wish to return it to the council with a query whether it desired to give its consent.

Mr. Thomas.—Everybody is thinking in terms of small subdivisions or building allotments, but that is only one section. Not only is the consent of the council to a subdivision necessary; an important requirement is that correct road access and other facilities are provided.

Mr. Byrnes.—In irrigation districts before subdivision can be effected, approval of the State Rivers and Water Supply Commission must be obtained, indicating that proper provision for water supply and the necessary easements has been made.

Mr. Garran.—I think you are ahead of legislation. I do not think the Commission possesses the power suggested.

Mr. Byrnes.—I think it does. I have bought and sold irrigation land. One must present one's plans to the Commission.

Mr. Garran.—That is to ensure that a supply of water is available. It does not prevent the subdivision taking place.

The Chairman.—I think it will be found that it is a practice of solicitors experienced in that type of work to provide that the contract is conditional upon the approval of the State Rivers and Water Supply Commission.

Mr. Byrnes.—No, it has got beyond that.

The Chairman.—I think Mr. Garran is perfectly correct when he says that there is no statutory provision requiring approval of the Commission. However, that point does not concern the Committee. We are now considering whether Mr. Taylor's proposed amendment is consistent with the Committee's view that the Registrar should be an officer dealing with the registration of land rather than a judicial officer deciding, when a particular transaction comes before him, whether it complies with certain regulations. It appears that the amendment follows that general intention.

Mr. Byrnes.—I wish to obviate the possibility of the Registrar giving consent and then finding that, because the requirements of the State Rivers and Water Supply Commission have not been fulfilled, the sale cannot take place.

Mr. Garran.—There is no requirement that the Registrar shall consent, provided the municipality agrees. There is still a discretionary power.

Mr. Thomas.—Under the Local Government Act, municipalities apply different interpretations to the size of frontages. For example, at Northcote some years ago some persons advocated that frontages should be not less than 16 feet and others considered that 12 feet was sufficient. I think the councils have power to determine the size of frontages.

Mr. Garran.—That is so.

Mr. Thomas.—Would the Registrar have power, if he considered it to be in the public interest, to refuse to accept the council's decision?

Mr. Garran.—The Registrar would ask the council whether it was in accordance with its by-laws. That is not a matter for this Bill.

The Chairman.—I suggest Mr. Thomas should reserve his remarks until the Local Government (Amendment) Bill is under consideration.

Mr. Garran.—Paragraph (*b*) of clause 98 gives effect to the recommendation appearing in Item 9, page 4, of the Committee's 1952 Report concerning "own-your-own flats." It provides that in the case of horizontal subdivisions of buildings there shall be included in the survey of each allotment necessary easements of support and for the supply of water, gas, electricity, sewerage, telephone and other services, without those easements having to be delineated on the plan.

Mr. Brennan.—Without any special reservation of such?

Mr. Garran.—Except as provided in the Act.

Mr. Thomas.—Who becomes the owner of the title?

Mr. Garran.—The owner of the flat. If he buys it and is registered, he becomes the owner of that part of the building.

Mr. Thomas.—Does that mean that there could be more than one title for the same piece of land?

Mr. Garran.—No. Land is not considered to be on one plane. It goes to the centre of the earth and as high as heaven. One can sell land from 10 feet below or 100 feet above the ground. The original grants went down to the centre of the earth. Since some time in the last century they have gone down 50 feet below the earth's surface. There is also a special mineral reservation. There is no limit on the extent above.

Mr. Randles.—You mentioned easements of support. Would it be necessary to include the easement of a right-of-way—for example, access by a stairway?

The Chairman.—I shall ask Mr. Garran to consider that matter and give his views at our next meeting.

The Committee adjourned.

FRIDAY, 5TH NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. Garran, Assistant Parliamentary Draftsman, was in attendance.

Mr. Garran.—If I might revert to three matters arising from yesterday's evidence, it will be remembered that in connexion with clause 90, I mentioned that I myself was not in accord with the Bill as drafted at sub-clause (1) of clause 90 and paragraph (*b*) of sub-clause (2) of clause 91. I have further discussed the matter with Mr. Taylor, and he has come round to my way of thinking. Therefore, I submit a suggested redraft of sub-clause (1) of clause 90 which will cover completely what is partly covered by paragraph (*b*) of sub-clause (2) of clause 91, which paragraph will be omitted. The suggested redraft reads:—

> Subject to this Act every such caveat except a caveat lodged by the Registrar shall lapse as to any land affected by any transfer or other dealing other than—
>
> (*a*) a transmission under Division two of Part IV.; or
>
> (*b*) a transfer or dealing as to which the caveator or his agent has lodged with the Registrar his consent in writing; or
>
> (*c*) in the case of a caveat lodged by or on behalf of a beneficiary claiming under a will or settlement—a transfer or dealing giving effect to the appointment of a new trustee or to any other transaction which in the opinion of the Registrar is not inimical to the interests of the beneficiaries—
>
> upon the expiration of 30 days after notice given by the Registrar to the caveator that a transfer or dealing has been lodged for registration.

Paragraph (*b*) of sub-section (2) of section 91 came in as an additional amendment to the transfer of land system last century to keep alive caveats where there are certain dealings in trust estates, such as the appointment of a new trustee. However, the provision does not cover a wide enough scope. It requires the Registrar to be of opinion that the alteration is authorized by the will or the settlement, but it does not refer to alterations required by law, such as on the death of a trustee. Sub-clause (1) of clause 90 was redrafted in the previous Bill to cover some caveats under wills or settlements. At the moment, the two provisions overlap and are somewhat conflicting, so it is considered desirable that they should be brought together. The provision in the Bill as it stands could operate on the assumption that a notice not provided for will be sent out to a caveator.

Mr. Randles.—In other words, when the transaction is such that the title is not affected?

Mr. Garran.—That is so; such as the death of one trustee. The Registrar has to be satisfied that the transaction is not inimical to the beneficiary.

The Chairman.—I think it desirable that copies of any suggested amendments to the Bill should be sent to the Law Institute and other persons interested in the technical side of the proposals, so that time may be saved when hearing other evidence.

Mr. Garran.—I suggested a new sub-clause (2) to clause 97, and Mr. Byrnes raised a point of law with which I disagreed. However, I find that he was right, so I must withdraw my opposition.

Section 59 of the *Water Act* 1928 was amended in 1940 to provide that subdivisions of irrigated land are not to be effected without the consent of the appropriate water authority, and it is felt that a similar provision should be inserted in this Bill. The Registrar advises that he does not know whether lands are irrigated lands or not; the only bodies possessing that information are the water authorities and the municipalities.

Mr. Thomas.—Should not the parties concerned have the obligation of notifying the Registrar to that effect?

Mr. Garran.—What I suggest is that the responsibility shall be on the municipal council to see that certificates are obtained, whether they are to be obtained under the Local Government Act or under the Water Act. In some cases, it will be found that the municipal clerk is also the clerk of the water authority or is closely related in his work with it.

The Chairman.—The procedure in the metropolitan area accords with your suggestion. Although a local council has no obligation to do so, a plan of a subdivision is always submitted to the Board of Works before consent to it is given by the council, having regard to the fact that the Board is interested in drainage, and particularly in flooding.

Mr. Garran.—My suggested amendment is that sub-clause (2) of clause 97 be omitted and the following sub-clause inserted:—

> The Registrar may refuse to accept for lodgment any plan of subdivision unless the council of every municipality concerned certifies in writing that any consent to the subdivision required by section five hundred and sixty-eight of the *Local Government Act* 1946 or section fifty-nine of the *Water Act* 1928 has been given or that no such consent is necessary.

Mr. Randles.—I can understand a council notifying the Melbourne and Metropolitan Board of Works, particularly in the case of a subdivision of land close to the metropolitan area where the Board may already have plans in hand for sewerage works that will require alteration.

Mr. Garran.—Actually, there is no similar provision for the Melbourne and Metropolitan Board of Works.

The Chairman.—It is done as a matter of practice?

Mr. Garran.—Yes, pursuant to section 568. It would be the council's responsibility to ensure that sewerage and water facilities were available to all allotments.

In connexion with clause 98, Mr. Randles raised a question relating to the implied easements necessary for enjoyment of a separate part of a building under the "own-your-own flat system. I think it is proper that a provision to supply an easement of way should be included and, accordingly, it is suggested that the words "way and" be inserted after the word "of" in line 14 of paragraph (*b*) of clause 98.

The Chairman.—Legislation in regard to flats is of an experimental nature, and if the system of individually owned flats develops and further provisions are considered necessary, the Act could be amended.

Mr. Pettiona.—What is the position regarding easements when buildings are erected on stilts?

Mr. Garran.—The legislation does not permit easements to be destroyed. Buildings must be erected in such a way that there is no interference with easements. In the case of an easement of way, provided a building allowed the proper passage of vehicles, persons and animals, it would be in order.

Mr. Pettiona.—The practice of building on stilts is becoming more prevalent.

Mr. Thomas.—Consideration was given to the possibility of using stilts in the Koo-Wee-Rup swamp area but the project was abandoned.

Mr. Garran.—Clauses 99 to 102 inclusive of Division 5 provide the necessary authority to the Registrar to make any necessary adjustments or amendments to the Register Book. Such amendments must, of course, be within a limited scope because he does not deal arbitrarily. Clause 99 provides for applications by proprietors to have their boundaries adjusted to accord with the correct surveys and, in such cases, the necessary notice must be given. The position can be safeguarded by caveat. The law on this point has worked satisfactorily and is basically unchanged.

Clause 103 is a new provision giving the Registrar power to correct errors and it has been included on the recommendation of this Committee as evidenced in Item 29 of the 1951 Report. Sub-clause (2) of clause 103 appears in the existing Transfer of Land Act but I am not entirely satisfied with paragraph (*b*) of that sub-clause. Baalman, in his *Commentary on the Torrens System in New South Wales*, says, and I quote from page 417—

> It is conceivable that that paragraph prevents the exercise of the power of correction to the prejudice of third parties who have acquired registered interests on the faith of the erroneous title, but it is not easy to extract that meaning from the actual words used.

I suggest that the paragraph could be improved by omitting the words, "except as regards" in line seven and inserting instead the words, "but without prejudicing any rights accrued from." It is difficult to give an exact draft; it is more a pious hope than a proposition that could be stated with certainty to meet all contingencies.

Mr. Randles.—What would be the position if rights had accrued to a person before the error was discovered?

Mr. Garran.—The correction of the error would not prejudice that person in relation to those rights.

Mr. Randles.—The correction of the error would have no effect?

Mr. Garran.—It would have no effect as against the rights of that person. The Titles Office knows of no case in which that paragraph has been used, but

it looks good on paper. Division 6 provides for the general powers of the Registrar, and, subject to what I shall say, follows the existing legislation. Sub-clause (2) of clause 104 is a modern form of providing for production of documents and the calling of witnesses by a Board or Authority; it is an application of the Evidence Act. Under the transfer of land legislation there are about four different methods of providing for the production of documents and the calling of witnesses, and they have all been brought together in this modern form.

Sub-clause (3) of clause 104 follows the recommendations of the Committee made in Item No. 13 of the 1953 Report, giving effect to a suggestion of the Registrar. It is concerned with giving power to the Registrar to require any person who has any material document to bring it to the Titles Office for administrative purposes.

Mr. Thomas.—Would that apply to any corrections that had been made on particular titles?

Mr. Garran.—The provision is not concerned only with corrections; it may be concerned with investigating facts and rights. It could be used in connexion with corrections, but not alone.

Mr. Pettiona.—Would it apply only where a dealing is in process?

Mr. Garran.—That would be the only occasion when the Registrar would require it.

Paragraph (*e*) of clause 106 is the normal provision that is placed in all our local land Acts. It is now, I think, the accepted practice and may be made general.

Division 1 of Part VI. deals with the Assurance Fund of the Titles Office. It follows the existing legislation in regard to the fees coming in. Concerning the application of the fund to satisfy persons who have suffered damage as the result of the operation of the Torrens system, clause 110 has been re-drafted according to recommendations 31 and 32 contained in the Committee's 1951 Report. Those recommendations accepted the re-drafted provision in the previous Bill and suggested the incorporation of two recent Victorian Acts relating to specific cases of forgery, and also suggested that the provisions as to limitation of actions should be brought into line with a Bill that was then before the House. As to the limitation of actions, I have removed all provisions relating to that in respect of claims on the assurance fund; they are unnecessary and the ordinary rules will apply. If the Limitation of Actions Bill becomes law, it will apply automatically. On the whole, claims against the Assurance Fund will have a slightly greater chance of success under this Bill than they have under existing legislation.

The Chairman.—That is, of course, in accordance with the statutory trend. When cases have been met to which the fund did not apply, special Acts have been passed to enable it to apply.

Mr. Garran.—That is so; they are the two forgery cases to which I have referred. Division 2 of Part VI. covers sundry miscellaneous matters. I have not included in this Division any provision as to who shall witness instruments for the purposes of the Bill. In that regard, I refer to recommendation No. 27 contained in the Committee's 1951 Report and recommendation No. 11 in the 1953 Report, in which it was recommended that the present class of authorized witnesses should be extended. In consultation with several people, I found that it was generally felt that if that class was extended it would no longer be the narrow class of people to whom reference could be made individually to check on the fact of verification of signature. In dealings with land outside this Act, anyone may be a witness. It has been felt, accordingly, that authorized witnesses should now be abolished. I might add that they are not used in England, and Mr. Ruoff, who was consulted, does not miss them. That is one of the three cases where I have not followed the recommendations of the Committee.

The Chairman.—The Committee recommended an extension of authorized witnesses; you have gone further and removed any limitation?

Mr. Garran.—That is so. I have extended the recommendation of the Committee rather than disregarded it.

Mr. Randles.—What are the necessary qualifications of a witness?

Mr. Garran.—He must be of full age and of sound mind.

Mr. Randles.—In other words, no particular qualifications are necessary?

Mr. Garran.—That is so. The qualifications of witnesses cannot be verified effectually by the Titles Office.

The Chairman.—As Mr. Garran has indicated, all documents relating to land under the general law may be witnessed by any one. Practically all documents drawn by lawyers may be witnessed by any one also. There are, in fact, few instances where provision is made for specially qualified witnesses.

Mr. Garran.—Clause 113 embodies numerous provisions concerning the service of notice, but is based on section 283 of the 1928 Act, which provision has been altered slightly with the view of permitting the use of ordinary post instead of registered post.

Mr. Thomas.—If ordinary post is used, there is no certainty that the person concerned actually receives notice.

Mr. Garran.—The Registrar is empowered to require the service of further notice, if he is satisfied that the person concerned did not receive the original notice.

The Bill that was previously before Parliament included a provision concerning the appointment of a rules committee consisting of the Registrar, and representatives of the bar and of the Council of the Law Institute of Victoria. Item 34 (at page 10) of the 1951 Report of this Committee recommended the inclusion of this provision. After consultation with the Attorney-General, however, I was directed to omit it on the ground that it would be tactless to to introduce such a provision at a time when the basis of dual control is being reduced to that of single control. If the provision is desired later, it can be inserted but, as the rules relate mainly to the internal practice and procedure of the Titles Office, it is thought better to regulate the Office in the manner customary to a Government Department rather than to have "irresponsible"—I use the word kindly—persons dictating in detail the method of administration.

The Chairman.—That, I suppose, is reasonable, having regard to the fact that this Committee, in its reports and you, Mr. Garran, in drafting the measure have sought to make of the Bill a true "land registration" measure rather than a code relating to the transfer of land.

Mr. Garran.—I felt that the recommendations of the Committee, in its later reports, indicated that greater stress was being laid on the desirability of unified administration and that, if the matter were reconsidered, there might be an inclination to alter the provision relating to the rules committee.

The Chairman.—Who were the persons proposed to be appointed to the rules committee?

Mr. Garran.—There were to be the Commissioner, and four persons appointed by the Chief Justice—two to be practising barristers and two to be practising solicitors. That was before the stage was reached of combining the two functions of Commissioner and Registrar.

The Chairman.—Was the rules committee empowered to make general regulations regarding registration?

Mr. Garran.—Sub-clause (1) of clause 329 of the 1953 Bill provided—

> Subject to the provisions of this Act the Rules Committee may make rules for prescribing any matter by this Act directed or authorized to be prescribed and for regulating any other matter or thing (including the prescribing of any forms to be used) in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.

The Chairman.—There can be seen the influence of the Commissioner, who regarded himself as a judicial officer rather than an administrative one. The whole tenor of the Bill now under consideration is to limit the judicial powers and to increase the adminstrative powers of the Registrar.

Mr. Garran.—I come now to the schedules, which have been covered mainly by my comments on the body of the Bill. Generally, forms have been brought up to date and simplified and, where unnecessary, omitted to enable any appropriate form to be used. The Fourth Schedule gives effect to item 9 (*b*) (at page 7) of the Committee's 1953 Report as to the address for service on a caveator anywhere in Victoria.

As to the Fourth Schedule, perhaps I should make it clear that there are two different types of caveat under the transfer of land legislation. One is to protect people who claim interests in land before registration, so that the first registered person shall not be registered with any interest to which he does not have a proper right; that is the form of caveat that appears in the Fourth Schedule. The other caveat, the form of which appears in the Sixteenth Schedule, enables any person who has an unregistered interest in land to protect that interest after the land has been registered.

Mr. Pettiona.—A person lodging notice under the Fourth Schedule would be called upon to prove his interest?

Mr. Garran.—Yes. He must start proceedings to prove his interest within a certain time and, if anyone lodges a frivolous caveat, he can be mulct in damages.

Mr. Randles.—If there is to be a dealing, the caveator must prove his title within 30 days.

Mr. Garran.—Yes. The Sixth Schedule provides the ordinary form of transfer, and, as I mentioned in relation to clause 45, the reference to the exact monetary amount has been omitted in accordance with your recommendation, 1951 Report, item 20, page 8.

Mr. Randles.—Did you omit from Table A. reference to fences?

Mr. Garran.—The Seventh Schedule is Table A. It has been revised in consultation with the Law Institute Council. I understand that the council may wish to raise one or two matters in connexion therewith, which were being considered at the time the Bill was sent to be printed. This Bill includes one amendment contained in the *Statutes Amendment Act* 1953, namely, the exclusion of the provision relating to fences. It does not include the other amendment made by that Act, namely, the reduction of the period of time for the answering of requisitions. The original period has been restored. This re-drafting, which was done after consultation with the Law Institute Council, was effected in accordance with the Committee's recommendations—1951 Report, item 33, page 9, and the 1953 Report, item 19, page 9.

Mr. Randles.—You have omitted the reference to fences, but you have not taken into consideration the other amendment made last year?

Mr. Garran.—Not the shortening of the period, no, because there were objections by the legal profession in reference to the Transfer of Land Act and also in reference to the Property Law Act.

Mr. Randles.—What will be the effect now?

Mr. Garran.—This Bill will override. The Attorney-General is quite happy about it.

The Chairman.—This will be overriding as far as the Transfer of Land Act is concerned?

Mr. Garran.—Yes. As I previously stated, there are one or two items which the Law Institute Council desires to discuss. Therefore, I shall not touch on those matters because I do not know what views the council holds on them.

The Chairman.—You do not wish to say anything further concerning those points?

Mr. Garran.—No; they are entirely conveyancing matters. I come now to the Seventh Schedule, Table A., clause 16 which reads as follows—

> Any payment due under this Contract may be made or tendered either in cash or by a draft or cheque drawn by a bank as defined by the *Commonwealth Banking Act* 1945 or any Act amending or replacing that Act.

Mr. Randles.—Under the provisions of the Commonwealth Banking Act, the State Savings Bank is expressly debarred, and therefore a draft or a cheque drawn on that bank would not be tenable.

Mr. Garran.—At any rate, it is not cut out, because all these terms can be altered to meet any circumstances. They are not binding. They could be adopted *in toto* by reference to them. If they are not adopted, they would not apply. They could be adopted with additions, omissions, or alterations. Mr. Randles' point might be mentioned to Mr. Fox who will be in a better position to answer it as it involves solicitors' practice. I have omitted from the Bill the old, short form for conveyancing in relation to leases, as it was never used. When the use of the short form is required in connexion with conveyancing, the short form contained in the Landlord and Tenant Act is used.

Mr. Thomas.—What is the reason for that?

Mr. Garran.—Simply because the Landlord and Tenant Act contains a better set of forms. In the Fifteenth Schedule, I have made an alteration on the recommendation of the Crown Law Conveyancing Branch. The Schedule provides that the covenant in a mortgage to insure shall require a mortgagor to deposit with a mortgagee the policy of insurance within a certain time. As the Act now stands, the deposit must be lodged not later than seven days after the premium is payable. Under the Bill, this period has been changed to seven days before the premium is payable; the reason, which is obvious, being that if the mortgagee wants to take steps to protect his property it would be too late for him to do so under the existing provision. Under the proposed amendment, he will have seven days in which he can insure and he can take the necessary steps against the mortgagor also. If he has not got the receipt in his

hands seven days before the specified date, the mortgagor is at fault, and the mortgagee can protect his property and proceed against the mortgagor in due course.

Mr. Randles.—The mortgagee could make the payment and then claim on the mortgagor?

Mr. Garran.—Yes. In the Sixteenth Schedule, I have followed the Committee's recommendation in its 1953 Report, item 9 (*f*), page 7, as to the place of address of caveator. Finally, in regard to the Twentieth Schedule, I should have liked to redraft it because it is so full of cross-references to clauses of the Bill in respect of which errors could arise. However, it is well understood and I did not want to appear to be altering the amount of the fees by rewriting the words in which the requirements for payments are expressed.

Mr. Thomas.—Are they minimum or maximum payments?

Mr. Garran.—They are flat payments. Certain fees are also payable under section 525 of the Local Government Act in connexion with the transfer of land. That, Mr. Chairman, completes the evidence that I have to submit to the Committee.

The Chairman.—On behalf of the Committee, Mr. Garran, I thank you for your excellent analysis and explanation of the Bill. I particularly congratulate you on your work in producing this Bill, which appears to be clear and to have the great advantage —although adopting a number of the Committee's recommendations—of reducing the volume of the legislation considerably. I think it is an excellent job, and I am sure all members of the Committee will agree with me.

Mr. Thomas.—I should like to add my own congratulations to Mr. Garran for the work he has done.

Mr. Garran.—I thank you, gentleman, for your remarks.

The Chairman.—If any further question should arise from evidence that may be given by other persons, the Committee will again consult you.

Mr. Garran.—I shall be available when required. I shall draw up a formal amendment on the point mentioned to-day.

The Committee adjourned.

TUESDAY, 9TH NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council:	*Assembly:*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. I. A. Swinburne,	Mr. R. T. White.
The Hon. F. M. Thomas.	

Mr. William John Taylor, Registrar of Titles, was in attendance.

The Chairman.—On behalf of this Committee I welcome to our deliberations Mr. W. J. Taylor, the Registrar of Titles. For his information I should say that Mr. Garran has gone through the Bill with which we are dealing, with us, and in a fair amount of detail and he has indicated a number of matters that we are to discuss with you, Mr. Taylor. We now leave you to add anything that you might care to put before us to Mr. Garran's evidence. Have you seen his evidence, by the way?

Mr. Taylor.—I have seen most of the matter that Mr. Garran has put before this Committee and I have a good idea of what he said. I have prepared some material and I propose to follow the prepared script as I have it before me. I know that in the past fortnight this Committee has had a surfeit of the Transfer of Land Bill in the process of acquainting itself with the new version of the Transfer of Land Act. As I am following in the wake of Mr. Garran there is probably little that I can add to his evidence. He undoubtedly has given effect to simplicity, one of the main concepts of the Torrens system, combined with a refreshing and modern viewpoint. I must, however, urge the Committee to endeavour to have the Bill passed this session. If the Titles Office is ever going to get on top of the work and administer the real Torrens system, it requires all possible support. In many respects this is a model Bill and I can assure the members of the Committee that from the administrative angle it will work. The success of the new legislation will largely depend upon the efficient and commonsense working of the Titles Office. Registration must be prompt and title searching simplified. The legal profession now faces too many unnecessary hazards at a time when law clerks, generally, are inexperienced and perhaps harder to recruit than public servants; those clerks are up against sequences of unregistered dealings, unregistered plans of subdivision and thousands of titles out of the Register Book. The result is wasted time and effort on the part of searchers and my officers and the resultant risk of inaccurate information on which dealings are prepared for registration and settlements effected. Perhaps I can now touch upon one of the proposed amendments that Mr. Garran has submitted to the Committee, namely, the suggested amendments of clause 97 by the insertion of a new sub-clause in lieu of sub-clause (2). Sub-clause (2) of clause 97 follows section 211 of the present Act (as amended by section 33 of Act 5056) and, in my opinion, it places an unfair onus on the Registrar who should not be obliged to express an opinion on plans or schemes of subdivision. I commend Mr. Garran's proposed amendment for that reason. No Registrar or public servant intrudes in the field of subdivisions of general law land. Municipalities should, I suggest, supervise and control all subdividing and the only concern of the Registrar should be whether the subdivider has by-passed the local council. Now, this amendment will not solve all the problems associated with subdivisions but may, in fact, raise new ones which I feel must be brought under the notice of the Committee. I do not know whether Mr. Garran touched on this matter fully.

The position with respect to horizontal subdivisions giving rise to stratum titles is not clear. There is, I think, considerable doubt as to whether they come under section 568 of the *Local Government Act* 1946 and require consent of the council. The Solicitor-General feels some doubt on this point. I have had a rather lengthy discussion with Mr. Winneke on this matter to-day. The suggested amendment requires that all subdivisions, horizontal or vertical, be submitted to the council. If the Titles Office requisitions for consent of the council and this is not a valid requisition, court actions may result. I submit, therefore, that this Committee may have to consider some amendment to the Local Government Act if it accepts the amendment to clause 97 of the Bill with which we are dealing, which is very desirable from the point of view of the Titles Office.

The Chairman.—With your permission, I will read Mr. Garran's amendments, as follows. (Amendments read.) In other words, instead of the present position, the Registrar will be able to submit the plan to the council and ask the council to say either "We consent" or "We do not need to consent." I take it that as a matter of procedure the practice will become as you have already indicated.

Mr. Thomas.—The trouble is that there would be considerable delay or danger of further delay because shire councils often meet only once a month or every two months. Then there has to be the matter of approval by the council.

Mr. Taylor.—Yes. In fact, there has been no question of delay until very recently when these horizontal subdivisions, which perhaps I myself unearthed, came into being. We have plans of subdivisions, either plans that have the council's consent upon them or proofs that the lots thereon were separate tenements prior to the operation of the *Local Government Act* 1944. That evidence is lodged with the plan.

Mr. Thomas.—We have to visualize the situation that they have that knowledge and that the particular application has been from the horizontal aspect.

Mr. Taylor.—That is so. There has been really no great difficulty about matters other than horizontal subdivisions. This is a bit of a teaser and section 568 may not apply to these. The horizontal subdivisions are partly vertical and horizontal air space titles. If those subdivisions are under section 568 of the Local Government Act the Registrar should require the consent of the council. If the matter goes back to the council and the council says, "We do not have to consent to this", then you have an impasse. There is no doubt that when section 568 was originally enacted stratum titles and horizontal subdivisions were never thought of. But these horizontal subdivisions are becoming rather more numerous and I think it amounts to this, that it should be laid down somewhere—and that place would be the Local Government Act—as to whether or not the municipalities are going to come into the field of horizontal subdivisions.

Mr. Byrnes.—You are not certain in your own mind, I take it, nor is Mr. Winneke certain in his mind, that it is absolutely essential for the council to give consent to those subdivisions, legally?

The Chairman.—That is, either the Local Government Act as it now stands or if it is amended in accordance with the amending Bill before the House.

Mr. Byrnes.—Your opinion, Mr. Taylor, is that it should be necessary for the councils to give that consent so that it should be made legally binding?

Mr. Taylor.—I think that as Registrar of Titles in case of doubt I should ask for the consent of the council although I may feel that that is not necessary. There is considerable doubt about the matter but, as Registrar, I should ask for the consent in fairness to the councils.

Mr. Brennan.—You feel some uneasiness and that there should be the requirement of some safeguard, and you look to the council in the first case and feel that somebody should approve other than yourself with respect to these horizontal subdivisions?

Mr. Taylor.—These questions of subdivisions are undoubtedly the province of the municipal councils. Every man to his job, and I do not say that I desire to evade the work or the responsibilities, but the councils should have all the say with respect to subdivisions. The opinion of the Registrar should not govern the matter at all.

Mr. Swinburne.—They control the building of these places in the first instance, so they should see that the whole matter is completely set out.

Mr. Taylor.—Yes, that is so.

Mr. White.—Exactly what procedure is followed now? Is there some hold-up?

Mr. Taylor.—No, we have not yet had one horizontal subdivision of a building erected subsequent to the 18th December, 1944. We have had a few subdivisions of buildings that were erected prior to that date and, therefore, the flats were separate tenements within the decision of *Nelson* v. *Tammer* and proof that the building was erected and had been separately occupied prior to that date suffices. There is then no question of the consent of the council at all. But some will be coming along in regard to new buildings, and I have to make up my mind with respect to the terms of sub-section (2) of section 211 and I shall have to ask myself, "Am I of the opinion that this is a plan of subdivision to which section 568 applies?" If I say, "I think it does——"

The Chairman.—And if someone else thinks you are wrong, there will be an action against you.

Mr. Taylor.—I would not want to be a "nark."

Mr. White.—You hold that this business is the responsibility of the municipalities?

Mr. Taylor.—I do.

The Chairman.—Your belief is, first, that the municipality should have the responsibility and, second, the law should be clear enough to enable the municipalities to say whether they have or have not the power.

Mr. Taylor.—Yes, that is the position.

Mr. Pettiona.—It is possible for the council to "pass the buck" by saying, "We do not think that it is necessary for us to give consent."

Mr. Taylor.—I want the council to say that. It should not be able to "pass the buck" to the Titles Office. I think this Committee would be almost misled by this amendment. This is a very helpful amendment. It is very welcome from the Titles Office point of view.

Mr. White.—Do I take it that if we do not do something we may be "passing the buck"?

Mr. Taylor.—You will have me in this position, that I can refuse to take this plan of subdivision to which no consent of the council may be requested in the terms of section 568. It may not be necessary that any consent be obtained. Well, I can say, "I will not accept this plan of subdivision because it has not the imprimatur of the council's consent or no consent."

Mr. Byrnes.—Then there will be required an amendment of the Local Government Act.

Mr. Randles.—Everything that applies to that particular subdivision should be the responsibility of the council, and there should be no doubt that it is the responsibility of the council?

Mr. Taylor.—I think so. I have no desire to stop these horizontal subdivisions. It is just a matter of internal administration in the Titles Office to deal with them like any other matter. And of course it has the blessing of this Committee in that a special sub-clause has been inserted in clause 98 to facilitate such subdivisions by granting necessary implied easements.

The Chairman.—This Committee has expressed itself as being in favour of such subdivisions, to be registrable in the Titles Offices and carrying with them the necessary easements. From the practical point of view how is this new proposed amendment going to work, so far as the Water Act is concerned?

How are you going to decide which plan requires consent under the Water Act? Are you going to say anything in that a particular county might be subject to the Water Act? Are you going to ask for every plan to be referred to the State Rivers and Water Supply Commission?

Mr. Taylor.—I have not given that very much thought but the map on the wall of the Crown Solicitor's office has shaded areas of irrigation districts, and I think we could obtain from the State Rivers and Water Supply Commission particulars as to all the councils which may be subject to the consent of the Commission. Then any plans of subdivision coming from one of these councils must embody what the clause requires here, that the Commission has given its consent.

The Chairman.—And as to anything coming from other councils, you would not require it?

Mr. Taylor.—No, because I think this: When I looked at that amendment I immediately thought that councils will not, just off their own bat, put in the Water Supply Commission's consent, or otherwise. They will never think of it. But any of these councils should undoubtedly co-operate with the Commission in this matter, and they should and they must embody in their consent that the State Rivers and Water Supply Commission has consented.

Mr. Thomas.—Are you in accord with the view of Mr. Garran—I refer to his definite interpretation of land. You are the Registrar of Lands. That is going to be something of a material object. When it comes to the question of the proposed construction of two or three flats it means that you are going to issue duplicate titles over the same piece of land.

Mr. Taylor.—Yes. Even as the Act now stands, it includes these stratums of air space. There is nothing intricate about these stratum titles actually. The title sets out this stratum of air space, and it is very easy to search and find out all the titles to the land; that is the land down to the centre of the earth and upwards to infinity, and I think it is consistent with the Transfer of Land Act and the definition of land that we do issue these stratum titles. We have issued 26 titles over a block of flats in Alexandra-avenue, so that there are 26 seperate titles to flats.

Mr. Thomas.—Covering that one area of land?

Mr. Taylor.—Yes.

Mr. Swinburne.—What happens if the building should be destroyed? You cannot destroy land, of course?

Mr. Taylor.—Fortunately, that is not a Titles Office worry. But I was interested to learn recently from an article in the Law Institute Journal, written by a Scottish solicitor, Mr. Dickson, who was interested in the evidence given before this Committee and in the Committee's recommendations; and he wrote that this stratum title idea had been in operation for more than 500 years in Scotland. But he pointed out the difficulties connected with it and stated that the only effective way one could have it running properly was to legislate for everything—for public health and for what happens when the building is demolished—and to provide for every possible contingency by legislation. That was the only satisfactory way of proceeding. In Scotland, as distinct from our certainty of title here, they have the general law land similar to our general law land. They have not the Torrens system which does keep the title part of it in order here. However, other aspects are fortunately not the worry of the Titles Office.

Mr. Pettiona.—If a person obtained a title from your office of a flat, say, on a third-floor level and he also occupied a garage on the ground-floor level—perhaps so many yards away from his direct landing at the bottom—what would his position be?

Mr. Taylor.—In all these schemes of subdivision of flats the grounds and the staircases, the approaches, the gardens, the drives and the pathways are all in the joint ownership of the flat-owners or they are vested in a company of which the only shareholders are the flat-owners. So in that way their rights of access are guaranteed. Each one of them is a joint owner of the land separating their premises and the garage. They have an agreement covering all manner of things. There are many matters that are the subject of agreement between the parties, but that is nothing against the Titles Office point of view or the viewpoint of the Registrar in permitting separate titles to be taken out for separate flats, because they are becoming more and more popular and are accepted generally by the legal profession.

Mr. Randles—Do you know what is the position in Sydney?

Mr. Taylor.—There, they are all companies. I understand from an Examiner of Titles in New South Wales that in Sydney there is rather a demand for the separate title to the flat, but I think that in the New South Wales legislation there is a stopper because easements over there must be very well defined by reference to plans and so forth on the title, and unless they are clearly indicated and sufficiently defined, they may be voided because of uncertainty. That might mean an amendment of the Real Property Act or of the Conveyancing Act.

The Chairman.—Have you concluded your prepared submissions to the Committee in regard to unregistered plans of subdivision, issuing titles on the plan of subdivision on the value of the surveyor's measurements? You agree with the amendment that Mr. Garran has submitted after consultation with you?

Mr. Taylor.—Entirely.

The Chairman.—Are there any other matters arising out of the Bill to which you desire to draw our attention?

Mr. Taylor.—No, I have nothing further to put to the Committee.

The Chairman.—You have no further amendments in mind?

Mr. Taylor.—No.

Mr. Thomas.—Can you give the Committee any idea as to the extent to which these things are covered under the general law?

Mr. Taylor.—To which do you refer?

Mr. Thomas.—To cases in which titles were issued under the general law principle.

Mr. Taylor.—I think there are about 1,500,000 acres in the State that are still to be brought under.

Mr. Thomas.—Which eventually will come under these provisions?

Mr. Taylor.—Yes. They are still under the general law and by the provisions of bringing land under by direction, all that land will be brought under.

The Chairman.—Can you give the Committee any indication of how long it will take to train the necessary staff to enable you to recommend that this particular provision be proclaimed?

Mr. Taylor.—I think the provisions governing this matter of bringing land under by direction are not very complicated, but if the office had to wait until everything was surveyed, you could say that it would not be done in the next 50 or 100 years. I do think, however, that perhaps most of the general law land could be brought under the Act on the deed measurements and the necessary adjustments made to the title when survey would be effected.

The Chairman.—So you do feel that you could make a start fairly quickly?

Mr. Taylor.—I think so. I think it has been envisaged that there should be a survey first and that they should be brought under the Act second. But it is better to get it under the Act and then you have the same measurements as in the deed title and one of the Commissioner's minutes would be of course to survey. You must be satisfied as to the measurements of the land by a plan of survey. I think a limited title could be issued on the deed measurements because I am sure that if you had to wait upon surveys you would never get much done at all. The survey would be more or less like these plans of subdivision. The surveys would come in and all would have to be checked like a plan of subdivision. It would be better and in the interests of everybody to bring the land under the Act on deed measurements—the measurements in general law deeds.

Mr. Byrnes.—The owner would lose nothing in that case.

Mr. Taylor.—The owner would get a better title than that which he now holds under the general law deeds.

Mr. Thomas.—History has proved that quite a number of people having deed titles have land far in excess of the land that the deed indicates.

Mr. Taylor.—Yes. As to excess land, that is always granted by the Titles Office if there is proved to be excess in the Crown allotment or subdivision. But that causes no hardship. It is granted.

Mr. Thomas.—The people concerned could be asked to pay for it?

Mr. Taylor.—No, but we would probably ask, in regard to excess land, "Has it been within the fences for fifteen years?"

Mr. Thomas.—I have seen cases of deeds showing the land held to be much greater than the original Crown grant and the people concerned have become possessors of that land because of an adverse decision.

Mr. Taylor.—They cannot get possession against the Crown. There is a section which precludes anyone from obtaining adverse possession against the Crown or, among other bodies, the Victorian Railways.

Mr. Thomas.—I have seen records of charges running from £5 to £850 in respect of land on the deed title.

Mr. Taylor.—If it happens to be Crown land, the Titles Office would not issue a title to anybody. It could not do so, but if the land was excess land in a Crown allotment and if there were acres of excess, it would not matter to the Titles Office. It would say, "This is excess land in that Crown allotment" and it would grant the land to the applicant on proof that it has been in his possession.

The Chairman.—You are thinking of cases in which an applicant has not been able to prove all his title and it has been suggested that if he goes to the Lands Department he might be able to persuade the department to sell it to him. It would clear that up.

Mr. Taylor having concluded his observations, I desire to thank him for his assistance to the Committee in its deliberations. It is very heartening to know from him that the Bill, as drafted, will assist in the administration of the Titles Office. He is aware of the interest that this Committee has taken in simplifying the procedure and in its desire to help him and his staff to get up to date in their activities.

Mr. Taylor.—We do appreciate the interest that has been shown by this Committee in our work.

The Chairman.—It is our desire to see legislation that will enable the staff to function, together with the office as a whole, efficiently.

The Committee adjourned.

WEDNESDAY, 10TH NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council:	*Assembly:*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. R. T. White.
The Hon. I. A. Swinburne,	
The Hon. F. M. Thomas.	

Mr. W. J. Taylor, Registrar-General, and Registrar of Titles, was in attendance.

Mr. Taylor.—By your leave, Mr. Chairman, I would like to deal with a matter which you brought under my notice regarding a complaint published in the Victorian Law Institute Journal of 1st November, 1954, at page 291. This was a complaint by a firm of solicitors to the Council of the Queensland Law Society concerning the Queensland Registrar of Titles not notifying the lodging solicitor that a plan of subdivision had been passed for registration. Solicitors were therefore obliged to search from time to time and to check whether the plan had been registered. This would be a serious matter in Victoria. I would like to point out in Victoria a notice is sent to the lodging solicitor informing him that the plan of subdivision has been accepted as a lodged plan, and this notice quotes the registered number. This enables solicitors to prepare instruments henceforth, with a complete Crown description including the registered number of the plan of subdivision.

At this stage I would like to hand to members of the Committee two small circulars which gives effect to that office procedure. These circulars are as set out below—

SURVEY BRANCH,
OFFICE OF TITLES.
Melbourne, C.1 19

CIRCULAR
Re plan of subdivision No.
R.I. No.

You are advised that the above plan of subdivision has been registered and numbered. . . . .

W. J. TAYLOR,
Registrar of Titles.

The Municipal Clerk
Municipality of

OFFICE OF TITLES,
SURVEY BRANCH

The plan of subdivision sealed by your Council on
containing Lots
and fronting on Street
has been numbered

L.P.

W. J. TAYLOR,
Registrar of Titles.

Recently a practice on similar lines was instituted with respect to caveats. The lodging party is advised by letters of the entry and number of the caveat which

he could otherwise only obtain by inquiry at the caveat branch. The office in fact has been for many years supplying this information to country solicitors, and it was left to the city solicitors to attend the caveat branch to obtain the information from the staff of the caveat branch.

Mr. Brennan.—Is there anything different in the Queensland procedure on this subdivision from our procedure?

Mr. Taylor.—Yes. Now you have mentioned that fact I would like to quote from an article in the Law Institute Journal pointing out that in Queensland " sales of subdivided land cannot be finalized until the relevant plan of survey has been passed by the Registrar of Titles for registration ". That would be an ideal piece of legislation in the future to have such provision that no sales of lots on subdivisions be made until the plan has been approved. It would operate fairly to purchasers of land. But due to the very long delay in handling plans of subdivision in the Titles Office, such a provision would be manifestly unfair at this juncture. When the office gets by this spate of subdivisions, then some assistance in this regard could be given.

The Chairman.—In the meantime you suggest an amending sub-clause 6 of clause 97 to give some control over the plans of subdivision?

Mr. Taylor.—I commend sub-clause 2 of clause 97 to the Committee, as it will be of assistance to the office. I think it is a just provision in that the councils should have a say in this matter as to subdivisions. It is quite outside the scope or the duties and responsibilities of the Titles Office.

The Chairman.—You are now referring to sub-clause 2 of clause 97?

Mr. Taylor.—Yes.

The Chairman.—There is a further proposed amendment, a new sub-clause 6, which deals with your powers relating to the plan of subdivision where the survey is not complete.

Mr. Taylor.—The inclusion of the suggested sub-clause 6 to clause 97 will be of great benefit to the solicitors first of all, and to the Titles Office. It will enable a large proportion of the arrears of the unregistered dealings to be cleared up.

Mr. White.—What do you mean: " Will be of great benefit to the solicitors "?

Mr. Taylor.—At the present time solicitors send their clerks to make searches at the Titles Office, and they might find some of these unregistered dealings. That is a hazard to get by because they are very difficult to extract, and the unregistered dealings combined with unregistered plans of subdivision cause a lot of uncertainty.

Mr. Byrnes.—There is mention of section 59 of the *Water Act* 1928. Was there not an amendment to that Water Act?

Mr. Taylor.—I think the answer may be—I emphasize the word " may "—that it is still section 59. It is really that section 59 has never been taken out of the text, and the new section 59 has been included in the amendment. Section 59 is still appropriate.

I would like to refer to sub-clause 5, which says, " Until the plan of subdivision has been so approved the Registrar may refuse to accept for lodgment any transfer or other dealing in respect of an allotment thereon." I believe that sub-clause 5 is in effect to assist the office, but in fact if there were any opposition to that sub-clause, it could be deleted. It would be a difficult matter to refuse the lodgment of any dealing in the Titles Office. If the office were to refuse to accept dealings of any unregistered plan of subdivision, I feel sure there would be such an outcry that the procedure would be discontinued forthwith. Personally, I do not think I would ever be able to take advantage of that sub-clause.

The Chairman.—You would say by giving you power to approve of a plan of subdivision before the survey was complete, as it were issuing a limited title, you would have all the power you would need to effectively deal with the plan of subdivision?

Mr. Taylor.—That is so. I would now like to refer to the inquiry made of the Chairman with regard to sub-clause (*b*) of clause 98 of the Bill. It has been pointed out to him that the expression " easements of support " is vague, for example, in the case of a two-storied building subdivided horizontally at ceiling level as a number of walls may form the supports for the first-floor building.

Unless the title shows which are support walls, a Council's Building Surveyor would be in a hopeless position when considering plans for alterations to the lower half of the building. New owners would not know which are legally the support walls.

Some element of vagueness is essential in granting implied statutory easements in the Bill in favour of a lot (or portion of a building) transferred.

It appears that possibly no structural alterations, particularly to walls, internal or external of flats on lower floors, would be permissible as they would all be subject to implied rights of support in favour of upper portions of the building. More than likely also, the owners of the respective flats enter into an agreement not to make any alterations to their flats without certain consents.

I do not think a new owner would be under any misapprehension as he should know that there could be no alteration to any wall or any portion of his flat which may prejudice the statutory right of support in favour of other flats in the same building.

It is a fair criticism of sub-clause (*b*) to say that it is more vague than sub-clause (*a*) of clause 98, but it is not practicable to define on the plan, much less the title, the areas or portions of the lot transferred subject to implied easements granted in favour of other parts of the buildings. Experience may show the desirability of setting out more detail on the subdivision or filing architects' plans with the plan of subdivision.

The Chairman.—I think it is fair to say that the question of implied easements in relation to flats is simply in the experimental stage, and that in sub-clause (*b*) of clause 98 the draftsman has attempted to give all the necessary easements subject, of course, to the amendments suggested by Mr. Randles, that easements of access should be included. It may well be that if this clause does not meet all circumstances a subsequent amendment may be necessary.

Mr. White.—Are these new principles dealing with this question?

The Chairman.—Yes. When the Committee took evidence concerning this matter about two years ago Mr. Taylor stated what he considered should be done under the existing law. At that time, the Committee felt that the existing law should be amended to ensure that instead of all easements necessary being included the Act should provide for certain implied easements which appeared to be necessary for the proper enjoyment of the flats. Sub-clause (*b*) of clause 98 carries out the recommendation of the Committee.

Mr. Byrnes.—Mr. Taylor raises a very serious doubt in my mind as to what could happen in the future; a person may commence to work in the strata underneath a wall but nobody knows which is the structural or dividing wall. The easements are not defined.

Mr. Taylor.—They are almost defined, but not as specifically as in the preceding sub-clause in which case the drainage, sewerage services and roads are shown on the plan of subdivision. I do submit that there would be very little argument about this matter if it had to be decided where the building was already erected. I think it probably means that no alterations whatever can be made in that building without the consent of the owners.

Mr. Byrnes.—Without the consent of all owners.

Mr. Taylor.—Without the consent of the supervising committee, or whatever method is instituted to police the matter.

Mr. Byrnes.—Mr. Taylor stated that architects' plans might even have to be lodged, as well as the titles. That is a very big issue; if this class of business expands that may have to be done.

Mr. Taylor.—Yes. The position may be covered by the lodgment of more detailed plans, not necessarily the architects' drawings, on the lines of the normal plan of subdivision of vacant land, showing what constitutes the support and the areas over which the services of drainage, telephone, and so on, exist.

Mr. Brennan.—That authority applies in relation to terraced houses. The plan indicates the nature of the easement and the location of it.

Mr. Taylor.—The plan of subdivision of a terrace indicates the party wall; the plan of subdivision of a block of flats likewise indicates the party wall. However, the title does not. In any case, in dealing with a lot on a plan of subdivision the title is not the final arbiter in the matter. A surveyor, if called on to peg out a lot or make a check survey of a lot, must always go to the plan of subdivision. That is the governing document concerning measurements, and so on.

Mr. Swinburne.—Subdivisional walls, apart from flats, would be only filling walls. There would be no supporting walls other than the main structure, and one would never be able to alter those. I do not think there would be any difficulty in defining the supporting walls.

Mr. Byrnes.—Mr. Taylor spoke of easements. I do not think there would be any difficulty about it.

Mr. Taylor.—It is outside the scope of the Transfer of Land Bill, and whether or not this amendment is accepted, they are still being sold. The form of transfer—it appears to be the only form that can be devised—is rather vague; so also are the implied easements under the present section 212.

This transfer giving effect to the easements in the absence of the amendment is delightfully vague. I have distributed it—even as far as New Zealand—but it has not been registered as yet. It will be registered, and if there is any argument or dispute, it can go to the court. I think the court could construe what was intended by this grant of easement. I think it is workable and I feel that the office should accept it. All disputes concerning the interpretation can be matters left to the Court.

The Chairman.—Under the existing legislation you feel you are obliged to accept this transfer. Under the new legislation, without clause 98, sub-clause (*b*), you would still have to accept it. With sub-clause (*b*) it may well be that the rights of the persons concerned, if there is any doubt, are important.

Mr. Taylor.—It cannot detract from those rights. I suggest the conveyancers do nothing with respect to creating any easements and their transfer. I suggest we keep to the simplicity of the Torrens system.

Mr. White.—I take it that these matters will not restrict the effectiveness of the clause?

Mr. Taylor.—That is so.

The Chairman.—Is clause 63, in Division 6, dealing with acquisition of cul-de-sacs wide enough to include unnecessary rights-of-way?

Mr. Taylor.—The present draft is in relation to cul-de-sacs which would be dead-end lanes; there would be no through lanes. I think it would be very difficult to legislate for the closing of through lanes over which owners of land had definite registered easements.

There is a section in the present Act which enables some of the through roads which were subject only to easements in favour of other lots in the particular subdivision to be closed, and the closing of them would not prejudice other lot-holders. I do not think there has been more than one such case in the history of the office.

Division 6 is dealing only with genuine cul-de-sacs.

Reverting to page 34 of the minutes of evidence, Mr. Brennan in a question of Mr. Garran referred to requisitions of titles under unemployed occupiers provisions. I take it that that reference is to the Unemployed Occupiers and Farmers Relief Acts.

Mr. Brennan.—Actually it is a requisition on titles.

Mr. Taylor.—Of course, from the point of view of the Office of Titles that Act no longer exists.

Mr. Brennan.—The provision existed in the depression years.

Mr. Taylor.—That is one requisition the Office of Titles does not make now.

At page 49 of the Minutes of Evidence, Mr. Thomas asked Mr. Garran would there be many restrictive covenants. There are many restrictive covenants in large subdivisions. In the Toorak area the restrictive covenants on some of the valuable sites are very important. For instance, the preservation of an uninterrupted view may be desired. There are a number of them; there are T. M. Burke subdivisions, Spencer Jackson subdivisions, and particularly some of the other larger subdivisions. I think they put these things in for the sake of including them, and mostly concern the removal of soil and so on. There has been a recent case which has disposed of a very large percentage of the subdivisions. In the case of *Bohn* v. *Miller Bros. Pty. Ltd.* (*Vic.*) (1953) V.L.R. 354 it was stated that unless the transferee, that is, the purchaser of the land, in his transfer covenanted with the transferor, that is, the vendor, as owner of the balance of the land in the subdivision, or any part or parts thereof—those particular words "part or parts thereof" are important—then the covenant would not inure for the benefit of the land sought to be benefited if the balance of the land was subsequently sold in lots. I would say that 50 per cent .of the covenants in the Titles Office are affected by that case.

I might add for the information of the Committee, getting back to this vexed matter of subdivision, that there is a move from the Titles Office to have appointed approximately ten young surveyors to assist in clearing up these plans of subdivisions. These surveyors, if we are able to recruit them, will do a lot of the primary work, the mathematical work and so on, and that will be of great assistance.

The Committee adjourned.

THURSDAY, 11TH NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council:	*Assembly:*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. F. M. Thomas.	Mr. Pettiona,
	Mr. Randles.

Mr. Philip Moerlin Fox, of the Council of the Law Institute of Victoria, was in attendance.

The Chairman.—The Committee would like to hear the comments of the Council of the Law Institute of Victoria on this proposed legislation.

Mr. Fox.—Before commenting, I should like to say how much the council appreciates being asked to comment on legislation such as this. The council is always ready to offer what assistance it can.

The Chairman.—The Council of the Law Institute of Victoria has been of great assistance to the Committee.

Mr. Fox.—The council welcomes this Bill. It appreciates the amount of work the Committee has carried out in this regard, and wishes to congratulate the draftsmen on a fine job.

The Council approves of the Bill in general. There are only a few comments I wish to make on amendments suggested by the council.

Firstly, I should like to comment on sub-clauses (4) and (5) of clause 21. Sub-clause (4) reads, "The Registrar's minutes shall not form part of the Register Book." Sub-clause (5) provides, *inter alia,* that any person may inspect the contents of the Registrar's minutes if authorized in writing by the registered proprietor.

The council strongly urges that the Registrar's minutes should be open to public search. This provision seems to me to be in line more with English thought than Australian as to title of land.

In England, it has always been felt that a person's title to land concerns nobody but the owner. That view has even been carried into the English Torrens system because, in England, at the present time one cannot search a Certificate of Title in the London Land Registrar's Office without the permission of the registered proprietor. It is quite different from the position in Australia.

For instance, in Victoria, a person can go to the Titles Office to search anybody's title. The council sees no reason why the same should not apply to the Registrar's minutes. One may be given a Contract of Sale, signed by a purchaser, with reference to a title. A searcher is sent to the Titles Office and it may be found that the title is a limited title. He comes back and reports that information. One then has to get in touch with the vendor's solicitor and ask for an authority to inspect the Registrar's minutes.

Mr. Randles.—What is a limited title?

Mr. Fox.—It is a title issued when land is brought under the Act by direction of the Registrar and there is some difficulty which causes the Registrar to issue a limited title instead of an ordinary title.

Mr. Randles.—As an example, one of the title deeds may be missing?

Mr. Fox.—Yes, or a person might think he had some outstanding right. A note of the defect would be made in the minutes.

Mr. Randles.—That is to say, a note would be made on the title but it would not be known to what the note referred?

Mr. Fox.—Yes. I refer the Committee to Part II. of the Fifth Schedule.

The Certificate of Title refers a person to the Registrar's minutes, but he cannot go any further without the authority of the registered proprietor. To my council that seems to be quite unjustified, and we urge very strongly that the Registrar's minutes should be open to search in just the same way as is the Register Book.

The Chairman.—This sub-clause is the result of a recommendation of this Committee made in its 1951 Report. The relevant item in that report is Item No. 16 (*c*), in which this Committee recommended that the then clause 60 should be amended to provide for inspection of Commissioner's minutes only with the written consent of the registered proprietor or by order of the court, that being the South Australian law. Do you recall whether any views were expressed by your council at the time?

Mr. Fox.—No, I cannot recall it. In 1951, or earlier, I doubt whether the council had any views on this particular aspect.

Mr. Brennan.—Has your council regard to the necessity for proper protection of a purchaser in this matter?

Mr. Fox.—Yes. To the council this proposal seems to be without reason. A person can make a search of an ordinary certificate or limited certificate of title without any reference to the registered proprietor. Why should not a person be able to take the step which the limited certificate of title invites him to take and inspect the Registrar's minutes? The only objection I have had put to me in relation to this matter is that defects in a certificate of title should not be made public. I think it is nonsense. Nobody will make a search of a certificate of title merely to find out whether it has a defect. A search will be made only for a good reason. Therefore, it should be known what the defect is.

Mr. Thomas.—Are you not confining the question of authority to the person or solicitor acting on behalf of the owner?

Mr. Fox.—No.

Mr. Thomas.—Supposing I am thinking of buying a piece of land from Mr. Smith, cannot my solicitor issue authority to his clerk to make a search of the certificate of title?

Mr. Fox.—Not of the Registrar's minutes; the only person who can do that is Mr. Smith.

Mr. Thomas.—Therefore, the authority is very limited?

Mr. Fox.—Yes. The only person who can give the authority to search the Registrar's minutes is the owner.

Mr. Randles.—This difficulty would not arise in the ordinary course of events because Mr. Smith would give that authority at the same time.

Mr. Fox.—In practice, it does not work out that way. A purchaser will bring in a contract to his solicitor and ask him to buy him the land. The solicitor does not know who is acting for the vendor. He has to make a search, and that is the time when he wants to advise his client what is the defect.

I put it not so much that the Committee should ask me for reasons for justifying the Registrar's minutes not being available for public search, but rather that somebody should give a valid reason why they should be withheld.

Mr. Randles.—You think there is a principle that involves the whole Torrens system?

Mr. Fox.—It seems contrary to the ideas of the system.

The Chairman.—Have you discussed this aspect with Mr. Garran and Mr. Taylor?

Mr. Fox.—No, but I doubt whether it is a matter that concerns them.

The Chairman.—Mr. Garran has gone to great pains to endeavour to recapture in this piece of legislation what Torrens intended. Mr. Taylor has approached the matter very much from that point of view, too. I feel that the members of this Committee are impressed with the views you stated on behalf of your council. The reason why the proposed legislation is set out in the Bill in this form is because of a previous recommendation of this Committee.

If you care to discuss the matter with Messrs. Garran and Taylor, and they have no objections to it, I feel certain the Committee would give very careful consideration to your views.

Mr. Hollway.—It seems to me that the position is covered, because if a person were selling a piece of land the obvious procedure would be for the registered proprietor to give notice in writing of the authority to search.

The Chairman.—Yes, but it may not be so simple. Mr. Fox mentioned the case of a solicitor who receives a contract, perhaps involving an urgent search, and when he goes to the Titles Office to make a search he finds that it is a limited certificate of title. What does he tell the vendor?

Mr. Hollway.—He tells him to get a notice in writing from the registered proprietor.

Mr. Pettiona.—There must be some vital reason for the inclusion of this provision, if it is new.

The Chairman.—The Committee will investigate the position, and ascertain the reason for the inclusion.

Mr. Fox.—I pass now to clause 72 (3). This subclause provides what may be called a "short cut." The peculiarity of this clause is that it is limited to right of carriage-way. I would suggest that the "short cut" be made available in the cases of easements of drainage and easements of party wall.

The Chairman.—That would save a good deal of work in the Titles Office.

Mr. Fox.—In the event of a transfer, if the question arose at the present time as to exactly what rights the words "right of drainage" &c., conferred, it may be very difficult to answer with certainty. I do not know why the present section was confined to easements of carriage-way when it was first drafted, unless it was that drainage easements and party-wall easements were uncommon.

With regard to clause 87, the Chief Justices' Committee will be reporting on this. Perhaps I might make some mention of it also. In the seventh line the words "estate and" come out. The mortgagee does not acquire any estate. Also, it seems to me what a person expects to get under the Torrens system if he is having a transfer from a mortgagee is not a transfer of the mortgagee's interest, but a transfer of the mortgage itself.

Mr. Hollway.—Do you think it is of importance; you would not go to law over it?

Mr. Fox.—No. Clauses 92 and 93 deal with search certificates and stay orders. We suggest that they might be omitted completely from the Bill; they have never been used in my experience and the Registrar tells me that they have never been used in his experience. In fact, I would say they would be completely unworkable unless the present staff of the Titles Office be doubled. What is provided is that anybody can make an application to the Titles Office for a search certificate, and can also apply for a stay order for 48 hours. In the first place, as the Registrar will tell this Committee, to issue a search certificate would mean spending a great deal of time in getting out the title and considering it, and then issuing the search certificate. The second aspect is that the stay of registration for 48 hours is of no use to anybody. It seems to me that this was Torrens's original idea which may have been all very well in 1860 when there were comparatively few dealings under the Torrens system, and it would then have been possible to carry out this system of search certificates. I think it is quite impracticable now. If this Committee intends to prune the "dead wood," I would suggest that these provisions be deleted.

The Committee adjourned.

TUESDAY, 16TH NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. I. A. Swinburne,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. Rylah left the Committee and the Hon. F. M. Thomas took the Chair.

Mr. P. M. Fox, representing the Council of the Law Institute of Victoria, was in attendance.

Mr. Fox.—I should like to refer again to clauses 92 and 93 at the beginning of Division 2 of the Bill, dealing with search certificates and stay orders. We suggested last week that if this Committee was taking all the dead wood away from the Act these clauses might be omitted. I have since had an opportunity of discussing this matter with the Registrar, and he agrees with me that if ever the idea of these search certificates and stay orders caught on with the profession—I mentioned last week their being regarded as a completely dead letter—absolute chaos in the Titles Office would result. I think that for that reason the Registrar would welcome the omission of these clauses. While they remain in the Bill and become part of the Act it will always be open to somebody to start the fashion by applying for search certificates or stay orders, and the results would be disastrous.

Mr. Brennan.—I agree. No obstruction would be permitted. A corollary would be the provision to the effect that no such stopping would be permitted unless there were notification in some way on the title.

Mr. Fox.—No, because we have got on very well for nearly a hundred years in the complete absence of stay orders or search certificates.

Mr. Brennan.—We had them in what was known as the depression period.

Mr. Fox.—No, not these stay orders. It might be thought—and I think it was suggested last week—that these clauses might be left in the Bill for the reason that some day there might be sufficient staff in the Titles Office to handle these stay orders and search certificates, where they had to be dealt with. But I have heard that the intention is to replace search certificates by photostatic copies of the actual

Certificate of Title, and for that reason it seems to me that the search certificates in their present form will always be a dead letter. That is to say, they will never be used in their present form, but are likely to be replaced, as I understand it, by a photograph of the actual title.

Mr. Brennan.—Sub-clause (1) of clause 92 provides that—

> Any person desiring to learn whether a registered proprietor is able to deal with any land free from obstruction by any caveat or instrument lodged for registration or by any order writ injunction or other cause known to the Registrar but not appearing upon the Crown grant or certificate of title may lodge an application for a search certificate . . . .

That is to say, this sub-clause provides for the inspection. If we omit that provision, would not that embarrass people who might require to obtain such a search certificate? Unless provision were made on the photostatic copy for the notification of such encumbrance or obstructions, would not that be the case?

Mr. Fox.—Quite. I have not taken part in the working out of these photostatic copies, but I rather think that what will happen will be that when you make a search you will get a photograph of the title, plus a photograph of all instruments which affect it. In other words it seems to me that the principle that we are going to aim at, as far as I can understand, is that the onus of interpreting what the Titles Office hands out will be still on the searcher as it is now, whereas the present section dealing with search certificates places the onus upon the Titles Office. That, it seems to me, will always be unworkable, because the Titles Office never could have staff to say not only "Here is the title you are asking about," but also to advise the searcher that everything is in order. The way in which we shall come out in the long run will be with photostatic copies, possibly of everything in the office affecting certain pieces of land, but the onus of interpreting those will be upon the searcher. For those reasons we suggest that these two clauses be omitted from the Bill, and, when the photographing arrangements have been perfected so that there is no delay, consideration could be given to the amending of the Act along the lines of the English Land Transfer Act, where, as I understand it, they already have the photostatic copies of the title available, with an automatic closing of the register.

Mr. Byrnes.—As to these photostatic copies, is there any danger of their being out of date? Can they be kept right up to the minute? Would not such a procedure involve a continuous revision of, and a re-photographing of the documents?

Mr. Fox.—Yes, it would, I should imagine. You would go to the Titles Office to-day and obtain a photostatic copy of the title as it stands to-day. But it does not follow that it will be the same to-morrow. As I understand it, in England, in addition to having provision for these photostatic copies, they also have provision such as this: Suppose that a purchaser, or would-be purchaser, applies for a photostatic copy of the title. Not only do you get that, but you receive also an automatic closing of the register for fourteen days so that the title cannot alter for the next fourteen days. I think that answers your query.

Mr. Byrnes.—It does, to a point.

Mr. Fox.—After the fourteen days an application can be made for a fresh copy.

Mr. Byrnes.—Anyone wanting to know anything about a title wants to know all about it, up to the minute.

Mr. Randles.—But they cannot get it.

Mr. Brennan.—The objection applies, even to this arrangement.

Mr. R. T. White.—Can Mr. Fox tell us how long this system has been operating in England?

Mr. Fox.—I cannot say, but I should not think it had been for very long because I think the photostatic copy principle was established not long before the war. However, I am doubtful about that.

Mr. Byrnes.—There is the point that if the staff of the Titles Office gets behind in regard to its ordinary routine work, as is the case to-day, is there any guarantee that they can keep up to date with photostatic copies?

Mr. Randles.—If you want to search the original title it is photographed. The original itself can remain there for years and the position would be exactly the same as it is to-day. If someone were now to make a search they could get a photostat as of the day on which the search was made.

Mr. Fox.—The remarks I have been making really have not been directed so much to the principle of the matter as to the machinery of this photostat procedure. But I say again that we feel that these clauses could be omitted because, as far as I can see, they would never be relied on in their present form.

Mr. Randles.—Is there any provision whereby the Registrar must give a certificate? Is there any penalty clause in the case of a certificate having been given that is incorrect?

Mr. Fox.—Yes. The assurance fund provisions apply in regard to mistakes made by the office. What you suggest would be covered by that.

Mr. R. T. White.—It is the searcher who is responsible?

Mr. Fox.—Yes, and that, it seems to me, is the unavoidable principle because of staff difficulties. You will always have to face up to the position that the Titles Office can only take the matter up to a point and, in the long run, it must be always the interpretation of the searcher which is the final thing. Otherwise, you would require to have almost hundreds of officers at the Titles Office.

Mr. Randles.—Yes, that is so. There would be needed a clerk for practically every searcher.

Mr. Fox.—That is the case.

Mr. Pettiona.—Is it likely that these photostatic copies will be able to take alterations and have things entered upon them, and the whole process of dealing entered?

Mr. Fox.—As I understand it, the photostatic copy, which belongs to the searcher, can only be relied upon as showing the register at the time the photostat was made. If we have the automatic closing of the register, as is the case in England, it means that nothing can be altered until the end of fourteen days. I should imagine that just the date of issue would be placed upon it. However, all that has yet to be worked out. The Registrar has shown me sample photostats which are very satisfactory.

Mr. R. T. White.—The system must have worked fairly well in England.

Mr. Fox.—That would be so.

Mr. Randles.—If the photostat copy of the title deed is taken and the register book is closed for fourteen days, then if the office was in arrears in its work someone interested could be defeated in their purpose.

Mr. Fox.—Probably what we should have to do, following upon the lines of that thought, is to say that the register shall be closed for fourteen days, except-

ing as to dealings lodged, of which you would get a photostatic copy. If the dealings were not lodged it would be a case of bad luck. When we come to the stage of working things out, if the Law Institute is consulted we would all agree that fourteen days, so far as we in Melbourne were concerned, would be too short. That period would not give us a chance. A number of contracts of sale are in respect of a period of 30 days. It is very seldom that the period is less than 30 days. What I would look for would be the closing of the register for 30 days.

Mr. Hollway.—How would you get a transfer registered? Take the case of a person buying a property. He would have a photostatic copy of the title made, and that would automatically close the register. Say that he then wanted to carry on this transfer. You say that it is safe to search again, which would have the effect of closing the register again.

Mr. Fox.—I should have referred to the closing of the register to everything but the contemplated dealing. Does that make it clear? Say that Smith is going to buy a block of land. He applies for a photostatic copy so that he may register a transfer from Brown to owner Smith.

Mr. Hollway.—But until he gets a photostat of the title he has not got a transfer. He has to get his transfer passed on the photo copy. Once he does that he closes the register.

Mr. Fox.—Once he applies for the photostatic copy he closes the register against all dealings not already in the Titles Office, except the transfer to Smith.

Mr. Hollway.—I see that, but that seems to me to be a bit cumbersome. Also there is the case of a person who obtains a photostatic copy, if anything, just out of curiosity.

Mr. Fox.—I feel that I should say that I did not come here to-day prepared to discuss the mechanics of the photostat. All I can say is that we do not think the present clauses to which I have drawn attention will ever work in the circumstances set out.

Mr. Swinburne.—It does not matter to you whether it is a photostatic copy or a certificate. The same principles would apply.

Mr. Fox.—That is true. So far as the certificate is concerned, the objection to that is the sheer impossibility of its ever working. Whether anything better can be got out of it is a matter for investigation, and the first thing to be done would be to communicate, I suggest, with England and find out what is done there.

Mr. Hollway.—If a person wanted to make things awkward for someone else all he need do would be to make the necessary application and follow the procedure which would end in getting the register closed.

Mr. Randles.—It would be a case of vexatious litigation.

Mr. Hollway.—Yes, or it could be done without any sort of concert at all. The creditor might be searching a title. The person in question might have a number of creditors and, if they all went on searching, he could not have any dealings with the land in question at all.

Mr. Fox.—I might mention that I also discussed with Mr. Taylor and Mr. Garran the question of allowing the Registrar's minutes to be open to public search, and neither has any objection at all to that being done, if this Committee so feels. Indeed, Mr. Taylor, after pointing out that under the clause as at present drawn, he had the power to order that the Registrar's minutes could be inspected by any person, said he felt that if any person proposing to deal either came to him or got into touch with him he would make an order remitting inspection of the Registrar's minutes.

The Acting Chairman.—The position is that you have to get authority now from the actual owner, who might be away in New Guinea, for instance.

Mr. Brennan.—And it is a power that is only occasionally invoked now.

Mr. Fox.—Yes. The next clause that I desire to refer to is clause 98, dealing with easements on plans of sub-divisions. The only suggestion I make here is one that is consistent with the suggestion which I made last week that the provisions of the Act should not be restricted to easements of carriage-way but should apply at least to easements of carriage-way, drainage and party walls—those being the most common. Paragraph (*a*) of clause 98 is limited as it now appears. It reads—

> All such easements of way and drainage and for the supply of water gas and electricity and for sewerage services and for underground telephone services . . . .

The Acting Chairman.—This Committee is now proposing the inclusion of the words "such other instruments". That would overcome the position there?

Mr. Fox.—No. It is still limited.

Mr. Randles.—Sub-clause (3) has been altered by the insertion of the words "easements of way".

Mr. Fox.—Paragraph (*b*) of clause 98 has been altered but the principle of paragraph (*a*) of that clause is that when you are subdividing land you can colour parts of the land in different colours and at the bottom of the plan of the sub-division you can state that the land coloured brown is for one particular purpose and that coloured blue is, shall we say, for drainage. The Bill as it appears at present goes that far. Now, we do not see why there should not be provision also for the colouring of other lands green and yellow and, at the bottom, a statement to the effect that the land coloured green and yellow is set apart for party wall easements, and proceeding indeed along those same lines in respect of any type of easements. The effect of paragraph (*a*) of clause 98 is to save the necessity for expressly creating or observing easements in the transfers. If they appear in the plan of the sub-division they go with the blocks without anything being said in the transfer. Why should we stop short simply at roads and drains? Why not, in effect, be able to create any sort of easements by making a proper reference in the plan of the sub-division? If there is a party wall, then at present we have to expressly create a party wall easement in the body of the transfer. We do not have to expressly create an easement of way or an easement of drainage under this paragraph (*a*) of clause 98. We want to have that principle extended to any type of easements at all. Why should you have to say anything in the transfer? You do not have to do so in regard to rights of carriage-way or drainage. Why not go all the way and provide for any sort of easements to be created in effect as set out? This is a matter of what I might call referring to the intended creation of a fresh easement. It is not like a right of support, which is there all the time. Say that you are cutting the land up. You want a party wall. At present you have to expressly create an easement in the transfer. We say, "here is a sub-division. There is an easement of light indicated here." Why not indicate that on the plan and, having done that, you need say no more about that on the transfer.

Mr. Brennan.—You want these easements to be inherent or explicit in the transfer although unexpressed.

Mr. Fox.—That is so.

Mr. Hollway.—That is right. I cannot see any objection to that.

Mr. Fox.—I think that in paragraph (*a*) of clause 98 there should be a simple reference to all such easements as are set apart in the plan without being restricted in any way at all. We are only talking now, however, about the mechanics of the matter. Let us say that we are talking of the bringing into existence of these easements in a way that is going to be easier of performance and involving considerably less duplication. I suggest that we cut out all restrictions and simply say, " all such easements as appear on the plan ".

With respect to clause 110, which deals with those persons who may recover from the Assurance Fund, I might mention that I discussed this point at the meeting of the Chief Justice's Committee on Law Reform and I think they have adopted it. It is, that clause 110 as it appears in the Bill, does not cover the position where a person deals on the faith of an unregistered dealing and not on the faith of the register book itself. To explain that, let me put the position in this way: Suppose that a person by virtue of a forged transfer gets on the register; that is, he gets a certificate of title, and suppose that you go along and buy that land from him. Before your dealing is registered, the forgery is discovered and the register is rectified by wiping out the transfer to the purchaser. As clause 110 is now worded, a person who suffers damage in these circumstances can recover against the Assurance Fund. He can say, " I have relied on the faith of the register. I have relied on this certificate of title which has now been wiped out." He can get his money back out of the Assurance Fund, which is as it should be. It seems to me that at the present time, we frequently rely not only on the register book but on one or a number of dealings which are in the course of registration at the Titles Office, but have not yet got registered. There may be a perfectly genuine certificate of title, and there may be a transfer, say, to Jones in the course of registration, which is in fact a forgery. However, we do not know that. We make a search and we find that the certificate of title is in order and a transfer apparently all in order. We may find a string of transfers. Now, because of the time taken for registration, we have to rely on these dealings in course of registration, and that has been the practice of the profession ever since I have been in it. We pay our money over and lodge another transfer to join up the chain. After we have done that, somebody discovers that there has been a forgery. The forged transfer is withdrawn and all subsequent dealings cannot proceed and the money of the people concerned is lost. They have no claim against the Assurance Fund as clause 110 is now worded because they cannot say that they have relied upon the register. They are relying on subsequent unregistered dealings. My suggestion in relation to this matter is that there should be added to paragraph (*d*) of sub-clause (1) of clause 110 some words such as these: " or on the faith of any dealing lodged for registration in the Titles Office."

Mr. Brennan.—That word or expression " on the faith " means " on the authenticity ".

Mr. Fox.—Yes. This may be a departure from the original Torrens system which was very insistent that the principle must be reliance on the register. But for years now, the Titles Office has not been as up to date as the framer of the Torrens Act thought it would be. I remember reading some of Torrens' own writings which make it quite clear that when our Titles Office started and for some years thereafter registration took only about half an hour. A person went there with his dealings and put them over the counter and waited there until they had been dealt with and registered. It has to be borne in mind that many of the provisions of the Torrens system were based upon that assumption.

Mr. Brennan.—That is why they put in the times lodged at an explicit time of the day such as four minutes exactly past Two o'clock.

Mr. Fox.—That is done in any event. The possibility that there might be strings of unregistered dealings in regard to certain pieces of land was never thought of by the framers of the Torrens system.

Mr. Hollway.—Actually, it is more convenient now to proceed under the Property Law Act.

Mr. Fox.—Yes. But the registration time would not be much below ten days because of the sheer mechanics of the process and we shall always have these unregistered dealings with us. The Assurance Fund has plenty of money and it might well be extended to cover the odd case arising here and there so that people relying on unregistered dealings can be covered.

Mr. Randles.—Surely, if you are dealing with me and you went to find several registered and unregistered dealings, it would be more than a red light for you to be careful when you saw so much changing of hands in a short space of time.

Mr. Fox.—It is not a matter of a short space of time, particularly when transfers are in question. You might have three or four transfers of a block in the Titles Office but these might have taken place over some three or four years.

Mr. Brennan.—You have touched upon a question really of fraud in regard to this matter. That points to the suggestion that a certain transfer in a series of transfers, may be forged or bad. That cuts to the root of things ultimately so that subsequent dealings are involved.

Mr. Fox.—At present, a person who gets on the register and then loses his title because he is told that a forger has been at work, can recover from the Assurance Fund, which is as it should be. I cannot see why there should be a difference between a person who gets on the register and suffers the damage and a person who just stops short of getting on the register because the forged dealing on which he is relying is discovered before he gets registration. The provisions of this clause should be extended to cover the odd case and a person who suffers damage because the dealing on which he is relying turns out to be a forgery should receive compensation. The Assurance Fund provisions of this Act have been twice amended—in 1939 and again in 1952—to cover hard cases which were not covered by the original Act. It is clear that there can be a third hard case of the type that I am citing now, and the Bill might, therefore, be amended now to cover that possibility of that hard case rather than that we should wait until such a hard case actually occurs.

The Acting Chairman.—On behalf of the Committee, I desire to thank you, Mr. Fox, for your attendance here and for the comments put forward. I can assure you that the Committee will give them full consideration.

The Committee adjourned.

WEDNESDAY, 17TH NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles,
The Hon. I. A. Swinburne,	Mr. R. T. White.
The Hon. F. M. Thomas.	

Mr. A. D. G. Adam, Q.C., representing the Chief Justice's Committee on Law Reform, was in attendance.

The Chairman.—On behalf of the members of this Committee I would like to welcome Mr. Adam, Q.C., to our deliberations. He is present as representing the Chief Justice's Committee and we would like at this stage to express our appreciation of the speed with which that Committee has considered this piece of legislation. We have indicated to that body that we regarded the matter as of some urgency. As a matter of fact, the Bill has been in the melting pot for so long that we feel that it should be pressed on with. The Chief Justice's Committee, therefore, has given it immediate attention and Mr. Adam is here to give us its comments upon the measure. The memorandum that he made available yesterday I have had copied and distributed to our Committee. I should point out that it is not an official document at this stage, but that Mr. Adam can make it so if he thinks desirable.

Mr. Adam.—Yes, and thank you, Mr. Chairman. I think I should make it clear at the beginning where this report stands. The Chief Justice rang and asked me if I would assemble together some of the former members who are members of a sub-committee of the Chief Justice's Committee, to look at the Bill and make any comments we might see fit to offer. Time was short and His Honour said that it was very urgent and so the four of us whose names appear upon this report —Mr. Voumard, Q.C., Mr. Wiseman and Mr. Fox, of whom you have had some experience very recently, I understand, together with myself, met, and we compiled this report and let the Chief Justice have it on Monday last. His Honour decided that it would be quite impracticable to call together what is the main Chief Justice's Committee and to circulate copies and get anything from that body before this measure was introduced. He thought that the best course would be to forward our report to you, Mr. Chairman, and let you take such action as your Committee thought fit.

I mention that because one cannot say that this report has had the scrutiny of the Judges in committee. It is really their sub-committee's report, forwarded through them to you, and it must stand on its merits accordingly. The report, as you can see, is not a very ambitious one. It proceeds substantially on the basis that you have decided upon a number of issues in past meetings held by your Committee in regard to prior Bills, and it does not purport to canvass the ground as was done in the first of our reports. It looks rather to some of the drafting provisions and gives our comments as to whether they really give effect to what apparently was intended.

If one takes the Minister's second-reading speech as a guide, in the main, my comments will be by way of explaining some of the drafting changes, and then you might consider whether you thought there was any substance in them. I may say that we did not have the advantage of seeing your Committee's Reports. I sought to obtain them from Mr. Garran. Our time was short but we had to proceed without the benefit of the reports and the consideration of these matters on their merits. That is why we accepted the decisions without further comment except as to one matter which troubled us a bit. It is a section dealing with the compulsory acquisition of land. It is in Division 3 of Part III., where the draftsman has proceeded on the assumption that an acquiring authority should apply for registration in the case where the land is vested in it by the Act or should lodge a copy of notice to treat or of intention to acquire where the proceeding is in that way. In this draft report there is a general comment upon it. I would refer the members of this Committee to page 3 and to paragraph (*e*). The point that was troubling us a little about that was that while we agreed to the full with the policy of requiring public authorities to notify in a suitable way what they had done to the Titles Office, so that searchers could know the true position of the title; we felt a little difficulty about the proper penalty if they did not do what the Act requires them to do. We understand from the Minister's speech, and it can be gathered from sections as they stand, the idea is that the acquiring authority should get no title to the land which is vested in it under the acquiring statute until it takes the further steps required under this Act. It is just a question whether that is the proper penalty or whether a more appropriate penalty might not be to give to any purchaser dealing with the registered proprietor compensation for any loss he has sustained through the default of the acquiring authority to comply with the provisions of this Act. The members of this Committee will see the difference. In the first case, despite the terms of the acquiring Act which would vest the title in the acquiring authority, the provisions of this Act would deprive the acquiring authority of any title to the land. It would have to start acquisition proceedings *de novo* as against any purchaser from the registered proprietor, and of course it could do that. It seems a somewhat purposeless proceeding to go through again the formalities of acquiring the land and compensating the purchaser according to the principles laid down under the acquiring Act. We were wondering whether it would not be more satisfactory to allow the acquiring Act full force so that it vested the land in the acquiring authority according to its terms whereas the purchaser, misled through the failure of the acquiring authority to take proper steps for registration or giving notice under the Act, would be entitled to compensation or damages for the losses he had suffered through such failure.

We have suggested a redrafting of that part of the Bill which would give effect to this method of providing redress where the acquiring authority fails in its duty. I might add, dealing with this part of the Act, that we are not clear as a sub-committee that this part of the division of the Act as drafted does achieve the objective stated in the Minister's speech, as it does not seem to be made absolutely clear that the purchaser, at any rate before his own registration would acquire any title which was paramount to that of the acquiring authority.

The Chairman.—And you are referring particularly now to clauses 53 to 59 of the Bill—Division 4?

Mr. Adam.—Yes.

Mr. Brennan.—Had your sub-committee any idea of the form such notice would take—caveat form or otherwise—on the certificate of title?

Mr. Adam.—No. We thought that the machinery of recording the notice referred to under clause 57 was a matter outside our purview—that the Titles Office would have no difficulty in warning anyone.

Mr. Brennan.—Sufficient warning?

Mr. Adam.—We thought that that was a matter for the office in consultation with your Committee. Another point—just to deal with some of the highlights, as it were—is this: It is proposed, we gather from the Minister's speech and from the text of clause 43, that instead of as at present where a purchaser—and I take the typical person proposing to acquire land—is not protected under the Act until such time as he gets on the register himself as the registered proprietor, he should be protected before registration. There is an interval of time when he may be assailed by those who have equitable interests which affect the vendor's title. That is the result of the interpretation given to what is now section 179 of the Transfer of Land Act in the case of Templeton and The Leviathan. Under the Bill, it is proposed to get round that decision and give the purchaser full protection as from the time he contracts or deals with the registered proprietor, so that, subject to what appears on the register book, he can take it that the vendor's title is free and unencumbered.

The Chairman.—That is done under clause 43.

Mr. Adam.—So one might think. I am satisfied it is not.

The Chairman.—I should say that clause 43 is the clause which attempts to achieve that object.

Mr. Adam.—Now, this is a little technical. That is the fault of the law. The draftsman here has aimed to achieve that goal by sub-clause (2) of clause 43. Sub-clause (1) follows the old section 179 which was construed as I have indicated. Sub-clause (2), in our opinion, does not alter the position under section 179 for this reason: The sub-clause (2) says:—

> Notwithstanding anything in any provision of this Act the operation of this section shall not be affected or delayed by the fact that no instrument to give effect to such contract dealing or transfer has been executed or registered.

Now, what does the section do? So far as is material, all it does is to relieve a purchaser from the consequences of notice of any trust or unregistered interest. Now, a purchaser before he becomes registered has only an equitable interest himself. It is not until registration that he acquires the legal title to the land. He has only got an equitable interest in this critical interval between contracting and his ultimate registration. A person with an equitable interest is, on general principles of law, postponed to those who have prior or earlier equitable interests, whether he has notice or not of those earlier interests.

It is only when he becomes the legal owner—that is, upon registration—that the question of notice matters. When he becomes the legal owner the fact that he is not affected by notices is of importance. But at an earlier stage that is not the test whether he has notice or not. Therefore, as is done under clause 43, to relieve the purchaser before registration of notice of equitable interest is not to give him priority over that earlier interest. I do not know if I have made myself clear but if this clause is to achieve its object, what it should say is in effect that a purchaser before registration shall not be bound or not be affected by any trust or unregistered instrument at the time—not that he shall not be affected by notice of any trust or on registered instrument because that does not give him priority.

The Chairman.—And therefore you have suggested a new sub-clause (3) of clause 43?

Mr. Adam.—More than that. If you look at this proposed redraft of clause 43 as set out on page 6 of this report, you will see that it starts off in the same way as sub-clause (1) down to the words " or shall be affected by notice." Those words will be seen on line 2 of page 24 of the Bill, in sub-clause (1) of clause 43. Line 1, page 24, departs because it says in our redraft of clause 43, appearing on page 6 of the report, " nor shall any such person be bound by any trust or unregistered interest affecting such land other than interests not requiring registration for their protection . . . ." It will be seen that the language here changes. It says " nor shall any such person be bound by any trust or unregistered interest affecting such land, other than interests not requiring registration for their protection, unless a caveat has in respect of such trust or unregistered interest been lodged in pursuance of the provisions of this Act prior to such contracting or dealing and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud." Of course you have to negative fraud for the purpose of this section. Then sub-clause (2) goes on as you have it here; and then sub-clause (3) adds, " for the purposes of this section an interest which is the subject of an instrument lodged for registration shall not be deemed to be an unregistered interest by reason of such instrument not being registered ". That is to ensure that protection is given to those who lodge caveats or those who have already lodged dealings for registration. But subject to that, purchasers may search the register and if they find nothing they are not bound by trusts or unregistered interests.

Mr. Brennan.—I took it when you spoke that it would be the same notice before or after registration. You were thinking of tightening up this clause by cutting out the words " taking or proposing to take a transfer "—these are on line 2 of sub-clause (1) of clause 43. You have in mind always the ultimate taking of a transfer which is in itself proposing to take a contract or lodge a caveat or the lodging of an instrument.

Mr. Adam.—There is that departure to tighten it up. It is a bit loose as it stands. And as you are going to give a very important operation to this clause, you want to define more precisely who will be protected against earlier unregistered interests or trusts. And it was with a view to tightening it up that we had modified the language, and it would now read " No person contracting or dealing, etc., " so that to get protection one has to either make a contract or deal with, i.e., take a transfer or mortgage from a registered proprietor or else contract for a transfer from a registered proprietor. The latter would cover the case where you were contracting with, say, a purchaser from a registered proprietor. You would be then contracting for a transfer from the registered proprietor. In the common case where you are contracting with someone who has bought from a registered proprietor, you want the sub-purchaser to have the like protection and he should be free from anything that is not recorded in the register book. That was the idea of slightly moulding the original words in sub-clause (1)—so as to tighten it up—to give the protection proposed by the Bill to a section " proposing to take a transfer " from the registered proprietor would seem to leave the gates wide open, and so this clause should be tightened up to give effect to what is the policy now.

Mr. Hollway.—Can you give concrete examples for the guidance of the Committee on sub-clause (3)?

Mr. Adam.—Yes. What I had in mind was the case where *A* is the registered proprietor and *A* has sold the land to *B* and in fact completed that transaction by transfer to *B*. Now, *B* has lodged his transfer for registration. *X* comes along and *A*, being one of those fraudulent individuals purports to sell the same land to *X*. *X* looks at the register book and he finds no

caveats. There is, though, an unregistered dealing. *B* has lodged his transfer of registration. If we did not have sub-clause (3) here and you relied simply on sub-clause (1) you might say "This second purchaser is not to be bound by any trust or unregistered interest unless a caveat has been lodged." Well, there has been no caveat lodged here by the first purchaser, *B*. He has lodged his dealing for registration. He has technically an unregistered interest at the relevant time when the second purchaser has contracted to purchase, but it is clear that that should not be overreached and, for the purposes of this section, a dealing that has been lodged for registration stands in the same position as a registered interest so the second purchaser would only take subject to any caveats and subject to this unregistered instrument which has been lodged for registration prior to his purchase.

Mr. Hollway.—The second purchaser would receive nothing at all.

Mr. Adam.—That would be so as it is under the existing Act. If he has not searched he has only himself to blame. But what we do say is that careful purchasers who have done all they can and have relied on what they can discover from the register book should be preferred to those who have slept on their rights and have not lodged caveats or dealings and have taken no steps.

Mr. Brennan.—You regard the physical act of lodging as something that should have its priority?

Mr. Adam.—Yes. If this person has lodged his transfer he should be in as good a position as if his interest was registered. And sub-clause (3) is merely to define unregistered interests in order to make it clear that it covers interests which are technically unregistered but which are subject of dealings lodged for registration.

The Chairman.—Have you any other points that you desire to bring before the Committee at this stage?

Mr. Adam.—You will find with respect to the clauses covering sales by the sheriff and so on, drafting changes meant to make clearer what is open to doubt on the present drafting. However, I think that the report here, subject to any explanations that your Committee may want, speaks for itself. It would take some time to go right through it. If you have any queries as to what is meant by it I shall be happy to endeavour to answer them.

The Chairman.—You feel that the other matters to which you desire to refer are fully set out in your report which you have made available to this Committee?

Mr. Adam.—Yes, and if there is any further explanation that may be desired we shall be pleased to give it.

The Chairman.—Then that concludes our consideration for this morning. On behalf of the Committee I desire to thank you for the work you and your colleagues have done upon this matter at short notice. Should we have any further matters to which we would like to refer you for explanation we shall do so after we have had Mr. Garran's comments upon your suggestions for redrafting.

The Committee adjourned.

FRIDAY, 19TH NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. A. Garran, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—You have seen the evidence given by Mr. Fox of the Law Institute and also the memorandum submitted by Mr. Adam on behalf of the Chief Justices Sub-committee. In both cases certain suggestions have been made to drafting amendments in the Bill, and this Committee would appreciate your comments.

Mr. Garran.—I will commence at page 5 of the roneoed submission. Paragraph (*a*) has suggested a drafting alteration to clause 9 (1) (*e*), not to clause 9 (3) as appears. The Sub-committee has suggested words were inadvertently omitted; but I omitted them on purpose in view of the words "on behalf of" which appear in paragraph (*e*) on page 8, and also in the light of clause 16 which provides that on application to bring the land under the Act it would be registered in the name of the applicant or of such other person as is directed in that behalf.

Mr. Randles.—When the registration is not to go in the name of the applicant, it could not be construed that he himself must say in whose name it must be registered?

Mr. Brennan.—It does not suggest that the applicant directs.

Mr. Garran.—The Registrar will give the actual registration in the end. The direction would be from the applicant. The Registrar would not allow a registration in the name of any person not entitled to it. So far as the words are concerned, from a drafting point of view, it does not do any harm if they go in, but I do not think they are necessary.

Paragraph (*b*) is a good suggestion, and I recommend its adoption.

Mr. Brennan.—Would you not agree that the phrase as suggested by the Sub-committee is much wider in its concept than is in the Bill?

Mr. Garran.—It is wider in expression.

Paragraph (*c*) is one of the most difficult matters in relation to legislation. On rereading my evidence, I feel that, when I dealt with this clause before, I was not clear enough. The clause has to be looked at in its context. Clause 40 begins by saying that the instrument, for the purpose of this Act, is of no effect until registered. So far as this Act is concerned it does not prevent possible personal or equitable rights arising outside the ambit of this Act. Clause 41 makes the certificate conclusive evidence of title. Clause 42 makes the estate of the registered proprietor paramount except in cases of fraud or in relation to certain interests. Clause 43 with which we are now dealing was put in at a later stage by some of the States of Australia to define fraud in a negative way for the purpose of what is now clause 42. There have been several difficult decisions on it, but the general position seems to be that the Courts have held that on registration, but not before, any *bona fide* notice one may have received of unregistered or registrable instruments shall not affect one's title. But there is some doubt as to

whether one would still be bound personally in some way in relation to any matter of which one had notice as regards any person entitled under any equitable or other interest to which the notice relates.

Sub-section (2) of clause 43 was inserted with the aim of removing a doubt, namely, whether the registered proprietor before he transfers his title to anybody else would in any way be bound contractually or in equity to observe rights of any unregistered interested party of whose interest he did at some time have notice. From the draft of the Chief Justice's Sub-committee it seems that the Sub-committee thought, and probably rightly, that the intention of the sub-section was to provide that even before registration an instrument executed for the purpose of the Transfer of Land Act would be given some special protection against notice, although by clause 40 it had no effect until registered. It was with this in view that the redraft proposed in paragraph (*c*) was prepared. That draft specifically provides special protection for unregistered instruments, and would in my opinion be contrary to the general principles of the legislation. I suggest to this Committee that sub-section (2) be omitted, and that this paragraph (*c*) also be omitted, and that the Act be left as it is now. The doubts are small and the dealing with them is difficult. I have made a further attempt to deal with this problem, but after further discussion with the Titles Office authorities I suggest that it would be better to omit sub-section (2) of clause 43. These doubts may disappear with the simpler legislation. I suggest it could be left for a more mature consideration than time now permits, particularly as there are certain difficulties arising from this proposed redraft.

The Chairman.—You recommend that we omit sub-clause (2) of clause 43, and leave the law as it is in the present section 179 of the *Transfer of Land Act* 1928.

Mr. Garran.—Yes. Paragraph (*d*) suggests the omission of some words on the basis that they obviously cannot mean what they say. I think they can mean what they say if the provision is read in its context, although it may be, to some extent, open to misconstruction. The first part of sub-section (2) of clause 45 deals with the rights that pass to a transferee. To leave out all the words suggested would, I think, make the sub-section lopsided, but if the omission started on the top of page 25 with the words " and as such proprietor " I would suggest that the Committee could accept this suggestion. That would retain the words " and such transferee shall thereupon become the registered proprietor thereof." Then he would be bound by everything that appeared on the Statute Book, or as clause 42 says, binds him whether registered or not.

The Chairman.—What is the actual suggestion?

Mr. Garran.—To omit the words on page 25, lines 1 to 4 commencing " and as such proprietor " down to " proprietor thereof."

The Chairman.—To the end of the sub-clause?

Mr. Garran.—Yes. I think the preceding words should be retained to cover the liabilities, as a counterpoise to the rights already dealt with.

Mr. Randles.—I take the view that if those words had been allowed to remain you would never have such a person as a purchaser without notice. In fact, the new purchaser would take all the liabilities of the old proprietor.

Mr. Garran.—The misconstruction that can be put on the words proposed to be omitted is that the words could refer to matters not on the register. If construed as relating only to matters on the register book they are good, otherwise bad, but by retaining the first few words suggested and omitting the words starting " and as such proprietor " the difficulty would be removed and the liabilities would be safeguarded.

Paragraph (*e*) amending clause 51, sub-clause (3). This suggestion deserves your attention except that the wording will have to be altered slightly. It would read " any dealings by the bankrupt, if for value and except in the case of fraud, shall not be affected." I suggest that the provision be reworded to read " any dealings by the bankrupt with any person dealing *bona fide* and for value with him shall not be affected." That would involve the omission in line 33 on page 27 of the words " if for value and without fraud " and the insertion of the words " with any person dealing *bona fide* and for value with him."

Clause 52 is a clause which I told you I do not like very much myself, nor does the Chief Justice's Sub-committee like it. Sub-section (4) is the difficult provision and I have had further talks to the Registrar on the matter. The main problem is that pointed out by the Sub-committee on page 8 of their roneoed report, namely, the reference to the purchaser for valuable consideration. The second part of sub-section (4) deals with what happens if the sheriff sells before the copy of the writ of *fieri facias* is served on the Registrar. The simplest way to amend this is to prohibit the sheriff from selling before such service. That was my first suggestion to the Registrar and he has now come around to it. This will save a complicated provision being inserted as suggested by the Sub-committee. It was taken from this Western Australian Act and requires some consideration in relation to redrafting the words in many respects.

I suggest that the matter raised by the Sub-committee could be met better by an amendment on the following lines:—" Clause 52, page 28, sub-section (4), lines 27 to 36, omit all words commencing 'but until service' to the end of the sub-section and insert 'but until a memorandum of the service of the copy has been entered in the register book as aforesaid no sale under the writ judgment decree or order shall be made by the sheriff or other officer.' " This would prohibit sales by the sheriff before the service of a copy of the writ of *fieri facias* on the Registrar. The whole problem of course of sales by sheriffs is full of difficulty, some of them caused by the Property Law Act and some of them caused by the difficulty of obtaining the duplicate certificate.

Mr. Brennan.—Sometimes the impossibility of obtaining that duplicate.

Mr. Thomas.—Does that suggest you will have this as a sub-clause to the whole of the matter already in existence?

Mr. Garran.—No, the amendment removes lines 27 to 36 on page 28 except for the first word of line 27, and substitutes a shorter set of words in lieu.

Mr. Brennan.—I am in favour of that; I think the suggestion is an excellent idea.

Mr. Garran.—The Registrar now agrees with this method of approach.

Mr. Randles.—This is a direction to the sheriff. I would have thought it would be a direction to the Registrar that he was not to place on the register book notice of this transfer until such time as the copy of the writ was served on him.

Mr. Garran.—That is in the clause already, but trouble may arise in that the sheriff will sell prematurely and then his actions do not fit in with

the framework of the clause and you may have competing interests which will cause a lot of trouble between innocent parties.

Mr. Brennan.—The sheriff is the officer effecting the legal transfer to the person who buys at the sale?

Mr. Garran.—Yes.

Mr. Thomas.—Does the sheriff have to give notice to the Registrar that he is about to sell?

Mr. Garran.—No, he serves on him the copy *fieri facias* with the statutory declaration identifying the judgment debtor with the registered proprietor. He has three months after that in which to sell. The Registrar holds up dealings during that three months. At the end of it if he hears no more from the sheriff he gives effect to all the dealings that have been lying dormant. If he hears within the three months from the purchaser from the sheriff then he gives effect to that purchase in priority to all other dealings that have come his way.

Mr. Randles.—The new purchaser of course takes a clear title.

Mr. Garran.—Yes, he takes the title actually as if he were a *bona fide* purchaser for value from the man who owned the land.

I would like to deal with paragraphs (*g*) and (*h*) together. That is to say, clauses 53 and 56. These are matters of policy and not of drafting. The question is when a statutory authority compulsorily acquires land, is it to be considered the proprietor as from the date it has completed proceedings under the Lands Compensation Act or only from the time at which the instrument of acquisition is registered at the Titles Office. The latter is the policy of this Bill and is practically fundamental to the transfer of land system. The suggestion that the title should vest in the authority before registration, subject to compensation, is one that the Titles Office could not accept and I cannot recommend.

The Chairman.—You suggest, therefore, Mr. Garran, that no action be taken in respect of paragraphs (*g*) and (*h*)?

Mr. Garran.—That is so.

Paragraph (*i*) suggests an amendment to clause 67 (2). I would suggest to this Committee that this is unnecessary in view of the later words of the section: "on the part of the lessee to be performed and observed." Therefore, its inclusion would not cause any difficulty. With regard to paragraph (*j*), it suggests the use of certain short forms for certificates of title relating to easements of drainage and party walls. Without seeing any such short forms I cannot express any opinion. I would not like to have to draft them because of the difficult possibilities relating to party walls and also to some extent drainage; they are very complex and I do not think that one short form would apply to all circumstances. If one is produced, it may be worth considering.

The Chairman.—If this matter be thought necessary, it could be attended to in later amending legislation.

Mr. Garran.—That is so.

Paragraph (*k*) suggests an amendment to clause 73 (2). I consider this amendment unnecessary. When the registration of an easement is cancelled, then the Register Book ceases to speak of such easement. Clause 42 provides that registration of easements is unnecessary; therefore to amend clause 73 in that way would be to affect portion of clause 42, as well as being unnecessary.

Paragraph (*l*) refers to some words I inserted in clause 77, to write into that section something that did not appear on its face, and which it took a High Court action to determine. Particularly as mortgages under the Transfer of Land Act are different from common law mortgages, I would suggest that it is convenient to include these words, although they are not in the present Act, but are read into it by virtue of the decision of the Court.

Paragraph (*m*) is an amendment to clause 78 (1) (*a*) which would then read the mortgagee upon default "may enter into possession of the mortgaged or charged land or receive the rents and profits thereof." This suggests some kind of eviction, which however is covered by paragraph (*d*). I do not quite see the reason for the proposed amendment.

The Chairman.—You would feel if the alteration suggested was made to the section it might contemplate a mortgagee entering into possession of mortgaged land to the detriment of the mortgagor without taking the procedure which is laid down under clause 78 (*b*)?

Mr. Garran.—Yes, and possibly to the detriment of a tenant.

The Chairman.—So far as you know, the present clause is well understood and is operating satisfactorily?

Mr. Garran.—I understand so.

The suggestion contained in paragraph (*n*) is I consider unnecessary in view of clause 4 (2). Amendment of course could be made but if so similar amendments should be made in several other places.

Paragraph (*o*), which is an amendment to clause 81 (1), appears also to be unnecessary. The vesting would have to be in the mortgagee as mortgagee. The provision reads: ". . . if the legal estate in the mortgaged land had been vested in him with a right in the mortgagor of quiet enjoyment", and the words "first mortgagee" are used early in the sub-section.

Mr. Brennan.—Does not the sub-committee imagine a comma after the word "him"; in other words, vest him as proprietor without the suggestion of mortgage at all—as if he were the registered proprietor?

The Chairman.—Perhaps it may be wise to add the words if there is any doubt?

Mr. Garran.—Yes.

Mr. Randles.—Clause 81 (1) gives the mortgagee all the rights he would have had had he been the legal owner in general law?

Mr. Garran.—Generally that is so.

Mr. Brennan.—Or the legal owner under the Transfer of Land Act?

Mr. Garran.—Yes.

Paragraphs (*p*) and (*q*) deal with clause 98 (*a*) and (*b*). They seem to be to some extent in conflict with the method of approach. Paragraph (*p*) suggests a widening of the terms relating to easements that could be created. I suggest that such a widening would be quite a proper thing so long as the exact easement is required to be shown in some way by colour on the plan. Having adopted that approach I would suggest that the narrowing recommended in paragraph (*q*) would be a contrary approach. The words "and other services" would apply to such other services as service lifts and so on.

The suggestions in paragraph (*r*) refer to clause 110. This paragraph suggests the insertion of words at the end of clause 110 (1) (*d*) to provide for compensation from the assurance fund where anything has been done on the faith of any instrument lodged for registration. There is a strong objection to this in the Titles Office as such instrument may never be registered—registration may be refused. When it is registered, it dates back to the date of lodgment. Therefore, there is no real difficulty, but it is against the policy of the Office.

Mr. Brennan.—Mr. Adam in his discussion placed tremendous importance on "lodgment." He regarded lodgment as in effect creating an equitable right.

Mr. Garran.—Paragraph (*s*) relating to clause 110 raises a very difficult problem. There are many ways in which the drafting of the provisions relating to compensation could be approached. The present Act is very confused but could be followed. The previous Bill got away altogether from the present Act and took it from the English legislation. This Bill follows, with some variations, the previous Bill.

It is suggested that there should be included in this Bill a provision safeguarding the actual case that was dealt with in Act No. 4689 where there was a forgery and it was held that there was no loss in the case of an innocent party because although registered he had not been "deprived of land."

If this amendment is incorporated it will without doubt cover the position, but if incorporated, you should also cover the special case that was dealt with under Act No. 5553 which was a case where the injured party was "once removed" from the fraud. It had been hoped to get away from this succession of individual cases by dealing more generally with the provision and the provision in clause 110 specifically designed for this purpose were the words in brackets on line 5 "whether by deprivation of land *or otherwise*" and also paragraph (*c*) "any amendment of the Register Book." It means I think those cases are covered. I would suggest that if possible the Committee should see its way to obtaining a simple method of approach.

The final one is (*t*) although not so marked, on page 12. That is dealing with clause 116, sub-clause (1). I suggest the adoption of this recommendation.

Dealing with Mr. Fox's suggestion regarding clause 21, sub-clause (5). That deals with the inspection of the Registrar's minutes and is a matter of policy for this Committee. When I say a matter of policy, I mean a matter that this Committee may recommend or not. The amendment there would be to go back to the provisions of the previous Bill. Clause 60, sub-section (2) of the 1953 Bill would replace sub-section (5).

The next was with relation to drainage and party walls. I have discussed this point in connexion with the Chief Justice's Sub-committee's recommendations.

Clause 87, line 7, the words "estate and" should be omitted.

Clauses 92 and 93—I have discussed with Mr. Fox his evidence on this. In one matter I think he slightly misunderstood the Registrar. I asked the Registrar in the early drafting days if I should omit these provisions. The Registrar's viewpoint is that they are not used; that if they were used to any great extent they could be embarrassing but that they are a safety valve and there is no harm at least in leaving them there. Whether or not they stay in does not matter much. I might add that some such provision might require to be made when the photostat system is introduced.

The Chairman.—It would seem after hearing Mr. Fox's evidence it would be desirable to leave them in the Bill at the present stage. When the system of providing titles is in proper operation some amendment may be necessary.

Mr. Garran.—I would not mind very much myself whether they stand or fall.

In clause 98 he raises the same questions as to easements as were raised by the Chief Justice's Sub-committee and I have dealt with those.

Similarly, in respect to clause 110 his suggestions were covered also by the Chief Justice's Sub-committee. Communications from Mr. Fox by telephone last night and by mail this morning provide suggestions that I knew were brewing relative to alterations of Table A in the Seventh Schedule. I have left this schedule to the Law Institute to draft because it is really their problem. Mr. Fox has two suggested amendments which I cannot give you in type just yet but which I will provide as soon as I can. The first one is to clause 6 on page 77 to make sure that any outstanding writs on issue for recovery of moneys owing shall not be deferred pending service of any special notice under this clause; and a redraft of clause 14 to set up in different paragraphs the items that are already in the paragraph but somewhat confused by not being properly separated. I can send you copies of those at a later stage. I have read them and there seems to be no objection to them. On these matters I have been relying entirely on the recommendations of the Law Institute.

The Chairman.—If you will send them to us and then after consultation with the Law Institute the schedules could be amended.

The Committee adjourned.

MONDAY, 22ND NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. Garran, Assistant Parliamentary Draftsman, was in attendance.

Mr. Garran.—Concerning clause 95 (1) of Division IV. of the Bill, I should like to mention I have had the opportunity of reading the submissions of the Surveyor-General and the Chairman of the Surveyors' Board.

The Chairman.—Do you agree with the proposed amendment to this clause, that the word "survey" should be altered to the plural "surveys"?

Mr. Garran.—Yes. The amendments, apart from this one, fall into two categories: firstly, matters which are either covered by or, if not, should be covered by the Land Surveyors Act; secondly, matters which are connected with the internal procedure of the Office of Titles, and are somewhat similar to matters relating to the Examiners of Titles, which have already been considered by the Committee.

The Chairman.—This particular amendment does not fall into either of the categories you have mentioned?

Mr. Garran.—No.

The Chairman.—Are there any provisions in the present *Transfer of Land Act* 1928, providing that surveys can be carried out only by licensed surveyors?

Mr. Garran.—Not that I remember.

The Chairman.—When dealing with the reference to the Survey Branch and the imposing of specific duties on survey personnel, did you have in mind the recommendation of this Committee that there should be unified control under the Registrar, and that only the Registrar should have statutory duties?

Mr. Garran.—Yes, both in relation to the Survey Branch and to the Examiners of Titles.

The Chairman.—The Committee has before it a letter received from you in which are enclosed copies of suggestions made by the Council of the Law Institute of Victoria for alterations to Table 'A' of the Seventh Schedule. Do you wish to comment on this aspect?

Mr. Garran.—Yes. At an earlier stage, I mentioned I had given to the Council of the Law Institute responsibility for the drafting of Table 'A.' The Council indicated to me that it had a couple of further suggestions in mind, but they were not ready in detailed form when the Bill went to the House.

I have now received from the Council two suggestions for the amendment of Table 'A.' The first suggestion deals with clause 6 (1), on page 77 of the Bill, and it states that before the words "unless and until" there should be inserted the following words, "other than his right to sue for the recovery of any moneys then owing."

It was designed to make certain what was considered to be the position at present—it is subject to some doubts—that any outstanding rights to sue for moneys owing should not be held up by any requirements of notice under clause 6 which are requirements precedent to future rights to sue.

The second suggestion is a redraft of clause 14, on page 79 of the Bill. The redraft reads as follows:—

14 (*a*). Where the consent or licence of any person or body is required to the sale, the vendor shall at his own expense apply for and use his best endeavour to obtain such consent or licence. If such consent or licence is not obtained by the date upon which the purchaser becomes entitled to possession of the land sold or to the receipt of the rents and profits thereof as the case may be (in these Conditions called 'the settlement date') the contract shall be null and void and all moneys paid hereunder by the purchaser shall be refunded to him.

(*b*) If the land sold is leasehold, the rent and other monetary obligations payable by the vendor (except capital payments payable under any Crown lease) shall be adjusted between the parties in the same manner as is provided by these Conditions for the adjustment of rates. The purchaser shall indemnify the vendor against all claims in respect of all the obligations under the said lease which are to be performed after the settlement date.

Clause 14 deals with two different circumstances, the second of which has a particular application to the clause concerning leasehold estates. As Table 'A' now stands the clause hops from one to the other and back again. The redraft puts the contents of the present clause into understandable order.

The Chairman.—You have considered both suggestions of the Council of the Law Institute, and you are of the opinion they can well be included in Table 'A.'

Mr. Garran.—Yes.

The Committee adjourned.

TUESDAY, 23RD NOVEMBER, 1954.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. H. C. Ludbrook,	Mr. Randles.
The Hon. F. M. Thomas.	

Mr. Frank W. Arter, Surveyor-General and Chairman, Surveyors' Board, and Mr. Howard S. McComb, Chief Surveyor, Melbourne and Metropolitan Tramways Board and a member of the Surveyors' Board, were in attendance.

The Chairman.—On behalf of the Committee, I welcome Mr. Arter, Surveyor-General and the Chairman of the Surveyors' Board to our deliberations, and he is accompanied by Mr. McComb, who is the Chief Surveyor of the Melbourne and Metropolitan Tramways Board and a member of the Surveyors' Board. We have received your letter of the 12th of November addressed to Mr. McDonald, the Secretary of the Committee. That letter, together with the suggested amendments, has been circulated amongst members of the Committee. We have deferred considering any of the amendments submitted by you until we have heard your views on them, other than the amendment to section 95, sub-section (1), where you suggest that the word "survey" should be altered to "surveys." It appears to us to be substantially a drafting amendment and we propose to agree to it.

Mr. Arter.—Mr. Chairman, this letter of ours was considered from many aspects. I think each one on the committee had a common interest in so far as some of the members were practising surveyors and I was once the Chief Surveyor of the Titles Office. We also had Mr. Shea, the present Chief Surveyor, and Mr. McComb, who has been interested in the Transfer of Land Act since its inception. As I say, we considered it in the light of our own experience both from the practising point of view and departmentally, and also from the Surveyors' Board point of view. The Board is the responsible authority for preparing the Regulations for the making of title surveys and for the general supervision of survey work throughout the State.

The Chairman.—From where does the power come to do that?

Mr. Arter.—From the Land Surveyors Act. From the Surveyors' Board point of view—quite divorcing myself from my own personal opinions, of course—the Board has Regulations made for the making of title surveys and we have a very keen interest in the survey aspect of the Transfer of Land Act. That is the reason why and the spirit in which we met. We thought of the matter on two or three principles. One was if a survey became a matter of contention an authoritative person should be able to speak—I am particularly referring now to the use of surveys that may be already available at the Titles Office; I will make a special note of that in a moment—and that being so the only person competent to advise on survey matters is the Surveyor and Chief Draftsman, and we think as such he should be nominated in the Bill as the person responsible for survey recommendations. He is *ex officio* a member of the Board and by that appointment he is responsible for the title surveys at the Titles Office.

There is a little doubt in my mind as to whether the Bill refers to survey information on Titles Office records—that is, within the Titles Office; or survey information which may be available to the Titles

Office. The Survey Co-ordination Act has been instituted for the purpose of co-ordinating and making available survey information throughout the State; from not only the Titles Office but from all other Departments; and I could well conceive that the Titles Office might have survey information available to it which was not actually lodged in the Office of Titles but which would be available under the provisions of the Act. That occurs of course now between the Lands Department and the Titles Office in so far as we make available more modern information from the Department of Lands and supply it quite readily to the Titles Office and give them sufficient information to amend titles on what we call a Certificate of Adjustment.

The Chairman.—Do you feel that section 95, sub-section (3), is not wide enough?

Mr. Arter.—I am trying to tie the loose ends by bringing the Surveyor and Chief Draftsman into this Act, in the same terms and definitions as he enjoys by his statutory appointment as Titles Office Survey Officer under the Survey Co-ordination Act. The Survey Co-ordination Act is the tie-up as regards survey between departments and public authorities and as Surveyor-General and Chairman of the Surveyors' Board I am in charge of survey co-ordination. I am trying to show the link-up, to show the chief of the Titles Office, a co-member of the Board by virtue of his office, is also appointed by statute to the position of Titles Office Survey Officer, which is quite apart from his position as the Chief Draftsman. He provides the link between the two departments and I think it would be a wise step to provide for an authoritative person who could recommend to or advise the Registrar.

The Chairman.—Does not the fact that he occupies that position mean that he will be the Registrar's adviser on survey irrespective of what we put in the Transfer of Land Act?

Mr. Arter.—Yes, it could be so, but I respectfully maintain that the person who should be the responsible authority for survey matters, that is, survey recommendations, should be the person who is qualified to give the information.

The Chairman.—Yes, and I am not in any way quarrelling with that view; I think it is a very reasonable one, but does not the mere fact that he is Chief Surveyor in the Titles Office mean he must be the Registrar's adviser on survey?

Mr. Arter.—Yes, definitely.

The Chairman.—That is from a practical point of view.

Mr. Arter.—Yes.

Mr. McComb.—Although the Registrar could override him.

Mr. Pettiona.—You say sub-section (2) of section 95 could permit the Registrar to go outside of his Department and get another person who is a licensed surveyor—"All surveys required by the Registrar shall be made and certified by a licensed surveyor."

Mr. Arter.—That is so. Those are the surveys required by the Registrar to effect registration.

Mr. Pettiona.—Then for the checking of them he uses his own departmental files?

Mr. Arter.—It is not only the checking of them but the establishment of the title and the establishment of the survey are made by the Survey Branch staff under the control and direction of the Surveyor and Chief Draftsman.

The Chairman.—Just to clear the position as I see it, in this recommendation made by you, Mr. Arter, there are two different matters involved. The first one, that the survey staff in the Titles Office, or the Chief Surveyor in the Titles Office, should have statutory recognition and statutory powers, and duties, no doubt.

Mr. Arter.—He has statutory powers and duties now under the Land Surveyors Act and under the Survey Co-ordination Act.

The Chairman.—Do you want to go further than that and bring the statutory powers into the Transfer of Land Act?

Mr. Arter.—I think it would be advisable.

The Chairman.—The other proposition you are interested in, I take it, is that there should be something in the Transfer of Land Act itself to provide that only licensed surveyors should do the surveys, or alternatively, to put it another way, only surveys done by licensed surveyors should be acceptable to the Titles Office?

Mr. Arter.—That is the way it should be.

The Chairman.—Does not that position prevail now quite apart from the Transfer of Land Act, all title surveys as defined in the Land Surveyors Act must be made by a licensed surveyor?

Mr. Arter.—Yes.

The Chairman.—If it is already provided for in the Land Surveyors Act, what need is there to put it in the Transfer of Land Act?

Mr. Arter.—It was in the old Transfer of Land Act in section 211. It is mentioned quite frequently in the Transfer of Land Act.

The Chairman.—You have the words "licensed surveyor" used in section 211—"and shall also show the areas, and shall be made and certified by a licensed surveyor."

Mr. Arter.—You have it in the new Act, too, in section 95, sub-section (2).

The Chairman.—Is there any need to go further than that?

Mr. Arter.—To get the link between the Transfer of Land Act and the Land Surveyors Act. In the old days the Land Surveyors Act was to provide surveys under the Land Act and the Transfer of Land Act. We think to make a tidy job you should get these two linked in the Act.

The Chairman.—Does not the words "made and certified by a licensed surveyor" virtually give you all you want?

Mr. Arter.—I, for one, would not argue the point about it very far. I feel it is somewhat redundant, but it is the feeling of the Committee that it would be desirable to get the full link.

Mr. McComb.—As you put it now, the Registrar shall be given power to say whether a survey is necessary. If he says a survey is necessary, under the Land Surveyors Act it has to be carried out by a licensed surveyor and the Board determines how that is to be carried out.

The Chairman.—Are you contesting the fact that the Registrar should be able to say whether a certificate is necessary or not?

Mr. McComb.—No, we are not contesting that at the present time, but we are saying if the Registrar says it is necessary it has to be by a licensed surveyor

and then it has to be in accordance with the Regulations made for that survey, but I can conceive there will also be cases, for instance, these stratum titles—we have not issued any rules as to how they are to be carried out—and there may be other cases where the Registrar may want further requirements. We think it would strengthen the Act if you include the statutory requirement of the Land Surveyors Act and then add in requirements by the Registrar.

Mr. Arter.—I feel it would make the case stronger to include it. I did not think when we brought this up it would be a contentious matter. I thought it would be a neat tie-up.

The Chairman.—I think there are two things involved here. In the first place the Transfer of Land Act is supposed to be an Act to facilitate the registration of land transfers and not an Act that lays down substantive law with regard to the method of transferring land or an Act which sets out a detailed procedure for the Titles Office and that was the original purpose when Torrens prepared his Transfer of Land legislation. Over a period of years, I think it is fair to say that in Victoria we have had the simple Torrens system cluttered up with a tremendous amount of extraneous matter probably largely due to the lawyers rather than to the surveyors, and it is the aim of this Committee when making its report on this Bill to get back to simplicity and clear out of the Transfer of Land Act a lot of matter that should not be there.

The Chairman.—My personal feelings are that it would be a retrograde step to put into the Transfer of Land Act anything that was unnecessary. It would seem in the Land Surveyors Act you have all the control needed over surveys as such. If you have not all the necessary control then it could be rectified by regulation. That is the first proposition. It would seem the proper place for this is in the Surveyors Act and not in the Transfer of Land Act. The other question is different. The question of the Registrar's power over surveys is one this Committee would have to examine in more detail later. I would like to clear up the first question.

Mr. Arter.—I agree with you. There has been some unimportant discussion; but there have been differences of opinion, and I have expressed those opinions.

The Chairman.—This Committee will examine each of the amendments suggested and consider them in the light of the Transfer of Land Act. Dealing now with section 4 (1), I take it on what you have discussed, this can be deleted. Would you agree the Land Surveyors Act prescribes that only licensed surveyors can do surveys, and the only surveys which are acceptable to the Titles Office are surveys done under that Act?

Mr. Arter.—That is so. The definition is included in the Survey Co-ordination Act and the *Land Surveyors Act* 1942.

The Chairman.—Section 95 (1) has already been agreed upon. What is involved in section 95 (2)?

Mr. Arter.—That is bound up with section 4 (1).

The Chairman.—It goes further than that; you have deleted the words "and shall comply with any requirements of the Registrar."

Mr. Arter.—That is a vital point as it is the Surveyors' Board of Victoria that would have the final say whether or not the survey was done correctly. It could be referred to the Surveyors' Board, and that Board would be the arbiter of whether or not a survey was carried out correctly.

The Chairman.—Adding the words "and shall be in conformity with the Land Surveyors Act" possibly does not carry it any further. The point of substance is that the provision of complying with any requirement of the Registrar is not liked, because that may be inconsistent with the Land Surveyors Act.

Mr. Arter.—That is the substance of it.

The Chairman.—There were other provisions; it was never intended that the Registrar should dictate to surveyors on technical matters. It was included on the suggestion of this Committee that the Registrar could call only for such surveys as were necessary, instead of as under the present Act, to require him to call for complete surveys in every case. It was part of the provision of section 95 (3) that the Registrar could dispense with certain surveys in certain cases. There does seem to be a possibility of conflict.

Mr. Arter.—You can see the tie-up; the Chief Surveyor is responsible, by virtue of his position as a member of the Board, for the conduct of his surveys at the Titles Office. As such he should be responsible to the Registrar. If it were defined, it would strengthen his case.

Mr. Hollway.—Would you have any objection to adding the words "shall comply with any requirements of the Registrar," after the words "*Land Surveyors Act* 1942"?

Mr. Arter.—I am trying to strengthen the power of the survey as required by the Registrar.

The Chairman.—The matter could be disposed of by the amendment of Mr. Hollway.

The next matter is section 95 (3). The only point is whether statutory recognition should be given to the Surveyor and Chief Draftsman.

Mr. Arter.—Yes. It would be better if this part read, "to the Office of Titles," instead of "in the Office of Titles."

The Chairman.—That has been covered earlier. What is going to be the effect of your proposal with regard to section 97, Mr. Arter, with the ordinary square allotment which can now be split in half without the cost of a survey?

Mr. Arter.—The power is there all the time to ask for a survey to split the land into two parts; it always has been. This says every plan of subdivision shall be made and certified. It is not a plan of survey, but I am going to say a plan of subdivision could be construed as exactly that, and not be by a licensed surveyor. We have accepted thousands of plans of subdivision with the consent of Council. They are not plans of survey.

The Chairman.—That is so. If we adopt your recommendation on section 97 we would then preclude those plans being registered in future.

Mr. Arter.—We are simply reinstating what was there before. This is one of our main points.

Mr. McComb.—The draftsmen have not brought that forward in its entirety. The Registrar can ask for a plan of subdivision, but if it is a plan of subdivision it has to be by a licensed surveyor.

Mr. Pettiona.—If it was in the old Act why has it not been carried out?

Mr. McComb.—We do not know but we want it carried forward in that form.

The Chairman.—Under the old Act the Registrar could exercise a discretion as to whether he required a plan of subdivision or not.

Mr. Arter.—If it became a plan of subdivision, under section 211 it must be by a licensed surveyor.

The Chairman.—Section 211 is "any proprietor subdividing any land under the operation of this Act for the purpose of selling the same in allotments shall deposit with the Registrar a map of such land if so required."

Mr. Arter.—That is not the prevailing Act; it has been amended under the Local Government Act.

Mr. McComb.—Section 201 refers to it.

Mr. Pettiona.—It still only means the Commissioner may require. It is only where he requires a survey it shall be done by a licensed surveyor.

Mr. Arter.—That particular section of the Act was found to be so loose that it was deliberately altered and amended by an amended Local Government Act which wiped out the words "for the purpose of a sale." I do not think we are suggesting that the plan of subdivision is necessary; we are only saying that any such plan of subdivision shall be certified by a licensed surveyor, reinstating what was there before.

The Chairman.—If that is all you have in mind we understand your recommendation.

Mr. Arter.—In regard to section 97, sub-section (1), we simply go back to the old Act and we say that any such plan of subdivision shall be made by a licensed surveyor.

Mr. McComb.—There is an amendment later on that in a plan of subdivision allotments can be referred to by the number. You want that distinction because if it is not a plan of subdivision you cannot use those numbers in describing it. The point I want to make is this, when there is a plan of subdivision that is the guarantee by the Government that the land is there. Unless there is a survey there is no guarantee by the Government that the land is there. That is the safeguard for the people. If the Registrar says he must have a plan of subdivision we want it done by a licensed surveyor because it will then be based on survey and the measurements will be accurate.

Mr. Arter.—"After the plan of subdivision prepared and certified by a licensed surveyor has been approved"—I think that is necessary.

There seems to be some confusion in regard to section 98, "A transfer of an allotment of land by reference to an approved plan of subdivision." When was the approval given? Was the approval at the stage when it was submitted or half way through its course? We think the term "approved" is too loose.

The Chairman.—The Registrar has recommended an amendment to the Bill as follows:—

Clause 97—At the end of the clause insert the following new sub-clause:—

(6) The Registrar pending survey of or proof to his satisfaction of title to any land proposed to be subdivided may approve a plan of subdivision subject to notification on the plan and on the Certificates of Title of the allotments to the effect that such plan and certificates may be subject to amendment or adjustment and the Registrar may in due course without any application in that behalf amend or adjust any such plan or certificate of title and may when satisfied as to the plan remove any such notification.

Mr. Arter.—That is very good but it brings up the point of when a plan of subdivision is approved. I think that is when it is registered.

Mr. McComb.—If you are to use it for the purpose of description of titles in legal documents would it not be when it is registered in the office?

Mr. Arter.—The Registrar approves it as a plan to be registered. We have simply said "by reference to an approved and registered plan of subdivision."

The Chairman.—That means these numbers cannot be used prior to then.

Mr. Arter.—I should think the ordinary sequence of events would be to lodge the plan and number it.

Mr. McComb.—You would need some registration of the official plan because you are going to refer to that in legal documents in reference to the title.

Mr. McComb.—You have a clause in the Bill that the Registrar may hold up the registration.

The Chairman.—The clause which I read is to be substituted for sub-clause (5).

Mr. Arter.—That is a good sub-clause.

The Chairman.—You agree with the proposed sub-clause (5)?

Mr. Arter.—I do.

The Chairman.—And the only point you are concerned with now is that the "approved" in section 98 should refer to an allotment of land by reference to an approved and registered plan of subdivision and until such plan is registered no implied inference arises.

Mr. Arter.—I am only going on my own experience and I think if you can get a plan in and at the same time accept it you have gone a long way towards concluding the work.

The Chairman.—I think I can say there was no suggestion at any stage in the mind of the Committee or of the draftsman that approval by the Council should carry any implied easements in section 98. The only thing in regard to section 99 is adding the official position of the Surveyor and Chief Draftsman?

Mr. Arter.—Yes, that is the only difference and that difference is not made from any selfish motive; we think it is essenital to carry the weight of the survey. I think the reading of the new sub-clause (5) makes it all the more imperative, because then the Registrar has a responsible authority who can give him competent and responsible advice by law.

The Chairman.—We thank you for the assistance you have given us and shall consider the recommendations you have made.

The Committee adjourned.

WEDNESDAY, 24TH NOVEMBER, 1954.

Members present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. H. C. Ludbrook,	Mr. Pettiona,
The Hon. I. A. Swinburne,	Mr. Randles.
The Hon. F. M. Thomas.	

Messrs. A. Garran, Assistant Parliamentary Draftsman, and W. J. Taylor, Registrar-General and Registrar of Titles, were in attendance.

Mr. Garran.—Further to my previous remarks and consequent upon reading the evidence of Mr. Arter, I desire to make the following comments on the

specific suggested amendments: As to the interpretations of "Title Survey" and "Plan," these expressions are not used in the Bill except in relation to "Plan of subdivision," which is a phrase of its own. Therefore, to interpret these words would serve no purpose so far as the Bill is concerned.

The interpretations of "licensed surveyor" and "survey" are not really necessary for the legislation, but if the Committee thought fit it would do no harm to adopt them. In each case the suggested terms would have the same meaning as under the *Land Surveyors Act* 1942.

The Chairman.—If this amendment were made it would meet the point raised by Mr. Arter, that there should be a definite tie-up between the Land Surveyors Act and the meanings under that Act, and the Transfer of Land Act?

Mr. Garran.—Yes. Personally, I do not think it is necessary; we never follow that practice in our drafting. However, if there are any doubts, this will remove them.

Concerning the suggested amendments to clauses 95 (2) and 97 (1) (*a*), I produce a suggested redraft of sub-clause (2) of clause 95 to meet these two points and to remove any confusion there may be. The suggested redraft of 95 (2) reads as follows:

> All surveys required by the Registrar and all plans of subdivision lodged under this Division shall be made and certified by a licensed surveyor and, subject to the requirements of the *Land Surveyors Act* 1942, shall comply with any requirements of the Registrar.

The redraft puts back into the Bill the provision that plans of subdivision will have to be made and certified by a licensed surveyor; it will also make it certain on the face of the Bill that nothing in the Transfer of Land Act will override the requirements of the Land Surveyors Acts.

Mr. Brennan.—For instance, if a proprietor has consolidated two adjacent blocks, each of a frontage of 50 feet, and then decides later on to sell one of them—obviously, a new title will be required—will a plan prepared by a licensed surveyor be required?

Mr. Taylor.—The answer is no. The simple plan is drawn on the transfer, and the Council must consent to that transfer. It does not become an official plan of subdivision within the meaning of clause 95 (2).

The Chairman.—Clause 95 (1) retains the discretion of the Registrar to require a survey of a plan if he considers it necessary; it does not compel him to do so.

Mr. Garran.—I also produce a suggested amendment to clause 95 (3), to meet the point raised by Mr. Arter. The proposed amendment is to insert the word "to" in place of the word "in" in line 32.

The Chairman.—If the amendment were made as suggested the Titles Office would be able to use not only a survey in the Titles Office but a survey which was available to the Titles Office.

Mr. Garran.—Yes, that is so. The amendment proposed to clause 97 (4) is covered by the positions relating to licensed surveyors, which I have already mentioned as being unnecessary.

The proposed amendment to clause 98 is unnecessary in view of the use of the word "approved" in relation to lodged plans of subdivision, appearing in sub-section (4) of clause 97. Under the Act as it now stands, there is confusion between lodging, approving and registering plans of subdivision, but these confusions were carefully eliminated in the preparation of the Bill.

The Chairman.—Is the position now that a plan of subdivision is not registered but is approved?

Mr. Garran.—Yes. The plan of subdivision is not part of the Register Book. After lodgment, and approval by the Registrar, it will be held in the Office of Titles. Certificates of Title in the Register Book will refer to allotments as set out on that plan.

Mr. Brennan.—Mr. Taylor, is not the schedule attached to the original title a plan of subdivision?

Mr. Taylor.—It would be a copy, probably a print, of the original plan of subdivision. In all cases, it would be portion or the whole of the plan of subdivision.

Mr. Brennan.—You would not regard that extra sheet as part of the Register Book?

Mr. Taylor.—No. That sheet is added to the title only for the convenience of the Titles Office. A new system of endorsing will be set up very soon, and all the transfers as to part will be shown in schedule form on the duplicate title and the original title. For the first time in history, the duplicate title will show what lots have been transferred.

Mr. Brennan.—One of the advantages will be to reduce searching time.

Mr. Taylor.—Yes.

Mr. Garran.—The further proposed amendments to clauses 95 and 99 raise another question as to whether the Bill should contain directions as to the internal working of the Office of Titles in relation to the Survey Branch. In view of the recommendation of the Committee that unified control should be adopted, I have eliminated from the Bill all references to examiners of title and other officers within the Titles Office.

It is proposed that the office should be run in the usual way. Of course, the Registrar will take due account of all administrative and technical matters on the advice of the branches of the office. I do not think these amendments should be given effect to. If they are, several other alterations will be required in the Bill.

The Chairman.—I have here a letter from Mr. Fox, which reads—

> The Secretary, 22nd November, 1954.
> Statute Law Revision Committee,
> Parliament House,
> Melbourne.
>
> Dear Sir,
>
> *re Transfer of Land Bill.*
>
> As requested, I have drafted the amendments which I suggest should be made to clause 72 (3) and now enclose same.
>
> I should explain that the present clause, besides being confined to carriage-way easements, is also confined to the creation of such easements, and has no application to their reservation. I have attempted to draft amendments which will allow the key words to be used when an easement of carriage-way, drainage, or party wall is either created or reserved.
>
> Yours faithfully,
> (Signed) P. MOERLIN FOX.

The draft amendments read—

> Delete the present clause 72 (3) and substitute the following sub-clause:—
>
> "72 (3). Where in any Certificate of Title or instrument an easement is referred to or created or reserved by using the phrases 'a right of carriage-way over ' or 'a right of drainage over ' or 'a party wall right over '

(*in each case specifying the land subject to the easement and referring to a map or plan of subdivision*), such phrase shall have the same effect and shall be construed as if the words appearing in the Twelfth Schedule opposite each of such phrases had been inserted in such Certificate of Title or instrument.

2. (*a*) Amend Twelfth Schedule by omitting from the present passage the words 'Together with' and by substituting for the words 'of the land herein described' the words 'of the dominant tenement', and by inserting opposite the passage the words 'a right of carriage-way over '.

(*b*) Insert the words 'a right of drainage over' and insert opposite them the following words: 'free right and liberty to use the land—coloured blue on the said map for drainage and sewerage purposes including the right to use any drain or sewer now constructed below the surface of the said land coloured blue for the passage of drainage and sewage and the right to construct lay and maintain below the surface of the said land a drain or sewer for such purpose making good at his own expense all damage or disturbance which may be caused to the surface of the said land coloured blue in relation to such construction laying and maintenance.'

(*c*) Insert the words 'a party wall right over' and insert opposite them the words 'Full and free right to the use of the half of a party wall which half is erected or may hereafter be erected on the land coloured '."

Mr. Garran and Mr. Taylor have both had an opportunity of seeing Mr. Fox's letter and the proposed amendments enclosed therewith. I will now ask Mr. Taylor for his comments upon them.

Mr. Taylor.—In my official capacity I have no objection to the amendments proposed by Mr. Fox. At page 71 of Currey's *Manual on Titles Office Practice*, he says—

It is to be regretted that no short form of drainage easement has been provided in the Act so that some measure of uniformity might exist. At present grants of drainage rights are variously expressed as being "through", "over", "under", "along" or "upon" the lands intended to be affected.

Apparently Mr. Currey had much the same idea as Mr. Fox has now submitted to the Committee. From the administrative point of view it will make no difference whatever to the work of the Titles Office, to the form of easement set out in the title, or in any other manner, therefore I think it is just a matter for the Committee as to whether or not it sees fit to adopt the suggested amendment.

Mr. Garran.—My only comments are as to the actual form of the draft. You will remember that in my earlier evidence I said if we could see a form then we could discuss it. It is essential, of course, that the form should be stable for all time because the short form when used in a Certificate of Title will keep on running. You want it to mean one and the same thing. The suggestions of Mr. Fox as to the right of carriage-way contain no variations that need disturb this Committee. They do have a slightly wider application in that they will apply not only to the creation but to the reservation of any easement, which I think is a useful amendment to the section as a whole.

With regard to the proposed new right of drainage it seems to be a comprehensive and workable draft. I would like, however, just to point out that it contains one debatable provision, that the person putting a drain or sewer over the easement area must make good at his own expense all damage or disturbance caused. I do not know whether that is a proper thing to appear on the Certificate of Title. I do not know what Mr. Taylor has to say in regard to that.

Mr. Taylor.—It would not appear on the title.

Mr. Garran.—But it would be implied in it.

Mr. Taylor.—Precisely, it would be implied in what was appearing on the title, and if I might say so at this juncture, the profession has become used to the creation of a drainage easement in these terms—"Together with a right to use the land coloured blue for drainage purposes." I think the viewpoint is held inside the Titles Office, although it does not really concern them so much except in an advisory capacity, and also outside that that is a more comprehensive way of creating an easement than just to say "Together with a right of drainage over the land coloured blue." If this schedule is adopted and the words "a right of drainage over" are used here, then the rights set out in the schedule will apply to that particular easement if it ever comes up for argument or discussion as to what the nature of the rights are.

Apparently it is a matter that has been discussed for a very long time; Mr. Currey wrote his book in 1933. It has been a live issue of discussion amongst the profession for 30 years to my knowledge.

The Chairman.—This is another case where if you use certain words in the section you will imply what is in the schedule, so that if you are not satisfied with what is in the schedule you use another set of words and specifically create the easement required. This is not anything in the nature of mandatory legislation.

Mr. Taylor.—I think if I were drafting a drainage easement I would say "together with a right to use the land for drainage purposes." I think it is more comprehensive than "a right of drainage over."

Mr. Garran.—With regard to the party wall the saving in words is very small, five words replacing 23. It is not a replacement of a size commensurate with that in the case of the carriage-way or the drainage. It also applies only to one type of party wall easement. It reads "Full and free right to the use of half of a party wall which half is erected or may hereafter be erected on the land coloured green." My general approach to this, Mr. Chairman, is that in principle there could be no objection to it, but the actual wording of the covenant needs some consideration, which time does not permit. It would be possible to put in a provision to extend the operation of subsection (3) to allow the Governor in Council to prescribe for short forms for easements. That may be another approach which the Committee might like to consider.

The Chairman.—Could we ask, Mr. Garran, whether you feel, at this stage, it would detract substantially from the Transfer of Land legislation if we do not provide for these easements in the form suggested?

Mr. Garran.—Mr. Taylor could probably answer that better than I can, but the position as I understand it is that such forms have not been provided up to date. Some conveyancers I understand would like them but it is only a shortening of form, and Mr. Taylor could tell you whether that would interfere with or assist the work of his office.

Mr. Taylor.—I do not think it would improve the draft Bill to include it; I think it might be more appropriate in the Property Law Act than in the Transfer of Land Act.

Mr. Garran.—If included the forms must be right.

The Chairman.—That is the problem. Mr. Garran, assuming we do not adopt Mr. Fox's suggestion to deal with drainage and party walls, is there any amendment which should be made to the Twelfth Schedule or section 72 (3) at this stage?

Mr. Garran.—The only amendment I suggest is the amendment to section 72, sub-section (3), relating to reservation of easements as well as creation. Possibly you might like to alter the words in the existing schedule leaving out reference to "encumbrances referred to" and referring to "the dominant tenement" and substituting "vehicle" for "carriage," but other than those I do not think the amendments to the schedule would be worth while.

To cover the point raised by Mr. Fox, I would suggest section 72, sub-section (3), be amended as follows: Omit "any certificate of title or instrument contains" and insert "in any certificate of title or instrument an easement is referred to or created or reserved by the use of."

The Committee adjourned.

APPENDIX A.

REPORT OF TRANSFER OF LAND ACT SUB-COMMITTEE OF THE CHIEF JUSTICE'S COMMITTEE ON LAW REFORM.

1. At Your Honour's request we have perused the Transfer of Land Bill and submit the following comments:—

2. As appears from the second-reading speech of the Minister in introducing the Bill, this measure in substance gives effect to recommendations of the Statute Law Revision Committee on the subject of the amendment and consolidation of the Transfer of Land Acts. Over a number of years this Committee has issued six reports thereon. Having regard to the fates of the earlier Bills introduced into Parliament in 1949 and again in 1953, and the recommendations of the Statute Law Revision Committee after exhaustive examination of the issues involved and the intention of the Government now to proceed with this Bill as a measure of urgency, we have assumed that the general subject of Transfer of Land Act reform is, as a matter of practical politics, no longer open to discussion, and accordingly we have, in the main, concerned ourselves with the questions whether anything worth while retaining from the existing legislation has been omitted and whether in point of drafting the Bill is effective to make such amendments in the law as are expressed by the Minister to be its objectives.

3. To a great extent the Bill is a consolidation of the existing legislation with the important qualification however that drafting of existing legislation has been extensively revised. In this process of redrafting, opportunity has been taken to omit much that is obsolete, unnecessary or repetitious. The result has been to reduce the 284 sections of the 1928 Act, with subsequent amendments, to 120 clauses in the Bill. Subject to some minor qualifications referred to below, we consider that the re-drafting, which has long been overdue, has been well done and that nothing of practical importance has been omitted.

4. The more important changes in the substantive law achieved (or intended to be achieved) in their sequence in the Bill would appear to be as follows:—

(*a*) The provisions in Part II, Division 2, providing for the compulsory bringing of land under the Act. These provisions follow those in the South Australian legislation which, we understand, are working satisfactorily. We agree that this is a desirable innovation.

(*b*) Amendments introduced by clause 42 to the list of unregistered interests declared paramount to registered title by section 72 of the existing Act. The changes are—

(i) options to purchase are excluded from the interests of tenants in possession which are to be protected;

(ii) only such rates and other charges as can be discovered from a certificate issued under specified Acts or other enactments specified by proclamation are to be protected.

We consider both changes are desirable.

(iii) Leases, licences, &c., granted by the Crown or public corporate bodies in respect of which no provision for registration is made are omitted from the list of paramount interests.

We are not clear why—perhaps because they are of no practical importance—but we see no objection from the point of view of the profession.

(*c*) By clause 43 the protection now afforded by section 179 to persons dealing with registered proprietors against prior unregistered interests is extended (or intended to be extended) to purchasers prior to their becoming registered—cf. *Templeton* v. *Leviathan* 30 C.L.R. 34. We consider this to be a desirable change. However, we do not think that clause 43 as drafted achieves its objective. Accordingly we have suggested below a re-draft of clause 43.

(*d*) *Sales by Sheriff.*—Part IV. Division 3.

As appears from the Minister's speech, the Bill is designed to effect a material change in relation to the title passed to a purchaser on a Sheriff's sale. The intention is that the purchaser should take the title of the debtor as appearing from the register book, subject only to the statutory exceptions, instead of, as under the existing Act, the debtor's actual interest only in the land.

We are not satisfied that clause 52 as drafted succeeds in achieving this objective and accordingly have proposed a re-draft which would appear to put the matter beyond doubt.

(*e*) Part IV. Division 4, which deals with compulsory acquisition by Authorities, is based on Act 5314 of 1948.

Under the 1948 Act it was permissible but not compulsory for an acquiring Authority to apply for registration of acquisitions. Under the Bill it is compulsory. (Clause 54.)

Under the 1948 Act there was no provision in cases where statutory authorities proceed by way of notice to treat to notify the Titles Office of the service of such notice. Such a notification is now made compulsory.

We consider these changes desirable.

In his second-reading speech the Minister stated that—

> a provision is inserted which provides that only on actual registration of acquisition of land by public Authorities will the title be complete. Until such registration a *bona fide* purchaser for value from the person registered as proprietor will take an indefeasible title subject only to the notices above referred to.

If this result is intended, we have some doubt whether it is achieved by the Bill as drafted.

Whether it is desirable that the penalty for default by an acquiring authority should be the over-reaching of its rights under the Acquisition Act or a liability to compensate purchasers who have suffered loss thereby is an open question. As the acquiring authority could re-acquire compulsorily from such a purchaser and the compensation on such acquisition might not recoup the purchaser the loss he has suffered, we would have thought it preferable that the penalty should be compensation for loss actually sustained by the purchaser.

In these circumstances we have proposed a re-draft of clause 56 of the Bill dealing with compensation instead of some re-draft designed to secure a purchaser a title which would override the statutory rights of the acquiring authority.

(*f*) Part IV. Division 8—

The provisions as to registration of easements and their removal from the register have been simplified and anomalies under the existing Act removed. Registrable easements cover those created by any written document or recognized by an order of the Court. The recommendation of the Statute Law Revision Committee that easements acquired by use should be capable of registration (apart from an order of the Court) has not been adopted in the Bill as it was considered that this would involve a difficult inquiry of a judicial nature by the Registrar.

Easements remain paramount interests against registered title notwithstanding non-registration—clause 42.

We consider that the changes effected with regard to easements simplify the case and are a distinct improvement over the piecemeal and unsatisfactory provisions in the existing legislation.

(*g*) Restrictive covenants.

The Bill makes express provision for the registration of restrictive covenants—Part IV., Division 10. We consider this change in the law, which accords with the practice followed by the Titles Office without legislative authority, is a desirable one.

(*h*) Authorised witnesses.

The requirement that signatures on instruments under the Act be attested by special classes of witnesses has been omitted as being of little value and inconvenient. The experience in the English Land Registry, where special classes of witnesses are not required, suggests this is not an undesirable change.

5. We would suggest for consideration the following drafting alterations in the Bill:—

(*a*) Clause 9 (1) (*e*)—Add at end—

"If the application contains a direction that the certificate of title is to issue in the names of such infant lunatic patient or infirm person"—cf. S.17 (*f*) 1928 Act.

We would think these words were inadvertently omitted.

(*b*) Clause 42 (2) (*d*)—Substitute "any easements howsoever acquired subsisting over or upon or affecting the land."

This would make it clear that easements arising by implied grant would be included.

(*c*) Clause 43.—Re-draft to read as follows:—

"(1) Except in the case of fraud no person contracting or dealing with or contracting for a transfer from the registered proprietor of any land for valuable consideration shall be required or in any manner concerned to inquire or ascertain the circumstances under or the consideration for which such proprietor or any previous proprietor thereof was registered or to see to the application of any purchase or consideration money nor shall any such person be bound by any trust or unregistered interest affecting such land other than interests not requiring registration for their protection unless a caveat has in respect of such trust or unregistered interest been lodged in pursuance of the provisions of this Act prior to such contracting or dealing and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

(2) Notwithstanding anything in any provision of this Act the operation of this section shall not be affected or delayed by the fact that no instrument to give effect to such contract or dealing has been executed or registered.

(3) For the purposes of this section an interest which is the subject of an instrument lodged for registration shall not be deemed to be an unregistered interest by reason of such instrument not being registered.

As clause 43 now stands it would not appear to protect a purchaser prior to his registration, as immunity from the consequences of notice arises only when the purchaser acquires the legal estate—i.e., upon registration. Sub-clause (2) does not appear to achieve what is its designed purpose. To provide that a purchaser, when his interest is equitable, is not to be affected by notice of prior equities, is not to give him priority over them.

(*d*) Clause 45 (2).—Omit the words "and such transferee shall thereupon" down to end of sub-clause.

These words which are copied from the corresponding section 121 of the 1928 Act obviously cannot mean what they say.

(*e*) Clause 51 (3).—For "without fraud" substitute "except in the case of fraud".

The use of the words "without fraud" instead of "except in the case of fraud"—cf. clauses 42 and 43—rather suggests that it is the state of mind of the bankrupt who is dealing with the land rather than the purchaser from him which is relevant.

(*f*) Clause 52.—Re-draft clause 52 as follows:—

52. (1)—as in clause 52 (1).

(2)—as in clause 52 (2).

(3)—as in clause 52 (3) down to "Registrar".

(4)—as in clause 52 (4) down to "registered proprietor".

(5) No trust or unregistered interest affecting any land so specified other than interests not requiring registration for their protection shall bind a purchaser upon a sale under any such writ judgment decree or order unless a caveat in respect of such trust or unregistered interest shall have been lodged in pursuance of the provisions of this Act before the service of the copy of such writ judgment decree or order but in the absence of a caveat all the estate and interest in the land as well of the judgment debtor as of any person entitled under any such trust or to any unregistered interest shall pass to the purchaser by virtue of a transfer under this section. For the purposes of this sub-section an interest which is the subject of an instrument lodged for registration shall not be deemed to be an unregistered interest by reason of such instrument not being registered.

(6) No instrument dealing with the land lodged with the Registrar after the time of service of such writ judgment decree or order or before the lodging of a transfer under this section shall be registered or be deemed to have been lodged for registration.

(7)—as in sub-clause (5).

(8)—as in sub-clause (6)

(9)—as in sub-clause (7).

The clause as drawn does not make it clear that a purchaser has protection against equities affecting the judgment debtor prior to such purchaser becoming registered. Further it is doubtful, in view of the specific provision in the clause relating to a purchaser for valuable consideration, whether the rights of such a purchaser would not prevail against the transferee from the Sheriff even after registration—*National Bank* v. *Morrow* 13 V.L.R. 2; *Rowe* v. *Equity Trustees* 21 V.L.R. 762.

A radical re-drafting of the former section 178 seems desirable if the objective of putting the purchaser from the Sheriff in the same position as the purchaser from a registered proprietor is to be achieved. Our re-draft, which is based on the corresponding section of the W.A. Act—see *Kerr* p. 310—is an attempt to achieve this.

(*g*) Clause 53—(3) Omit "apart from the operation of Part III.".

The omission of those words would make it clear that the title of an acquiring authority depended not on registration but on the relevant acquisition legislation.

(*h*) Clause 56.—After "damage" insert "by reason of the failure or delay of an acquiring authority to make application for registration as required by section 54 or to lodge notice of intention to acquire land compulsorily as required by section 57 or"

See paragraph 4 (*e*) of this report for explanation of this amendment.

(*i*) Clause 67 (2).—After "contained in the lease" add "and having reference to the subject matter thereof."

This would accord with the position of covenants running with the land under the General Law and see Property Law Act sections 141, 142.

(*j*) Clause 72 (3).—We consider that it would be useful to extend the scope of this sub-section to cover easements of drainage and party walls as well as rights-of-way.

(*k*) Clause 73 (2).—Add at end "and thereupon such easement in whole or in part (as the case may be) shall cease to affect the land."

As easements bind land apart from registration, the consequences of removing an easement from the register book should be expressed, not left to implication.

(*l*) Clause 77 (1), lines 5-6.—Omit "in good faith and having regard to the interests of the mortgagor grantor or other persons."

The rules of equity applicable to mortgagees' powers of sale, which are unaffected by the Act —see section 3 (1)—make the inclusion of these words unnecessary.

The Bill assumes that rules of equity will be applied where not inconsistent with the express provision of the Statute and accordingly, for the most part, is silent as to such rules. It seems anomalous and undesirable to make an exception of the particular case of the exercise of a mortgagee's power of sale.

(*m*) Clause 78 (1) (*a*).—For "by receiving" substitute "or".

Although the Bill follows the wording of the existing legislation, we consider that our amendment gives clearer effect to the real intention.

(*n*) Clause 79 (4).—After "mortgagor" add "or any person claiming through or under him subsequently to the mortgage."

These words, which appear in the corresponding section 162 of the 1928 Act, might possibly be deemed included by the general provisions of clause 4 (2), but it seems desirable to leave no room for argument.

(*o*) Clause 81 (1).—After "vested in him" add "as mortgagee".

This would appear to remove doubts whether this provision, which corresponds to section 156 of the 1928 Act, succeeds in assimilating the position of the Torrens first mortgagee to that of the legal mortgagee under the General Law.

(*p*) Clause 98 (*a*).—Omit "of way" down to "telephone services".

The inclusion of these words seems unnecessary and unduly restrictive.

(*q*) Clause 98 (*b*).—Omit "and other services".

It is thought that "*other services* to the allotment transferred as may be necessary for the reasonable enjoyment of the relevant part of the building" provides a dangerously vague test for implying grants of easements.

(*r*) Clause 110—

(1) (*d*) Add at end "or on the faith of any instrument lodged for registration."

It is suggested that a purchaser for value who in good faith and without negligence suffers loss through relying on an instrument lodged for registration but not yet registered has as strong a claim, on moral grounds, for indemnity out of the assurance fund as the purchaser relying on such an instrument after it happens to have been registered.

(*s*) Add after (1) the following new sub-section (2)—

"Where any amendment of the Register Book is made to cancel or remove the effect of a forged instrument any person who in good faith claims any estate or interest in the land or claims to be entitled freed from any encumbrance by virtue of the registration of such forged instrument shall be deemed to have been deprived of such estate or interest or to have become subject to such encumbrance by reason of such amendment and to have suffered loss accordingly."

The object of this amendment is to ensure that the rights to claim against the Fund given by Transfer of Land (Forgeries) Act—No. 4689—are preserved. As clause 110 now stands it would be doubtful whether an innocent purchaser who became registered upon a forged instrument would qualify for indemnity out of the fund on rectification of the register. He would have to establish that by reason of this rectification he had "sustained loss or damage"—*Gibbs* v. *Messer* and *Clements* v. *Ellis* would appear to establish that he had not thereby been deprived of any land, as registration of the forged instrument would not have conferred any interest on him. Unless the Bill defines "loss or damage" so as to cover his case—as Act No. 4689 did—it would certainly be open to argument that he could prove no loss or damage "whether by deprivation of land or otherwise". Our amendment is designed to clarify the position and to prescribe the measure of his loss.

Clause 116 (1).—Insert at the beginning—

"If upon the application of any owner or proprietor to have land brought under the operation of this Act or to have any dealing or transmission registered or recorded or to have any certificate of title foreclosure order or other document issued the Registrar refuses so to do or".

The insertion of these words which appear in the corresponding section 248 of the 1928 Act, in addition to the words now in clause 116, seems desirable as it is far from clear that the matters referred to would otherwise be covered, e.g., it is by no means clear that a refusal by the Registrar on grounds that seemed good to him to grant an application to bring land under the Act would amount to the refusal of any application "to have any act or duty done or performed which by this Act is required to be done or performed by the Registrar."

This procedure is such a useful one that we think there should be no room for doubt as to its availability in appropriate cases.

APPENDIX B.

COPY OF TRANSFER OF A SINGLE FLAT (LOT 1 ON A PLAN OF SUBDIVISION) EMBODYING CREATION OF EASEMENTS IN FAVOUR OF SUCH FLAT AND RESERVING EASEMENTS THEREOVER IN FAVOUR OF THE NINE OTHER FLATS (LOTS 2 TO 10 ON THE PLAN OF SUBDIVISION) IN THE BUILDING.

I, JOHN SMITH of Collins Street Melbourne Gentleman being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the encumbrances notified hereunder in consideration of the sum of Five thousand pounds paid to me by Thomas Brown of Bourke Street Melbourne Gentleman do hereby transfer to the said Thomas Brown (hereinafter called "the Transferee") all my estate and interest in all that piece of land being Lot One on Plan of Subdivision No. 20000 lodged in the Office of Titles and being part of Crown Portion One Parish of Prahran County of Bourke and being the land more particularly described in Certificate of Title Volume 6000 Folio 001 (hereinafter called "the dominant land") together with such rights of support over and from such of the lands being Lots 2 to 10 (both inclusive) on Plan of Subdivision No. 20000 lodged in the Office of Titles as stand in my name as the registered proprietor thereof (hereinafter called "the servient land") and every or any part thereof, as are necessary to ensure for the dominant land and the building erected thereon—the right to enjoy such facilities and protection in the nature of support for the benefit of the dominant land and the building erected thereon as have hitherto been enjoyed over or in respect of the servient land by reason of the dominant land and the servient land having been in common ownership and together (in common with all others entitled thereto) with full and free running and passage of water soil gas electricity and refrigeration through and along such parts of the main water and other pipes sewers drains tubes and wires leading to or from or serving the dominant land as pass through the servient land and together with the right at all reasonable times and with servants agents and workmen to enter upon the servient land or any part thereof to repair the said pipes sewers drains tubes and wires the transferee or other the registered proprietor or proprietors for the time being of the dominant land doing no unnecessary damage by or in the course of such entry repair maintenance reinstatement or renewal and making good all damage thereby or in the course thereof reserving unto myself and my transferees the registered proprietor or proprietors for the time being of the servient land or any part thereof (*a*) such rights of support for the servient land and the building erected thereon and any and every part thereof over and from the dominant land as are necessary to ensure for the servient land and any and every part thereof and the building erected thereon the right to enjoy such facilities and protection in the nature of support for the servient land or any and every part thereof and the building erected thereon as have hitherto been enjoyed over and in respect of the dominant land by reason of the dominant land and the servient land having been in common ownership (*b*) the full and free running and passage of water soil gas electricity and refrigeration through and along such parts of the main water and other pipes sewers drains tubes and wires leading to or from or serving the servient land or any part thereof as pass through the dominant land and (*c*) the right at all reasonable times and with servants agents or workmen to enter upon the dominant land for the purpose of repairing the same pipes sewers drains tubes and wires and transferee or other the registered proprietor or proprietors for the time being of the servient land doing no unnecessary damage by or in the course of such entry repair maintenance reinstatement or renewal and making good all damage done thereby or in the course thereof.

Dated the day of 19

Signed &c. &c.

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

1954

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VICTORIA

SUPPLEMENTARY REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

PROPOSALS CONTAINED IN THE

TRANSPORT REGULATION BILL

Ordered by the Legislative Council to be printed, 2nd December, 1954

By Authority.
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

12661/54.—D.—No. 5.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

THURSDAY, 25TH FEBRUARY, 1954.

8. 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.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

THURSDAY, 25TH FEBRUARY, 1954.

6. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Holloway, Mr. Mitchell, 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.

TUESDAY, 12TH OCTOBER, 1954

18. TRANSPORT REGULATION BILL.—Motion made, by leave, and question—That the proposals contained in the Transport Regulation Bill be referred to the Statute Law Revision Committee for examination and report (*Mr. Shepherd*)—put and agreed to.

WEDNESDAY, 17TH NOVEMBER, 1954.

2. TRANSPORT REGULATION BILL.—Motion made, by leave, and question—That the proposals contained in the Transport Regulation Bill be referred to the Statute Law Revision Committee for further examination and report (*Mr. Rylah*)—put and agreed to.

SUPPLEMENTARY 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 further considered the Transport Regulation Bill—a Bill to consolidate the Law relating to the Regulation of Transport—which was initiated and read a first time in the Legislative Assembly on the 29th September, 1954. On the 12th October, 1954, the debate on the second reading was adjourned and the Legislative Assembly referred the proposals contained in the Bill to the Statute Law Revision Committee for examination and report.

2. On 27th October, 1954, the Committee made a Report recommending that the Bill be proceeded with, subject to an amendment outlined in paragraph 4 of the Report (D. No. 3, 1954), and be passed into law during the present Session.

3. However, on 11th November, 1954, the Committee received a communication from Mr. A. Garran, Assistant Parliamentary Draftsman, in which he stated that, when giving evidence on the Transport Regulation Bill, he had informed the Committee that the *Transport Regulation (Compensation) Act* 1940 was spent and so was not consolidated but he had since learned that section 2 (4) (*b*) of that Act may still be required to have operative force.

4. The Legislative Assembly, on 7th November, 1954, referred the proposals contained in the Bill to the Statute Law Revision Committee for further examination and report.

5. Clause 2 of the Bill repeals *inter alia* the *Transport Regulation (Compensation) Act* 1940. That Act provided for the surrender of certain long distance hauliers' licences that were in force in 1940 and for payment of compensation therefor and in section 2 (4) (*b*) it was enacted that no commercial goods vehicle licence, except a licence "as of right", should be granted to any person in *re* any route, area, or purpose substantially similar to that of a licence so surrendered.

6. The Committee have examined the *Transport Regulation (Compensation) Act* 1940 and consider that, although the surrender of all licences affected by the Act has been completed and all claims for compensation dealt with, it is purely a matter of Government policy as to whether the prohibition contained in paragraph (*b*) of sub-section (4) of section 2 of that Act should be perpetuated.

7. The Committee therefore are of opinion that, unless it is decided to include in the present Bill a provision perpetuating the prohibition referred to, it cannot be regarded as a true consolidation.

Committee Room,
2nd December, 1954.

1955

VICTORIA

PROGRESS REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

AMENDMENTS OF THE STATUTE LAW FOR THE REMOVAL OF ANY ANOMALIES IN THE PROVISIONS OF DIVISION 2 OF PART VI. OF THE WATER ACT 1928, AS AMENDED, RELATING TO THE LIABILITY OF WATER AUTHORITIES TO MAKE COMPENSATION IN RESPECT OF INJURY LOSS OR DAMAGE CAUSED BY WORKS OF SUCH AUTHORITIES AND THE PROCEDURE FOR SETTLING DISPUTES IN RELATION THERETO

TOGETHER WITH

MINUTES OF EVIDENCE

AND

APPENDICES

Ordered by the Legislative Council to be printed, 19*th April,* 1955.

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W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

D.—No. 6—[2s. 9d.]—2924/55.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

THURSDAY, 25TH FEBRUARY, 1954.

8. 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.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

THURSDAY, 25TH FEBRUARY, 1954.

6. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question.—That Mr. Hollway, Mr. Mitchell, 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.

PROGRESS 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 Honorable the Attorney-General, at the request of the Honorable the Minister of Water Supply, by memorandum dated 22nd February, 1955, recommended to the Statute Law Revision Committee that they should examine and report upon and make recommendations for the removal of any anomalies in the provisions of Division 2 of Part VI. of the *Water Act* 1928, as amended, relating to the liability of Water Authorities to make compensation in respect of injury loss or damage caused by works of such Authorities and the procedure for settling disputes in relation thereto.

2. On 22nd February, 1955, the Committee adopted this recommendation and commenced their inquiries.

3. Evidence has been received from the following persons:—

Mr. L. R. East, C.B.E., Chairman, State Rivers and Water Supply Commission,

Mr. Andrew Garran, Parliamentary Draftsman,

Mr. R. M. Eggleston, Q.C., of Counsel, representing the Victorian Bar Council,

Mr. T. J. Tehan, Solicitor, of Kyabram, representing the Goulburn and Waranga Water Users' United League,

Mr. C. E. Newman, Solicitor, of Numurkah.

In addition, Mr. R. E. Harding, Senior Divisional Engineer of the State Rivers and Water Supply Commission, has assisted the Committee in their deliberations.

The Minutes of Evidence and Appendices to the present stage are appended to this Report.

4. On 23rd and 24th February, 1955, the Hon. F. M. Thomas, M.L.C., represented the Committee on a tour of inspection of flooding in Goulburn Valley irrigation districts. His report to the Committee is appended to this Report. (See Appendix B.)

5. It has become increasingly evident to the Committee in the course of their inquiries that the provisions under investigation are in need of very detailed examination which must of necessity be somewhat lengthy and involve the calling of many witnesses and the consideration of highly technical problems, both administrative and legal.

6. The Committee propose to seek the views of Honorable Members whose electorates include drainage areas and irrigation districts which have been subject to flooding, and to visit a limited number of irrigation districts for the purposes of taking evidence and making inspections.

7. The Committee have not yet completed their inquiries but are of opinion that a Progress Report should be submitted in order that the evidence already received can be made available for the information of Honorable Members.

Committee Room,
14th April, 1955.

Minutes of Evidence of Inquiry re Anomalies in the provisions of Division 2 of Part VI. of the *Water Act* 1928, as amended, relating to the liability of Water Authorities to make compensation in respect of injury, loss or damage caused by works of such Authorities and the procedure for settling disputes in relation thereto.

TUESDAY, 8TH MARCH, 1955.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon T. W. Brennan,	Mr. Hollway,
The Hon. F. M. Thomas.	Mr. Pettiona,
	Mr. Randles,
	Mr. R. T. White.

Mr. L. R. East, Chairman, and Mr. I. Meacham, Engineer, of the State Rivers and Water Supply Commission, were in attendance.

The Chairman.—On behalf of the Committee, I have much pleasure in welcoming Mr. East and Mr. Meacham to the deliberations of this Committee. The terms of reference of this inquiry are as follows:—

To examine and report upon and make recommendations for the removal of any anomalies in the provisions of Division 2 of Part VI. of the *Water Act* 1928, as amended, relating to the liability of Water Authorities to make compensation in respect of injury, loss or damage caused by works of such Authorities and the procedure for settling disputes in relation thereto.

Those terms of reference were suggested by the Minister of Water Supply, and doubtless Mr. East is quite conversant with the purpose of the inquiry. I now ask Mr. East to proceed with his submissions.

Mr. East.—When your Secretary informed me last week that I would be expected to appear before the Committee on this subject, I thought it would be best if I prepared a statement covering the ground leading to the reference to your Committee. I have therefore prepared such a statement, which I now submit.

Exhibit "A."—Compensation provisions of Water Acts in respect of injury, loss or damage caused by works of Water Authority.

I shall commence my evidence by reading, with your permission, Mr. Chairman, some extracts from the first part of the statement. Paragraph 1 sets out the terms of reference, which you have already read. Paragraph 2—

This reference has been made in accordance with an undertaking given to Parliament when certain provisions of a Bill to amend the Water Acts were being debated in the Legislative Assembly on 2nd December, 1954.

There, I refer to clause 11 of the 1954 Bill, as introduced in the Legislative Assembly. The provisions of this clause are set out in paragraph 3 of my statement. On page 2 of my statement, I proceed as follows:—

Referring to this clause, the Minister said, "Clause 11 provides that lands in irrigation areas classified in the irrigation register as swamp lands shall not be the subject of litigation for damage if occasionally flooded. It is entirely wrong that anyone owning lands clearly defined as swamp lands in an irrigation register should be able to sue the Commission for damages for such occasional flooding when these lands are nature's receptacles for surplus waters and would in many cases, but for the Commission drains and other works, be flooded every year. Often these natural swamp lands become highly productive portions of a man's farm, because in many years they receive the benefits of drainage and also of irrigation although not classified as irrigable."

Actually, these areas might be quite dry for long periods. The Commission sells extra water, when available, if it is required by the landowners—

I might add that landowners are adequately safeguarded against wrongful classification of any of their lands as swamp lands, in that the Water Acts provide for appeals against land classification to District Appeal Boards comprising representatives of the irrigators, the Department of Agriculture, and the Commission.

The Commission's representative is therefore in a minority and cannot dominate any decision of a District Appeal Board—

The clause also removes from section 260 of the Water Acts a provision that has unfairly hampered authorities under the Water Acts in their defence against claims for compensation for flood damage. This provision places on the Authority the onus of proving the negative case that the damage claimed for was not caused by the Authority's negligence; that is, in contesting the case, the Authority is faced from the outset with disproving the assumption of its guilt. Disproof is a formidable task when the charges to be met are of the most general kind, and it is a task that is not normally, under other laws, imposed upon a defendant. The principle of common law is that the onus of positive proof lies with the claimant.

This special provision in the Water Acts was inserted into an amending Water Bill in 1916, in a late stage of the Bill's passage through Parliament.

When that Bill was being debated in Parliament in 1916, abnormal floods occurred all over northern Victoria. At that time most of the members representing country electorates were fully engaged in the protection of their properties and also those of their constituents. That year was probably the wettest as far as flooding is concerned since 1870—

Its effect in making authorities under the Water Acts unduly vulnerable to claims for compensation for flood damage has been forcibly demonstrated in claims brought against the Commission in recent years for damages sustained by landholders during floods of exceptional magnitude. Irrigators in certain districts are becoming greatly concerned at the heavy payments that their districts have to carry to meet compensation awards, and at the prospect that such payments may be increased indefinitely many times in the event of further exceptional floods occurring while this provision of the Water Acts remains in force.

The same concern is felt by the Commission, which is understandably reluctant to undertake further comprehensive drainage schemes, particularly in irrigation districts, because of the difficult—and I may say unfair—position in which it is placed in regard to flood compensation claims. The present paradoxical position is that if the Commission carried out no drainage works at all, it cannot be held responsible for flooding that results from lack of drainage, whereas if it constructs drains bringing great benefits to all lands in a district, it makes itself liable to compensation claims when some of the lands normally benefited occasionally fail to receive benefit.

At this stage I should like to submit a plan of the Tongala-Stanhope district.

Exhibit "B."—Plan No. 5, Tongala–Stanhope irrigation district.

This plan shows in blue large areas of the Tongala irrigation district. The blue portions represent land that is and always has been subject to inundation at times of very heavy rain. Your Deputy Chairman saw some of this land during his inspection last week.

Mr. Brennan.—Are these areas low-lying swamp lands?

Mr. East.—Not exactly. The land slopes gradually northwards. It would include what were swamp lands.

Mr. White.—It includes the lower levels?

Mr. East.—It embraces large areas of flats. Unless water was lying on the surface, the average person would not know that it was low-lying land. It appears to be as flat as a cricket pitch, but it slopes gradually to the north, dropping about 1 foot in a mile. Many of the depressions might be half a mile wide and at times of heavy rain they would carry a few inches of water. The Commission has constructed relatively small excavations through some of the depressions so that in normal seasons the water from the irrigation lands on both sides can be drained off if it rains heavily, or rains even ordinarily. No attempt is made by the Commission to take off the excess water while these areas are concentrating the natural flood waters that accumulate after heavy and unprecedented storms.

This map indicates the general susceptibility of the country to natural inundation. The floods to which I refer are not of a dangerous character; a person could wade through them anywhere and, in many cases, sheep could walk through them in any direction. Speaking of the River Murray and the Goulburn river, the flow in a drought year is about one-eleventh of the flow in a flood year. Although the average annual rainfall might be 18 inches, there could be a concentrated fall of 12 inches in three days. The lands indicated in this map were formed over a period of millions of years by the deposition of silt brought from higher land by the flow of water.

The area within which the great Murray Valley district has been developed over the past fifteen years is roughly 1,000 square miles, lying between Yarrawonga, Numurkah, Nathalia and the River Murray. In that region 270,000 acres have been placed within an irrigation district and many hundreds of miles of irrigation channels have been constructed to bring water on to the land. The water available is sufficient to irrigate little more than one-quarter of the total area of the land. Toward the end of the 1939-45 war, the Government decided to establish soldier settlement in this district and 60,000 acres were selected and acquired; it has been developed for intensive irrigation by the State Rivers and Water Supply Commission on behalf of the Soldier Settlement Commission.

Mr. White.—Is that settlement at Cobram?

Mr. East.—It is near Cobram. That soldier settlement area has been given additional water supplies so that there is now sufficient water available to irrigate every suitable acre. Most of the farms are used for dairying but some have been developed as orchards. With intensification of development, considerably more damage can be caused than formerly if flooding occurs. A wise man, if he has available only sufficient water for the intensive irrigation of only one-quarter of his property, will concentrate on the higher portions of it, because the irrigation channels traverse those parts; if he has available sufficient water for the development of 100 per cent. of his land, he will naturally develop the lower portions as well. Consequently, drainage becomes a matter of greater importance as irrigation is developed more intensively.

This country is similar to that in the Tongala district except that, in the Murray Valley areas, hundreds of miles of shallow depressions run from the east toward the west. The Commission has made contour surveys which reveal differences as small as 3 inches in a mile. Such depressions, however, constitute serious hazards because a 3-in. depth of water lying on a property for any length of time is sufficient to kill pasture. It is necessary to provide for the removal of excess water during the summer, which is the irrigation period. When heavy rain comes on land which has been saturated by recent irrigation, the rain does not soak into the soil; it lies in the shallow depressions and causes damage. If the Commission did nothing whatever concerning drainage, it could not be charged legally with causing damage; it could only be accused, politically, of not doing what the public and Parliament thought it ought to do.

The Chairman.—Have any problems arisen from the irrigation channels acting as banks to retain water and thus aggravate flooding?

Mr. East.—Yes, but not in the Murray Valley district. In that region channels have been constructed by the State Rivers and Water Supply Commission on the most modern lines, based on experience gained over a period of 50 years. Where these channels cross big depressions, they are taken in subways or tubes—some are up to 7 feet in diameter—for a distance of 7 or 8 chains. The flood waters flow over the top and the ground is undisturbed.

Irrigation work in Victoria commenced as long ago as 1887, following the passage of Deakin's famous Irrigation Act in 1886. In those early days no one had accurate knowledge of climatic conditions and the intensity of rainfall; moreover, proper contour maps were not available. Irrigation trusts constructed 4,000 or 5,000 miles of channels, large and small, many of which were later found to be obstructions to the flow of water. That condition did not matter much in the early days because land was held in thousands-of-acre blocks and the artificially created swamps were regarded as an advantage rather than a disadvantage, in the same way as graziers in the Western District even now regard swamps as an advantage in as much as they provide stock feed in times of drought.

These blockages were attended to by the trusts from time to time, but eventually, in 1906, the Commission took over the responsibilities, including the structures, of all the trusts, which were abolished. The Commission is using many of those channels now. From time to time, enlarged water-ways were provided by the Commission, but the inadequacy of the cross-drainage provision is disclosed in many places where exceptionally heavy rain, not previously experienced, occurs in particular localities. In other words, every super rain concentrated in a particular place shows up some of these weaknesses.

The Chairman.—Apart from getting the water away from lands that are irrigated by the Commission, and for which channels have been provided, another problem arises where old irrigation channels, not constructed by the Commission, are in fact keeping water on land?

Mr. East.—The run-off is delayed.

The Chairman.—That would have occurred even if the channels had not been constructed?

Mr. East.—There are cases like that; it is not general because there are probably 10,000 subways under channels in various parts of the State and perhaps a few score would come into the category of requiring enlargement.

Mr. Brennan.—Have some of the old levees and banks lost the significance for which they were originally intended?

Mr. East.—A few of them. I am not speaking of levees and banks at this stage, but only of channels. The question of levees introduces a difficult problem, with which I shall deal later.

Mr. Brennan.—Closer settlement has caused the change?

Mr. East.—Yes.

Mr. White.—Do most of the complaints come from owners of non-irrigable land?

Mr. East.—No. The non-irrigable land usually cannot be damaged by more water; it usually benefits.

Mr. White.—The complaints come from holders of intensely irrigated land?

Mr. East.—Yes.

Mr. Pettiona.—Those lands are getting plenty of water practically all the time?

Mr. East.—They are receiving sufficient water to enable production to be greatly increased; therefore the damage can be that much greater. Later I shall make special reference to people who have highly developed what were previously swamp lands and pockets—people have even planted orchards in such places. I hope that members of the Committee will have an opportunity of inspecting some of these sites. Claims have been made against the Commission because of the submergence of such orchards and the dying of the trees, when there was not the slightest doubt that the areas would have been under water every year if it had not been for the existence of our works.

Mr. Thomas.—For how long did the water remain on the orchard where the claimant was successful?

Mr. East.—I cannot say. Probably the best way to ascertain that information is to read the Williamson case, which I have included as an exhibit.

Mr. White.—Do complaints come only from highly developed areas or are they received from irrigation areas generally?

Mr. East.—Nearly all our irrigation areas are highly developed. We have received complaints from places such as Werribee, Tongala and Shepparton in recent years.

Mr. White.—Are not the allotments around Cobram and those areas mentioned comparatively small?

Mr. East.—We have had no contested claims from those districts for two reasons. Firstly, our irrigation works are constructed with the benefit of 50 years' experience behind us. In cases where a channel has been broken—that has occurred, but was not caused by floods—we have paid compensation. If we were satisfied that the damage was caused by our works, we did not argue about negligence but paid the claim. There have been a dozen or more such cases in the Murray Valley district. New earthworks are not consolidated. When you bring the water in it can find small crevices—such as yabbie holes—flood the bank and then pasture or orchard lands. In such cases, we have paid compensation. That aspect hardly comes within the Committee's terms of reference in this inquiry because the claims were not contested. The Commission believes in paying in cases where, in our opinion, we caused the damage. On the other hand, we strongly object to paying in cases where we believe the damage would have occurred anyhow. We have not built channels which have blocked watercourses. We have allowed for the free passage of natural flood waters. Therefore, people could not blame us because we had not constructed any drains at all.

Mr. White.—Are some of the areas from which complaints have been received old irrigation areas?

Mr. East.—Yes, areas which have been irrigated since 1890 but which have been much more highly developed during the last 30 years.

Mr. White.—But they are not nearly as highly developed as the Cobram area, are they?

Mr. East.—They are. For example, Tongala is one of the centres from which claims are received. My statement of evidence continues:

Objections raised in the House to sub-section (1) of clause 11 led to conferences between the Minister and the Leader of the Country Party, and the honorable members for Malvern, Swan Hill and Rodney, at which I explained the difficulties with which Water Authorities were faced because of the state of the law in respect to compensation for drainage.

When the Bill was again being considered in Committee to deal with clause 11, the Minister, after thanking the honorable members referred to for their co-operation in an endeavour to evolve an amendment that would remove the major difficulties raised by the Opposition, moved—

That sub-clause (1) be omitted with a view of inserting the following sub-clauses:—

"( ) In section two hundred and sixty of the principal Act for the words commencing 'but in all cases' to the end of the section there shall be substituted the words 'but the onus of proof that any flooding from any water supply works of an Authority was not due to any negligent act or omission of the Authority shall rest with the Authority'."

( ) At the end of section two hundred and sixty of the principal Act there shall be inserted the following sub-section:—

"(2) Notwithstanding anything in the last preceding sub-section no Authority shall in any case be liable to make any compensation in respect of any injury, loss or damage caused by—

(*a*) flooding by water from drainage works of the Authority of; or

(*b*) water in any way flowing from drainage works of the Authority on to—

lands classified in the register of any irrigation and water supply district as swamp lands."

( ) In section two hundred and sixty-one of the principal Act as amended by any Act for the words "six months after the occurrence of the injury complained of" there shall be substituted the words "two years after the giving of the notice aforesaid."

( ) In section two hundred and sixty-three of the principal Act as amended by any Act the words "No compensation shall be awarded save in respect of some item set forth in the notice in writing stating the nature of the injury complained of furnished to the Authority as hereinbefore provided" shall be repealed.

He said—

Members are aware that this responsibility for damage caused by flooding is a complex matter. In view of the undertaking I gave to Opposition members who conferred with me, I should like to place certain statements on record. There has been much discussion on the question of the onus of proof. Under the present law, if the Commission constructs any drain along a natural course of flood water, it places itself in the impossible position of trying to disprove negligence in the event of flooding which will inevitably occur at times after heavy rain. If the Commission does not construct any drainage works it is, of course, free from liability. The Commission is anxious, as is the Government, that major drainage works shall be undertaken in the Murray Valley, in the Nambrok-Denison soldier settlement area, and in other parts of the State. Under the present unsatisfactory state of the law, however, those works cannot be undertaken.

As I explained when I was delivering my second-reading speech, clause 11 removes from section 260 of the Water Acts a special provision which was inserted into an amending Water Bill in 1916, which makes authorities under the Water Acts particularly vulnerable to claims for compensation on account of flood damage. Occurrences since 1916, particularly in recent awards, have indicated that the views expressed by members who criticized the amendment made in 1916 were soundly

based, and what was then feared has actually occurred. Recent decisions in connexion with claims for compensation have indicated the impracticability of a water authority satisfying an arbitrator that it had not been negligent in respect of flooding from natural watercourses along which drainage works had been constructed.

It was agreed in the discussions with representatives of the Opposition that the repeal of the onus of proof provision in the Water Act should be limited to drainage works, and that is the purpose of the amendment now before the Committee. The amendment further limits claims in respect of flooding to swamp lands.

I might say that if an irrigation channel bursts and floods some of the swamp land, the Commission does not ask to be relieved of responsibility.

The Chairman.—Although the original clause of the Bill would have provided that protection.

Mr. East.—The Minister's statement continues—

As originally provided, it would have given an exemption whether the water came from irrigation or from drainage works. The amendment also overcomes other difficulties raised during the discussions, in that it removes altogether the present provisions of the principal Act limiting compensation to items set forth in the original notice of intention to claim. Such notice will then have to state in general terms the nature of the injury. It will be sufficient, therefore, for a claimant to forward notice that he intended to claim for injury resulting from flooding of his property, simply giving sufficient identification of the land in question.

The relevance of that statement is to be found in the arbitrator's award in the case of *Williamson* v. *The State Rivers and Water Supply Commission.* I propose now to submit a number of documents relating to that case and also to the case of Armstrong and the Commission.

Exhibit "C"—

1. The *Argus* Law Report, 1952, containing Mr. Justice Sholl's judgment in the case of *Armstrong* v. *The State Rivers and Water Supply Commission.*

2. Award of Mr. Justice Sholl in the case of *Williamson* v. *The State Rivers and Water Supply Commission.*

3. Extracts from *Hansard* reports (October and November, 1916, Volume 144) of debate on Water Bill.

The Williamson case—of which a summary is given in Appendix 3 on page 35 of my prepared statement—resulted in an award which was in the form of a special case for the opinion of the Supreme Court. Regarding most of the matter for reference to the Supreme Court, the Commission was of the opinion that if it had won the dispute it would have done so, not on moral right, but on technical grounds. Of course, Counsel for the Commission had the task of defending the Commission in a case based on a very difficult law, and naturally on his side he used all the technicalities of the law.

After having considered the facts in both the Williamson and the Armstrong cases, the Minister of Water Supply was satisfied that certain amendments of the Water Act were desirable, and for that reason the amending Bill was introduced to remove the possibilities of a claimant failing on technical points.

The Chairman.—Or of a claimant's case being defeated by technical defects in the notice given in respect of the claim.

Mr. East.—That is so. The alterations included in the amending Bill aimed at clarifying that point, but whether the amending measure does that sufficiently is a matter for consideration by the Committee.

The second last paragraph of my statement (page 4) reads as follows:—

The Commission has given me an undertaking that, pending a comprehensive review of the provisions of the Water Acts in regard to flooding by the Statute Law Revision Committee—to which I shall refer later—and consideration by Parliament of the recommendations of that committee, the Commission will not have recourse to possible technical inadequacy of any such notices that may be received after the passage of this Bill, provided they are received within the statutory period of 30 days.

All that we will require is a brief notice from, say, Bill Smith to the effect that he intends to claim against the Commission on account of the flooding of his land in the Parish of Woop-woop.

Mr. Thomas.—You do not want a notice in detail?

Mr. East.—No. It must be remembered that the Commission has one district officer in charge of a thousand square miles of land, in which there may be 10,000 possible points at which trouble could arise. A flood might occur to-day, and a week later it might have disappeared and there would then be no evidence to indicate where the water came from. There would also be little evidence as to the area of land on which the water had been lying. The Commission could receive claims about which there would be no remaining evidence if the claim were lodged two months after the flooding took place. The lodging of a claim one month after the flooding would be late enough. Of course, a landowner may not be able to lodge his claim while the flood was in course.

Mr. Thomas.—You cannot estimate the damage?

Mr. East.—We do not seek to do so.

The Chairman.—You desire to allow the person concerned a reasonable time in which to give notice of his intention to claim for damage due to flooding so that you will have an opportunity to see the property and to collect evidence?

Mr. East.—Yes, such evidence as may be available. Parliament recently extended the period in which action had to be taken from six months to two years. That was done because it was ascertained that in some instances the damage caused was not evident in six months; trees take longer than that period to die. I shall now read from my statement—

No one wants to protect statutory Authorities from liability in damages when damage which would not otherwise occur results from their operations. An Authority, however, should not be made to pay compensation for damages which would have occurred even without any contribution of flooding from the works of the Authority. Altogether apart from the onus of proof, there are other matters such as, "What is negligence in connexion with the design of works to convey water?" which require clarification, and with other members I am of the opinion that a comprehensive revision of the relevant sections of the principal Act is desirable.

The Committee adjourned.

WEDNESDAY, 9TH MARCH, 1955.

Members present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. F. M. Thomas.	Mr. Pettiona,
	Mr. Randles,
	Mr. R. T. White.

Mr. L. R. East, Chairman of the State Rivers and Water Supply Commission, and Mr. I. Meacham, Engineer, were in attendance.

The Chairman.—At the conclusion of our first meeting, yesterday, we had reached the end of paragraph 7, page 5, of Mr. East's statement. I think Mr. East is now ready to deal with the historical aspect of the subject.

Mr. East.—Paragraph 8, relating to the historical aspect of the legislation, is important, because there is considerable doubt as to how certain provisions of the Water Act got into the legislation, and why. However, we have been unable to ascertain why particular provisions were originally introduced in the water legislation in 1886. The provisions to which I shall refer in Deakin's famous irrigation Act each contained a far-reaching principle. The section which appears in paragraph 8 of my statement was apparently not even debated at the time the Act was passed. It was not even mentioned in his speech. Apparently, it was taken as part of the machinery of the legislation, and it is possible that it was taken holus-bolus from some Californian or other American State legislation, which Deakin probably had studied during his term as Chairman of the Royal Commission. I shall quote section 104 of the *Water Conservation Act* 1883, No. 778—

> The drainage of surplus waters artificially supplied to any area under this Act through adjoining private or Crown lands and across or along roadways shall be permitted without compensation as if such waters were deposited upon such areas by natural rainfall, provided that such waters shall first be conducted into some natural channel or drainage course and that compensation shall be made by the Waterworks or Irrigation Trust Company or person who shall have caused such drainage to the owners and occupiers of any lands for any damage which they may sustain through the exercise of the powers conferred by this section.

Of course, that was before Deakin's time. At the time this Act was put into effect no irrigation was contemplated, and the flows of water referred to in the provision were flows that were being conveyed to provide domestic and stock supplies, for cattle, sheep and, of course, persons, through the broad acres of the rural lands of Victoria.

Mr. White.—What authority was doing that work?

Mr. East.—The Water Conservation Acts provided for the setting up for the first time of trusts and it authorized them—at their own cost and without Government subsidy—to construct channels for domestic and stock purposes.

Mr. Brennan.—Were they municipal bodies?

Mr. East.—Not quite. It was the first setting up of local authorities as distinct from municipal councils. They were variations of the local governing bodies. Probably the councils would initiate the works.

Mr. Hollway.—They would have been bodies of the type of the Ballarat Water Commission?

Mr. East.—Yes, but in a smaller way.

Mr. White.—These were the first authorities set up for the purpose?

Mr. East.—That is so. The Western Wimmera Waterworks Trust and the Wimmera United Waterworks Trust were among the first bodies to undertake any work under the provisions of the Act. Those bodies built the Wartook reservoir and some channels in the Horsham district. The 1886 Irrigation Act, which was the first epoch-making legislation in Australia dealing with irrigation and water supply, modified the section of the 1883 Act, which I have just quoted, by deleting provision for compensation for damage. Why that was done I do not know. The 1886 Act also introduced the other sections, which form the main subject of this inquiry.

The Chairman.—Section 89 of the 1886 Act dealt with drainage only.

Mr. East.—It was not drainage as we know it to-day. At that time drainage was being regarded in relation to the flow of water through the channels for domestic and stock supplies. Many of those channels were natural watercourses such as the Yarriambac creek, which runs through Warracknabeal.

Mr. Brennan.—Section 89 states that " drainage or surplus waters artificially supplied shall be permitted without compensation either from any Trust or the Board." That appears to be a direct negative of the other provision.

Mr. East.—It leaves out the question of compensation, but the other section to which I shall refer shortly restores the right to compensation.

Mr. Brennan.—It would appear that within the three-year period between 1883 and 1886 there were claims for compensation.

Mr. East.—Not necessarily, because the provision relating to the payment of compensation was not taken out of the legislation but from that particular section.

Mr. Randles.—Section 104 provided that the draining of surplus waters artificially supplied through adjoining private or Crown lands or across or along roadways was permitted without compensation, but section 89 adds a proviso that such waters shall first be conducted into some natural channel or drainage course. Therefore it really restored the compensation provision——

Mr. East.—Are you interpreting the Act, or making an affirmation?

Mr. Randles.—I am trying to analyse the differences that occurred during that period.

Mr. East.—I do not think anything happened except that during that period a great deal more thought was given to the problems connected with water supply and drainage and the legislation was clarified. The later Act clarified many obscure points that had been attacked only in a very tentative way prior to 1886. Paragraph (*b*) on page 6 reads—

> The Irrigation Act in a separate part—Part XIII.—introduced specific general provisions in regard to liability of Trusts——

At that time there was no Water Commission—

—to make compensation for injury to riparian rights and by flooding.

I might mention that the question of riparian rights was the crux of the whole Irrigation Act. The legislation was fought very bitterly by people who contended that the confiscation of the riparian rights of the people was outrageous. They said that the next thing the Government would do would be to take their land from them.

Mr. Pettiona.—What Board is referred to in Section 89?

Mr. East.—The Board of Land and Works. That Board is very well protected against claims for compensation. There was no intention to make waterworks trusts immune in the same way as the Crown is immune. Section 212, which was introduced by Deakin, laid down a new basis for claims for injury. It is in the following terms:—

> Notwithstanding anything hereinbefore contained, from and after the passing of this Act no action claim or proceeding whatsoever shall be maintainable except as hereinafter provided against any Trust or against the Board or against any servants or agents of or contractors under any Trust or the Board for or in respect of any of the following matters (that is to say):—
>
> (*a*) Any injury loss or damage caused by any violation or infringement by such Trust or by the Board their servants agents or contractors of any riparian or other rights to or easements over any water constantly or intermittingly flowing in or through any place whatsoever;

(b) Any injury loss or damage to property caused by flooding or by water in any way sent on to such property by any act of any Trust or of the Board their servants agents or contractors.

I might state that in Victoria there has never been a claim under riparian rights. I now tender an exhibit containing an extract from evidence presented to the Public Works Committee.

Exhibit "D."—Booklet entitled "Victorian Water Law—Riparian Rights" by Lewis R. East, M.C.E., M.I.C.E., M.ASCE., M.I.E. Aust., Chairman State Rivers and Water Supply Commission.

From this exhibit it will be observed that rights to the use of water were vested in the Crown and, following the passing of the 1886 and 1905 legislation, nothing was left to the private individual, except rights that may have existed before 1886. The 1886 Act provided that any such rights could be the subject of claims within a certain period but actually no claims were received. It is interesting to note that although there has been no litigation in Australia concerning riparian rights, millions of dollars have been expended in the United States of America in such litigation.

Mr. Brennan.—Do riparian rights refer to the rights of the individual?

Mr. East.—They relate to the right to water of a person whose property is actually contiguous to water. The 1886 and 1905 legislation removed the rights of landowners not only to water that flowed past their properties but also to that which flowed over it. In other words, although a person might have a title to a property through which a river flowed, he would not actually own the river. He would have a limited right—specified in the Water Acts—to sufficient water for drinking purposes but not for irrigation. Without the abolition of riparian rights, irrigation could not have been practised in Australia because immediately a person commenced to divert water on to his property an injunction to restrain him from doing so could be taken out by a landowner downstream.

Mr. White.—Could not a person install a pump, say, for the purpose of spray irrigating lucerne?

Mr. East.—He could not lawfully do so without first obtaining a permit or licence.

Mr. Randles.—Before the enactment of legislation abolishing riparian rights all that the landholder possessed was common law rights?

Mr. East.—Yes. Every person then had the right to a flow of water unmarred in quality and quantity.

Mr. White.—I take it that since the enactment of the 1886 legislation, all rights over streams have been vested in the Crown.

Mr. East.—The right to use and control the streams is vested in the Crown. It has not been held that the water actually belongs to the Crown; there is a difficult legal problem involved. I think the relevant provision is to the effect that the right to use the flow shall rest with the Crown. I might cite as an analogous case that although I possess a freehold title to the land on which my home is built, I do not actually own the land, but no one else has rights superior to mine.

Mr. Randles.—In effect, the Crown controls not only the water but also the land over which the water flows?

Mr. East.—Bed and banks are vested in the Crown. That is a far-reaching principle, but it has never led to trouble.

Mr. White.—Is it permissible for a man to build a dam on his own property?

Mr. East.—Yes, the position is clearly set out in the Water Acts.

Mr. Hollway.—Does not the decision depend on whether or not the area is an irrigation one?

Mr. East.—A person may not construct a dam across a stream on his own property.

Mr. White.—Irrigation is not confined nowadays to what are termed irrigation areas. Spray irrigation is becoming extremely important in many areas that are not regarded as irrigation areas. The main requirement is to obtain a reservoir of water and in some instances it is necessary to sink a bore. I take it that there is no power to control the use of underground water.

Mr. East.—That is so. Nevertheless, there is pressure in all parts of Australia to have the control of underground water vested in the Crown. That condition obtains in both Queensland and New South Wales, but in Victoria there is no such control at present.

The question asked by Mr. White is relevant, because one of the sections to which reference has been made—the Committee might decide that it should be abolished—deals with the question of rights in water. Sub-section (2) of section 4 of the Water Act provides the answer; it reads—

This section shall not operate so as to prevent any person from draining any land or making any dam or tank upon land of which he is the owner.

That means that, generally speaking, a person can make a dam or tank on land of which he is the owner, but if there is a watercourse through the land he is in difficulty, because the proviso to sub-section (2) reads—

Provided that the flow of water in any river creek stream or watercourse or into and out of any lake lagoon swamp or marsh is not thereby sensibly diminished.

If a person constructed a large excavated tank on his property in a depression that was not a creek, we would take no notice of it. In fact, we would advise him how to build it. If there were a stream through the property, the landowner would have to apply for a permit, and we would grant it under section 12 of the Water Act, which provides that the Commission may in the name of the Crown grant to the owner or occupier of any land permission, subject to such conditions as the Commission thinks fit, to carry out works, or for the construction of a weir or dam in such river, creek, stream or watercourse. The Commission makes special provisions about such dams or weirs so that at times of low flow, the flow out must equal the flow in. We experience great difficulty in that regard, particularly in the Macedon and Warburton areas where there are small creeks and during the summer time the demand on such creeks is more than they can supply. We have to control, somewhat rigidly, the amount that individuals divert from the creeks. A measuring weir is placed upstream of the storage and another downstream of the storage, and only as much water as comes in is allowed to flow out. Frequently there is no water coming into a storage, and then persons below the storage complain. The answer such persons receive is that the water was stored during a period of surplus water and the Commission will not direct the person who stored that water to release it.

In my opinion, that portion of the section dealing with rights in water can be dispensed with, not that we object to it, but it does not matter. Anyone reading section 212 would consider that it did not matter what was done in infringing riparian rights or damage to property caused by flooding as no compensation would have to be paid, but the next section

immediately indicates that payment is to be made in certain circumstances. Section 213 of the 1886 Act provided—

Notwithstanding anything in the last preceding section contained, any Trust or the Board shall be liable to make compensation, subject to the conditions and limitations hereinafter in this Part contained, to any person for any injury loss or damage caused by any violation or infringement by such Trust or by the Board or the servants agents or contractors of either of any riparian or other rights to or easements over any water constantly or intermittingly flowing in or through any place whatsoever or by flooding or by water in any way sent on to property by any act of any Trust or of the Board or the servants agents or contractors of either, if such injury loss or damage be such as would but for this Part have been a good cause of action to such person against such Trust or against the Board or against the servants agents or contractors of either.

Mr. Thomas.—That is practically the same as the present provision.

Mr. East.—That is so.

Mr. White.—Is not one a contradiction of the other?

Mr. East.—The first section protects; the second one removes the protection. It was done deliberately.

Mr. Brennan.—Is the effect of this section to restore the common law right of a landowner to compensation for flooding?

Mr. East.—I suggest that question might best be directed to legal witnesses at a later stage in the inquiry. My statement of evidence continues—

Section 214.—No Trust shall nor shall the Board be liable to make any compensation under this Part in respect of any injury to any riparian or other rights to or easements over any water constantly or intermittingly flowing unless a notice in writing stating the nature and extent of the injury complained of has been furnished to the Trust or to the Board (as the case may be) within two years after the Trust or the Board has taken the steps or done the thing in respect of which such notice is given, and unless after giving such notice the person claiming compensation proceed without unreasonable delay to obtain such compensation in the manner hereinafter provided.

Section 215.—Where any claim is made by any person under this Part against any Trust or the Board and such person and such Trust or the Board (as the case may be) do not agree on the questions raised by such claim, or where any claim for compensation is directed by this or any other Act or by any regulations made thereunder to be settled under this Part, the questions whether any or what compensation shall be made to such person shall be determined by some police magistrate unless the compensation claimed exceed Two hundred pounds when such claim shall be determined upon by an arbitrator as hereinafter provided.

That is the introduction of the arbitration principle which, in our opinion, is of the greatest importance to the claimant. I need not refer in detail to sections 216 to 226 and 228, but section 227 provided for the reduction of claims to the extent of the benefit received by the lands affected as a result of works of the Authority against whom the claim is made. The following sub-sections are worthy of note:—

Section 227.—(3) There shall be considered in reduction of all claims for compensation whether by reason of the execution of any works by the Trust against which any claim is made or by the Board any and what enhancement in value of any property of the claimant wherever situated has been directly or indirectly caused and whether any or what other immediate or proximate benefit has been gained by or become available to such claimant by reason of the execution of such works or of any other works by the same Trust or by the Board under this Act.

(4) The measure of damages shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing and shall not include remote indirect or speculative damages.

(5) In any case where the injury complained of may appear to be of a permanent or continuing character or likely to be repeated a sum may be awarded which the police magistrate or arbitrator or Judge may declare to be a compensation for all possible future repetitions of such injury as well as for the injury already done, and after such award no further compensation shall be made to any person whatsoever in respect of any future repetitions of such injury.

Sub-section (5) of section 227 indicates that a compensation may be a lump sum to cover all future injury. For example, if a property was affected by submergence as a result of the works of the Authority, the arbitrator could award £10 per acre as a lump sum to cover the recurring injury year after year. It is like a flood easement. On page 8 my statement continues—

Water Act 1905, No. 2016.—The Water Act provided for the constitution of a new corporate body—the State Rivers and Water Supply Commission—to take over the functions of the Irrigation Trusts and it was given certain other powers and duties.

See Sections 234-240 which carried forward substantially unchanged the provisions of the *Irrigation Act* 1886 and an intermediate *Water Act* 1890, No. 1156, which was a consolidation of relevant legislation from 1868 to 1889 listed in a Schedule to that Act.

The 1905 Act made these provisions apply to the Commission.

Water Act 1915, No. 2747, was a consolidation of the *Water Act* 1905 and amending legislation between 1906 and 1912 including the *Water Act* 1909, No. 2226, which provided for Drainage Districts, and the Flood Protection Acts of 1911 and 1912, Nos. 2345 and 2359, which became subdivisions 3 and 4 of Part III., Division 1.

At this stage specific provision was made for the first time for drainage and flood protection. Prior to that the only flood protection work carried out by a Trust was that which was performed under a subterfuge at Carrum, a permanent swamp. A waterworks trust handled the problem under the legislation which provided for trusts to supply water. Ninety per cent. of the expenditure of the trust was for flood protection and drainage works and 10 per cent. was devoted to the construction of small ditches to convey water through the area in summer time, as a face-saving measure. That is still done.

Mr. White.—Was there any irrigation prior to the 1905 Act?

Mr. East.—Yes. Under the 1886 Act 90 irrigation areas were constituted apart from the First Mildura Irrigation Trust which was set up under special legislation. The 1905 Act abolished all trusts except the Mildura one. They were bankrupt.

Mr. White.—Were there any drainage problems prior to this?

Mr. East.—Not on irrigated lands, because there was no intensive irrigation at that time. What farmers then called irrigation would be regarded as flooding to-day. The irrigation envisaged by the 1886 Act did not develop successfully because a farmer who has not been an irrigator does not readily become one and it is left to the next generation to develop irrigation. Ordinary farming is more leisurely than the work carried out by an irrigator, who is really a landed labourer, though he may be wealthy. He must be on the job many times a day to turn water on and off and so on. In 1886 there were very few farmers who were prepared to change over to working with their hands for a much greater percentage of their time.

When the seasons were normal, no landowners used any water, but when droughts occurred they all wanted it, and there was not enough water to supply all needs. There was no revenue from the supply of water during normal seasons because the landowners would not use it. The Acts of 1905 and 1909 compelled property owners to take and pay for water.

The principle was introduced by Elwood Meade. As late as 1914, it was stated on public platforms that Australia had imported many pests, including the rabbit, the sparrow, the blackberry, and also Elwood Meade, which was the worst of them all. The man who made that statement was a big landowner, with thousands of acres. Every year, he received a bill for some hundreds of pounds for the supply of water, which he would not use. Nobody takes that view to-day. The attitude is in the reverse direction; everybody wants more and more water. The value of irrigation has been spectacularly proved over and over again. However, objections to the supply of water have been made as late as 1935. In 1936, the Royal Commission on Irrigation, when sitting at Maffra, received a great deal of evidence from owners who said that irrigation should never have been brought to Gippsland. That happened after the flood year of 1935. A number of prominent public men are recorded as having vilified the then Chairman of the State Rivers and Water Supply Commission, Mr. Catanach, for having forced irrigation on them. Within seven or eight years, landowners were proclaiming loudly that the Commission was not supplying water fast enough.

Mr. White.—The same complaints were made only six or seven years ago during the inquiry on the enlargement of the Eildon Weir.

Mr. East.—On page 8, I refer to the Water Act of 1916, No. 2852. The provisions of the Water Acts were amended as follows:—

Section 6.—In section two hundred and sixty of the principal Act for the words from "by flooding" to the end of the section there shall be substituted the words "by intentional or negligent flooding or by water in any way sent on to property by any negligent act or omission of the Authority or its servants agents or contractors but in all cases the onus of proof that such flooding was not intentional or due to negligence or any negligent act or omission of the Authority or its servants agents or contractors shall rest with the Authority."

The Chairman.—Can we take it that section 260 of the 1916 Act was the equivalent of section 213 of the 1886 Act?

Mr. East.—Substantially. I refer now to page 33 of my statement on which is shown a summary of the case of *Groutch* v. *State Rivers and Water Supply Commission* 1912-1914. I might mention, however, that the summary was not prepared by a legal authority. It reads as follows:—

The Commission had constructed on and through certain land adjoining the Goulburn river a large channel terminated at each end by the said river, for the purpose of conveying flood waters more directly from one section of it to another. Levee banks were then erected on each side of the channel.

On the 22nd September, 1912, flood waters from the Goulburn river made a breach in the levee bank and the land of the claimant was flooded. Compensation was claimed for damage allegedly caused by flooding.

Judge Wasley was appointed as an arbitrator on the 8th April, 1913. He found in his judgment of the 10th April, 1913, that negligence had not been proved and the Commission was only liable where it was proved negligent.

At the request of the claimant a special case was stated for the opinion of the Supreme Court to determine whether negligence in the construction of the work of the Commission had to be proved by the claimant.

The Court decided on the 10th October, 1913, that negligence was not a necessary part of the claimant's case, and if she suffered damage by flood waters prima facie she was entitled to compensation.

It was not necessary to prove negligence. Section 235 was held to confer a right to compensation in all cases in which a claim could be made at common law.

The Chairman.—I take it that section 213 of the 1886 Act has now become section 235 of the 1905 Act?

Mr. East.—Yes. The summary continues—

The Arbitrator on the 30th July, 1914, then, after further evidence called on behalf of the Commission, stated that the claim was extravagant and owing to the long adjournment of the case the Commission was able to prove the grass had not been injured. He further stated he was not satisfied that the damage (if any) was caused by the construction of the channel by the Commission, as it seemed clear from the evidence that the land of the claimant would have been flooded owing to the height of the flood.

His Honour held that the claimant had not proved any damage as the result of an act of the Commission. The claim therefore failed but as the claimant had succeeded on the special case submitted for the opinion of the Supreme Court, His Honour directed that each party should pay its own costs.

The finance involved was negligible, but it introduced a principle, and that led to an opinion by the Crown Solicitor, even before the Arbitrator had given his final decision but after the Court had made its determination. I now refer you to page 30 of my statement on which is shown an opinion by the Crown Solicitor, Mr. Guinness, on the "question of applying for special leave to appeal against decision of State Full Court on case stated by Arbitrator in the matter of *Groutch* v. *State Rivers and Water Supply Commission.*" Mr. Guinness's opinion reads as follows:—

I have considered the question of the probability of an appeal to the High Court being successful against the decision of the State Full Court on the case stated by the Arbitrator (Judge Wasley) in the matter of *Groutch* v. *The State Rivers and Water Supply Commission*, and have come to the conclusion that the chances of upsetting the judgment referred to are remote, and that the High Court if it granted leave to appeal at all would uphold the judgment.

The Full Court's judgment is based on the construction which it placed on sections 234 and 235 of the *Water Act* 1905 (Act No. 2016). Under section 234, it is provided that after the passing of the Act no action claim or proceeding whatsoever shall be maintainable except as in the Act provided against an authority in respect of, among other matters, any injury loss or damage to property caused by flooding or by water in any way sent on to property by any act of an authority its servants or agents. Section 235 then provides that notwithstanding anything contained in section 234 an authority should be liable to make compensation for any injury loss or damage caused *inter alia* "by flooding or by water in any way sent on to property by any act of the authority its servants agents or contractors; if such injury loss or damage be such as would but for the provisions of this Act have been a good cause of action" to such persons against the authority. . . .

I think the semi-colon which appears in the last sentence must have been a typographical error of those days.

Our Full Court held that by reason of the words quoted a person whose property was flooded or had water sent on to it was given a right to claim compensation, and that the effect of the words "but for the provisions of this Act" operated to deprive the Commission of a defence which might otherwise be available—namely, that the work being done under statutory authority unless there was negligence in carrying it out, the Commissioners would not be liable. In other words, the section conferred a right to compensation in all cases in which a claim could be made at common law. At common law where a landowner brings or impounds water on his land, he is liable for its escape unless he can show that the escape was due to an agency beyond his control (see *Rylands* v. *Fletcher*, L.R. 3 H.L. 330). There was, however, an exception to this obligation, that where the legislation had authorized an act to be done, if the act was done without negligence, though damage might result, the person suffering the damage had no redress except such as the legislature might expressly give him.

In the special case here, it was mooted whether this exception could be relied on by the Commissioners; the Court, however, held that the wording of section 235 prevented the Commissioners availing themselves of this defence, as the right to compensation conferred by section 235 given to the person complaining was all the rights which he would have at common law, as in express terms the right given was to be such which he had "but for the provisions of this Act."

I think the construction of the State Court would be accepted as the proper one by the High Court, and if so, that an appeal would not be successful. There is no appeal of right, but an application would have to be made to the High Court for leave to appeal. It is possible that the High Court would grant the leave, but this is not at all sure; and even if it did grant the leave, my own view is that the judgment would be confirmed.

The decision referred to is no doubt of wide application, and I think that the question of amending the section should be considered and the right to claim compensation limited to cases where flooding was due to negligence. The amendment desired would be carried out by making the paragraph quoted above read as follows:—" By intentional or negligent flooding or by water in any way sent on to property by any negligent act of the authority or its servants agents or contractors".

The Committee adjourned.

THURSDAY, 10TH MARCH, 1955.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon F. H. Thomas.	Mr. Randles.

Mr. L. R. East, Chairman of the State Rivers and Water Supply Commission, and Mr. I. Meacham, Engineer, were in attendance.

Mr. East.—My statement of evidence proceeds—

The only alterations between 1916 and 1954 were in 1939 when section 261 of the consolidated *Water Act* 1928, No. 3801, was amended by Act 4678, section 28, which read—

> Section 28. "Section two hundred and sixty-one of the principal Act is hereby amended as follows:—
>
> (*a*) The words 'and extent' shall be repealed;
>
> (*b*) For the words 'one year' there shall be substituted the words 'thirty days';
>
> (*c*) For the words 'after giving such notice the person claiming compensation proceeds without unreasonable delay' there shall be substituted the words 'the person claiming compensation proceeds within six months after the occurrence of the injury complained of'; and
>
> (*d*) At the end of the section there shall be inserted the following sub-section:—
>
> '(2) The person claiming compensation shall answer in writing all such reasonable inquiries relating to the claim as are addressed to him by or on behalf of the Authority'."

The Minister, in introducing this amendment, circulated a memorandum in which the clause was explained as follows:—

> "Clause 28. The principal Act provides that claims for compensation in respect of any injury resulting from flooding may be made within one year of the occurrence in respect of which compensation is claimed. This enables claims to be made in respect of alleged damage, of which the Authority may have had no intimation or knowledge whatever until twelve months after such occurrence, by which time it is usually quite impossible to obtain any evidence or detailed information to combat such claim. This is particularly serious in that the Water Act, unlike any other Act, requires that the Authority shall prove that it was not negligent. Most other legislation requires that negligence must be proved by the claimants. It is not proposed to alter the position of the Authority in regard to proof of negligence, but it is considered that the Authority should receive notice that a claim is to be made within 30 days of the occurrence in respect of which compensation is claimed.
>
> The clause also provides that the person claiming compensation shall proceed with his claim within six months after the furnishing of such notice, and that he shall answer reasonable inquiries relating to the claim, so that the Authority might be in a position to obtain any necessary evidence."

The provisions of the Water Acts in relation to compensation in respect of flooding then remained unchanged until the amendments of 1954.

Mr. Thomas.—In what circumstances would the Authority have no knowledge of any occurrence until a period of twelve months had elapsed?

Mr. East.—A district engineer is in charge of 1,000 square miles and during a flood 50 square miles might be under natural flood waters. It would not be possible for the engineer to inspect the whole of his district within a few weeks, even if there were no flooding. It might take him six months to make a thorough inspection. Because of the magnitude of the area under his charge and the large number of flood difficulties that occur during every flood, it is most unlikely that the engineer will see the one in respect of which a person proposes to claim.

The Chairman.—That same problem faces large country shires and has led to the Municipal Association of Victoria opposing any amendment to the Local Government Act which requires that a claim for compensation in respect of negligence must be made within 30 days.

Mr. Brennan.—It also imposes on the landowner the responsibility of saying whether any damage had occurred.

Mr. East.—The landowner is usually living on the spot and is in a position to ascertain the damage that might result. He might be in a position to know the extent of the damage within 24 hours, and he is given a month or so in which to make a claim. Of course, he need not proceed with it. There were certain weaknesses in the amendment, which were disclosed later, and I shall explain them as I proceed. The period of six months proved to be too short, because the extent of the damage might not be fully evident within that period. That has been altered. My statement proceeds—

1954 AMENDMENTS.

By 1954 it had become evident from certain arbitration cases that an impossible situation had developed in regard to liability of Water Authorities in connexion with claims for compensation in respect of damage caused by flooding, and that no water authority could safely proceed with any drains or flood protection or river improvement works to reduce flooding unless the law were clarified and certain disabilities removed.

The Minister was advised accordingly in the following terms, viz.:—

(1) The law in relation to liability for flooding, as expressed in the Water Acts, has been satisfactory to nobody.

> (*a*) In 1913 it was interpreted to mean that a water authority was liable to make compensation in respect of damage caused by flooding even if there were no negligence.
>
> (*b*) In 1916 the law was amended to remove liability if there were no negligence, but the onus of proof that it was not negligent was placed upon a water authority.
>
> (*c*) It now seems from a ruling given by Justice Scholl in 1952 that flooding is either intentional or negligent if a water authority, in designing and constructing works such as drainage works, does not provide for rainfalls of as great intensity and duration as can be regarded as possible for the locality even if they have never actually been experienced.

I should like to refer to the summary of the Armstrong case, which appears on page 34 of my statement. Mr. Slattery, an officer of the Commission, interprets the Award in this way—

The onus was on the Commission of allocating the extent of flooding under three headings—

> (*a*) the flooding which would have occurred under natural conditions,

(*b*) the flooding for which the Commission's works might reasonably have been constructed, and

(*c*) the "excess flooding" due to the exceptional storm against which the Commission should not have been expected to provide.

I direct special attention to the words "excess flooding." The Arbitrator clearly indicated that there could be excess flooding against which we should not be expected to have made provision, and in which case the Commission would not have to pay compensation. That is not in conflict with what I said in paragraph (*c*) above. We may know that in northern Victoria six inches of rain has fallen in a day and twelve inches in three days. That might never have occurred at Tongala or whatever place is being considered in 100 years of rainfall records, but we know it is physically possible for such rain to fall. According to Mr. Justice Scholl, if we do not provide for that, if there is a flood we will be considered negligent. However, if 24 inches of rain fell in a day—a quantity which we could not be expected to regard as possible in Victoria—the Judge would not regard the Commission as having been guilty of negligence.

The Chairman.—There could be an exceptional storm for which you would not be held responsible?

Mr. East.—The word "exceptional" does not go quite far enough. It would have to be almost in the act of God category.

The Chairman.—On the other hand, if it was a heavy storm, far greater than anything which your records indicate could have happened previously, but which might be regarded as possible, you would be liable for not providing against it?

Mr. East.—According to Mr. Justice Scholl, we would be liable. I shall state shortly what is possible. The atmosphere can hold a certain amount of water vapour, depending on certain conditions. The area covered by that atmosphere with the maximum amount of water vapour could be many square miles. The water vapour could be condensed rapidly by meteorological causes, and winds could bring in more and more of that saturated air, which could be condensed and come down over a certain town. I envisage for the purpose of this illustration the maximum amount of water in the atmosphere, the maximum rate of precipitation and maximum continuity. In the combination of those factors, something which has never happened in the world anywhere, according to the hydrologists, could happen. The real problem in estimating precipitations is that of deciding spillway capacities of large dams such as Eildon. If water went over the earthen part of the dam, the dam would be destroyed and the loss of life and property would be enormous. A large town or city could be washed away in an hour. Consequently, in designing spillways, the hydrologists endeavour to ascertain the maximum conceivable concentration of precipitation and its duration. Then they arrive at a figure which I call the "maximized" flood. I object to the use of the expression "maximum possible" because I do not believe such things are possible. Then the hydrologists decide what the design flood will be. That is a flood which does not quite come over the top of the dam. It is possibly three times as great as any flood ever experienced, but the maximized flood might be five times as great. The design flood is not expected to be reached, but its use gives security. It is only in the design of dams that that procedure is justified because of the enormous extent of the potential danger from a destroyed dam. No one ever designs a drain in a city or elsewhere to cover such a concentration of water. Other bases are used for that purpose.

Mr. Randles.—In your opinion, is the effect of Mr. Justice Scholl's decision in the Armstrong case to carry the principle of *Rylands* v. *Fletcher* and similar cases further than the Courts in England have been prepared to carry it, particularly in cases dealing with likely injury from the hitting of cricket balls and golf balls in certain circumstances?

Mr. East.—I am of the opinion that the application of the principle as interpreted by Mr. Justice Scholl to rural drainage makes rural drainage impracticable in that it is not possible for any Authority to design and construct drains in irrigation districts subject to heavy natural flooding of such a capacity as will carry the natural flood in addition to water that may be added to the depressions from the works of the Authority. It is the intention of the Commission in providing future rural drainage works in irrigation districts to construct its excavated drains only of sufficient capacity to carry the water that would be added to the watercourses from the works of the Commission, such as water released from its irrigation channels at times when irrigators cease to take water because of natural rainfall, together with the additional water that might be expected to run off the irrigated land as a consequence of such land being saturated with irrigation water at the commencement of the rainfall. The drains along natural watercourses will obviously not carry any of the natural flood waters coming down those watercourses, and they will not lower the level of the flood waters. It is obvious, however, that the total quantity of flood waters will be increased because of the release of surplus irrigation water into the drains and because of the increased run-off from the recently irrigated irrigation holdings.

The Commission will be able to demonstrate before a court that it had provided a capacity sufficient to take all the water released, plus all the additional water coming from the lands that had been irrigated as a consequence of the Commission's irrigation works.

I said that the flood waters would not be lowered, but there would be a very important benefit in that, as a by-product, might I say, the existence of the Commission's drains would much more rapidly remove the natural flood waters. They would take away what was added at the time the Commission was adding it, but that would not be for very long. Then, the drains would take away the natural flood waters, much of which would under natural conditions remain in the depressions for considerable periods.

The Chairman.—You said that the water would continue to flow in the irrigation channels after the rain had begun to fall. I suppose, ultimately, you could stop that flow?

Mr. East.—We would stop it at once at the top end, but that might be 30 miles away. There might be 30 miles of channel of a width varying from the width of Bourke-street to that of this room. I was referring to the contents of the channels.

The Chairman.—From the point at which the water is originally clocked off to the point where the channel is clear? That covers your point when you say that after you have finished, the drain will then be available for general drainage?

Mr. East.—Yes. The Commission is faced with this difficulty: When it begins to rain, it is not known whether the amount of rain that will fall will be 40 points or 2 inches. If it should be 40 points, blockholders would want to irrigate their land next day, because the irrigation is equivalent to 2, or 3, or 4, or even 6 inches of water.

Mr. Thomas.—You used the expression "maximized." Did you mean to convey that, generally, there is no limit?

Mr. East.—No. By "maximized" I mean a maximized rate of precipitation in inches per minute, continued for the maximum time in hours that is theoretically conceivable, and spread over the maximum area, which would be the whole of a catchment. The catchment might be an area of 1,500 square miles. It has never happened, but it is possible. It could start from the top of the catchment, with the intensity of the storm moving down the valley and keeping in step with the flood wave. If it occurred in the reverse direction, there would be a different result. Take the Latrobe river, for instance, which runs from west to east. Most of the storms travel in that direction—from west to east. If a heavy storm started on the catchment of the Latrobe river and moved gradually down the valley towards the Gippsland Lakes, there would be a higher flood peak than if the storm started at the Gippsland Lakes end and moved up the catchment. The reason is that there is a building up all the time if the storm follows the flow. Some of the water gets away early if the flow is in the opposite direction to that of the storm. A "maximized" flood assumes that storm movement occurs in the worst possible way.

Mr. Brennan.—The worst that can reasonably be expected?

Mr. East.—To use a lengthy expression, it requires concatenation of circumstances that has never been experienced.

Mr. Brennan.—Which, normally, would not operate?

Mr. East.—Which never has happened. The position is somewhat akin to the theoretical possibility of shuffling a pack of playing cards and immediately afterwards dealing the 52 cards in numerical sequence. I shall continue to read from page 11 of my statement—

> This might seem reasonable on the face of it, but to provide drains that would not overflow with rainfalls and flows which hydrologists could conceive as theoretically possible would be so costly as to make any drainage work for the benefit of rural lands absolutely impracticable.

The cost would be many times greater than both the total value of the land and the total possible damage, even if a flood occurred.

> If lesser capacity is provided, it would be very difficult indeed under the present law for the Commission to refute charges that the drains had caused flooding to be more damaging than under natural conditions and that therefore the Commission had been negligent in the design and construction of the drains.

(2) Development of the law as expressed in the Water Acts has been a process of endeavouring from time to time to overcome difficulties and remove anomalies, but I believe the interpretation of the law in the courts has at times been very far from what the legislature must have intended.

Justice Scholl in an interim written award *re* Armstrong and State Rivers and Water Supply Commission in 1952—*Argus* Law Reports, 24th June, pages 473–491—summarizes the development of the law, and referring to an amendment to the Water Act in 1916 said—

> "The debates which I have read afford an excellent illustration of the soundness of the rule that the meaning of the language of an Act of Parliament is not to be determined by reference to the views, frequently varying, of individual members as to its meaning."

(3) At that time, 1916, the Commission, after a case known as Groutch's case, was seeking an amendment of the law. The amendment actually carried differed considerably from that proposed. See *Hansard* 1916, volumes 144 and 145.)

(4) The previously existing law had, in the Groutch case in 1913, been interpreted to mean that the Commission was liable to make compensation for damage caused by flooding even if there were no negligence.

This interpretation was based on the wording of the relevant sections of the Act. I believe it could not possibly have been the intention of the legislature. That is questionable. I may be wrong there.

(5) The proposals to improve the position, as submitted to Parliament in a Water Bill in 1916, were debated at a considerable length.

It has been taken from the remarks of the Honorary Minister when the Upper House was debating a clause which had been varied by the Minister of Water Supply in the Lower House, that the variation was satisfactory to the Commission (see page 2613, Honorable W. L. Baillieu (Honorary Minister)), "I am told that the Commissioners do not think the clause is unfair, although I admit that a very good argument can be used for the excision of the words proposed. We know that in nine cases out of ten the public authorities get the worst of most dealings."

That is true, although it does not seem to be in accord with public opinion. We, as a Department, always pay more than a private person would have to pay, irrespective of whether we are acquiring land or whether we are paying compensation.

(6) The Honorary Minister, the Honorable W. L. Baillieu, later read to the House a statement from the Commission on the subject of the amendment—see page 2740.

The Honorary Minister, after reading it to the House, said—

> "It does seem a little remarkable that the Government should be opposing an amendment (proposed by the Honorable Robert Beckett to remove the onus of proof from the Commission, see page 2739-40), which on the face of it is going to give relief to the Water Supply Commission, and yet the Commission, through the Minister, declared that this is a reasonable attitude for them to take up in view of the position which they now occupy. For that reason I must ask the Committee to vote against the amendment."

To interpret the Honorary Minister's remarks as meaning that the Commission agreed to the clause would be wrong.

The statement was obviously prepared by the Commission for the Honorary Minister and not for the Minister of Water Supply, for it indicates to the Honorary Minister the views of the Minister and not the views of the Commission. It concluded by saying, "In view of the fact that at present the authority has been held to be liable whether there is negligence or not, and in view also of the very strong arguments adduced when the clause was being debated, the Minister believes that the clause, as now submitted to the Legislative Council, will prove a reasonable safeguard for both water users and the supply authorities."

As pointed out, the Commission did not say that the Commission itself regarded it as a reasonable attitude, but that the Minister believed that the proposal would prove a reasonable safeguard for both water users and the supplying authorities.

From this and from the *Hansard* report of the debate in the Upper House on the whole Bill (not all shown in the extracts attached hereto) it appears that the Bill was being dealt with under pressure and under difficult circumstances——

The difficult circumstances relate to the 1916 flood, the conscription campaign, and other irrelevant matters.

——and that members had had little time to consider the matter. One of them, the Honorable J. G. Aikman, said—

> "I think we ought to adjourn further consideration of this matter. Mr. Manifold has intimated that he has not had time to read the Bill, and I presume the other honorable members are in the same difficulty." (See page 2614.)

The Bill covered many very important and contentious matters. It had been debated over a period of ten weeks in the Lower House. The Minister of Water Supply had deferred to some extent to the objectors to clause 6 as presented to the Lower House, and had himself introduced a compromise amendment.

Neither the Minister nor the Commission wanted the whole Bill held up any longer. This clause was by no means the most important in the Bill. The recollections of an officer in the employ of the Commission are that the Commission's attitude to the revised amendment was that "at any rate the position could not be worse than it had been under the previously existing law."

I am not sure that he was right.

(7) The origins of the compensation provisions of the Water Acts go back to the 1886 Act, at which time there was a Water Supply Department carrying out works for the Government, and it was proposed to provide for a number of local trusts to carry out irrigation works throughout the State.

The Water Supply Department had practically complete immunity as a Crown authority.

The trusts proposed to be set up under the 1886 Act would be in a different position, and the 1886 Act attempted to define the extent of their liability, and to make reasonable provision to safeguard landholders affected by the works of the trusts. In spite of the interpretations placed upon the law by the courts, there is little doubt that what was intended by the legislature was that—

(*a*) the trusts should be made liable to make compensation for damage caused by flooding as a result of their actions—the Act did not say "negligent actions," but I believe what was intended was either deliberate or negligent actions.

In the first case, the trusts would know that if they deliberately flooded lands as a result of their irrigation works—there were no draining works—they would be expected to pay compensation. In the second case, to safeguard themselves from charges of negligence they would be expected to take reasonable care in carrying out their operations. Any case would then rest on what was reasonable care.

(*b*) To simplify court proceedings by providing for arbitration in the interests both of the claimants and the defendants.

(8) In 1905 the Water Acts set up a new form of corporate body, the State Rivers and Water Supply Commission, to take over, to all intents and purposes, the responsibilities of the Water Supply Department and of most of the trusts.

It was not intended that the Commission was to be given the immunity of a Department of the Crown. However, it was certainly not intended that it should be made so vulnerable to claims for compensation that it could not carry out any works affecting the flow of water without very grave risk of liability to make heavy compensation payments.

(9) The Groutch case of 1913, however, showed that it was, as a result of the interpretation of the law in the courts, more vulnerable than any private person, or than any other corporate body, public or private, or than any Department of the Crown—save, of course, other water authorities under the Water Acts who were equally liable with the Commission. (See footnote to section 259, Water Act 1928.)

I shall not attempt to interpret the footnote, which reads—

(*a*) Under the section formerly in force it was held that no action was maintainable against a water trust for damages to property caused by flooding where the flooding was occasioned by the active operations of the Trust, and that probably no such action was maintainable even where the flooding was occasioned by the omissions of the Trust.—*Tyndall* v. *The Rodney Irrigation and Water Supply Trust,* 19 V.L.R., 560; and see *McCrudden* v. *The Borough of Horsham Waterworks Trust,* 21 V.L.R., 504, and it was also held that a property owner whose land was injured by the escape of water from a channel constructed by the State Rivers and Water Supply Commission, was prima facie entitled to recover compensation without proof of negligence on the part of the Commission; but this right might have been excluded by evidence that the escape was due to the act of God or to some extraordinary natural phenomenon.—In *re Groutch* v. *State Rivers and Water Supply Commission,* 1913 V.L.R., 455; and compare section 285, and see *McCrudden* v. *Borough of Horsham Waterworks Trust,* 21 V.L.R., 504; *Bland* v. *Inglewood,* 1918 V.L.R., 467; and 1920 V.L.R., 522. But the provisions formerly in force were altered by the Water Act 1916 which came into operation two days after the flooding in Bland's case.

When I next submit evidence to the Committee, I shall produce Exhibit 5, which shows section 260 of the *Water Act* 1915, the amendment to that section in the Water Bill 1916 when presented to Parliament, and as determined by Parliament, and the amendment now proposed in the Water Bill 1954. I produce Exhibit "E" showing sections 259 to 265 of the Water Act in consolidated form, with amendments to date.

Exhibit "E"—Consolidation of sections 259 to 265 of the Water Act.

The Committee adjourned.

TUESDAY, 15TH MARCH, 1955.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. F. M. Thomas.	Mr. Pettiona,
	Mr. Randles,
	Mr. R. T. White.

Mr. L. R. East, Chairman of the State Rivers and Water Supply Commission, and Mr. I. Meacham, Engineer, were in attendance.

EXHIBIT 5 was circulated to members. This dealt with section 260 of the Water Act No. 2747, 1915, and its subsequent amendment by various Water Acts up to and including Water Act No. 5838, 1954.

Mr. East.—My statement of evidence proceeds—

(10). Attachment B (now Exhibit 5) shows section 260 of the Water Act 1915, the amendment to that section in the Water Bill 1916 when presented to Parliament, and as determined by Parliament, and the amendment now proposed in the Water Bill 1954.

(11). The position has been made much more difficult for water authorities in that they have from time to time been given responsibilities in regard to drainage and flood protection not contemplated when the "liability" sections of the Irrigation and Water Acts were drafted.

(12). Nobody wants to exempt a water authority from responsibility for flooding resulting from its actions.

At the same time, however, irrigators would not want the Commission to be placed in such a vulnerable position in respect to claims for damages from flooding, that it could not risk the carrying out of any comprehensive drainage works.

The Murray Valley Irrigation District, for example, which covers an area of 270,000 acres, is traversed by a number of wide, shallow, natural watercourses which have always been the natural route for floodwaters following heavy rainfalls. Much of the water enters the district from surrounding land. The Commission's irrigation channels, generally speaking, follow the bridges and do not interfere with these floodwaters. Where they cross the depressions, the channels are carried in subways under the surface and so do not offer any obstruction to the passage of floodwaters.

The irrigators of the district have been pressing very strongly for a comprehensive drainage system, which would, of course, have to be along the depressions.

As already pointed out in paragraph (10) (1) (*c*), it has recently been ruled that the Commission would be liable on the grounds of negligence if it did not provide for the conveyance of waters resulting from rainfalls as great as could be expected. The fact that rainfall causing flooding may be quite unprecedented would not be accepted as a defence, if the Commission could have anticipated that such exceptional rainfalls could possibly occur.

(13). It can be stated most definitely that it would not be practicable to construct excavated drains through the Murray Valley watercourses which could carry rainfalls as great as could possibly be anticipated. It is certain that it would not be economically feasible to construct drains even large enough to carry floodwaters from rainfalls that *have* actually been experienced.

I would mention that these channels have been constructed entirely since 1936 and therefore incorporate the experience of at least two generations.

The Chairman.—The reference to "paragraph (*c*)" should now read "paragraph 10 (1) (*c*)."

Mr. East.—That will be corrected.

Mr. Randles.—I think (10) (2) (*c*) is important when you come to rainfall and flooding.

Mr. East.—There is a difference between flooding and rainfall "that could be expected."

Mr. White.—What do the words "that could be expected" mean?

Mr. East.—We know that some parts of Victoria get as much as 12 inches of rain in three or four days, and the fact that it has occurred at Murchison could be an indication that it could occur at Numurkah. On the other hand, it may never occur at Numurkah. On the interpretation given by Justice Sholl it would seem that we would have to provide for such rain in northern Victoria.

Mr. White.—That it could happen there?

Mr. East.—The people *could expect* it to happen. It is not quite the same thing as "could." For instance, you could expect things to happen. You could expect to be killed by lightning. The probability is that it would not occur. In the same way there is the possibility of a rainfall of 12 inches in a short period occurring anywhere in the Murray Valley or similar areas such as northern Victoria.

Mr. Randles.—Could you attack the problem from another point? For instance if that flooding were foreseeable? If something should happen you could foresee?

Mr. East.—The Arbitrator went on to indicate elsewhere that rainfalls that could not have been anticipated might come and we would not be liable in such an event. Assuming, as I said, that 12 inches of rain had been experienced somewhere, and actually 20 inches comes, we would not be expected to provide for the 20 inches, i.e. if it had never come before at any place.

Mr. White.—Once it had arrived you would be liable from that date on?

Mr. East.—Yes. I would repeat what I read in sub-paragraph (13) on page 14 as it is very much to the point in the case we are discussing. ". . . . . It is certain that it would not be economically feasible to construct drains even large enough to carry flood waters from rainfalls that *have actually been experienced.*" It raises a very academic question, but nevertheless a vital one.

Mr. White.—The whole meat is in that paragraph, is it not?

Mr. East.—Yes. My statement proceeds—

10 (14). Under these circumstances no drainage system that could be carried out could prevent the flooding of much land along these watercourses, and, with the present law as it has now been interpreted, the Commission would almost certainly lose any actions against it for compensation for flooding, even although the lands in question would have been flooded under natural conditions had the Commission carried out no drainage works at all.

Remember, this was before the 1954 amendment. I am quoting what was written then. That amendment has altered the situation slightly, but it is an important point when it comes to fighting claims.

10 (15). This is a most unsatisfactory situation, and unless rectified will prevent the Murray Valley and similar large districts from having the undoubtedly very great benefits of such drainage as could otherwise be provided.

(16). The amendments in the 1954 Water Bill actually do not go far enough, for what is desirable is that a water authority (and this applies to river improvement trusts as well as to the Commission) should be safeguarded against claims in respect of the flooding of lands which would, in any case, have been flooded without any of the works of the Commission (or of the river improvement trust).

The Chairman.—The effect of this amendment is that you have been relieved so far as swamp lands are concerned?

Mr. East.—Yes, but it is a very limited relief.

Mr. White.—Who determines "swamp lands"?

Mr. East.—"Swamp land" in the references here refer to land defined in the Irrigation Register as "swamp land." The Commission's officers compile the Irrigation Registers. They show the total area of high land above the channels, the area of swamp land, and land otherwise unsuitable for irrigation. From that you can compute the area that is suitable for irrigation and the water right is calculated pro rata on the area. This register is advertised, appeals may be lodged against it, and usually are. Usually the appeals are on the ground that we haven't shown as much land as is irrigable. The appeals are heard before an Appeal Board, which comprises an officer of the Agricultural Department appointed by the Minister of Agriculture, an irrigator elected by the irrigators concerned in the district, and an officer of the State Rivers and Water Supply Commission. The decision of the Board is final and cannot be appealed against.

Many such decisions are made and the Commission revises the register accordingly. There is one limitation introduced since the big drought. If an appeal could mean allocation of extra water as a water-right, that allocation can be made only if the Commission before the hearing of the case certifies, in writing, that an additional allocation could be made without prejudice to the existing irrigators. In many cases throughout the Goulburn System we have certified that it could not be made and therefore the appeal is more or less academic. Nevertheless, such appeals have been heard, the decisions have been recorded, and when additional water becomes available, the men will get the benefit.

There have been appeals by people who don't want additional irrigation and who have claimed that we have classified as suitable more land than is suitable. These appeals are heard and decisions made on the merits of each case. There has never been an appeal against "swamp land." In the light of this interpretation, next time the register is advertised there will undoubtedly be some appeals against the classification as "swamp land."

Mr. White.—Because they are not eligible for compensation on swamp land?

Mr. East.—Yes.

The Chairman.—That is the first difference.

Mr. East.—The other difference is more important. The first part of the amendment leaves the onus of proof against the Commission only for water-supply works. If a water pipe or a channel bursts, the onus of proof is on the Commission; but in other forms of damage from other kinds of works—primarily drainage, secondly, river improvement, the onus of proof would not be on the Commission. That has enabled us to go ahead with the Murray Valley and Nambrok-Dennison schemes.

10 (17). The Sholl award—page 489-490 seems to mean that if a water Authority increases "natural" flooding *at all,* it is likely to be held responsible for *the whole* of the resulting damage.

Clause 11 (2) of the present Water Bill (1954) is intended to improve the position in that an arbitrator will be required to determine the proportion (if any) of the responsibility of an Authority and shall award against the Authority only such proportion of the amount of damage assessable under the Act in respect of flooding. It is understood that this is the case in the assessment of damages resulting from accidents in which ships or motor-cars are involved.

I would like to quote a case, not referred to in this document at all, in the Maffra-Boisdale flats. Irrigated land there growing sugar beet received its water from a channel which came through a divide in a tunnel from the Glenmaggie Reservoir in another catchment. There was a very big natural rainfall in the Boisdale Valley, as I will call it, which came down and washed holes in the big channel all over the place and flooded the whole of the Boisdale flats, including this property. Water for irrigation was coming through the tunnel for part of the time, adding a very small amount of water to the natural flooding from the Boisdale Valley, but the point was, it was coming through the tunnel. It therefore joined up with and added to the natural flood waters from the Boisdale Valley. We lost the case and had to pay the whole cost of the damages.

I am not going to argue the rights or wrongs of the case at all, but that was the case where we added a small amount of water and were held responsible for *all* the damage done.

The Sholl award came to the same thing, if you read those pages 489-490 you will see that in the Armstrong case the Arbitrator awarded all the damages against us because we were unable to prove exactly—and I emphasize the word " exactly "—what damage would have been done if we had not contributed at all. I am not going to suggest that we were not liable at all in the Armstrong case. There were certain features where our works interfered with the natural flow of water, but I don't think that the Act as amended would have absolved us from some liability. I am not questioning the decision of the Arbitrator in regard to the facts, but the Commission was in the serious position of having to pay for all the damage, which would not have been the case if we had done nothing.

There is a section of the Water Act which provides for the allocation of damages in cases like that, but because we were unable to prove specifically and exactly what proportion of flooding might be due to our works, the Arbitrator awarded all of it against us.

In the amendment of 1954 it is provided that the Arbitrator shall decide the proportion (if any) of damage or responsibility of an Authority, the same as in the assessing of damages from motor-car accidents or in which ships are involved.

Mr. Brennan.—With whom would be the responsibility of saying that damage by flooding had occurred?

Mr. East.—The owner. Certain flooding would have occurred when, say, 75 per cent. of a property would be affected by natural flooding and 25 per cent. by reason of the Commission's works. In the Armstrong case we were unable to say exactly that the proportion was 75 per cent. and 25 per cent., so the Judge awarded all the damages against us. Under the new Act the Arbitrator is required to make a decision on the cause of the flooding and determine the proportion and the responsibility of the Commission through contributory negligence. The decision, of course, cannot be mathematically accurate. (Sub-section (5), section 12 of Act 5838.)

Mr. White.—The Arbitrator might assess it at 100 per cent.?

Mr. East.—Yes. The evidence shows that he is aware that the land would have been flooded without our works, but as the Act is worded it requires us to prove certain things precisely, which we could not. Well, the Judge would have to make a " shot in the dark." I am not criticising the Arbitrator in any way. He was acting on the interpretation of the law as it was. I am quite sure that he would have acted with complete satisfaction to the Commission on the amended law.

The Chairman.—The reference to " clause 11 (2) " in sub-paragraph 10 (17), page 15, of Mr. East's submission will become " Sub-clause (5), section 12, of Act 5838."

Mr. East.—This particular amendment was not regarded as contentious by anybody, and in my opinion it has no contentious points at all. It is accepted by all, i.e., the division of responsibility.

10 (18). It has been said that it is difficult for an individual to succeed in a claim against a public authority such as the Commission. This assumes that the public authority always forces claimants to go to law. This is not correct, for the policy and practice of the Commission has been to negotiate with claimants and pay damages without court action where it is satisfied that the damages have resulted from negligent act or omission on its part. Over recent years there have been 27 such cases in which the Commission settled such claims out of court paying amounts ranging from a few pounds up to more than £1,000. Claims have been contested only when the Commission was satisfied that the flooding complained of was not the result of negligent act or omission on its part.

The reasonable way in which the Commission has conducted negotiations is indicated by the fact that out of thousands of cases of compensation for land acquisition not more than four (4) cases have been taken by land-owners to arbitration in the last 30 years.

I might say that the Water Act does not *require* the Commission to pay for land at 10 per cent. more than its market value because of compulsory acquisition, but as a matter of policy we have always paid 10 per cent. above market value.

Mr. Thomas.—Better than the Housing Commission!

Mr. East.—If we contested claims we would not have to pay the 10 per cent. unless specifically awarded by the arbitrator.

10 (19). It must be remembered that the Commission is answerable to Parliament and that any of its actions can be the subject of questions in the House.

The Commission's attitude in regard to problems that arise can best be explained if we consider how the 65 members of Parliament look at these problems. One may look at them from their personal effect in his electorate. Would the other members say that the Commission's action is reasonable, or would they say it is unreasonable? Quite often when we have the law on our side we say " We think members of Parliament would believe it to be quite unreasonable." Thus we don't stand to our legal rights, and act accordingly.

Then in regard to all sorts of matters as to how we deal with public complaints and requests they might make, we take the view that if we could not satisfy Parliament that our action was reasonable, then we take it that the action would be unreasonable, and we avoid that unreasonable action.

Mr. Hollway.—What sort of standard would you have there?

Mr. East.—We try to put ourselves in the place of the outsider who has a good knowledge of public affairs, but has no personal interest in the matter at all; not necessarily a close knowledge of the subject. Now, would he say " That is unreasonable, that is outrageous." There have been cases when the law has been entirely on our side but we have not stood by our legal rights.

Mr. Brennan.—Your standard is that of an ordinary, reasonable man?

Mr. East.—Yes. If we could convince the majority that our action was reasonable, we would take it for granted that we had a good case.

Mr. Hollway.—Then you would go outside the terms of the Act?

Mr. East.—Not quite. I am talking about requests that are made, or claims that are made—not compensation. I cannot recall to mind appropriate instances at the moment.

Mr. Pettiona.—If a request is made to do certain things in the terms of the Act and you were not entitled to do them, would that happen?

Mr. East.—It is not quite so likely.

Mr. Pettiona.—Have you stepped outside the Act at all at any time ?

Mr. East.—We have very wide discretion. The Act, although a big one, cannot cover all our activities. There are many cases where it is "Corporation v. Individual" and we don't like to stand on a quibble, or on any basis of authority just because the individual could not do anything about it. I will get you some cases to exemplify that. They come up four or five times a year.

Mr. Hollway.—It would be quite interesting to quote a case.

Mr. East.—My statement proceeds:—

10 (20). The present position of the law in regard to liability for flooding as expressed in the Water Acts is most unsatisfactory.

It was developed before water authorities had entered into the field of drainage on a large scale and was drafted —and debated—largely with the idea of providing for compensation for damages resulting from failure of storages or irrigation works, which, generally speaking, can and ought to be designed to provide against any rainfalls that might be expected.

This is not the case with drainage.

The original compensation provisions in 1886 were drafted when it was expected that, under certain circumstances water would be deliberately sent on to certain properties, e.g., using a natural watercourse to convey water, and it was, of course, right and proper that full compensation should be payable.

The situation now is that there is an urgent need for comprehensive drainage systems to permit of more intensive production in irrigation districts. As the law now stands, water authorities incur grave risks if they construct such comprehensive drainage schemes, whereas, if they did nothing to provide for drainage they would not be incurring any risk at all in respect of flooding in the low-lying areas along which drains would naturally be taken.

Mr. Thomas.—How long ago was that provided for?

Mr. East.—1886 was the first provision. The first specific sections dealing with drainage of any consequence were round about 1909.

11. Considerable difficulty was experienced in determining how the Water Acts could best be amended to overcome the disabilities referred to, but eventually the two sub-clauses of clause 11 were included in the 1954 Water Bill as quoted on page 1 of this submission.

12. Comments on clause 11 of the Water Bill, 1954, were made by the following, namely:—

(i) The Chairman of the Victorian Bar Council by letter dated 19th October, 1954, accompanied by Memorandum of Mr. D. I. Menzies, Q.C.—see Appendix 1.

(ii) V. W. Officer, Secretary, Graziers' Association of Victoria, by letter dated 1st November, 1954—see Appendix 2.

(iii) Mr. Bloomfield, M.L.A.—Second Reading debate, 3rd November, 1954.

(iv) The Honorable J. G. B. McDonald, M.L.A.—Second Reading debate, 3rd November, 1954.

(v) The Honorable R. K. Brose, M.L.A.—Second Reading debate, 3rd November, 1954.

13. With the exception of the Graziers' Association, which did not express views on the matter, all who commented on the matter agreed that the state of the law was far from satisfactory.

Mr. D. I. Menzies, Q.C., referred to the relevant section of the Water Act as a "badly drawn and difficult set of provisions" and he went on to say that "a complete revision of the division would therefore be justified".

The Chairman of the Victorian Bar Council, Mr. M. J. Ashkanasy, in his letter forwarding Mr. Menzies memorandum, wrote that "if it is felt that the decision of Mr. Justice Sholl in Armstrong's case has raised matters requiring corrective action, the suggestion is made that the principles involved be made the subject of a wider review and that consideration be given to revising this part of the Act in a more comprehensive manner with a view to evolving a plan more simple in operation and consistent with the requirements of justice".

Mr. J. S. Bloomfield, M.L.A., referring to the legislation as it now stands said that "it is not unlike a sort of patchwork coat . . . after several tinkerings an article was produced that was most unsatisfying . . . the fact is that the principal Act requires a complete overhaul".

Mr. J. G. B. McDonald, M.L.A., said that "he endorsed the remarks of the honorable member for Malvern and he hoped that, with the assistance of legal advice, the difficulty pointed out by Mr. Bloomfield of allowing the Water Commission to continue to function while affording justice to the ordinary citizen could be overcome".

Mr. R. K. Brose, M.L.A., said "I believe the law as it exists is not in the best interests of the State or of the irrigators . . . the present position is intolerable".

Mr. Menzies, Q.C., by the way, was the Counsel for the claimant in one of the difficult test cases and therefore was conversant with the matter.

14. The law in regard to claims for compensation for injury by works was so complex that practically all who wrote or spoke on the proposed amendments obviously were in considerable doubt in regard to certain aspects of it.

15. *Arbitration.* Some speakers were apparently under the impression that the system of arbitration was introduced in 1916 and that its purpose was to favour the Water Commission.

Actually provision for arbitration was in the Lands Compensation Act as long ago as 1869, and it is certain that it was introduced in the interests of the landowner, as Parliament in those days was completely dominated by the big landowners of the State. The arbitration principle was obviously operating satisfactorily for it was incorporated in the first Irrigation Act of 1886 and had been carried forward in all subsequent water legislation.

One of the special advantages of arbitration to a claimant is that an Authority cannot appeal against the decision of an arbitrator as to matters of fact even if it is convinced that the arbitrator is in error. Appeals are costly and an Authority is usually in a better financial position than a landholder to meet such costs.

It was suggested that there were disadvantages in the arbitration system and that under arbitration claimants had not access to documents relating to works.

In this regard attention is drawn to section 250 of the Water Act which section had remained unchanged since the original Water Act of 1905 and was probably brought forward from still earlier legislation. This section reads "Any arbitrator may call for the production of any documents in the possession or power of either party which he or *either of the parties* thinks necessary for determining the questions in dispute and any arbitrator may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose."

As the arbitrator may call for documents which either of the parties thinks necessary, no purpose could be served by the Commission withholding any such documents even before commencement of proceedings. The Commission has been advised that, although it is not specifically stated, a claimant has the right to ask for such documents. This right was established in Kursell *v.* Timber Operators in 1923 as recorded in 2 K.B., page 202.

The Chairman.—You mean the arbitration principle was obviously operating satisfactorily for the benefit of the landowners?

Mr. East.—I think so.

The Committee adjourned.

WEDNESDAY, 16TH MARCH, 1955.

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. I. A. Swinburne,	Mr. R. T. White.
The Hon. F. M. Thomas.	

Mr. L. R. East, Chairman of the State Rivers and Water Supply Commission, and Mr. I. Meacham, Engineer, were in attendance.

The Chairman.—Mr. East is going on with the document he has submitted, gentlemen.

Mr. East.—My statement of evidence proceeds:—

16. *Onus of Proof.* From the first Irrigation Act of 1886 until 1916, the onus of proof was on the claimant, but by the amendment (already referred to) while a Water Bill was before Parliament in that year, the onus of proof that it was not negligent was placed upon Water Authorities.

The words " in that year " mean " 1916 ".

It had been suggested both during the debates of 1916 and in the debate on the 1954 Bill that this amendment was accepted by or consented to by the Commission.

Reference has already been made to this matter in paragraph 10 above. (Sub-paragraph (6).)

The Commission's statement on that matter appears in full in *Hansard,* pages 2740 and 2741, 28th November, 1916. A careful reading of it does not disclose that the Commission agreed with the proposed amendment or thought that it was reasonable. The statement simply sets out the position under the then existing law and the views of the Minister who introduced the amendment.

I have reason to believe that the Commission regarded the amendment as very undesirable, but considered that it was better to have the clause then under debate even with the amendment than to lose it altogether and advised the Minister that at any rate the position could not be worse than it was prior to the 1916 Bill. It might be mentioned that prior to that Bill a decision by an arbitrator was that a Water Authority was liable for damage *whether it was negligent or not.*

Mr. White.—In other words, you were not very happy about it.

Mr. East.—This Commission was not very happy about it, but I believe the position became no better, because experience has shown that the mutilated amendment of 1916 put the Commission into an impossible situation.

Mr. White.—It would be hard to get worse?

Mr. East.—You could always get worse.

Recent decisions have shown the impracticability of a Water Authority satisfying an arbitrator that it has not been negligent.

This might be an appropriate point to make reference to the liability provisions in regard to the Land Drainage Law of Great Britain. I don't want to go into details in this respect, in fact I am not competent to do so, because my knowledge is limited to what I acquired during a very brief investigation in 1952. I might say that in an explanatory booklet circulated by the appropriate department in Great Britain—the Land Drainage Section of the Department of Agriculture and Fisheries—it is stated that an Authority is not liable for non-feasance—in paragraph 118, page 50, of the Report of the Land Drainage Legislation Sub-Committee of the Central Advisory Water Committee, published in 1951. However, in the legislation of 1930, *Land Drainage Act* 1930, which is the principal Act upon which has been based all subsequent land drainage legislation, section 34, sub-section (3), states specifically:—

Where injury is sustained by any person by reason of the exercise by a drainage board of any of its powers under this section, the board shall be liable to make full compensation to the injured person, and in case of dispute the amount of the compensation shall be determined in the manner in which disputed compensation for land is required to be determined by the Lands Clauses Acts.

We have not a copy of the Land Clauses Acts, but probably they will be available in the Parliamentary Library. That is the only section referring to this sort of thing—to negligence.

Mr. Thomas.—Is our Land Drainage Act based upon that?

Mr. East.—No. We have no land drainage legislation. We have sections of other acts in which reference is made to land drainage. An interesting provision in the British Land Drainage Legislation is section 44, sub-section (7), of the same Act, viz.:—

If it appears to any drainage board that an obstruction erected before the commencement of this Act is a nuisance and ought to be removed, the board may proceed against a person having power to remove the obstruction in the same manner as if it had been erected after the commencement of this Act, and this section shall have effect accordingly:

Provided that the drainage board shall be liable to make full compensation to any person who sustains damage by reason of the removal in pursuance of the provisions of this sub-section of an obstruction otherwise lawful, and in case of dispute the amount of the compensation shall be determined in the manner in which disputed compensation for land is required to be determined by the Lands Clauses Acts.

Here, I might mention that the River Boards are the successors of the Drainage Boards. It is necessary that I should explain that the obstructions referred to are very largely weirs erected over the past few hundred years for the purpose of driving water wheels, grain mills, industry, and other purposes, and these weirs hold up the level of the streams and undoubtedly cause flooding. They have existed for a long time.

The Drainage Boards have the right to demand that these weirs shall be removed, but they must pay compensation because of the vested rights of the users. There are very few cases where that could apply in Australia, but don't interpret this to mean the removal of a tree which has fallen into a stream—and a tree fallen into a stream would be an obstruction.

The literal interpretation could mean that compensation might have to be paid to any person who sustains damage because a snag was removed from a stream; that was not the intention of the clause.

Mr. Randles.—We don't know any cases?

Mr. East.—I do know that there have been cases where River Boards have paid compensation for the removal of weirs.

Mr. Brennan.—Funny thing you should mention about weirs. I have just been reading a book by the late Hon. W. A. Brodribb, an old M.L.C. of Victoria and New South Wales, entitled " Recollections of an Australian Squatter " (Public Library reference No. 2951) in which he describes the obstruction of rivers in New South Wales by weirs (page 97). He gave these accounts of fights over the weirs. The people responsible for their obstruction were brought before the Court, held before a Judge in Sydney, but I don't know whether these cases would be recorded as such. I will get you a reference, if you like.

Mr. East.—We would like to have that reference. Some 20 or 30 years ago I had cause to have removed from a certain Victorian stream weirs that had been built by the early settlers to make pools on the Loddon, Pyramid Creek, and other streams. Mr. Byrnes would know some of them by name. Some people objected to the removal. The Commission, with its powers under the Water Act, rejected their objection and removed the weirs. There are some

weirs still on streams that ought to be removed. We have not yet overcome the local opposition from the few who are benefiting from them, but no doubt in due course the protests from those detrimentally affected will be effective.

Mr. Thomas.—Were those rivers highly banked?

Mr. East.—There was one at Deakin known as Pay's Bank, which completely blocked the Loddon. We shifted it. Others on Pyramid Creek were also removed. Where it held up half a square mile of water it was an advantage to the owner and it did not matter much where the floods went over a couple of square miles of country in the old days, but when the blocks are cut down to 50 acres it is a different proposition. No one would take responsibility for those weirs built in the fifties; no one could be sued for the damage done by them, and no one could take action against us for removing them.

Mr. Byrnes.—Was there any objection against removing them?

Mr. East.—There was slight objection in some cases.

Mr. White.—Could that last quotation Mr. East just read out be helpful?

Mr. East.—Not this last one on the removal of weirs, but the other one I read is relevant to the main principle of the inquiry.

Mr. Randles.—In England the land owner, I take it, owns the streams, but here, I take it, the Government does?

Mr. East.—Nobody owns streams here. "The right to the use the flow and to the control of the water at any time in any river creek stream or watercourse and in any lake lagoon swamp or marsh shall . . . vest in the Crown". (*Water Act* 1928, Part II., Division 1, section 4 (1).)

16. In the most recent case of Williamson, Mr. Justice Sholl referring to certain augmentation of flooding of the claimant's land said, "The Commission has *not* proved that the Commission's contribution was *not* due to negligence or any negligent act or omission on its part or on the part of its servants, agents or contractors" and later referring to certain injury, loss and damage, he states, "The claimant . . . has not proved that the whole or any specific and ascertainable portion or proportion of it was due to the Commission's contribution nor . . . has the Commission proved that the same injury, loss and damage . . . or any specific and ascertainable portion or proportion of it would have been suffered by the claimant in the absence of the Commission's contribution. All that can be said, upon the basis of such evidence as I am prepared to act upon is (and I so find) that it is more probable than not that a majority of the trees would have survived in good condition without the Commission's contribution, though it is possible that all, or none, might have done so.".

Similar comments and decisions appear in several places in his award. Without going further into these awards it is obvious that views expressed by a number of speakers in the legislature in 1916 showed a far-sighted appreciation of what has turned out to be the case.

Mr. Mackey said "a negative is a pretty hard thing to prove".

The Honorable W. L. Baillieu said, "We know that in nine cases out of ten the public authorities get the worst of most dealings".

The Honorable Frank Clarke said "I really do not see why the Government wants to lay this burden upon the Commission".

The Honorable Robert Beckett, who tried to have the onus of proof amendment withdrawn, said, "The clause places a burden on the Commission which is most unusual, which is not called for, and which is contrary to the ordinary principles of claims for negligence or claims for compensation".

The Minister in charge of the Bill in the Upper House, the Honorable W. L. Baillieu, who, on behalf of the Government opposed Mr. Beckett's amendment for removal of the onus clause, said, "It may appear somewhat unusual if not paradoxical that I should be opposing an amendment which, if carried, is certainly going to relieve the Authority of an obligation. On the face of it, honorable members must be impressed by what Mr. Robert Beckett has said and feel very much disposed to vote for the amendment".

Mr. Baillieu then read a statement from the Commission and made the statement already quoted that "As I have said, it does seem a little remarkable that the Government should be opposing an amendment which on the face of it is going to give relief to the Water Supply Commission and yet the Commission through the Minister declares that this is a reasonable attitude for them to take up in view of the position which they now occupy. For that reason, I must ask the Committee to vote against the amendment."

As has already been said there is nothing in the Commission's statement which he read indicating that the *Commission* considered the onus of proof clause as reasonable.

I don't want this to be interpreted as questioning the attitude of the Minister at all. The Minister, of course, as the responsible representative of the Government introduces Government policy to the House. It is not for the Commission to question the Minister's decision in the matter and the Commission did not do so.

17. *Notice of Claim.* There was another matter which was referred to by Mr. Bloomfield in his debate on the present Bill and which has come out of Mr. Justice Sholl's latest award—not available to members at the time of the debate.

The existing Act required persons claiming compensation to proceed within six months after the occurrence of the injury complained of.

Mr. Justice Sholl referring to the Williamson case said, quite rightly, that "In the case of flooding of a certain orchard, it was not practicable to make any accurate calculations or even close estimate of the actual losses until the following spring . . . and at the end of the year 1951 was the earliest date at which it could be said that the extent of loss . . . was fully ascertained". The actual flooding occurred in March, 1950.

It was evident, therefore, that the six months referred to in the present Act is not long enough and *an amendment was prepared to extend that time to two years.*

For the expression "the present Act" in the second last line just read, there should be read "the then existing Act".

It might be mentioned that notice stating the nature of the injury had to be furnished to the Authority within 30 days after the occurrence in respect to which compensation is being claimed. It is essential that this notice should be given, for evidence of cause and effect in rural areas, very rapidly disappears in connexion with flooding matters and an Authority responsible for works spread over thousands of square miles should be in a position to know that a claim is to be made in time for it to view the damage and seek evidence in regard to the cost. The amendment made it clear that this notice did not have to indicate the extent of the injury and could be in very general terms.

For the word "cost" in the third last line just read, there should be read "cause".

Mr. White.—How long is it now since those recent floods?

Mr. Byrnes.—You mean the case under review?

Mr. White.—Yes.

Mr. East.—About a fortnight.

Mr. White.—I asked that question, having in mind that this point is relevant to it.

Mr. East.—It can be 30 days after the end of the flooding.

Mr. White.—Put it another way. Would it be any way helpful to us to see that area now? Is the time limit too long for us to get a bird's-eye view of the position?

Mr. East.—In the areas where there are Commission's drains, the position is already so much improved you would not know in some places that there had been floods, but in areas where drains are not constructed by the Commission there are still large areas of water.

Mr. White.—Around Shepparton?

Mr. East.—No. Over Deakin way you would see plenty of flood water, but I doubt whether anyone could say that any damage had occurred.

Mr. Swinburne.—You would know if you looked into the pastures.

Mr. East.—In many cases, no.

Mr. White.—Has all the water drained away?

Mr. East.—You get exactly the same impression in regard to water logging by walking on to recently irrigated pastures where there has been no submergence by floodwaters. An expert agriculturist would be in a better position to make an estimate as to whether it had been flooded or not, though even he could not be sure.

Mr. White.—Were not some of those areas under water for a week?

Mr. East.—Some of them, but the recovery is very rapid in the northern areas with the warmer climate. Non-farmers would not be able to detect that there had been flooding over three-quarters of the area temporarily submerged.

Mr. White.—I am only raising the point because you mentioned the time limit here.

Mr. East.—When I mentioned the Groutch case, which was held over pending an appeal, the claimant won the case, but that appeal lasted so long that nature restored the land to such an extent that when the Arbitrator looked at it he said no damage had been done, and no damages were awarded. If the case had been settled within three months the claimant would have got his damages. In the Wimmera and Mallee where we have about 7,000 to 8,000 miles of channels taking water from May till November into farmers' tanks, there are frequent bursts owing to sand drifts blocking the channels, or some other cause. It may be deliberate; it may be accidental; we cannot say.

Mr. Brennan.—Sand drift would be considerable up there?

Mr. East.—Yes. In certain seasons we get many claims, which may be a dozen or so every year. We record the claim; we make an observation and it is usually clearly obvious where the water came from. When there has been a burst, we do not usually raise the issue of not being liable. We say to the claimant that we will wait till he has harvested his crop and then assess damages and make compensation if justified. Frequently, the crop is heavier than in other parts of his land, then we pay nothing. Flooding does not always cause damage.

But these discussions of your Committee are mostly in connexion with irrigation areas where people are not quite so anxious to get water, except where they have used up their water-rights and want to get more.

18. *Drainage and Irrigation Works.* The Honorable J. G. B. McDonald has suggested in discussions that the Commission might be relieved of the onus of proof that it was not negligent in cases of flooding from drains which—as all people in irrigation districts know—cannot in very many cases be made of sufficient capacity to carry within their banks even the heaviest rainfalls that have been experienced in the various districts let alone the even heavier rainfalls that might possibly be experienced at long intervals.

Under the law as it stood if the Commission constructed any drain at all along some natural course of floodwaters, it placed itself in the impossible position of trying to disprove negligence in the event of flooding occurring—as it inevitably will—at times of very heavy rain.

If the Commission did nothing at all and constructed no drains, it would, of course, be free from any liability in the matter. A good deal of thought was given to this suggestion of Mr. McDonald's, for reservoirs and irrigation works can to a very large extent be designed and constructed to deal with the water flows that might be expected.

There was some difficulty in drafting an appropriate clause, for in times of flooding it might be argued by a claimant that although water came along a depression in which there was a drain some of it may have come from an irrigation channel. It would be very difficult indeed to disprove this because, during very heavy rains when irrigators suddenly stop receiving water on to their farms, the surplus water in the hundreds of miles of irrigation channels must in most cases be discharged into drains and the works are designed accordingly.

The fact that the excavated portion of the drains had a greater capacity than required to take the total quantities of water discharged into such drains from the irrigation channels may not be accepted under the law as it stood by an arbitrator as absolving the Commission from adding to the total volume of floodwaters passing down the depression within which the drain had been constructed.

In the Armstrong case, although the Commission only contributed to flooding, it was required to meet the whole cost of all of the damage that resulted.

It is not desired that a Water Authority should be exempted from making compensation in respect of injury caused by its works and which would not have been incurred but for the works of the Authority, but it is certainly not right that an Authority should pay compensation in respect of damage which would have occurred in any case. To some extent those difficulties were met by sub-clause (2) of clause 11 which required the proportion of the responsibility of an Authority to be determined by an arbitrator.

As a compromise, clause 11 was, however, re-drafted to provide that immunity from liability in respect of flooding of land classified as swamp lands would be limited to flooding by or from *drainage works.*

I want to add that the principal purpose of the introduction of drainage systems in irrigation districts is to take the surplus water from those channels when the irrigators say, "We don't want water." The water keeps on flowing down the channels and in some districts, like the Swan Hill flats, the water can be continued along the channels and then into the river, provided the river is not too high.

But in some districts the channels go out into the drier country and end, and if during rain the irrigators over long lengths of channels said, "We don't want water, close off our irrigation gates," the water would go on down the channel and then spill over further on where the channel capacity was too small to take the concentration of water, or at the end of the channel, and cause damage. So the general objective is to provide in connexion with channel systems, particularly larger channels, drains into which the channels can be emptied at times when the irrigators cease taking water at short notice. The channels from rivers are, of course, closed down as soon as it is evident that no irrigation will be wanted for some days, but we do know that a great deal of care has to be taken in closing down the headworks, because a 40-point rain does not give the water to irrigators that a 3-inch rainfall would give, and frequently irrigators want water within 12 to 24 hours of the rain stopping to make up for what they have not received from rain. There are many complaints about delays in resuming the delivery of water.

Mr. Brennan.—It would be impracticable to construct emergency excavations in the way of storages unless there are natural features into which the water could be diverted?

Mr. East.—No, we have no artificial basins where that is practicable. Our policy under the legislation as it now stands, in the hope that certain weaknesses will be cleared up as a result of these deliberations, is that we will be constructing drains of such capacity that they will carry within the excavated portion of the drain the whole of the water discharged into them from the Commission's channels, plus the additional runoff from the natural rainfall coming on to land that had been recently irrigated, i.e., within the last few hours or days before the flood rain. We will make no attempt to carry additional quantities beyond that, which means that natural flooding will submerge land to the same height as natural flooding did before we constructed any drains at all.

Mr. Randles.—In other words you are not accepting responsibility for other water flows?

Mr. East.—That is so—only water discharged from irrigation channels and rainfall coming off farms more rapidly than under natural conditions because of irrigation. The point is this, if a man has not recently irrigated, and a 2-inch rain falls on nearly level ground that has been check-banked and cultivated as in irrigation districts very little flows off; but if he has recently had from 3 inches to 6 inches of irrigation water on his block, well, nearly all the 2 inches of rain will flow off.

Mr. White.—Does it not depend a good deal on the type of rain? If 2 inches came in two or three hours it would nearly all run off, whereas if it came in two or three days it would not.

Mr. Randles.—That is what I meant.

Mr. East.—We might supply for irrigation anything from 3 inches to 6 inches over a farm. The rain is most unlikely to amount to that. It might only amount to 1 inch. The irrigation water from our channels will completely waterlog the surface layers of the soil; no more water can soak in, so the rain flows off. The point to remember is that the whole of the irrigation district is not irrigated at the same time. In some districts there is a roster system whereby the individuals get their irrigation deliveries in sections on days known to them. It might mean that not more than one-fifth of an irrigation district is being watered at any one time, or has been watered in the previous two or three days. That one-fifth gives a highly accelerated runoff. On the rest the ground is sufficiently dry to absorb most of the natural rain, and we calculate accordingly, having regard to the kind of district—whether intensive or extensive.

We are designing in the Murray Valley and Nambrok-Dennison areas drains in accordance with the principles I have just mentioned.

The Committee adjourned.

THURSDAY, 17TH MARCH, 1955.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. I. A. Swinburne,	Mr. Randles,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. L. R. East, Chairman of the State Rivers and Water Supply Commission, and Mr. I. Meacham, Engineer, were in attendance.

Mr. East.—My statement of evidence proceeds:—

COMPREHENSIVE REVIEW OF ACT.

19. Speakers said quite rightly that the principal Act required a complete overhaul in respect of the compensation sections.

This presented considerable difficulties both in regard to legal aspects and to practical problems associated with irrigation and drainage works.

The Minister was advised that the matter seemed to be one that might with advantage be referred to the Statute Law Revision Committee which could take evidence from the Commission, from the Crown Law Authorities, and from representatives of the Victorian Bar Council whose Chairman had indicated that the Council would be pleased to go into the matter and submit constructive suggestions.

20. The amendments submitted were accepted by the House on the undertaking given by the Minister to have the provisions of the Water Acts in relation to compensation for flooding referred to the Statute Law Revision Committee.

That completes my presentation of the historical background of this inquiry.

MATTERS FOR INQUIRY.

21. The following matters appear to be those which could with advantage be considered by the Committee under the terms of reference of the present inquiry.

I should make it clear that the following points are not recommendations by the Commission, but an attempt by the Commission to set out all the lines of investigation that could be followed if this Committee wishes to follow them. There may be others, but I cannot see them.

The Chairman.—Thank you, Mr. East. I think they will be of great assistance to us.

Mr. East.—

(i) The desirability or otherwise of separating provisions concerning the infringement of rights to or easements over water from provisions concerning flooding.

I previously indicated that the Commission has had no litigation, no claims even, or protests, about infringement of rights to easements over water in the whole history of the Commission.

(ii) The desirability or otherwise of the process of arbitration as opposed to action at law.

The Commission is of opinion that arbitration is to the advantage of both parties, particularly to the claimant.

The Chairman.—Would you like to amplify that a little?

Mr. East.—Yes. The Arbitrator, in an arbitration case, can seek information himself that will enable him to come to a conclusion, apart altogether from waiting until that evidence is presented to him. Secondly, the decision of the Arbitrator on points of fact is final. There can be no appeal, and in these flood cases where the position is often extremely doubtful, opportunities for appeal are undesirable from the point of view of the land owner, in that the costs of appeal are very great and an Authority can usually afford an appeal, whereas an individual land owner might not be in a position to incur liability for any further costs. He is up against it in his first claim quite considerably. The cost might reach £7,000 on account of Arbitration proceedings, and we could not indicate what they might cost if they ultimately went to the Privy Council. Some of the points are points that could go to the Privy Council.

The Chairman.—Mr. East, have you any idea as to whether the initial proceedings, leaving out the question of appeal before an Arbitrator, have been more costly or less costly than proceedings in a court of law?

Mr. East.—I would rather you asked that from someone in the Crown Law Office.

The Chairman.—You have no quick way of comparing them to your own knowledge?

Mr. East.—No.

(iii) The time which should be allowed for—
(*a*) notice of claim
(*b*) taking of proceedings by claimant.

In that regard, the Commission is very strongly of the opinion that the notice of claim should be lodged within 30 days. Even the 30 days have been found to be too long in some instances—allowing the Commission no possibility of ascertaining either the cause or effect; but we could not expect the time to be less than 30 days because a land owner might be surrounded by flood waters and quite unable to comply with that requirement.

Mr. Thomas.—Get out his boat?

Mr. East.—Get his letter out. It does not have to be a letter from a solicitor. It can be any form of notice and the Commission accepts in the barest outline.

The Chairman.—You don't want a technical notice as some of those other Authorities do, to establish their claim, but you do want notice that there is to be a claim so that you can be prepared?

Mr. East.—Yes. We believe that is satisfactory. In regard to the taking of proceedings, the Act before 1954 said "six months", but we found that was too short. In 1954, by amendment, the time was extended to two (2) years. It is for your Committee to consider whether it should be two years, four years, or indefinite.

Mr. White.—It is two years now, Mr. East?

Mr. East.—Yes. It was six months.

Mr. Byrnes.—In the Railways, particularly, it is very restricted.

Mr. East.—The Minister gave the House an undertaking which he had received from the Commission that pending consideration by the Statute Law Revision Committee of this question, the Commission would not rely on any technical weakness in a notice received in respect of a claim.

(iv) The relevancy of intention or negligence on the part of the Authority.

A very important issue is, should a man receive compensation if he is flooded even if the Authority is not negligent? Now, that is the position at present. He does receive it if the Authority is not negligent. Before 1916 all he had to prove was that he sustained damage, that the damage was caused by the works of the Authority, and he received compensation automatically whether the Authority was negligent or not; "Acts of God" and that sort of thing would not come into it. That is the question for consideration. It applies not to the Water Commission alone; any decision would have far-reaching effects on all Authorities, even in civil claims—i.e. the question of negligence.

(v) The clarification of what is negligence in connexion with the design and/or construction of drains.

Mr. Byrnes.—I regard that as very important, having had some experience in my district where drainage has been put in; I know what happens.

Mr. East.—I have already indicated in my evidence yesterday what was the Commission's intention in regard to the design of drainage works.

Mr. Byrnes.—I would like to ask Mr. East one question. In some of the drainage districts landholders contributed a quota towards the design and towards the actual construction, as well as doing their own internal drainage—I understand they contributed approximately 30 per cent.

Mr. East.—It was £2. Ten shillings per acre of their property.

Mr. Byrnes.—Having accepted that design, would not they be a party if there were anything wrong with the design?

Mr. East.—I doubt it. The Commission was the constructing authority for all the work. We designed it and we constructed it. We have had no claims whatever in that form. For the information of the Committee, the drains referred to by Mr. Byrnes are underground drains, just like a town sewer system, and the vineyards and citrus groves drain through agricultural tile pipes into this comprehensive underground pipe-line system, which is designed to take off a certain percentage of the total amount of water added in irrigation, and it is a very large quantity.

Mr. Byrnes.—Plus the flood water?

Mr. East.—No, we do not allow flood waters to go into these pipes at all.

Mr. Byrnes.—They do at Woorinen.

Mr. East.—Not into the pipe system. Anyone who allows such water into the pipe system is liable to prosecution. In Red Cliffs, Merbein and other districts, experience has shown that the irrigators, whether careless or otherwise, often drain surface water into the underground feeder system through their inspection shafts. Action of that kind led to pipes, that were intended to take water away, bringing water on to other peoples' properties up through inspection shafts on lower ground. Undoubtedly irrigators who tipped surface water into the drains would be liable.

Mr. Byrnes.—I am not referring to surplus irrigation water, but if you get a tremendous flood and rain, bringing a lot of water by an "Act of God", the drainage system at Woorinen was designed to take care of that to some extent?

Mr. East.—Not the surface water. The system was not designed to take surface water but to take 25 per cent. of the irrigation water soaking through the soil into the agricultural drains. Flooding of drains with natural water was most unlikely as it had to soak through the man's property. This retarded concentration of flood waters.

(vi) The incidence of the onus of proof, and in connexion therewith the desirability or otherwise of differentiating between flooding from drainage works and flooding from water supply works.

We don't think the onus of proof should be on the Authority in either case.

(vii) The desirability of specific provision that an Authority shall not be liable for damage on lands that would have been flooded if its works did not exist.

That is not in any existing legislation. It would be a new principle in law if it were adopted, but the Commission feels it is quite reasonable.

(viii) The desirability or otherwise of exempting authorities from liability for payment of compensation for flood damage on swamp lands or on lands within natural flood basins, and the definition of such lands.

(ix) The application of the principle of proportional liability.

We don't think that is now contentious at all. We believe the position is satisfactory.

(x) The application of the principle of enhancement in reduction of claims.

The Water Act and a number of other Acts provide that an Authority which confers benefit, in our case by irrigation and drainage works, can offset the advantage against the disadvantage. We have always been up against the difficulty that when a property changed hands, the original owner upon whom the benefit had been conferred cashed in on that advantage, and the buyer paid in cash the full enhancement of

the land. It was always considered a little bit harsh that the man who had bought in should lose some of the enhancement in a subsequent claim, and Mr. Justice Sholl has ruled in a recent case that when the property changes hands, the enhancement provisions are extinguished. That is only the ruling—whether it is correct in law, I could not say, but it is a question worth considering.

Mr. Byrnes.—It applies rather considerably where levee banks are constructed.

Mr. East.—Irrigation works, mostly. If the Commission puts an irrigation channel across a man's property and it is worth, say, £15 an acre, and we make it worth, say £30, we very seldom pay for the land upon which that channel is laid; but say we have taken 10 acres at £15 an acre, i.e. £150, and he has 100 acres, the value of which has been increased by £15 an acre, i.e. £1,500, we offset the enhancement against the value of the land and we do not pay him. That has applied over the full period of irrigation development in Victoria.

Supposing that land is sold, after it has been developed by irrigation, twenty years later and the Commission goes along and wants to put another channel through that property to serve somebody else—we can say we have taken advantage of only £150 out of the £1,500 enhancement that property has obtained, but if Mr. Justice Sholl's interpretation is correct we could not take advantage of any of such balance of enhancement in reducing payments for the additional land taken.

Long before Justice Sholl gave that interpretation, the Commission had acted in that way. We use our discretion and after the property has changed hands and after the man had got the full benefit from the initial work, and if the secondary work had not given any benefit, we don't take advantage.

22. The Commission does not *at this stage of the inquiry* desire to make recommendations for any alteration of the law in respect of items listed above with the exception of the following items which are insufficiently covered under the law as it stands to-day.

23. *Item (v).*

"The clarification of what is negligence in connexion with the design and/or construction of drains."

It is, generally speaking, impracticable to provide in rural drainage and river improvement works for the full control of natural run-off during and following periods of very heavy rainfall such as might be expected to occur from time to time. Failure to provide for full control of run-offs from such very heavy rains—whether experienced in the past or not—should not be regarded as negligence in connexion with works of this nature.

I emphasize the word "expected" in the above quotation. That is rural drainage and river improvement works. It means—"Give as much benefit as you can afford to do, even if you cannot give full benefit, rather than give no benefit at all."

24. *Item (vii).*

"The desirability of specific provision that an Authority shall not be liable for damage on lands that would have been flooded if its works did not exist."

The difficulty in this matter is that it can be argued that additional water has been brought on to lands as a result of the works of an Authority and that such additional water—however little it might be—caused damage which would otherwise not have occurred.

I ask the Committee to reject this argument as not justifying the leaving of Water Authorities open to claims in respect of lands naturally subject to flooding.

The matter is of vital importance to the many River Improvement Trusts which have been set up in recent years to effect improvements to streams placed under their jurisdiction. In very few cases can they hope to give complete protection from flooding, and in fact few of their works are designed with that objective in mind, but practically everything these Trusts do can be alleged to affect flooding—whether the work is simply removal of snags and obstructions from the streams, or the construction of groins or embankments or the excavation of channels or drains.

The Commission recommends that an appropriate amendment be made to the present Water Acts to safeguard these and other Authorities which may carry out such works.

The Arbitrator may say—"You say, Mr. Witness, that under natural conditions this land would have had 4 feet of water over it?" Witness—"Yes." The Arbitrator—"Before the works added anything?" Witness—"Yes", and the witness might be forced to say that the works might have contributed a quarter of an inch. Theoretically, the works added something. That should not be regarded as justifying compensation being awarded against the Commission.

If, however, this quarter of an inch caused the water to go somewhere else where it would not have gone before, then that is a different matter.

Mr. Brennan.—Could I put it this way. If, in an area liable to flooding, a house had been erected above the highest known natural flooding level of 4 feet, and as a result of, say, a retaining wall or other embankment erected by the Commission the water goes 4 feet beyond that highest known level, what then of the liability of the house owner to compensation for the extra flooding?

Mr. East.—That is a different matter; we would have to pay. Now, that reference in the last line I have just read, viz. ". . . to safeguard these and other Authorities which may carry out such works," is of considerable importance because the Commission at the request of the previous Government made an investigation and made recommendations, or rather, I made the investigation and recommendation, for the setting up of River Boards throughout the whole of Victoria to deal with river and stream improvement throughout the State. The recommendations are given on pages 41 to 43 of my report dated 1952 entitled "River Improvement, Land Drainage and Flood Protection, with special reference to The Nature and Operation of Land Drainage Legislation in Great Britain." I submit this as an Exhibit.

The Chairman.—Exhibit 7.

Mr. East.—The Government has indicated that it is giving consideration to these recommendations and there have been representations to the Government by River Improvement Trusts and other bodies urging that these recommendations be substantially implemented. The Parliamentary Public Works Committee is at present conducting an inquiry in which these proposals are involved.

25. *Item (viii).*

"The desirability or otherwise of exempting authorities from liability for payment of compensation for flood damage on swamp lands or on lands within natural flood basins, and the definition of such lands."

This matter is linked with Item (vii) above, but is of considerable concern to the State Rivers and Water Supply Commission as an irrigation authority.

Owing to the availability of the Commission's drains to remove water from swamp lands, and of its irrigation channels to supply water for irrigation, many landowners have taken the risk of developing such lands under intensive cultivation.

This development should be entirely at the risk of the landowner; the Commission which has constructed the drains which have made the development possible should not be liable for the inability of its drains to prevent flooding at times of very heavy rainfall.

The provisions of the 1954 Water Act in regard to swamp lands—see paragraph 6—do not go very far towards meeting the situation, for much land formerly swamp and still liable to occasional flooding has for years not been classified as swamp lands in the registers of irrigation districts.

It is suggested that the term "swamp lands" used in section 56 of the Water Act be expanded or replaced—possibly by two classifications such as "swamp lands" and "lands liable to flooding"—the latter being defined to ensure that they included only lands liable to flooding by natural run-off.

The Water Acts now include under definitions—section 3, Act 3801—

"Swamp lands" means lands that are from natural causes usually covered with water or the soil whereof is usually saturated with water so as to be unfit for irrigated culture.

You will realize that if we flooded such lands either deliberately or through negligence, or inadvertently, no damage could result, and therefore this definition does not really meet the situation.

Proceeding:—

It is suggested that a further definition be added somewhat as follows:—

"Lands liable to flooding" means lands intermittently submerged or occasionally inundated by natural flow of flood water.

An additional classification "Lands liable to flooding" could then be provided for in section 56 of the Water Acts, as lands suitable for irrigation to which water rights or extra water rights could be apportioned under section 61.

As we all know, lands that have been once swamp lands are usually very fertile and are well worth developing. In fact the whole of the Swan Hill Flats could have been classed in the category before the levee banks gave them protection.

Mr. Byrnes.—You have Lake Baker and others.

Mr. East.—Yes. There are other lands where there is no protection and drains removed water at normal times, but at times of very heavy rains there is nothing whatever to stop all the water from coming down.

Proceeding:—

Development should not be prevented by withholding water rights but it should be at the risk of the landowners.

Landowners should be given the right to object to the apportionment of "compulsory" water rights on such lands, if they consider that the risk of occasional loss might outweigh the benefits in years in which there would be no flooding.

I don't think anyone would object to it, but landowners should be given the right to object.

26. Consideration should be given to the position of River Improvement Trusts, which have no specific safeguards in regard to claims in respect of damage on swamp lands under present Water Acts. The *River Improvement Act* 1948, No. 5302, under which they operate provides in section 29 that division 2 of Part VI. of the principal Act (The Water Act) shall apply to the Trusts as if they were authorities under the Water Acts.

There have been no claims up to the present, but there is plenty of room for trouble.

What I would like to do now is to refer to the Appendices so that they will go into the Record. Attached to this statement I have made are appendices as follows:—

Appendix 1. — "Groutch Case" — Memoranda 21st October, 1914, and 3rd August, 1914, from E. J. D. Guinness, Crown Solicitor. Summary of case by K. J. Slattery, 3rd March, 1955.

Appendix 2.—"Armstrong Case"—Summary of case by K. J. Slattery, 3rd March, 1955.

Appendix 3.—"Williamson Case"—Summary of case by K. J. Slattery, 3rd March, 1955.

Appendix 4.—Victorian Bar Council letter 19th October, 1954, submitting memorandum by Mr. D. I. Menzies, Q.C.

Appendix 5.—Graziers' Association of Victoria—letter of 1st November, 1954.

Appendix 6.—General—Extract from opinion of Dr. E. G. Coppel, Q.C., 17th November, 1954.

Copy

APPENDIX 1.

14/8216 on 14/9221

CROWN SOLICITOR'S OFFICE,
461 Lonsdale-street,
Melbourne. 3rd August, 1914.

Memo.

re *Groutch and The State Rivers and Water Supply Commission.*

(Arbitration.)

The claim by Frances Clare Groutch of Undera, farmer, for compensation for damages, £50, alleged to have been caused to her land through the bank of a channel constructed by the Commission breaking on the 22nd September, 1912, came on for hearing before His Honour Judge Wasley, who had been appointed Arbitrator by His Excellency the Governor in Council under the provision of the *Water Act* 1905, on the 10th April, 1913.

After hearing the evidence called for the claimant His Honour was of opinion that inasmuch as no negligence on the part of the Commission had been proved the claimant was not entitled to compensation, but at the request of the claimant His Honour stated a Special Case for the opinion of the Supreme Court, and on the hearing of the Special Case, on the 10th October last, the Full Court held that the claimant was entitled to recover compensation if damage were proved although the Commission may not have been guilty of any negligence.

The hearing of the claim for Compensation was resumed and concluded before His Honour Judge Wasley on Thursday last, the 30th ult., when, after the evidence called on behalf of the Commission, His Honour stated that the claim was an extravagant one; that owing to the long adjournment of the case the Commission was able to prove that the grass had not been injured as alleged by the claimant, and he was not satisfied that the damage, if any, was caused by the construction of the channel by the Commission as it seemed clear from the evidence, that if the Commission had not constructed the channel, the land of the claimant would have been flooded owing to the height of the flood.

His Honour held that the claimant had not proved any damage as the result of any act of the Commission and the claim therefore failed.

As the claimant had succeeded on the Special Case stated for the opinion of the Supreme Court His Honour thought each side should bear its own costs.

Papers are returned herewith.

Accounts of Messrs. S. Garonne and W. Reid, witnesses for the Commission, are forwarded herewith for payment.

(Sgd.) E. J. D. GUINNESS,
Crown Solicitor.
per J.B.R.

The Secretary,

State Rivers and Water Supply Commission.

Copy

13/12095 on 14/9221

CROWN SOLICITOR'S OFFICE,
461 Lonsdale-street,
Melbourne. October 21st, 1913.

re *Question of applying for special leave to appeal against decision of State Full Court on case stated by Arbitrator in the matter of Groutch* v. *State Rivers and Water Supply Commission.*

I have considered the question of the probability of an appeal to the High Court being successful against the decision of the State Full Court on the case stated by the Arbitrator (Judge Wasley) in the matter of *Groutch* v. *The State Rivers and Water Supply Commission,* and have come to the conclusion that the chances of upsetting the judgment referred to are remote, and that the High Court if it granted leave to appeal at all would uphold the judgment.

The Full Court's judgment is based on the construction which it placed on sections 234 and 235 of the *Water Act* 1905 (Act No. 2016). Under section 234 it is provided that after the passing of the Act no action claim or proceeding whatsoever shall be maintainable except as in the Act provided against an authority in respect of, among other matters, any injury loss or damage to property caused by flooding or by water in any way sent on to property by any act of an authority its servants or agents. Section 235 then provides that notwithstanding anything contained in section 234 an authority should be liable to make compensation for any injury loss or damage caused *inter alia* "by flooding or by water in any way sent on to property by any act of the authority its servants agents or contractors; if such injury loss or damage be such as would but for the provisions of this Act have been a good cause of action to such person against the authority" &c.

Our Full Court held that by reason of the words quoted a person whose property was flooded or had water sent on to it was given a right to claim compensation, and that the effect of the words "but for the provisions of this Act" operated to deprive the Commission of a defence which might otherwise be available—namely, that the work being done under statutory authority unless there was negligence in carrying it out, the Commissioners would not be liable. In other words, that the section conferred a right to compensation in all cases in which a claim could be made at common law. At common law where a land owner brings or impounds water on his land, he is liable for its escape unless he can show that the escape was due to an agency beyond his control. (See *Rylands* v. *Fletcher* L. R. 3 H.L. 330.) There was, however, an exception to this obligation, that where the legislature had authorized an act to be done, if the act was done

without negligence, though damage might result, the person suffering the damage had no redress except such as the legislature might expressly give him.

In the Special Case here, it was mooted whether this exception could be relied on by the Commissioners; the court, however, held that the wording of section 235 prevented the Commissioners availing themselves of this defence, as the right to compensation conferred by section 235 given to the person complaining was all the rights which he would have at common law, as in express terms the right given was to be such when he had "but for the provisions of this Act."

I think the construction of the State Court would be accepted as the proper one by the High Court, and if so, that an appeal would not be successful. There is no appeal of right, but an application would have to be made to the High Court for leave to appeal. It is possible that the High Court would grant the leave, but this is not at all sure; and even if it did grant the leave, my own view is that the judgment would be confirmed.

The decision referred to is no doubt of wide application, and I think that the question of amending the section should be considered and the right to claim compensation limited to cases where flooding was due to negligence. The amendment desired would be carried out by making the paragraph quoted above read as follows:—"By intentional or negligent flooding or by water in any way sent on to property by any negligent act of the authority or its servants agents or contractors."

(Sgd.) E. J. D. GUINNESS.

The Secretary,
State Rivers and Water Supply Commission.

Water Act 1905—*Section* 235.

Groutch v. *State Rivers and Water Supply Commission*
1912-14.

The Commission had constructed on and through certain land adjoining the Goulburn River a large channel terminated at each end by the said river, for the purpose of conveying flood waters more directly from one section of it to another. Levee banks were then erected on each side of the channel.

On 22nd September, 1912, flood waters from the Goulburn River made a breach in the levee bank and the land of the claimant was flooded. Compensation was claimed for damage allegedly caused by flooding.

Judge Wasley was appointed as an Arbitrator on 8th April, 1913. He found in his judgment of 10th April, 1913, that negligence had not been proved and the Commission was only liable where it was proved negligent.

At the request of the claimant a special case was stated for the opinion of the Supreme Court to determine whether negligence in the construction of the work of the Commission had to be proved by the claimant.

The Court decided on 10th October, 1913, that negligence was not a necessary part of the claimant's case and if she suffered damage by flood waters *prima facie* she was entitled to compensation.

It was not necessary to prove negligence. Section 235 was held to confer a right to compensation in all cases in which a claim could be made at common law.

The Arbitrator on 30th July, 1914, then, after further evidence called on behalf of the Commission, stated that the claim was extravagant and owing to the long adjournment of the case the Commission was able to prove the grass had not been injured. He further stated he was not satisfied that the damage (if any) was caused by the construction of the channel by the Commission, as it seemed clear from the evidence that the land of the claimant would have been flooded owing to the height of the flood.

His Honour held that the claimant had not proved any damage as the result of an act of the Commission. The claim therefore failed but as the claimant had succeeded on the special case submitted for the opinion of the Supreme Court, His Honour directed that each party should pay its own costs.

The Commission's payment to Counsel totalled £40 19s. 6d.

K. J. SLATTERY.
3rd March, 1955.

APPENDIX 2.

Armstrong v. *State Rivers and Water Supply Commission*
1951-53.

This claim was based on the alleged negligence of the Commission in the construction of the Deakin main drain and the contention that flood waters were brought on to her land by this drain, which together with irrigation channels and culverts had the effect of concentrating a large amount of water on her property. Flooding occurred in March, 1950 when 739 points of rain fell over a period of four days in the Echuca area.

The Commission denied negligence as the drain was designed to carry away surplus irrigation water and natural rainfall. It did not bring to the land any more water than it took away. The flooding occurred because of the unprecedented rainfall in this area.

Mr. Justice Sholl was appointed as Arbitrator on 10th April, 1951. In his interim award of 5th September, 1951, he found that the Commission's irrigation works had diverted substantial quantities of water and that the drainage works were of insufficient capacity. As a result flooding of the property was accentuated both with respect of intensity and duration.

The Arbitrator further stated that the storm was unprecedented and could not have been anticipated. But the Commission's works produced for approximately 30 days flooding to a greater depth and of a greater duration than would have been produced by works of an appropriate nature, having regard to the rainfall records available at the date of construction.

He was not satisfied that the Commission disproved negligence on its part and that this "excess flooding" was not intentional. Flooding is intentional when it is designed and desired or when it is the natural and probable consequence of the acts or omissions of the Authority, realized by it as such, even though such consequence is not desired. Flooding is negligent when the Authority in exercising its statutory powers and carrying out statutory duties, fails to use reasonable care to prevent flooding which is unnecessary for the proper exercise of such statutory functions.

The onus was on the Commission of allocating the extent of flooding under three headings.

(*a*) The flooding which would have occurred under natural conditions.
(*b*) The flooding for which the Commission's works might reasonably have been constructed, and
(*c*) The "excess flooding" due to the exceptional storm against which the Commission should not have been expected to provide.

Failing proof of this dissection of flooding, the Commission was held liable for total flooding and consequent damage, including loss of profit which was the major item of compensation.

In his final award of 17th April, 1953, the Arbitrator awarded the claimant £1,088 3s. 10d. as compensation. In addition, the Commission was required to pay the claimant's costs of £3,000 and its own costs amounted to £3,172 13s. 4d.

K. J. SLATTERY.
3rd March, 1955.

APPENDIX 3.

Williamson v. *State Rivers and Water Supply Commission*
1954.

In March, 1950 there was an exceptional storm (946 points over a period of four days) which flooded the Stanhope area, including the property of Williamson who then claimed compensation, alleging that the Commission's irrigation works had caused a minor increase in intensity of flooding but a major increase in the duration of flooding (from approximately three days to twelve days).

The Commission denied liability and contended that any diversion of water from its irrigation works was of negligible amount and did not affect the flooding which would have occurred inevitably.

Mr. Justice Sholl was appointed as an Arbitrator on 13th September, 1950. The Arbitrator in his Award of 18th October, 1954 found that the Commission's drain was so sited as to cause its banks to cut across to an appreciable degree the natural lines of drainage to and the natural outlet for the water. The banks of a channel were also placed further to restrict the natural drainage of and the said natural outlet from such areas. He also found that a channel overflowed which caused an increase in the area of the claimant's land flooded and thus increasing the duration of the flood.

The Arbitrator stated that the Commission did not prove that the Commission's contribution was not due to negligence or any negligent act or omission on its part.

It was further held that where a claimant proved damage from flooding and this was contributed to by works of the Commission and the Commission had not disproved negligence, the claimant was entitled to recover the whole amount of loss suffered except where the Commission could prove that some calculable and apportionable part of the loss was not due to its act or default.

This in effect placed a second burden of proof on the Commission. The Commission considers it impossible to discharge such a burden of proof and the recent amendment to the Act makes it mandatory for the Arbitrator to determine the proportion of liability and award only such proportion of damage against the Authority.

Mr. Justice Sholl's award is in the form of a Special Case for the opinion of the Supreme Court. This award provides in certain events that the Commission shall pay to Williamson £11,122 and costs. If the Commission is successful, it may have to pay nothing or it may have the award reduced to £5,500 and half the costs. The costs of the action to date are approximately £4,000 for each party.

Neither party has asked to have the special case referred to the Full Court and a settlement of this and 23 other cases is being negotiated for an amount not exceeding £12,000.

K. J. SLATTERY.
3rd March, 1955.

Copy

APPENDIX 4.

The Victorian Bar Council
The Committee of Counsel
The Bar of Victoria

Selborne Chambers,
462 Chancery-lane,
Melbourne, C.1.
19th October, 1954.

The Hon. C. P. Stoneham, M.L.A.,
The Minister of Water Supply,
Public Offices,
MELBOURNE, C.2.

Dear Sir,

re *Bill to amend the Water Acts.*

The attention of the Victorian Bar Council has been drawn to the proposed amendments to the Water Acts.

Certain aspects of the bill have been considered by the Council in the light of a memorandum prepared by Mr. D. I. Menzies, Q.C., a copy of which is attached.

The conclusion is reached by the Council that the proposed amendments will bring about a situation in which a citizen who has a just case for compensation will be unable to establish it. Although the main amendment relates merely to a change in onus of proof the practicalities of the situation are such that unless the claimant has the opportunity to obtain information from the defendant he has no chance of proving his case.

The expense and difficulty in preparing a case against an authority is a grave deterrent to any claimant in any case, but, be he ever so financial, he could not hope to present a satisfactory case under the proposed changes in the law.

It is to be observed that a claimant must proceed by arbitration and not by action in the ordinary way. As a result the procedures of interrogatory and discovery of documents which are available to assist an ordinary plaintiff to prove his case are denied to a claimant against an authority.

This Council does not believe that the Government would wish to create a situation in which from a practical point of view persons unjustly injured are prevented from establishing their claims and feels that the full implications of the proposed amendments may not have been realized.

If it is felt that the decision of Mr. Justice Sholl in Armstrong's case has raised matters requiring corrective action, the suggestion is made that the principles involved be made the subject of a wider review and that consideration be given to revising this part of the Act in a more comprehensive manner with a view to evolving a plan more simple in operation and consistent with the requirements of justice.

The time available has not been sufficient to permit this Council to offer anything more constructive at this stage, but should it be thought useful the Council would be pleased to go into the matter and submit constructive suggestions.

A copy of this letter has been forwarded to those Counsel on the roll who are members of Parliament and a copy has also been sent to the Hon. John Cain, Premier of Victoria.

I have the honour to be, Sir,

Yours faithfully,
(Sgd.) M. J. ASHKANASY,
Chairman,
Victorian Bar Council.

Memorandum of Mr. D. I. Menzies, Q.C.
Proposed Amendments to Water Act.

1. Division 2 of Part VI. of the Water Act which provides for compensation to owners of land for injury by works of any water authority is a badly drawn and difficult set of provisions which as they stand make it difficult for a person who has suffered loss to obtain redress. See for instance—

(1) the provisions of s. 261 requiring notice of injury within 30 days (an unreasonably short time) and failing to state clearly the event from the happening of which time begins to run. It may be the flooding or the occurrence of damage. If it is the flooding the notice must state the damage, yet at the time that might be unascertainable;

(2) the provisions of the first paragraph of s. 263 which prohibit the awarding of compensation unless the notice pursuant to s. 261 sets forth the item of damage;

(3) the ambiguity of s. 261 and s. 263—see Sholl J. in Armstrong's Case 1952 A.L.R. at pp. 478, 480, 484, 485. This judgment and the judgment in 1954 V.L.R. 288 which followed it stress again and again the ambiguities and difficulties of the sections.

2. A complete revision of the Division would therefore be justified. The amendment however does not tackle the real problem, i.e. the clarification of the position, but is directed merely to protect many water authorities, and in particular the Commission, from the consequences of flooding which it is proved they have caused.

3. The protection which the amendment would give would be likely to work injustice. As matters stand a claimant must prove damage from flooding caused by the authority in question and it is then for the authority to prove that the flooding was not intentional or due to negligence. If the claimant had himself to prove intention or negligence he could rarely succeed because the cause of the flooding is probably known only to the authority. In *Armstrong's case,* for instance, although the claimant was advised by a most skilled engineer it was only when the Commission's witnesses were called that what had really happened was discovered. That evidence related, *inter alia,* to the siting and construction of works twenty years or so previously.

4. Not only would the amendment to s. 260 throw an entirely unfair burden on a claimant but the proviso seeks to protect an authority from paying compensation for damage caused either intentionally or by negligence. Some of the lands registered years ago as swamp lands are lands of great fertility and productivity.

5. If the amendment proposed to s. 11 (2) were part of a reasonable revision of an unsatisfactory set of provisions there would be something to be said for a better drafted provision to facilitate the apportionment of damage according to fault. As matters stand damage is apportionable but it is for the Commission to prove that some part of the damage was due to causes other than the flooding which it intentionally or negligently caused. The present amendment is really tied up with the former amendment and if the former falls so should the latter.

APPENDIX 5.

The Graziers' Association of Victoria.
"Temple Court" (8th Floor),
422-428 Collins-street,
Melbourne, C.1.
1st November, 1954.

'phone
MU 5796
Hon. C. P. Stoneham, M.L.A.,
Minister of Water Supply,
State Offices,
MELBOURNE, C.2.

Dear Sir,

Water Bill.

I am instructed most strongly to protest against the provisions of section 11 of the above Bill.

Sub-section (1) of this section, if enacted in its present form, will for all practical purposes absolve public Authorities operating under the Water Act from any liability for flood damage they may cause to the properties of individuals.

The task proposed to be placed upon the individual, of proving that the Water Authority was negligent, is well nigh impossible.

In all such cases, the Authority involved has a very considerable technical knowledge and experience not only of the works concerned but also of the area through which they have been constructed. Data concerning topographical detail, district rainfall, engineering practice and design and other matters peculiarly within the knowledge of the Authority most frequently have direct bearing on the issue. None of this information is available to the individual who is the claimant.

The amendment proposed in section 11 of the bill would place the aggrieved individual in the hopeless position of attempting, in effect, to fight the Authority on its home ground.

There is no doubt it was in recognition of this situation and to preserve the rights of the individual that Parliament originally placed the onus on the Authority to disprove negligence.

Sub-section (2) of section 11, if enacted, will make it impossible for a claimant to recover in respect to land classified as "swamp land". The general accuracy or otherwise with which existing Registers of "swamp land" have been compiled is not known, but in a particular case which went to litigation, the claimant was amazed at the extent of the land classified as swamp. Much of this land was productive and capable of being ruined by a flood of more than, say, a week's duration.

A further difficulty is that the Register is not required to be revised more frequently than every fifteen years. Objections to a classification may be taken before a District Appeal Board, but only within 30 days of its publication. An owner or occupier may apply for a revision at any time, but the Authority's decision on this application is not appealable. Consequently, the Authority's view can be conclusive for as long as fifteen years.

In your explanation of this proposed amendment to the existing law, you described as "paradoxical" the situation in which, if the Water Commission " . . . constructs drains bringing great benefit to all lands in the district, it makes itself liable to compensation claims where some of the land normally benefited occasionally fail to receive benefit."

With respect, the phrase "fail to receive benefit" is a curious euphemism. It certainly does not accurately describe the damage and severe monetary loss to the individual that can result from the uninhibited disposal of Commission water on any private land which is classified by the Commission as swamp land.

Mr. Justice Sholl recently expressed a view on this position which you say is "paradoxical." He said:—"It is difficult to perceive any sound reason why an individual or individuals should not be compensated if they are exposed to particular loss by a scheme designed to benefit the community or a section of it, even if they are themselves members of that community or that section."

In this Association's view, it is quite essential that in matters of this nature the rights of the individual should be respected and preserved.

Public Authorities, such as the State Rivers and Water Supply Commission, obviously are possessed of a vast fund of technical and other information not available to any private individual.

In the circumstances, it is reasonable that such Authorities should have the responsibility of proving the correctness of their actions in cases where such actions appear to prejudice the livelihood of an individual.

It is earnestly requested that section 11 of the Water Bill be withdrawn.

Yours faithfully,

(Sgd.) V. W. OFFICER,

Secretary.

APPENDIX 6.

State Rivers and Water Supply Commission.

Extract from Opinion of Dr. E. G. Coppel, Q.C.—Williamson's Case. Dated 17th November, 1954.

I am next asked to advise whether it would be possible in a normal flooding claim for the Commission to discharge the onus of proof that such flooding was not intentional or due to negligence or any negligent act or omission of the authority, its servants, agents or contractors.

With regard to intentional flooding, I think that theoretically it is possible to discharge the onus of proof. But the normal flooding claim does not arise intentionally. I find it difficult to imagine such a case in practice.

As regards negligence, I think it highly unlikely that the Commission will in practice ever succeed in discharging the burden of proof. Looking solely at the irrigation works of the Commission, claims will, it seems to me, be made for what Sholl J. in Armstrong's case called "excess flooding." It seems unlikely that claims will be made in cases where the sole cause of damage is an overflow from the Commission's channels or reservoirs. And both Armstrongs' and Williamson's cases afford an illustration of the extreme difficulty, if not impossibility, of disproving negligence.

The other exhibits and appendices have been referred to in the course of the inquiry.

The Chairman.—Thank you, Mr. East. I would like to express the Committee's appreciation of the way in which you have presented your evidence in this case. It will be of great assistance to us in what is a difficult case. The information you have presented is most embracing and will be most useful.

Mr. East.—I would appreciate it if this Committee would favour the Commission with an opportunity to peruse its recommendations before they are finalized.

The Chairman.—I think we should give Mr. East an opportunity of giving evidence again at a late stage. We thank you, Mr. East, for the evidence you have given to-day and will probably be calling you again.

The Committee adjourned.

TUESDAY, 22ND MARCH, 1955.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. R. T. White.

Mr. A. Garran, Parliamentary Draftsman, was in attendance.

The Chairman.—Mr. Garran is here to-day to assist us with the problems arising in connexion with the Water Act. He is aware of our terms of reference and has seen the submissions placed before this Committee by Mr. East. I understand Mr. Garran is also conversant with the various problems which Mr. East posed at the end of his submission and which this Committee considers it should investigate before the inquiry is concluded. I ask Mr. Garran to proceed to give his views on the whole subject.

Mr. Garran.—This is a large problem which raises questions of administration and engineering as well as having social, political, and legal aspects. I understand that Mr. East approached the subject from the administrative and scientific or engineering angles. My contribution will be based on legal aspects.

First I shall discuss the general basis of liability in tort with particular reference to problems of water. Then I shall discuss the liability of statutory corporations, with particular reference to water. Then I propose to examine the Victorian Acts relating to water authorities in Victoria, and in other States and England. After that I shall suggest certain methods of approach and the related problems.

There are two general theories for the basis of liability in tort—that is, civil wrongs. One is that a person who is damaged should be compensated. The other is that a person who does damage should make restitution or pay compensation only if he is blameworthy. The one might be called a compensation basis and the other a fault basis. In the first case damages will be payable regardless of the mental approach or negligence or other conduct of the defendant. In the other case the defendant must have been blameworthy to some extent before he should be made liable. Salmond in his Eleventh Edition, at pages 22-23 states—

> The law moves in cycles. A period of strict liability, an "unmoral" period, is succeeded by a period of fault liability—a "moral period". Then the pendulum swings back again. It is the conflict between standardization and individualization, between certainty in the law and concrete justice in its application to particular circumstances. Viewed from another angle the conflict arises from the aim of the law to protect two basic interests—interest in security and interest in freedom of action.

Generally it can be said that there is a growing acceptance in this century of a doctrine that the object of the law of tort is to compensate a plaintiff for injury that he suffers and not to punish the defendant for his wrongdoing. An idea of compensation and even insurance is growing up. The question of insurance, as you are aware, is becoming more and

more important in law and administration. An example of this can be seen in the law of contributory negligence. Originally this law said that if the plaintiff himself was negligent he placed himself in the wrong and at fault so that he could not recover from the defendant even if the defendant was more negligent. This was altered recently by an Act in the Victorian Parliament, and now there is a basis of dividing liability according to the percentage of blameworthiness.

The Chairman.—Although that is a new conception as far as motor vehicles are concerned, it is a very old one in the Admiralty jurisdiction.

Mr. Garran.—That is so. Workers Compensation law provides a case in which compensation has been introduced even when the employer who is liable is not in any way to blame. Provision is made for covering his liability by compulsory insurance. Probably the best case is that of the law of trespass. There is trespass to the person or trespass to the goods. If I knock another person or his car and cause damage I am liable, regardless of negligence, because I have caused damage to him. However, this has been modified in view of the law of the highway. When people go on a highway they must expect to receive and give knocks to some extent, and so the law has imputed to all accidents on the highway a basis of negligence. The fact of accident alone was not sufficient to raise liability. Then the law was swung back to some exent by the introduction of third party insurance. It is true that in Victoria negligence must still be proved in relation to third party insurance claims, although one can now sue a defendant who is unknown—as in the case of the hit and run driver. In some jurisdictions (though not in Victoria) the insurance element is applied to motor-car accidents in the same way as in workers compensation. Recently the Victorian Parliament provided, in relation to aircraft, that the air should be deemed to be a highway where one may come and go despite the possible property rights of people, and that one is not liable for any nuisance caused by passing over land or making a noise as long as one flies at a reasonable altitude. And in the same Act it is provided that if any object falls from an aircraft and does damage, the owner of the aircraft is liable, apart altogether from any question of negligence.

Thus there is a constant swing between two ideas of liability without fault and liability with fault.

Apart from this question of theory, the law on the various torts is more or less clear. I do not propose to discuss all the various torts, but there are two which are applicable to this question. The first is known as the rule in *Rylands* v. *Fletcher,* that being the name of the case in which it was first clearly established. The rule is that if any man brings on to his land and keeps there any object which, if it escapes from his land, can do damage, he is liable for the damage apart from any proof of negligence.

Mr. White.—In what country did this case occur?

Mr. Garran.—It is an English case and it started with the question of water kept in a dam on land. It has been extended to various other dangerous things, even as far as campers, but I think that is a rather wide extension.

The other tort, negligence, is sometimes called a tort and sometimes called an element in tort. In many torts negligence is an element, and it is sometimes described as being a tort of itself. Negligence poses a problem in that it presupposes that there is some duty of care and there are different standards of care for different circumstances. So it is very difficult to say exactly where negligence starts and ends without also knowing what is the care—that is to say, the duty of the person at fault. For example, if you take into your building various types of people, the law requires different standards of care from you according to whether they are trespassers or licensees or have been invited onto the property.

Dealing now with the general principles of law as applicable to water, there is first the case of water which is normally on your land. Water flows in defined channels, such as a river, or at times, there is surface water that runs without a defined channel across land. There is also, of course, sub-surface water. With regard to the natural flow of rivers there is a right to the riparian owners—that is the people by whose land the water flows—to take their domestic requirements and expect that those above them on the river will not take more than their domestic requirements and so leave them waterless. As the water in rivers is now the property of the Crown in Victoria, for all practical purposes, this aspect of the law is of little importance in the present case. With regard to the flow of surface water not through any defined channel, the law has reached certain conclusions which briefly may be stated to be that if water comes on your land, you can allow it to flow off on to the next man's land without any liability. You can even pass it through those parts of your land which are more convenient to you, and the neighbour must take it as it comes. If you accumulate water, or dam it up, the question of liability alters and the " absolute liability " or " strict liability " doctrine of *Rylands* v. *Fletcher* comes into the picture. This, of course, will shortly lead us on to the question of statutory authorities whose function it is to dam up water and distribute it through artificial channels, or divert drainage through artificial channels.

There are certain exceptions to the doctrine of *Rylands* v. *Fletcher.* One is if the plaintiff—the next door neighbour—consents to the water being dammed up; another if some stranger comes on to your land and blows up the dam, and there is a nebulous exception called " Act of God ", but it is difficult to prove any occurrence as an Act of God. Heavy, unprecendented rainfall does not qualify (except for one early and much criticized case); possibly it would require a meteor to fall. I do not know whether an earthquake would be sufficient. The final exception is that the rule does not apply to statutory authorities operating within their statutory functions.

In Victoria, statutory authorities that deal with water are all public bodies invested with certain powers by or under an Act of Parliament. Further back in history, in England, the early statutory authorities were companies of adventurers—we call them businessmen now—incorporated by an Act of Parliament, and their incorporation was looked upon as a bargain between the adventurers and the public. Because of this approach to the first statutory authorities, the common law doctrine of liability was started in its present direction.

Dealing now with the question of the law of tort in relation to statutory authorities, the text book on this subject has not yet been written, although the first steps towards it are provided by Robinson in his book " Public Authorities and Legal Liability ". Should members of the Committee wish to make some shorter approach to the subject, references may be found in Salmond's Law of Tort, 11th Edition, pages 50 to 57 and 637 to 638.

I propose to pass by the problem of the immunity of the Crown in Victoria in tort as our water authorities are not the Crown, and that subject has been taken up on another occasion. Similarly, I propose to pass by the question of statutes of limitation.

The Chairman.—The Committee will desire you to look at that latter question on some future occasion.

Mr. Garran.—The common law has worked out a theory of liability of statutory authorities. A statutory authority is, by its Act, empowered—sometimes directed—to perform certain acts or general functions. In the case of the statutory authorities with which this Committee is concerned, there is no general direction that certain works are to be performed, but the authorities are authorized to do certain works. The authorities concerned in the Committee's inquiry are not only the State Rivers and Water Supply Commission, but also the Waterworks Trusts, Drainage Trusts, River Improvement Trusts, etcetera, under the Water Act, and there are other authorities such as the Melbourne and Metropolitan Board of Works, the Mildura Irrigation and Water Trust, the Geelong Waterworks and Sewerage Trust, as well as municipal councils, &c.

The common law has decided that where a statutory authority is, by its statute, authorized to perform some work, then unless some specific provision as to the liability of the authority is contained in the Act the authority will not be liable if it is acting within the scope of its authority and without negligence. I will speak at some length on the aspect of negligence later.

Perhaps I might now mention the problem of the scope of the authority. If the authority does something which it is not authorized to do, or if it does something in an unauthorized manner, it loses its statutory protection, and in the case of a water authority would be liable under *Rylands* v. *Fletcher*. Assuming that the authority is acting in the scope of its authority—and I will be assuming that hereafter—if there is no special provision in the Act, the courts will hold that authority liable only if it is negligent.

The Chairman.—It is quite clear that no questions have arisen outside the scope of the authority.

Mr. Garran.—Negligence is a variable factor according to the standard of care required. Generally, it may be said that an authority is not negligent if its acts are necessary, and the test of necessity both as to acts and their consequences is the possibility or impossibility of avoiding damages if the authority has exercised due care and skill.

Mr. White.—Is not the kernel of our inquiry in what you have just said?

Mr. Garran.—Yes, and I shall develop the argument further. I cite the case of the *Manchester Corporation* v. *Farnworth* which is reported in Appeals Cases 1930, page 171. In that case the municipal council set up an electrical generating station and poisonous fumes from the chimneys were detrimental to neighbouring farms. The court held that the municipality had failed to use all reasonable diligence—in fact, it said that the municipality was callous and indifferent in its planning. So it was held to be liable. I am stating those facts because I wish to quote from what was said by Lord Dunedin—

> The onus of proving that the result is inevitable is on those who wish to escape liability, but the criterion of inevitability is not what is theoretically possible, but what is possible according to the state of scientific knowledge at the time, having also in view a certain common-sense appreciation, which cannot be rigidly defined, of practical feasibility in view of the situation and expense.

That is a test, which, if applied, is, I think, an excellent proof of the genius and wisdom of the English common law. It will be noted that it takes into account scientific knowledge, common-sense appreciation of the problem, the situation, and expense, and it refuses to set down any rigid definition.

There is one more factor to be considered; that is to say, if a statutory authority is empowered as opposed to being directed, to do a thing, it is not liable for not doing that thing. If the Water Commission did not build a drain it would not be liable, but if it built a drain, questions of liability may or may not arise.

Mr. Thomas.—Would that be irrespective of the capacity of the drain?

Mr. Garran.—That issue would enter the question of liability if the authority built a drain. If the Commission did not build a drain it would not be under any liability.

Mr. White.—The drain might be in the interest of neighbouring land-holders.

Mr. Garran.—That goes back to the "companies of adventurers". I now refer to an Australian case, *The Commissioner of Railways, Western Australia* v. *Stewart,* 1936, reported in vol. 56, C.L.R., page 520. In that case, 50 years after the construction of a railway embankment the heaviest local rainfall within human knowledge occurred—578 points in 24 hours. The previous highest fall was 288 points. The court held that it was not an Act of God; it did not exceed a rainfall for which a reasonable man could have been expected to provide. Damage was caused because there were only three culverts under a section of the line, and those of limited size. The court held that the culverts should have been of wider diameter. Latham *C.J.* said it was not necessary to prove an Act of God to defend the case, but that it would have been sufficient for the Railways Commissioner if he had shown that under the circumstances he could not have reasonably been expected to provide against the consequences.

The Chairman.—The Railways Commissioner was held liable?

Mr. Garran.—Yes. In the case I am quoting no question was raised as to the expense involved. The expense of putting in three larger culverts would be insignificant with that of dealing with hundreds of thousands of acre feet of water falling over hundreds of square miles of land. I mention the case because it was largely on this case that Mr. Justice Sholl in Armstrong's case based an award which I am not criticizing, but which involved a statement of what approaches, in relation to a statutory authority, to absolute liability or liability without fault, a theory that I have already mentioned. Mr. Justice Sholl noted that in this case he was dealing with the question of statutory interpretation (because the Water Act has so many provisions as to liability) and not with a question of common law liability. He also noted the different circumstances between a widespread flood in northern Victoria and a local flood against a section of railway embankment. To that extent I would say that Armstrong's arbitration gave a wide interpretation of the liability of a statutory authority. Armstrong's case is reported in 1952, A.L.R., at page 472.

Other factors were involved in that case. The word "intentional" which has crept into the Water Act compensation provisions had, I think, some influence as also did the nature of the Victorian Water Act and its history. The fact remains that, as expressed by Mr. Justice Sholl, the application of the common law doctrine of liability to statutory authorities is more strict than I personally should have thought it was.

Mr. Thomas.—When does the application of the common law begin and end?

Mr. Garran.—This case is an example of the way the law develops. If we look upon the law as being static, it is impossible to apply it to changing economic and social circumstances. I mentioned earlier developments in the law of trespass and contributory negligence. Similarly, here a further development in the common law to meet the changing circumstances of modern agriculture and living conditions generally may be taking place. As matters now stand, the award in Armstrong's case is the latest statement on the matter and is directly connected with the problem now under discussion.

To sum up this part of my evidence—In the case of a statutory water authority, if it does nothing it is not liable; if it acts outside its authority or in a way not authorized, liability will arise; if it acts within its authority, it is liable on some basis of negligence unless the Act provides the basis of law applicable. Later I shall discuss the nature of the liability.

The Committee adjourned.

WEDNESDAY, 23RD MARCH, 1955.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. P. T. Byrnes,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles.

Mr. A. Garran, Parliamentary Draftsman, was in attendance.

Mr. Garran.—I now pass from a consideration of theoretical aspects to a survey of the Victorian Water Acts, and short surveys of other Victorian legislation relating to water authorities and legislation in some other parts of the British Commonwealth. My remarks will be considerably shortened if I may take all the matters set out in the dossier presented by Mr. East as being within the cognizance of the Committee.

The Chairman.—Mr. East's dossier has not been formally received as an exhibit because most of it is incorporated in the transcript. If it is convenient, you may give references to the pages of the dossier and members of the Committee will transfer them later to the appropriate references in the transcript.

Mr. Garran.—I shall omit the whole historical approach to the problem. There are two minor discrepancies in the dossier. The first is on page 5 where reference is made to the Water Conservation Act of 1881. Actually it is an Act of 1883. There was an 1881 Act which established waterworks trusts. The 1883 Act amended that of 1881 in relation to waterworks trusts and also dealt with irrigation trusts. The confusion has arisen because the 1883 Act is sometimes referred to as the Water Conservation Act 1881 Amending Act of 1883. The reference is actually to section 104 of the 1883 Act.

The other small error is contained in the fifth paragraph of Appendix 3 of the dossier, where it is stated that something was "held" in the arbitration in Williamson's case. Actually it was not held because the arbitrator's award was a reference of questions to a court, but it is not really wrong because the award went on the basis of law as stated in the Appendix.

Mr. Brennan.—If "said" were substituted for "held" the statement would be correct?

Mr. Garran.—That is so. I think I may say that the Water Acts are unique in relation to this problem of liability except for one antique copy which I shall mention later. They are also extremely complicated. To summarize the position I would divide compensatable injuries under the Water Acts into two main classes. The first is where redress is to be sought by arbitration and the second where it is to be sought by action at law.

In relation to redress by arbitration, first of all there is a provision relating to the acquisition of land which falls within Division 1 of Part VI., but I shall not mention that any further except to state that the procedural provisions of that Division are also applied to arbitration under Division 2, which is before this Committee.

Division 2 deals with what it calls "injury by works", but when you read the Division it is found to be more properly described as injury to rights or easements over flowing water and injury by flooding or water sent on to land. The first, injury to rights or easements, is now almost a dead letter because riparian rights are so written down by the powers vested in the Water Commission and other water authorities that very few people, unless they hold a licence under the Water Act, have any riparian rights which are likely to be affected by the exercise of the Commission's powers, particularly in view of the first two of the remaining paragraphs of Section 263 of the Water Act. Those paragraphs exempt the Commission from liability in respect of the taking, &c., of water by the Commission from flowing rivers and watercourses.

Mr. Byrnes.—Do the riparian rights take away the liability of the Commission?

Mr. Garran.—No; the authority of the Commission overrides riparian rights. A person living on a river can still take sufficient water for household requirements, but if the Commission, in the exercise of its powers, diverts the river, or uses all the water in it, the owner has no claim against the Commission or any other water authority. If the members of the Committee peruse the second of the remaining paragraphs of section 263, they will note that it reads—

> No compensation shall be made for the taking or diverting of any water which the Authority is or was empowered by or under this Act or any corresponding previous enactment to take or divert either permanently or temporarily from any river creek stream or watercourse lake lagoon swamp or marsh.

The question of riparian rights and other easements over flowing water, although dealt with in Division 2, is now, in practice, a dead letter. Division 2 is primarily concerned with flooding, or water sent upon land. The main provision in Division 2 is that claims by arbitration may be made against the authority for any negligence or intentional act which causes flooding. I do not wish to expand that aspect now as it is dealt with fully in Mr. East's dossier, and in the award of Mr. Justice Sholl in Armstrong's case, 1952, A.L.R., 472. That is the first proposition.

The second proposition is that the onus of proof, in the case only of water supply works as opposed to drainage works, is on the water authority. In other cases, such as in the case of drainage works, since last year's amendment the onus is on the plaintiff.

The third proposition, also introduced last year, is that a water authority is not liable for water flowing from drainage works (as opposed to water supply works) onto classified swamp lands in an irrigation district.

Finally, and this appears in section 293 of the Act which may or may not have been called to the Committee's attention, an authority is not liable for the drainage of any surplus irrigation water it has supplied when it pours this surplus off into a natural channel capable of containing it.

Those are the main propositions and the basis of liability under Division 2. That Division also contains some general provisions relating to procedure, limitation of actions, measure of damages, &c., which I shall discuss more fully later. At the moment I am concerned with the question of whether or not the authority is liable, not to what extent it is liable.

Apart then from these arbitration claims under Part VI., whether Division 1 or Division 2, certain actions can be brought in the ordinary way in the courts. Section 285 provides that full compensation is to be paid for all damages sustained from the general work powers which have been granted to the authority. I ask the members of the Committee to note this provision as I shall refer to it again when dealing with the Melbourne and Metropolitan Board of Works. Exactly what its scope is, I am not certain, but my own view is from a reading of the clause here and similar clauses in other Victorian Acts, that it refers only to the actual damage done while constructing works—for instance, digging up land, cutting under a house, preventing access from one part of the land to another, or the like, as opposed to damage by flooding, &c., consequent on the operation of the works. Section 288 of the Water Act provides that compensation shall be payable for damages to owners from works in the adjoining streets. From a reading of this Section, I feel I am right in saying that this applies only to preventing access to land and so injuring its value. So much for actions at law under the statute. In addition, of course, as mentioned previously, if an authority acts outside the authority given to it under the Act, it would be liable as if it were a private person, which would mean, dealing with water, that the *Rylands* v. *Fletcher* case and its basis of absolute liability would apply. I think the members of the Committee appreciate that sufficient provision has been made in the Water Acts to exclude the whole operation of common law liability of statutory authorities in respect of any authorized acts, and for the determination of the liability of an authority one must look to the Act and forget the common law except in relation to unauthorized acts.

I now turn to other Victorian statutes dealing with control of water. My first reference will be to the Mildura Irrigation and Water Trusts Acts. The provisions in these Acts are an antique copy of the Water Act before the Groutch case led to the 1916 amendment. No amendments have been made to the Mildura Acts similar to those made in 1916 and subsequently to the Water Acts.

The Chairman.—Do you know of any case where difficulty has arisen owing to the lack of amendments?

Mr. Garran.—No, but from my knowledge of the area the problems of drainage are more particularly related to sub-surface drainage than surface drainage.

In all these cases, I do not intend to refer to compensation for acquisition of land. In the *Melbourne and Metropolitan Board of Works Act* 1928, in relation to the Board's water supply and sewerage powers, there is at sections 101 and 137 a provision similar to that I brought to the Committee's attention earlier—similar to section 285 of the Water Act—which provides that full compensation shall be paid for all damages sustained in consequence of the exercise of the Board's general powers as to works. If my interpretation of that section is correct, it would provide no more than a liability in relation to damage caused during the execution of the Board's powers and would not apply to subsequent flooding which would be covered by the common law rule.

When the river improvement part was added, a similar provision was included and now appears at s. 259 of the 1928 Act. If we take the Elwood Canal, the question whether or not the Board is liable will depend on whether or not my interpretation of the Section is correct. If it is, the Board will be liable only on the common law basis and the Board would have to show in the circumstances as set out in the Manchester Corporation case that it was not negligent in the construction of the works. If my interpretation of section 285 of the Water Act is wrong, or the interpretation as it appears in the Board's Act is wrong, the Board would be liable absolutely under the statute in the case of flooding from any of its drains or waterworks.

The *Geelong Waterworks and Sewerage Trust Act* 1928, has little bearing on the matter. That body is a local authority under the Water Act in relation to waterworks. In relation to sewerage section 61 contains a provision similar to section 285 of the Water Act. The Barwon River Improvement Act of 1939, is administered by the Geelong Waterworks and Sewerage Trust and it contains a provision similar to those in the Melbourne and Metropolitan Board of Works Acts, and section 285 of the Water Act.

The *Drainage Areas Act* 1928, at section 13 (4) provides full compensation for constructing a drain. Again, I think, this provision refers to the actual work of construction, and sections 19 and 20 make provision for damages for injury by works under power similar to that of section 285 of the Water Act.

The *Local Government Act* 1946, does not help apart from the question of notice before action and limitation. But sub-section (3) of section 606 authorizes municipalities to open drains on land, in which case they are liable to compensate owners of the land. Again, I think, this applies only to the construction of the works which may, for example, possibly restrict access.

The Chairman.—The common law principle would apply to their liability.

Mr. Garran.—Apart from the actual construction of the works, yes. Section 609 of the Local Government Act contains a provision relating to damages from dams on roads and is similar to that in the Water Act. As I read it, it is only damage through restriction of access to land.

I cannot claim to be as conversant with New South Wales legislation as I am with the Victorian legislation, but I have studied the former carefully. In New South Wales apparently, there is no provision relating to liability in the Irrigation Act 1912-49, so that the common law principle would apply. In the New South Wales Metropolitan Water Sewerage and Drainage Act of 1924-49, there is a provision somewhat similar to section 285 of our Water Act. In section 64 of the New South Wales Water Act of 1912-52, there is provision that no compensation shall be payable by any authority in respect of the exercise of its powers as to works.

The Chairman.—Do you know when that provision was introduced?

Mr. Garran.—I do not.

The Chairman.—Would that provision be wide enough to protect an authority from liability whatever happened in the matter of flooding?

Mr. Garran.—I am not certain whether it would exempt from everything that happened, or that it may not be restricted on the lines of my interpretation of section 285 of the Water Act, in which case the common law rule would run.

In South Australia, section 12 of the Waterworks Act of 1932-36 contains power somewhat similar to section 285 of our Water Act, and sub-section (3) of section 20 provides that the South Australian Commissioner is not exempt from an action for nuisance or other injuries to land of persons other than those persons whose lands are taken or used. In the South Australian Metropolitan Drainage Act of 1935, section 14 contains a provision similar to section 285 of our Water Act. In the Irrigation Act of South Australia, 1930-45, there is provision that there shall not be any liability for flood waters nor for breaking of dams, channels and so on.

In the United Kingdom, the River Boards Act of 1948, is complicated in its application in that it applies Land Drainage Acts, which apply other Acts. I have chased through the Acts and the textbooks and, subject to what I shall say, there appears to be no provision for compensation for injury in those Acts, so the common law provision runs. The exceptions are that there is still a provision, which came from the original Waterworks Clauses Consolidation Acts, which makes water authorities liable for water that runs into mine workings. Also following the Dolgarrog dam disaster in Wales in 1925, there was passed a Reservoirs (Safety Provisions) Act in 1930, which set out the requirements for engineering supervision of future dams to be constructed and also said that in the case of any reservoir constructed after the commencement of the Act, there would be no exoneration from damage caused by the escape of water.

Mr. Brennan.—Were the stringent provisions of exemption in South Australia due to the acute question of water conservation? It is common knowledge that the water problem is more acute in South Australia than in Victoria.

Mr. Garran.—I cannot say because I do not know the conditions obtaining in South Australia.

Mr. Randles.—In Great Britain if authorities do not employ an engineer, are they liable for all damage?

Mr. Garran.—There are two propositions in the English Act. The first is that in the future all waterworks authorities shall conform with certain strict requirements when constructing reservoirs, as to the method of construction and supervision by qualified engineers; the second proposition is that, whether or not those requirements are complied with, an authority will be liable for damage by water that pours out of the reservoir, whether the authority has been negligent or not. That means absolute liability.

The Chairman.—You have found no provision in any Act similar to our own to limit liability by shifting the onus of proof?

Mr. Garran.—No, but I was not looking specifically for onus of proof. Under the common law, the onus is on the authority to prove that it has the statutory authority giving it immunity, and also in the exercising of that statutory authority that it proceeded with the care required in the circumstances.

The Chairman.—Under the Water Act, we appear to have tackled this problem from time to time by messing around with the common law, shifting the onus of proof backwards and forwards rather than tackling the question with express provisions as to liability.

Mr. Garran.—I do not wish to repeat at length the historical survey made by Mr. East at pages 5 to 24 of his dossier, and I will put it in this way: Up to 1915, certain provisions had been introduced into the Water Acts regulating the liability of water authorities in such a way as to be sufficient to exclude the common law doctrine. Groutch's case—reported in 1913, V.L.R., page 455—definitely decided that the common law liability was dislodged. The basis of the amending legislation introduced consequent on Groutch's case was to provide for further statutory control, in a form that was properly commented on by Mr. Justice Sholl in Armstrong's case. In addition, in the House, amendments were made relating to the burden of the onus of proof. Those provisions were further modified last session, again by amendments made in the House. Groutch's case was a milestone. The amendments made consequent on that case could have been made in either of two ways. We could have returned to the common law principle or we could have gone on to further regulation. It was determined to regulate further and that has been the basis of approach since that time.

Until last year the only other relevant amendments were those which related to the limitation of actions and notice before action. In Armstrong's case—1952, A.L.R., page 472—Mr. Justice Sholl as arbitrator raised several matters of importance. It will be noted that this case is reported in the law reports, but I am not certain whether as an arbitrator Mr. Justice Sholl's award would have the same judicial effect for interpretation purposes as a decision of a court. However, the reported award must be taken to be one of the latest pronouncements on the law in Victoria, and it is definitely a criticism and interpretation of the drafting and contents of Division 2 of Part VI. which must be fully considered.

It also raises the question of what is the standard of care or standard of negligence required in the case of a water authority, also problems as to when time begins to run for the purposes of the statute of limitations. In a second award of Mr. Justice Sholl in Armstrong's case—1954, V.L.R., page 288—the question of the application of the enhancement provisions of the Water Acts was discussed. In Williamson's arbitration of 1954, Mr. Justice Sholl's award took the form of a reference to the court of questions of law. This would have enabled the Supreme Court to address itself to these and related problems, but it appears that the claim is likely to be settled, and so this Committee will not have the decision of the Court on the matter.

The Committee adjourned.

THURSDAY, 24TH MARCH, 1955.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan, The Hon. P. T. Byrnes, The Hon. F. M. Thomas.	Mr. Randles.

Mr. A. Garran, Parliamentary Draftsman, was in attendance.

Mr. Garran.—I have discussed the basic rules of law applicable, also the statute law provided in Victoria and elsewhere in relation to this problem. Now I shall suggest methods of approach to a solution, and then discuss certain problems in relation to those methods.

As I see it, there are three possible general methods of approach; there may be more. The first is an administrative rather than a legal matter, which I shall mention without going into detail. It is that water authorities should be relieved of all liability but an insurance scheme should be provided to meet damage to ratepayers and others by flooding. The question of financing such insurance may not be as difficult as it appears at first sight, because after all the authority itself has to pay the damages if it is left to the law to settle the matter, and the payment ultimately comes from the ratepayers themselves. I am not in a position to follow up this suggested method of approach nearly as well as would be water administrators and accountants.

The two other methods are legal. The first is that in general the common law principles of liability of statutory authorities should be adopted with or without possible modifications in view of what I shall say later in relation to certain particular problems. This would give a fluid approach to the problem—one that has been worked out in general over the centuries. Of course, one would have to trust the Judges, but I know of nobody better fitted to deal with the changing circumstances. It may be that the recent arbitrations in Armstrong's and Williamson's cases have put forward an extended view of liability, which at the moment may be somewhat disturbing to some people, but in leaving matters to the courts it is usually found that while the pendulum may swing a little its movement is regulated subject to variations to meet changing circumstances.

In this respect it is interesting to note how this doctrine has worked out in Victoria with the railways. The decisions have now established that if the Railways Commissioners use the best available spark arrestors and burn off the grass within their fences, they have satisfied the common law requirement of duty in preventing damage as far as they can do so. Of course, I assume that they have taken care in other respects. Actually, the courts forced them into the burning off.

The third method of approach is to set out in any relevant Act of Parliament the full basis on which the statutory authority shall be liable. This means that one must devise a system which will meet all circumstances, and one will have a system that is not as fluid as in the case of common law. Of course, there is power to amend from time to time, but experience has shown us that that often works in a patchwork way rather than with a view to all the problems concerned. Those are the three general suggested alternative methods of approach.

In relation to those three methods, if I could now discuss particular problems that have been raised, I would divide them into three classifications, the first dealing with the fundamental basis of liability, the second dealing with the extent of damages, assuming liability is there, and the third dealing with certain procedural matters.

The first problem really applies to the statutory code method of approach. It is "What are you going to take for your basis of liability?" Under the common law approach your liability is on a basis of negligence. If it is intended to follow the statutory code method, it must be decided whether you will have the absolute or fault basis of liability, whether you are going to apply *Rylands* v. *Fletcher,* or have no liability, or whether you are going to impose some standard of negligence or trespass, or any other method of approach that may seem fit.

The second problem, which is related to the first is bound up in this is—assuming negligence is to be your test either in common law or by statute, what is the definition of negligence? Under the common law it must remain, to some extent, fluid, assuming (as I assume) that the standard described by Lord Dunedin in the Manchester Corporation case 1930 A.C. at page 183 is the starting point in such cases. In some cases it will be found that the standard of care is very high; in others, it is not so high. Of course, when coming to the statutory code method of approach, you may be forced to include some definition of negligence in your statute because you are getting away from the normal tests and may want to be specific to say what the standard of care should be. The common law standard may not be applicable to the statutory code.

The third item is the question of intention, and I have included that because of the inclusion of that factor in the Victorian legislation as amended in 1916. The difficulty of interpreting "intention," particularly in relation to negligence, is fully set out in Mr. Justice Scholl's award in the Armstrong case 1952 A.L.R. 472. It is one of the factors that may require consideration in a statutory code, particularly where it is known that in building a dam somebody's land will be flooded, although actually that is covered by compensation because you take his land.

The fourth item deals with a statutory corporation acting outside its authority. It is then liable, apart from the common law liability rule. If the water authority was not authorized to do any works in a certain area and it did them there, it would be liable, not on a common law basis of negligence but on a basis of *Rylands* v. *Fletcher,* because it would then act without the statutory protection.

Dealing now with the fifth point, if a statutory authority is authorized to do certain works, but not commanded to do them, it is not liable if it does not carry out those works, but it may be liable if it goes so far with them but then omits to do any necessary consequentials. So in relation to works by councils on roads, if the road is left unmade there is no liability, but if in working on it holes are dug, liability may arise.

Mr. Brennan.—It is a case of non-feasance, malfeasance, mis-feasance.

Mr. Garran.—A case of this type in relation to the water authorities occurs in Bland's case, 1920, *Victorian Law Reports,* page 522.

I now pass to the problems relating to the extent of liability. The first of these, which is the sixth on the list I am dealing with, is whether or not there should be some proportionate allocation of liability, assuming there is liability. Such a provision was introduced last year in the amendment that required the arbitrator to determine the sum of the damage and allocate to the authority only that portion for which it was responsible. That is a very difficult task to place upon the arbitrator. From Mr. Justice Sholl's award in the Williamson case, it will be seen that he found himself unable, in the circumstances, to say exactly how much damage would have been done apart from the drainage works of the authority. That must be so, particularly where there are drainage works over a large area which is flooded. A similar provision was also included in last year's Act to exclude from land in respect of which damage could be claimed any lands classified as swamp lands in the irrigation and water supply districts' register. These are matters which would be taken up in relation to a statutory code but they are hardly matters relating to the common law liability.

The seventh and eighth points are concerned with the question of the position in relation to joint tort feasors and contributory negligence. On the common law approach I take it that the law, as set out in the

recent Victorian statutes, would apply here, although the courts have not yet worked out its application in relation to damage by flooding—see *Wrongs (Tortfeasors) Act* 1949 and *Wrongs (Contributory Negligence) Act* 1951. Under the statutory code, these matters would have to be dealt with according to the requirements of the legislation.

The ninth point is that sooner or later it may have to be determined whether water works have become as much a part of the natural features of the land as other works of nature that are there. In other words, assuming a person goes to a district 30 years after the works have been established, could he say, "I am either going to grow a crop or get compensation on this land" or would his attitude need to be, "I know from what I have been told that this land is subject to flooding, and therefore, I must adjust my farming so I will not suffer damage should flooding occur." Again, that is a problem for the statutory code, and possibly also for the common law liability.

The tenth item is the question of whether enhancement of property should be set off against damages caused to the property.

The Chairman.—From your examination of the Act, you feel that it would be difficult to extent the enhancement provisions beyond their application to compensation?

Mr. Garran.—Yes, beyond compensation for injury by the actual construction of the works, although different views are held by other people.

I now pass to the procedural problems. Point No. 11 relates to the onus of proof. Under the common law, the onus is on the statutory authority to show—as Lord Dunedin said in the Manchester Corporation Case—that the damage was an inevitable result. I discussed this point earlier in relation to the railways, where the system has been worked out. There has been no chance of working it out in relation to water because of the statutory provisions in the Water Acts. So far as the statute is concerned, I have little to say except that members of the Committee have seen the ups and downs in the problem since 1916. It was then awarded so that the onus of proof should be on the authority. That has been now partially repealed—I mean in so far as drainage works of the authority are concerned—by the Act passed during last session.

Mr. Byrnes.—What is the position of the Commission under the amended Act if it prevents water from flowing along a natural watercourse?

Mr. Garran.—The Commission can do that under its general powers. If it does anything outside its powers it is an unauthorized act and the adjoining owners would have claims for damages.

The Chairman.—The Commission can do that sort of thing as part of its authority to provide for water or drainage?

Mr. Garran.—That is so. With onus of proof, serious problems must be considered, and the application of the rule depends upon the nature of the liability imposed on the authority by statute.

The Chairman.—Have you examined other legislation providing for onus of proof?

Mr. Garran.—I have not made a thorough examination of such legislation, most of which leaves the liability to the common law basis. The onus of proof would be on the authority to prove that the damage was the inevitable result of what was done under statutory authority.

The Chairman.—One trouble is a misconception on the question of onus of proof. The onus is on the plaintiff to prove damage and the onus shifts to the authority to prove that it was not negligent. It seems to me that, in all of the debates in the House it has been regarded as if the onus was on one or the other.

Mr. Garran.—The questions of liability and damage are distinct matters.

Mr. Byrnes.—As Mr. East mentioned, a number of factors would affect the question of damages.

Mr. Garran.—A plaintiff has to prove in £ s. d. what he has suffered.

Mr. Brennan.—Would it be fair to say that negligence is never authorized by statute?

Mr. Garran.—It could be authorized.

Mr. Brennan.—A statute never contemplates that the exercising of authority will be carried out in a negligent manner?

Mr. Garran.—I have given examples of a definite statutory provision in South Australia under which there shall be no liability at all.

My twelfth point is as to whether aribitration as a system of determining liability and damages is appropriate in the circumstances. At page 36 of Mr. East's submission is a letter from the Victorian Bar Council to the Minister of Water Supply and I direct attention to the third paragraph of that letter. I also direct attention to the two following paragraphs in the letter. So far as I am concerned, the statements made there are wrong. As to the production of documents, the position is provided by section 250 of the Water Act and by section 9 of the Arbitration Act and paragraph (*f*) of the schedule to that Act. So far as interrogatories are concerned, it is made clear that these can be required by the case of *Kursell* v. *Timber Operators,* 1923 2, K.B., page 202, and see *Holmes* v. *Cohuna* 19 V.L.R., page 429. There are other matters in relation to the use of arbitration that must be considered. I have not particulars, but if one obtained details of the expenses of arbitrations for claims under the Water Act, I understand they would be found to be very heavy. In all claims for over £300 the arbitrator has to be a Judge of the Supreme Court. In claims for less than £300 the arbitrator must be a Judge of the County Court. That is out of line with the present provisions as to County Court jurisdiction.

In addition, recently these cases have involved difficult questions of law and have not been merely directed to fact finding. This involves references to the courts on points of law, in which case further appeals may be made.

The Chairman.—I suppose it means that very often senior Queen's Counsel have been employed in arbitration cases just as if the matter had gone before a court.

Mr. Garran.—That is so.

Mr. Randles.—Mr. East suggested that costs would be less in the case of arbitration than at law.

Mr. Garran.—They should be less if the arbitration is concerned only with fact finding. In that case there is no appeal and the preliminaries are somewhat shorter. But once legal questions come in it is problematical whether or not the proceedings will be less expensive, because then they can be referred to the court and appeals can take place.

The Chairman.—Apparently the persons who originally drafted the Water Act contemplated questions of law being involved in these arbitrations. Otherwise they would not have provided for a Supreme Court Judge to act as an arbitrator.

Mr. Garran.—That may be so. I am not suggesting that the arbitration provisions should be removed from the legislation, but it would be worth considering whether the applicant should not have the option of proceeding either by arbitration or at law.

My final point relates to the statute of limitations. I discussed this matter before this Committee some time ago and I believe the Committee had before it my minority report annexed to the report of the Chief Justice's Committee on Law Reform on the Limitation of Actions Bill, in about 1947. My minority report was as follows:—

1. Two main principles require to be observed in determining the contents of a Statute of Limitations, viz:—

A. Proper balance between—

(*a*) rights of plaintiffs; and

(*b*) rights of defendants and public expediency that litigation should be speedily finalized.

B. Certainty and simplicity.

A. Balance between rights of plaintiffs and rights of defendants and public policy.

2. In comparing modern requirements relating to Statutes of Limitations with those in or before the reign of James I. "for quieting of men's estates and avoiding of suits" it is necessary to take account of the following factors—

(*a*) accelerated communications;

(*b*) greater speed in living and business methods;

(*c*) requirements for early finalization in winding up estates;

(*d*) contemporary practice and dislike of stale suits.

3. It is acknowledged that the proposed Bill shows no over-riding regard for things established. It provides for many changes in periods of limitations sometimes with an upward and sometimes with a downward tendency, and some of these changes are radical, e.g.—

Upward Tendency—

(*a*) repeal of the limited periods of public authority protection;

(*b*) extension of disability periods to cases to which they do not now apply;

(*c*) a new disability period relating to the impact of war conditions;

(*d*) extension of the period for actions of slander and for some cases of trespass to the person.

Downward Tendency—

(*a*) reduction of the period for some torts;

(*b*) repeal of the disability periods for imprisoned felons and persons beyond the seas;

(*c*) limitation periods for new classes of actions, e.g., actions relating to mortgages of chattels;

(*d*) extension of limitation periods to arbitrations.

4. There is no general policy behind these changes which must be regarded as piecemeal. If the limitation for some torts is reduced to three years, why should not the limitation for all torts be so reduced and also the limitation for breach of contract? It seems that debt and bailment are the stumbling block, but these causes of action have an ample protection under the provisions of acknowledgment and part payment; and why should the limitation period for specialty debts be retained at fifteen years? A reduced period for the collection of debts would be a great public benefit and should be generally welcomed by the commercial community. Bad debts are usually written off long before they are statute barred. In general it is considered that too tender a regard has been paid to the rights of the plaintiff and not sufficient regard to public interest.

5. The unduly short periods of limitations at present existing for public authorities' protection and under other provisions such as Lord Campbell's Act, Testators' Family Maintenance and the revised actio personalis rule are largely due to a pendulum action swinging back from the unnecessarily long periods established by the general rules. This could be avoided if the general periods of limitation are to be fixed more reasonably. The proposed repeal by the draft Bill of the public authorities' protection periods is partly set off by the reduction of limitation periods for most relevant torts, but the disability periods which will apply to infants injured in a railway accident might extend for over twenty years. As the Bill stands the repeal of the public authorities' protection would almost certainly be politically unacceptable.

6. The Bill provides for the repeal of those disability periods which are now provided for imprisoned felons and persons overseas but it retains the disability periods for lunatics and infants. With regard to the lunatic the disability period operates only when the plaintiff was a lunatic when the cause of action arose. This creates anomalous positions particularly in the case of a lunatic who claims he was committed to an institution on a wrong certification. The lunatic's affairs are now well supervised by the Public Trustee or his committee or other representative persons. Similarly the infant has a parent, guardian, trustee or next friend, is better educated than in the reign of James I., can sue for wages in his own right and if eighteen or over can take up Crown land and enforce contracts relating thereto. The disability provisions re infants do not, at present, operate in the case of "public authorities protection" limitations. In short it is considered that the disability periods for lunatics and infants should be discarded together with those for imprisoned felons and persons overseas.

B. Certainty and simplicity.

7. The proposed Bill by providing a consolidation of the law relating to limitation of actions will achieve much; but the consolidation is only partial, e.g., it excludes the limitation provisions relating to Lord Campbell's Act, Testators' Family Maintenance and the revised actio personalis rule. Furthermore, simplicity and certainty are not attained by the Bill. Clause 5 provides for four different periods of limitation (fifteen years, six years, three years and two years) for different classes of action between which it is difficult if not impossible to draw a strict demarcation. The result will inevitably be considerable litigation to interpret the Bill. It cannot be too strongly stressed that the standard of certainty and simplicity to be aimed at should be not that of the lawyer sitting in his library but that of the citizen who wishes to know his position before putting himself in the hands of a lawyer.

8. The provisions of the Bill relating to limitations for property actions remain very complex and it is doubtful if they can be materially simplified until further simplification of the property law is achieved, e.g., by bringing all land under the Transfer of Land Act, by the final elimination of entailed estates and by other reform of the property law. However, there seems to be no reason why as an interim measure the fifteen years period of limitation should not be reduced at least to that adopted in England, viz., twelve years.

C. Recommendation.

9. It is recommended that—

(*a*) the period of all actions except the property actions specifically referred to in the Bill be limited to three years;

(*b*) the specific rules of limitations for Lord Campbell's Act, Testators' Family Maintenance and the revised actio personalis rules be abolished, thus applying the general three year rule in these cases;

(*c*) all disability periods be abolished;

(*d*) the limitation of fifteen years in property actions be reduced to twelve years as an initial step pending simplification of the property law, when the periods of limitation may be considered;

(*e*) consideration be given to authorizing the court in extreme cases to allow actions to be brought outside the limitation period.

In addition to that report, I gave evidence before this Committee which is included in the 1950 Statute Law Revision Committee's report on Limitation of Actions. In so far as they relate to public authorities, my views were and still are that the position of public authorities in relation to limitation of actions should be the same as in respect of private individuals. At the moment it is a variable period for different authorities. I realize that this might involve a writing down of the general limitation period from, say, six to three years as a practical expediency to enable the passage of the measure.

It is interesting to note that last year in England by the Law Reform (Limitation of Actions, &c.) Act the law as to the limitation of actions was amended to abolish the existing discrimination in favour of public authorities which means that there the Public Authorities Protection Acts, limiting to one year the time in which they could be sued and providing

requirements as to notice before action, have now been repealed. At the same time the period of limitation for what are called "personal actions"—that is to say, most cases of tort—has been reduced to three years. This is in accordance with the views I have always held, except that I would go further and reduce all torts and contracts to an equal period, be it three, four, five or six years.

So far as it relates to the Water Commission, again one must consider separately the questions of liability and of amount of damage in relation to the statutes of limitations, both as to time limit and notice before action. With regard to liability, under the Act as it now stands the question of negligence goes back in some cases for a long period. It would have happened when the works were constructed possibly 50 years ago, so a further period of a year or two should not affect the claim.

However, having regard to the extent of damages when floods cover a large area and that damages may be claimed by a large number of settlers, it may be that special provision should be made to enable the water authority to know from whom the claims are likely to come. In general I feel that the question of statutes of limitations is one of general application over the whole of the law, and for myself, although I have been alone in the wilderness in many respects in relation to this branch of the law, I consider that the rules should be reduced to simplicity and all exceptions for particular authorities or persons should be eliminated if possible.

The Committee adjourned.

WEDNESDAY, 30TH MARCH, 1955.

Members Present:

Mr. Rylah in the Chair;

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Hollway,
The Hon. I. A. Swinburne,	Mr. Pettiona,
The Hon. F. M. Thomas.	Mr. Randles,
	Mr. R. T. White.

Mr. R. M. Eggleston, Q.C., a member of the Committee of Counsel of the Victorian Bar Council was in attendance.

The Chairman.—When the 1954 proposed amendments of the Water Act were before Parliament, the Chairman of the Victorian Bar Council wrote to the Minister of Water Supply on 19th October, 1954, in the following terms:—

Dear Sir,

Re Bill to amend the Water Acts.

The attention of the Victorian Bar Council has been drawn to the proposed amendments to the Water Acts.

Certain aspects of the Bill have been considered by the Council in the light of a memorandum prepared by Mr. D. I. Menzies, Q.C., a copy of which is attached.

The conclusion is reached by the Council that the proposed amendments will bring about a situation in which a citizen who has a just case for compensation will be unable to establish it. Although the main amendment relates merely to a change in onus of proof the practicalities of the situation are such that unless the claimant has the opportunity to obtain information from the defendant he has no chance of proving his case.

The expense and difficulty in preparing a case against an authority is a grave deterrent to any claimant in any case, but be he ever so financial, he could not hope to present a satisfactory case under the proposed changes in the law.

It is to be observed that a claimant must proceed by arbitration and not by action in the ordinary way. As a result the procedures of interrogatory and discovery of documents which are available to assist an ordinary plaintiff to prove his case are denied to a claimant against an authority.

This Council does not believe that the Government would wish to create a situation in which from a practical point of view persons unjustly injured are prevented from establishing their claims and feels that the full implications of the proposed amendments may not have been realized.

If it is felt that the decision of Mr. Justice Sholl in *Armstrong's Case* has raised matters requiring corrective action, the suggestion is made that the principles involved be made the subject of a wider review and that consideration be given to revising this part of the Act in a more comprehensive manner with a view to evolving a plan more simple in operation and consistent with the requirements of justice.

The time available has not been sufficient to permit this Council to offer anything more constructive at this stage, but should it be thought useful the Council would be pleased to go into the matter and submit constructive suggestions.

A copy of this letter has been forwarded to those Counsel on the roll who are members of Parliament and a copy has also been sent to the Hon. John Cain, Premier of Victoria.

I have the honour to be, Sir,

Yours faithfully,

M. J. ASHKANASY,

Chairman, Victorian Bar Council.

Subsequently, when the Water Act was amended in 1954, certain proposals were adopted and the Minister of Water Supply undertook to refer those provisions in the Water Act to this Committee for investigation, so that an opportunity would be given to all persons interested, including the Bar Council of Victoria, to give evidence before this Committee. I welcome Mr. Eggleston to our deliberations and ask him to give such evidence as he desires to place before the Committee.

Mr. Eggleston.—Substantially the views of the Bar Council, so far as they have been crystallized, are those embodied in the following memorandum compiled by Mr. D. I. Menzies, Q.C.:—

Proposed amendments to Water Act.

1. Division 2 of Part VI. of the Water Act which provides for compensation to owners of land for injury by works of any water authority is a badly drawn and difficult set of provisions which as they stand make it difficult for a person who has suffered loss to obtain redress. See for instance—

(1) the provisions of s. 261 requiring notice of injury within 30 days (an unreasonably short time) and failing to state clearly the event from the happening of which time begins to run. It may be the flooding or the occurrence of damage. If it is the flooding the notice must state the damage, yet at the time that might be unascertainable;

(2) the provisions of the first paragraph of s. 263 which prohibit the awarding of compensation unless the notice pursuant to s. 261 sets forth the item of damage;

(3) the ambiguity of s. 261 and s. 263—see Sholl J. in *Armstrong's Case* 1952 A.L.R. at pp. 478, 480, 484, 485. This judgment and the judgment in 1954 V.L.R. 288 which followed it stress again and again the ambiguities and difficulties of the sections.

2. A complete revision of the Division would therefore be justified. The amendment however does not tackle the real problem, i.e. the clarification of the position, but is directed merely to protect many water authorities, and in particular the Commission, from the consequences of flooding which it is proved they have caused.

3. The protection which the amendment would give would be likely to work injustice. As matters stand a claimant must prove damage from flooding caused by the authority in question and it is then for the authority to prove that the flooding was not intentional or due to negligence. If the claimant had himself to prove intention or negligence he could rarely succeed because the cause of the flooding is probably known only to the authority. In *Armstrong's Case*, for instance, although the claimant was advised by a most skilled engineer it was only when the Commission's witnesses were called that what had really happened was discovered. That evidence related, *inter alia*, to the siting and construction of works twenty years or so previously.

4. Not only would the amendment to s. 260 throw an entirely unfair burden on a claimant but the proviso seeks to protect an authority from paying compensation for damage caused either intentionally or by negligence. Some of the lands registered years ago as swamp lands are lands of great fertility and productivity.

5. If the amendment proposed to s. 11 (2) were part of a reasonable revision of an unsatisfactory set of provisions there would be something to be said for a better drafted provision to facilitate the apportionment of damage according to fault. As matters stand damage is apportionable but it is for the Commission to prove that some part of the damage was due to causes other than the flooding which it intentionally or negligently caused. The present amendment is really tied up with the former amendment and if the former falls so should the latter.

I had hoped to arrange for Mr. Menzies himself to appear before the Committee, but he is not available. As I understand the position, until 1916 the liabilities of the water authority for damage caused by flooding which resulted from works constructed by it was that liability which existed at common law. In 1916 the Act was amended setting out the kind of case in which liability would arise, and it made specific reference to the intentional sending of water on to land and to negligent acts or omissions which might result in flooding and cause damage. At the same time the Act as it stood in 1928 did provide that the onus of proof in relation to negligence rested on the water authority. The amendment introduced in September, 1954, provided:—

11. (1) In section two hundred and sixty of the principal Act for the words "but in all cases the onus of proof that such flooding was not intentional or due to negligence or any negligent act or omission of the Authority or its servants agents or contractors shall rest with the Authority" there shall be substituted the words—

"Provided that this section shall have no application in any case where injury loss or damage is caused by flooding of or by water in any way sent on to lands classified in the register of any irrigation and water supply district as swamp lands."

The amendment as passed in the Water Act of 1954 is as follows:—

12. (1) In section two hundred and sixty of the principal Act for the words commencing "but in all cases" to the end of the section there shall be substituted the words "but the onus of proof that any flooding from any water supply works of an Authority was not due to any intentional or negligent act or omission of the Authority shall rest with the Authority".

In effect, that did no more than limit the onus of proof clause to cases of water supply works carried out by an authority. There being no reference to drainage works or any of the other works which may be undertaken by a water authority, in those cases the onus of proof rests where it stands at common law, namely, on the plaintiff or claimant in any proceedings for compensation. At the end of section 260 the following sub-section was inserted by the Water Act of 1954:—

(2) Notwithstanding anything in the last preceding sub-section no Authority shall in any case be liable to make any compensation in respect of any injury loss or damage caused by—

(*a*) flooding by water from drainage works of the Authority of; or

(*b*) water in any way flowing from drainage works of the Authority onto—

lands classified in the register of any irrigation and water supply district as swamp lands.

Therefore, lands classified as swamp lands, even though they might have been very highly improved and as a result of earlier drainage measures have ceased to be what one might call swamp lands, could be damaged as a result of flooding by the release of water or by water flowing from drainage works of the authority, and the authority itself remains completely immune from any claim for loss or damage. The result of the amendment, as I see it, was to make the water authority completely free and at liberty to direct on to lands which were classified in the register as swamp lands any drainage water that it chose so to direct, without any liability for compensation. It could do that intentionally or negligently, or it could do it without negligence. Those aspects are specifically mentioned in the Act as exemptions. At first sight that appears to be a somewhat unjust provision which vests in the statutory authority a right to flood a man's land, presumably for the good of other landholders in the area, merely because the land which he owns is classified in the register as swamp land.

Mr. Swinburne.—That came about because in the early stages of development of such areas it was never meant that swamp lands would be developed as irrigation blocks as they have been. The amendment was intended to be a safeguard in that case.

Mr. Eggleston.—I cannot speak with any authority as to actual conditions, but my information is that some of these swamp lands are now highly developed. It may well be that if it had not been for the Commission such properties would not have become highly improved. Nevertheless, it is true that a person might purchase such a property in a highly improved state and then by amendment of the law find that he is liable to be flooded out at the will of the Commission.

Mr. White.—Who determines what areas are swamp lands?

Mr. Eggleston.—I could not say. The original Land Act provision provided for all lands to be classified in various classes, one of which was swamp lands. I presume the classification derives from the original register.

The Chairman.—There is an interesting implication arising out of Mr. Eggleston's remarks, that the framing of the proviso not only means that original swamp lands are still swamp lands, and Mr. Eggleston may be right when he states that the Commission can intentionally or negligently or without negligence flood such swamp lands and be in no way liable.

Mr. Eggleston.—That necessarily follows because section 260 as it now stands deals with intentional or negligent flooding. Accordingly, it is clear that sub-section (2) must be intended to cover intentional flooding as well as negligent flooding, because it immediately follows a provision in which intentional flooding has been dealt with. If no mention was made of intentional flooding, it might be said that the sub-section was intended to give protection against negligent flooding only on the part of the Commission, but in the light of what I have referred to one could not possibly read it in that way.

The other general complaint which was made by those who have had experience of the Act arose from the provisions about the notice to be given and the limitation of actions. I am sorry that I have not had the opportunity of seeing how the current amendments fit into the general provisions, but I understand that the time specified in section 261 within which actions have to be commenced has been extended from six months to two years. Our view would be that a provision which requires notice to be given to an authority within 30 days and which otherwise bars a claim is generally speaking an unreasonable and unsatisfactory one. In our view, such a requirement is all too commonly inserted in Acts for the protection of public authorities. Doubtless this Committee has had discussions on this point, certainly the Chief Justice's Law Reform Committee has. The Local Government Act provides for exemption from the notice provisions where there is excuse for not giving notice or something of that nature.

It is generally found that if a person has a just claim Judges are either prone to strain the law in their favour or are regretfully compelled to do what they feel to be an injustice. A person who has been overwhelmed by a flood, for example, may well be quite unlikely to get around to seeing his solicitor about responsibility for the damage within 30 days after the damage has occurred.

Mr. White.—It may be that the damage caused is not noticeable within the 30 days.

Mr. Eggleston.—That raises another question, to which I intended to refer later. Taking first the example of a man flooded out, following the decision of Mr. Justice Sholl, he has a period of 30 days from the cessation of the flooding in which to give notice. Because of other urgent matters requiring his immediate attention, he may find it impossible to consult his solicitor within that time in order to acquaint him of the extent of the damage. Speaking purely from a personal viewpoint, it does not seem to me to be unreasonable to suggest that a water authority would inevitably know what was happening within its area during such a period and, therefore, that it should not be entitled to the protection of such a limiting provision.

Mr. Pettiona.—Are you suggesting that under the Act any notice to be given to a water authority would have to go through a solicitor?

Mr. Eggleston.—Not necessarily, but a landowner would be unlikely to know, without consulting someone who knew something of the provisions of the Water Act, what was required of him. That is all I suggest.

The Chairman.—In 1950, the Committee recommended that the special protection for public authorities should not be retained in the Act. After five years, those recommendations have not been implemented. I think I can say that generally the members of this Committee feel the way they did in 1950, but there is a real problem in that the authorities —whether they be municipal or water—express the view that unless they have some notice that there may be a claim they are quite unable some months afterwards to find out whether the damage alleged was genuine or otherwise. Mr. East said that he was not concerned so much about the time within which an action should be commenced. He was in favour of the extension of the period allowed from six months to two years or even three years, because it might take longer than six months to ascertain whether a property was damaged or not. However, he considered that an authority should have some notice of a likely claim—as informal as possible if necessary—so that they would have the opportunity of inspecting the area to ascertain the cause of the flooding. Have you any suggestions to counter that view?

Mr. Eggleston.—Perhaps the example I shall quote is irrelevant to the position of the State Rivers and Water Supply Commission, but my experience of these provisions has been mainly in connexion with accident liability claims against municipal councils under the Local Government Act. I remember a case in which I appeared for a local authority. We took the point that no notice in writing had been given of a road accident. We ultimately won the case on the basis that there was no evidence of negligence on the part of the council. It was a simple case of a man having fallen off his bicycle because of a pot-hole in the road, but there was nothing to suggest that the council was in any way negligent because of what it had done. It was admitted by the local authority that the claimant's wife had been requested by her husband—who was suffering intense pain—to go to the Town Hall to report what had happened in an endeavour to prevent another similar accident. The woman verbally told the Town Clerk what had happened. He wrote the details on a piece of paper and sent it over to the engineer. From that point on, we could not find that any action in respect of the notice had been taken. When the action came on as a result of the writ being issued within the prescribed time, the council was quite unable to give us any information about what had occurred. I thus became a little skeptical about the alleged desire of councils to make investigations when they are informed of accidents. Nobody else has similar protection. It is true that it would be very nice if one had to be given notice within 30 days after the event of the intention of a person to make a claim against one. However, a member of the general public can be proceeded against up to six years.

Mr. Pettiona.—Any damage resulting from flooding or lack of drainage could still be occurring within 30 days of a flood.

Mr. Eggleston.—As I said previously, Mr. Justice Sholl's decision means that the 30 days run from the date the last item of damage was caused.

Mr. White.—A landowner could wait until the last day before giving notice and the floods might then have disappeared. In such circumstances, the Commission would not have a chance of investigating the claim to try to establish a defence.

Mr. Eggleston.—That may well be so, but it does seem to me that a body such as the State Rivers and Water Supply Commission would have its officers around seeing what was happening during a period of flooding.

Mr. Pettiona.—Mr. East mentioned that his officers are responsible for large areas and during a period of flooding might not be able to inspect all the properties in the area.

Mr. Eggleston.—I would not be disposed to set myself up as having expert knowledge of matters of this nature, but I point out that when one sees the cases of personal hardship which result from a man not knowing about the necessity of giving notice, one realizes the difficulties. These provisions are tucked away in various statutes and even a most careful practitioner may find it difficult to track down the precise section which requires certain notice to be given. No doubt we all hope that the statutes will be consolidated, but that will not be accomplished for some considerable time. One has only to see the kind of injustice that can result from an innocent failure to give the required notice in a case where no prejudice has occurred to feel strongly that unless some real ground of likely injury to a statutory authority can be shown, these provisions should be abolished. At all events, there should be the possibility of excusing people for failure to give notice.

Mr. White.—Very few irrigators know anything about this time factor.

Mr. Eggleston.—That is so. The Workers Compensation Act originally provided that notice of an accident had to be given. However, it was considered necessary that provision should be made in cases where failure to give notice was excusable, in order that the insurance companies would not refuse to pay. In practice, that means that unless a claim is absolutely unmeritorious, the court will inevitably hold that there was a reason for failing to give notice. In the case previously referred to, the Council received a verbal notice only, but it was held that this man was in such pain and anguish at the time, that although he was capable of asking his wife to notify the Town Clerk, he was incapable of deciding whether a solicitor should be approached to give notice on his own behalf.

The Chairman.—I suppose that if notice was not given for a considerable time—unless there was a good reason for the delay—counsel for the State Rivers and Water Supply Commission would comment on that aspect to the arbitrator or Judge before whom the matter was being heard.

Mr. Eggleston.—In practice, in all classes of litigation, it is regarded as a sound rule to tell the other side of an occurence of this kind as soon as possible, even though a person does no more than say, "We are investigating such a matter." If time is allowed to elapse without some warning, the authenticity of the claim is liable to be suspect.

Mr. Pettiona.—Was not the case before Mr. Justice Sholl one in which the water authorities did not take advantage of the fact that no notice had been given?

Mr. Eggleston.—In *Armstrong's Case,* the water authorities attempted to take advantage of the fact that the notice was given within one month of the end of the damage, not the beginning. The notice was given on 21st April, 1950, and the State Rivers and Water Supply Commission contended that it could not apply to anything which happened more than 30 days previously; that is, before Wednesday, 22nd March, 1950. Notice was furnished within 30 days of the flooding subsiding. One could scarcely complain at that, but the Commission argued that the 30 days limit commenced as from the time of the actual flooding. In his judgment, Mr. Justice Norris stated, and I read from page 484 of the 1952 Argus Law Reports:—

> . . . . that the claimant's land was, according to the evidence, flooded for some time before that; and that, subtracting that earlier flooding, it could not be said that the flooding on and after 22nd March would have been what in fact it was, or would have produced the results in fact produced.

If there had been some flooding before that and you could not tell whether the damage had resulted from earlier or later flooding, the plaintiff could not get anything. The idea that this is only utilized as a reasonable precaution does not work out in practice.

Mr. White.—Arguments supporting the other side could also be advanced.

Mr. Eggleston.—That argument was, in fact, rejected by the Judge. Statutory authorities, which claim the protection, are prepared to take it to the limit. In the case previously cited, the person gave notice within 30 days of the flood subsiding but it was stated by the authority: "You did not give notice within 30 days of the flood commencing."

Mr. Hollway.—If a flood lasted for 31 days, you could not give notice at all.

Mr. Brennan.—Do you consider there should be a uniformity of notice amongst the various government departments.

Mr. Eggleston.—That would be most desirable if it could possibly be achieved. However, I think the members of the Committee know what happened when it was tried before. The origin of the whole idea was in the various Public Authorities Protection Acts in England, which were standardized in the 90's of last century. The idea was that those bodies worked on an annual budget and unless notice was given of the claims likely to be made, they may encounter financial difficulties. As far as accident claims are concerned, most of those bodies are now insured and that type of difficulty should not arise. That is not the point as far as Mr. East is concerned as he is prepared to work on a three-year basis. However, he says, "I want notice of claim within 30 days."

The Chairman.—On that point, some authorities may not desire to exercise their strict rights, but the court cannot make an award for damages in favour of the plaintiff if the proceedings have not been commenced within the prescribed time.

Mr. Hollway.—Can you visualize the possibility of an authority finding itself forced to define far more land as swamp land to get themselves under the protection of the provisos?

Mr. Eggleston.—I do not think I should commit myself to answering that question. I am by no means sure of the process by which lands are classified as swamp lands.

Mr. Hollway.—I understand provision is made for an appeal against land being called swamp land.

The Chairman.—Mr. East informed the Committee on that aspect.

Mr. Eggleston.—The classification of land as swamp land is covered in the original *Water Act* 1928. Section 56 of Act No. 4761 provides for a register showing the areas of swamp lands, and section 58, which was amended by Acts No. 4513 and 4761, provided for an appeal to be made. Section 10 of Act No. 4513 provides for an appeal to be made to a District Appeal Board against the classification of land as swamp land. Consequently, there is control over the Commission to that extent.

The Chairman.—In his evidence, Mr. Garran said with reference to paragraphs 4 and 5 of the letter written by the Victorian Bar Council:—

> I also direct attention to the two following paragraphs in the submission. So far as I am concerned, the statements made there are wrong. As to the production of documents, the position is provided by section 250 of the Water Act and by section 9 of the Arbitration Act and paragraph (*f*) of the schedule to that Act. So far as interrogatories are concerned, it is made clear that these can be required *vide* the case of *Kursell* v. *Timber Operators,* 1923 2 K.B., at page 202.

Would you care to express an opinion on that?

Mr. Eggleston.—I should not like to do so without examining the matter. Section 250 of the Water Act is hardly sufficient to justify the position, but my impression is that the Arbitration Act would enable the obtaining of interrogatories and discovery, if this is an arbitration within the meaning of that Act. I am not clear about that aspect at the moment. I was not aware that this point had been raised, and I do not recall on whose authority it was included in the letter.

The Water Act provides that a person may be compelled to produce a document before the arbitrator. Of course, there is a big difference between issuing a subpoena and having a document produced at the hearing, and compelling the opposite party before the hearing to disclose on oath all documents which are in his possession and which are material to the case. That is provided for under rules of court in the case of an action. If one obtains an order from the court or further notice—according to the relevant provisions contained in the rules—the other party must file an affidavit setting out all the documents which he has in his possession relating to the matters in issue, which of them he is prepared to produce and which he claims are privileged. Then the opposite party can inspect the documents which are not objected to, and take copies of them. On the other hand, argument can ensue as to whether a document is or is not privileged, but generally speaking it has the effect of one knowing what documents the other party has in his possession. That may be extremely important, especially in a case such as this where one has to

prove negligence and it is not on the Commission to disprove it. Section 9 of the *Arbitration Act* 1928 provides:—

> Any party to a submission may sue out a writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

That is a subpoena to give evidence or produce documents, but neither of those processes gives one any advance knowledge of what is going to be said by the other side or what documents are going to be produced. Paragraph (*f*) of the Schedule states:—

> The parties to the reference, and all persons claiming through them respectively, shall subject to any legal objection submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

Section 250 of the *Water Act* 1928 provides:—

> Any arbitrator may call for the production of any documents in the possession or power of either party which he or either of the parties thinks necessary for determining the questions in dispute, and any arbitrator may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

It does not give the party the right to Discovery before the arbitration goes on.

The Chairman.—The Committee is very interested in this matter. Perhaps after examining Mr. Garran's evidence you might amplify your statements concerning arbitration.

Mr. Eggleston.—I shall be happy to do so.

The Chairman.—Have you anything further, Mr. Eggleston?

Mr. Eggleston.—I do not consider there is anything more I can add at the moment. If the Committee feels that there are further items on which our views would be helpful, we will be happy to furnish information. I wish to make it clear that I am not personally experienced in these provisions and some of the views I have given might require modification in the light of a more complete study of the Acts concerned.

The Chairman.—We shall forward you a draft copy of your remarks to-day to give you the opportunity of revising anything you have said. On behalf of the Committee, I thank you for the assistance you have rendered. If we require further advice no doubt you or one of your colleagues will be able to appear before us later.

Mr. Eggleston.—We are only too anxious to help at any time we are in a position to do so.

The Chairman.—You will forward a memorandum to the Secretary, amplifying the views of your Council on the undesirability of a claimant being compelled to seek arbitration?

Mr. Eggleston.—Yes.

The Committee adjourned.

TUESDAY, 5TH APRIL, 1955.

Members Present:

Mr. Rylah in the Chair.

Council.	*Assembly.*
The Hon. T. W. Brennan,	Mr. Pettiona,
The Hon. P. T. Byrnes,	Mr. R. T. White.
The Hon. I. A. Swinburne,	
The Hon. F. M. Thomas.	

Mr. T. J. Tehan, solicitor, representing the Goulburn and Waranga Water Users' United League, was in attendance.

Mr. Tehan.—The Committee has already received a detailed picture of the legislation, and I propose to confine my remarks to the Act as it stood prior to the amendments that were passed in December, 1954, and to suggest what are considered to be desirable amendments by the League whose views I have been retained to state before the Committee. The irrigators generally are not seeking damages from the State Rivers and Water Supply Commission in this particular regard; their main concern is to know what their rights are if flooding on a scale similar to that which occurred in March, 1950, should happen again, and what the liabilities of the Commission will be.

After the 1950 floods only 28 irrigators followed the matter through to arbitration. I have been acting for 24 of those irrigators, including Mr. Williamson, whose case is referred to in Mr. East's submissions. I repeat that the people for whom I am acting are not primarily concerned with obtaining damages from the Commission; they want the Commission to so construct its works that in the future there will be no flooding, or if the Commission, for some reason, is unable to construct its works in such a way, the irrigators wish to know with certainty where they stand in relation to their properties when flooding of such magnitude occurs.

Mr. White.—I take it that the works of the Commission at this stage are not up to the perfection desired by the irrigators.

Mr. Tehan.—That is our submission, largely, and I propose to deal with it in some detail.

Mr. Pettiona.—Could that be done in any other way than by the Commission just not supplying the water?

Mr. Tehan.—The position is that the works are in existence, and we contend that from a technical point of view—certainly from the layman's point of view—they are inadequate.

Mr. Brennan.—Would any of the persons for whom you are acting be the owners of what might be called swamp land?

Mr. Tehan.—Certain small areas, can be classed as swamp land, but it is somewhat difficult to get a picture of the matter, because in our particular area no officer of the Commission can tell any irrigator where his swamp land is. The first matter I propose to deal with relates to the question of onus of proof. We submit that the onus of proof, as set out in section 260 prior to the December amendment, is quite reasonable and, provided that the Commission's works are reasonably adequate to meet previously-known demands, should not impose any real hardship upon the Commission.

Section 260, prior to being amended, was quite consistent with the common law principle as laid down in the case of *Rylands* v. *Fletcher,* which in general terms makes an owner absolutely liable for the escape of water from his land—in this case, the Commission—unless he can show that the escape was due to an agency beyond his control. So far as the common law position is concerned, the first hurdle an irrigator faces is the question of the shield of the Crown as applied to the State Rivers and Water Supply Commission. At the moment there is some doubt whether or not at common law the Commission would be entitled to the shield of the Crown, but, on the statement of eminent authorities, one must admit that it could be. Assuming that there was no Water Act, and an irrigator was forced to rely on his common law rights he would be faced first with testing, in the High Court presumably, the question of whether the Commission was entitled to the shield of the Crown. It is probable that a finding would be in favour of the Commission, although that is a

matter not free from doubt. Until the Crown is made liable in tort, I think it is safe to say that an irrigator is without an effective common law remedy; therefore he is forced back to the position of the statute, which is contained in section 260 and following sections of the Water Act.

We submit that the onus of proof should not have been touched, because, in our view, the position in regard to drainage channels is just the same from the point of view of the Commission as is the position in regard to irrigation channels. I am sure that members of the Committee appreciate the distinction between the term of "*water supply works*" which is used in the Act and which was not amended in 1954 and the term "*drainage works*". Sub-section (1) of section 12 of amending Act No. 5838 amended section 260 of the Principal Act by substituting the words—

> But the onus of proof that any flooding from any water supply works of an authority was not due to any intentional or negligent act or omission of the authority shall rest with the authority—

for certain other words. However, in the case of drainage works the onus of proof is on the irrigator. I submit strongly that the question relating to onus of proof should revert to the position that existed prior to the 1954 amendment. It is contended that the Commission should at least be prepared to accept full responsibility for water from drainage channels, over and above what would have been the level, if any, of natural water before the drainage system was superimposed.

Mr. Pettiona.—Despite the fact that that is the only means by which the irrigator can make a profit?

Mr. Tehan.—The drainage system is not a profit-making installation, but simply a system of removing excess water.

Mr. White.—It is beneficial to the primary producer.

Mr. Tehan.—That is a matter of argument. Many irrigators wish they had never seen the drainage system. We submit that the existing drainage system in the Goulburn area is inadequate. First, the pipes under bridges and the siphons under irrigation channels are inadequate, and the constructing authority has failed to correspondingly enlarge the structures as the drainage system progresses from its beginning in the southern part to its end near the Goulburn river in the north.

Mr. Byrnes.—They remain much as they were in the beginning?

Mr. Tehan.—That is so. As a practical illustration of what happens, there might be one channel running 15 miles in an easterly direction and another 15 miles in a southerly direction. Each carries a certain volume of water. During the course of that 15 miles the water in the channel passes under bridges on roads. Then the two channels join and the same size and type of pipe conveys the water. Those pipes are not capable of carrying the flow.

The second point is the failure of the Commission to keep the channels free from weeds, silt, etcetera.

Mr. Pettiona.—Is the Commission responsible for that?

Mr. Tehan.—The Commission is the authority set up to control the drainage system. The irrigator cannot clean them himself because they require steam shovels and dredges.

Mr. Byrnes.—He is not permitted to do so. I think the irrigators pay rates to the Commission for maintenance purposes.

Mr. Tehan.—We appreciate the difficulties confronting the Commission in the matter of weed growth in channels. Observation of floods over the past five years has revealed that a very large area of land which had never been flooded before the construction of the drainage system is now subject to flooding, causing serious damage to pastures and orchards belonging to irrigators. That can be demonstrated to the Committee members if they visit the area. This is relevant to the question of the onus of proof, which we say should be restored to the position obtaining prior to the December, 1954, amendment. If it is not possible to accede to that request, then we submit that no further amendment should be made to the onus of proof provision in favour of the Commission. We submit that the onus should be restored to its original position because of the inadequacy of the drainage system.

Mr. White.—If the two points mentioned were covered, it would not matter whether or not the onus of proof were restored to its earlier position.

Mr. Tehan.—If those two points were covered to the satisfaction of the irrigators, the Commission would not receive any claims for compensation under the existing Act because the drainage system would be efficient and effective and would not cause flooding. The whole basis of the submission is that even with the onus of proof as it is, the Commission has not made its drainage system effective and adequate for the purpose for which it was designed, despite actions by irrigators for damages. It is well known that in cases where arbitration proceedings are threatened something is done, whereas if there is no threat nothing is done.

Mr. White.—Your wish is that the onus of proof will be changed so that the Commission will be forced to put the channels in order and thus obviate flooding?

Mr. Tehan.—That is so. I repeat my opening remarks that the irrigators are not concerned with the Commission's finances or the payment of damages; they are concerned with damage to their properties. They want the drainage system put in order so that flooding will not occur.

Mr. Swinburne.—Were the drainage channels installed to take away seepage or water which might fall in excessive rainfall?

Mr. Tehan.—According to the Commission, they were put in to take off surplus irrigation water, but obviously the designing engineer must have known that the natural run-off of rainwater should have been taken into account.

Mr. Swinburne.—Is the drainage system necessary in your opinion?

Mr. Tehan.—Yes, some form of drainage is necessary. Efficient drainage is necessary for irrigation, as well as taking care of the natural rainwater run-off.

Mr. Swinburne.—In your opinion should its capacity be capable of handling even exceptional demands?

Mr. Tehan.—Yes.

Mr. Byrnes.—In many cases the drains would bring water to low land where it would be carried away by old water-courses. In some cases it would be impossible for them to handle the flow.

Mr. Tehan.—That is so. Irrigators of 35 or 40 years' standing, twenty of which were pre-drainage, say they did not receive half the quantity of water before the drainage system was installed.

Mr. Pettiona.—What would be the financial position of those people if a Government adopted a policy of the Commission not supplying water?

Mr. Tehan.—I am afraid I could not answer that question.

Mr. Pettiona.—This has something to do with water supply in this respect. If there was no water supply there would not be a drainage problem. It is only when an irrigation area becomes saturated and there is no way for the surplus water to run off that a flood is caused.

Mr. Tehan.—In the view of the irrigators, the drainage system has failed because the constructing authority did not ensure, in the first place, that the natural run-off as well as the surplus irrigation water would be handled by the system. That can be proved by examination of the affected areas. Secondly, the Commission has failed to keep the channels clean and free from weeds.

The next point on the question of onus of proof is that in the actual conduct of an arbitration a large amount of technical engineering evidence is necessary on both sides, but the facts on which such evidence is based are peculiarly within the knowledge of the Commission and its expert officers. This was clearly demonstrated in both Armstrong's and Williamson's arbitrations. I was personally concerned in the latter. The claimant was faced with the initial expenditure of £300 for his expert engineering witness to check levels, etc., on data which was supplied in part by the Commission. This expenditure only covered the preliminary preparation of a claim to a point where counsel could be in a position to advise with some certainty as to the issues of liability involved and the prospects of successfully establishing a claim. In our view that is a real safeguard to the Commission. As I said at the outset, despite the phenomenal and previously unheard of rainfall in March, 1950, the Commission only received 28 claims for arbitration. My practical experience indicates that it will cost each claimant £300 for initial engineering expenses, if he is to establish a case against the Commission, even with the onus of proof as it is. So unless he claims a very large sum from the Commission it is obviously not worth his while to risk such expenditure in order to establish a case. The costs in Williamson's arbitration were £4,000 on each side. Unless an irrigator has been almost annihilated by the Commission's flooding, the question of the Commission facing arbitrations is not a very real one, and the onus of proof could well remain where it is.

Mr. Pettiona.—Who pays the bill finally?

Mr. Tehan.—Whoever loses the arbitration.

Mr. Pettiona.—If the Commission loses, who pays ultimately?

Mr. Tehan.—I suppose the taxpayers do, although the Commission will argue on that point. It has some system of accounting in relation to these claims, which I do not understand. It is stated that the money comes out of the district maintenance fund. That is the Commission's assertion, which we must accept. The next point on the onus of proof procedure is the question of documents being made available to assist a plaintiff in an ordinary Supreme Court action. They are not available to be used by the claimant under the provisions now being considered. In other words, it is not a full scale Supreme Court action—it is an arbitration. In *Williamson's Case* it was necessary to approach the Commission, obtain their plans, and the Commission was prepared to co-operate in that regard. However, the initial expenditure is so great on the claimant, even before he can be advised with reasonable certainty as to his prospects of successfully establishing a claim, that the question of the Commission facing many substantial claims after heavy rain is not as real as they would have the Committee believe.

If the 1954 amendment in regard to onus of proof is to remain, and for the foregoing reasons it is submitted it should not, we oppose any further amendment to relieve the Commission of onus of proof in the case of flooding from irrigation channels. We claim that the Act, so far as onus of proof is concerned, should be restored to its original position prior to the 1954 amendment. In all cases, the Commission should accept onus of proof when the flooding is not intentional or does not arise through negligence on its part. If the drainage amendment is to remain, we oppose any further amendment to relieve the Commission in respect of irrigation channels.

Williamson's Case was concerned with the Wyuna main channel and resulted from the March, 1950, flooding. Exactly the same thing happened in February, 1955, in regard to the Wyuna main irrigation channel. This channel is the main arterial channel from the Waranga Basin; the outlet is through to the Goulburn river in the north, irrigating on the way the whole of the Tongala-Stanhope area. We say that because of the bad engineering design of that irrigation channel, rainwater broke into the channel. I do not think there is any argument, on the part of the Commission, that this happened, because it was established in *Williamson's Case* that it did. In the early stages, the channel passes through hilly country in the Rushworth area and the rainwater coming from those hills strikes one bank of the channel and there are siphons constructed underneath the channel to allow the rainwater to pass underneath. The siphons were inadequate and the rainwater came into the channel, causing the channel to rise. The irrigation water had previously been closed off at the entrance. These irrigation channels are controlled by a system of bars or stops, each a distance of from 3 to 4 miles apart, the idea being that if an irrigator desires to take water out of the channel by arrangement with the Commission, the bailiff, an employee of the Commission, puts the bars in, thereby raising the level of the channel behind the bars. This enables water to flow out and irrigate the property. When the rainwater came down to the bars, the water rose to such a level that the channel overflowed its banks, flooding neighbouring properties. In such instances, the bailiff, seeing the water flowing over the channel, instead of leaving in a reasonable number of bars, pulls them up and allows a full flow of water to go down to the next set of bars where the same thing takes place. In order to effectively control this problem in irrigation channels—in particular the Wyuna main channel—siphon construction, to enable rainwater to run off, should be tackled, and secondly, the system of removing bars from the irrigation channel in times of emergency should be more effective than it is. The League suggests that the bars should be drawn from the bottom end of the channel, right through, and a system of telephone communication should be set up by the Commission between the various stops along the channel.

Mr. Pettiona.—When you say an "emergency" do you mean when abnormal rains fall?

Mr. Tehan.—Yes, and when other emergencies arise. Where this is relevant to the question of onus of proof is that the League submits the irrigation flooding could be controlled in the way outlined. The Commission should be fully prepared to accept onus of proof in the case of flooding from irrigation channels.

The Chairman.—Did the same thing happen in the 1955 flooding?

Mr. Tehan.—Yes.

The Chairman.—Was the method of control used by the Commission the same on that occasion?

Mr. Tehan.—Yes, and that has been demonstrated by one of the claimants in 1950 claiming again on exactly the same set of facts. The first answer to the problem is the construction of adequate siphons to take care of the rainfall run off. That would not be a particularly big job and it would cost only between £3,000 and £4,000.

From the practical viewpoint, a further aspect arises under the 1954 amendment to the Act altering the onus of proof. The particular matter to which I refer is the practice of the Commission in a number of cases in allowing water through flood gates from irrigation channels into the drainage system, which subsequently overflows and floods an irrigator's property. Mr. East made mention of this aspect in page 22 of his report. The League claims that the system of discharging surplus irrigation water into drainage channels, and then on to the irrigator, has been made doubtful by the 1954 amendment. A curious result followed the amendment in question. It is doubtful, having regard to the present state of the law, whether the Commission would be liable for damage in the event of lands other than swamp lands —the Commission is exempt from all liability in regard to swamp lands. In the cases of direct flooding from drainage works and indirect flooding from water supply works, having regard to the present law, it is difficult to say whether the onus of proof would be on the Commission or the irrigator. It is submitted that this, and other problems, will inevitably arise under the legislation as amended in 1954. From a practical viewpoint, onus of proof should be on the Commission, whether it be from flooding, drainage works or water supply works. We submit, therefore, that section 260 should be restored to its form prior to the 1954 amendment. If the Committee, or Parliament, are not prepared to accept that submission, we plead that if onus of proof is to remain on the irrigator with regard to water from drainage channels, some guarantee should be inserted in the legislation that the Commission's existing drainage system, which is regarded by the people whom I represent as hopelessly inadequate, should be made satisfactory from an engineering viewpoint. We would prefer the position that existed in regard to section 260 prior to its being amended in 1954. It is submitted that section 261 requires amendment in regard to two matters. First, the period of 30 days is completely unreasonable having regard to the practicalities of the situation after a flood. In almost every case, it is impossible to determine within 30 days whether there will be any damage, and even in those cases where the damage is apparent it is not possible to determine the nature and extent of such damage. Further, we contend that the event from which time is to run must be clearly ascertainable. At present, it is not certain whether the event from which time has to run is the sending of the water on to the property or the injury which results therefrom. It is considered that the notice required under section 261 should be in only general terms, simply alleging that flooding from the Commission's works had caused loss and damage; the details of the loss and damage sustained should then be the subject matter of a further notice.

Mr. Thomas.—Are you aware that the Commission does not enforce the provision that notice must be given within 30 days?

Mr. Tehan.—I disagree with that contention. I also wish to refer to the amendment passed in 1954 which absolves the Commission from responsibility of flooding from drainage channels of land classified in the register as "swamp land". I would point out that in no case has the area of swamp land been pegged or marked on any irrigation property. A survey of each property would be required to peg the land accurately in accordance with the Commission's register. Where properties in the Tongala-Stanhope area have been sold on a subdivisional basis, it has been necessary for the district officer to visit many of the properties to ascertain the locations of the swamp lands as shown on the register. The irrigators will not be satisfied unless they know with certainty the exact areas of swamp lands on their properties.

Mr. Thomas.—Do you know whether any surveys of swamp lands have been carried out recently?

Mr. Tehan.—No. The members of the League feel that if the present position is allowed to remain the result will inevitably be that land other than swamp land will become flooded by reason of the discharge of irrigation waters into drainage channels.

I now wish to comment on certain matters raised by Mr. East in his submissions to the Committee. In referring to item No. (*v*) under the heading "Matters for Inquiry," Mr. East said—

> The water authority should not be exempted from making compensation in respect of injury caused by its works and which would not have been incurred but for the works of the authority.

We agree with that submission, and to some extent the difficulty has been overcome by sub-section (5) of section 12 of the 1954 amending Act, because the arbitrator determines the responsibility of the authority for the assessable damages. We do not agree with Mr. East's contention that in connexion with works of a drainage nature failure to provide for full control of run-offs from heavy rains, whether experienced in the past or not, should not be regarded as negligence. It is submitted that the law should provide clearly that the Commission must pay compensation for any excess flooding over and above the run-off from heavy rain. As a matter of practice, the drainage system has tended to concentrate much more water on low-lying areas than was the case before the drainage system was introduced. That has been caused by the contribution of what might be termed "Commission water," plus the fact that due to inferior syphons and crossings and dirty drainage channels the water is prevented from getting away as quickly as it would have if there had been no drainage system.

Mr. Pettiona.—Do not the irrigators realize that if the authority constructed the channels to take more than the experienced and expected rainfall, their water rates would be much higher, with the result that it might be uneconomic for them to carry on?

Mr. Tehan.—The irrigators suggest that it would not cost a large sum to put the matter right.

Mr. Pettiona.—Are most of the people concerned engineers as well as irrigators?

Mr. Tehan.—No, but they have a practical knowledge of what is involved. In many cases, it would be just a matter of putting a larger pipe under a bridge or installing a larger syphon. It would have been much cheaper to have done the work properly in the first place, but as it was not done properly then it should be undertaken now.

We are not in agreement with item No. (vii) of Mr. East's submissions that a matter for inquiry should be—

> The desirability of specific provision that an authority shall not be liable for damage on lands that would have been flooded if its works did not exist.

The league insists that the Commission should pay for all damage on land which is flooded by its works but which would not have been flooded if its works

had not existed. In other words, we say that the Commission should not pay for flooding which would have occurred apart from its works but that it should pay for the flooding of ground which would not have been flooded if the works of the Commission had not been carried out.

Mr. Thomas.—Are you aware of the fact that a drain was constructed as a result of an application by the people whom you are representing?

Mr. Tehan.—If the drains were put in efficiently they would not cause flooding. In our opinion, the drainage system is inadequate and inefficient. The irrigators League opposes the extension of the definition of swamp lands, as set out in item (viii) of Mr. East's submissions, which reads—

> The desirability or otherwise of exempting authorities from liability for payment of compensation for flood damage on swamp lands or on lands within natural flood basins, and the definition of such lands.

It is submitted that the Commission should accept liability for damage to lands which would not have been flooded but for the Commission's contribution to the flood waters.

To summarize my points, we say that the Commission should accept the onus of proof for the flooding of lands which were not flooded prior to the installation of the irrigation and drainage systems, and that section 261 of the Act should be amended so as to specify the event from which the time of giving notice is to be taken, also that some extension should be given of the period within which notice must be given. We accept the Commission's contention that some provision should be made in the Act to enable the arbitrator to determine the proportion of damage for which the Commission should pay.

We rely strongly on the onus of proof position prior to the 1954 amendment. It should be a simple matter for the Commission to prevent flooding from the irrigation channels; I think Mr. East might agree with that view. We submit that the whole of the drainage system is hopelessly inadequate and inefficient because of initial bad design of the channels, syphons and bridge crossings, and bad maintenance whereby weed growth and silt in channels have not been adequately controlled.

I thank the Committee for the opportunity to present my evidence. If the Committee would like to see some practical examples of what I have described, we would be glad to assist, also to present formal verbal evidence from particular persons in particular cases.

The Chairman.—Thank you, Mr. Tehan. At this stage the Committee have not made any definite plans for an inspection of irrigation areas, but they have asked those Members of Parliament who represent such areas to submit proposals for an inspection. Then the Committee will consider visiting various areas and opportunities may be given during those visits for further evidence to be given.

The Committee adjourned.

WEDNESDAY, 6TH APRIL, 1955.

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. I. A. Swinburne	Mr. R. T. White.
The Hon. F. M. Thomas.	

Mr. C. E. Newman, solicitor, Numurkah, was in attendance.

The Chairman.—On behalf of the Committee, I wish to welcome Mr. Newman, solicitor, from Numurkah, who has been interested in the Water Act as it stood before 1954 and the proposed amendments to the Water Act. Mr. Newman was responsible for first drawing the attention of Members of Parliament to the anomalies that might be created if the Water Act was to be amended in the form originally proposed in 1954. He is now appearing before this Committee to give evidence in connexion with the inquiry being undertaken and he appears on behalf of certain people whom he represents in the Numurkah district. Mr. Newman, you have already seen the relevant terms of reference?

Mr. Newman.—Yes.

The Chairman.—It is understood that you have also had the advantage of seeing the submission prepared by Mr. East for the assistance of this Committee.

Mr. Newman.—That is so.

Mr. White.—What is your official capacity?

Mr. Newman.—I do not represent anybody or any irrigators' league. I speak, first, as a private citizen, and secondly, as a solicitor who has acted for clients affected by actions of the Water Commission.

Mr. Brennan.—Mr. Newman, do you own any properties affected by water flooding?

Mr. Newman.—No.

Mr. Thomas.—You are appearing simply as a legal man, having had experience of flooding?

Mr. Newman.—That is so. It is not a practice of mine to appear as a witness before committees such as the Statute Law Revision Committee. I am here as a private citizen and I feel that injustice would be done to water users if the proposed amendments were passed. I believe that the State Rivers and Water Supply Commission will be "getting away" with too much if the proposed amendments are permitted. Of course, I have, on occasions, acted for certain people who have been affected by the Water Acts.

Mr. Brennan.—Is there a great deal of irrigation work carried out in your area?

Mr. Newman.—Yes. The new soldier settlement area of 60,000 acres is at Numurkah.

Mr. White.—Have you discussed this matter with any organization up there?

Mr. Newman.—No, although I have ten clients who were affected in one flooding. I have had the advantage of seeing Mr. East's submission, and also, I have been furnished with details of Mr. Tehan's evidence. I agree entirely with Mr. Tehan's arguments and I do not desire to traverse that aspect of the matter.

Mr. White.—Mr. Tehan may not have given the exact evidence to the Committee that was furnished to you.

Mr. Newman.—That is so. Perhaps I should have said that I support his line of thought. I go further than Mr. Tehan—he warned regarding the proposed amendments. I am inclined to think that a complete revision of that part of the Water Act is required and there should be a return to the rule of law, in order that landholders may be given the opportunity of going to the ordinary Courts.

I commence my evidence with two premises. First, the Act and arbitration, as it exists, protects the Water Commission. Secondly, it is the landholder who needs protection, not the Water Commission. As a matter of principle, Parliament should be slow and hesitant to enlarge the protection of governmental bodies at the expense of the individual, and if any

members of the Committee have not read Lord Hewart's book, "The New Despotism," I recommend it to them. The late Lord Hewart was Chief Justice of England, and his book was published in 1929. In my view, his ideas on the enlargement of powers of administrative bodies are well reasoned and quite true. At page 103 of his book, he advances the following thesis:—

> Judicial decision may often appear to be a stumbling block in the way of the zealous official. The official course might be so much more smooth, and the official arm might be so much more powerful if there were no troublesome law courts.
>
> Parliament and the public should be unceasingly vigilant to observe and destroy clauses in Bills which if they are enacted have the effect of placing some or other departmental decision beyond the reach of the law.

I submit that Mr. East, in his statement, appears to want to have his department's decisions placed beyond the reach of the law and arbitration.

I direct the Committee's attention to the book, "Cases of Constitutional Law," written in 1928 by other foremost authorities on this matter, namely, Keir and Lawson. At page 123, the following statement appears:—

> Any step which tended to deprive the subject of the protection of the Courts against illegal encroachment on his private rights would be against all the principles of English law. But there is at the present time an unfortunate tendency, due partly, one fears, to bureaucratic impatience of any control to oust the jurisdiction of the ordinary Courts entirely in administrative matters.

The members of this Committee may feel that I am using rather strong words about the Water Commission, but I will quote cases in support of my statement. The landholder, under the Water Acts, has had only the right to compensation by arbitration; he has no appeal to the ordinary courts. What good has that done? The costs of arbitration in Williamson's case were £3,400 each side. Can it be said that arbitration is cheaper? Furthermore, the case took years to conclude. Can it be said, therefore, that arbitration is quicker? Can it have any advantage over the approach to the ordinary courts of the land, particularly as there is no settled procedure in arbitration cases. The claimants are in the dark, so to speak, as to procedure, whereas in the courts of law there is a settled procedure. Mr. East mentioned that in arbitration, claimants have just the same rights of discovery of documents and normal pleadings. Mr. Tehan will support me when I say that that is not so. There is only a partial, and somewhat grudging, disclosure of documents. Claimants have not the right to get vital documents and vital evidence from the Commission. Do the facts I have mentioned concerning arbitration fit in with Mr. East's statement on page 13 that arbitration would simplify court proceedings in the interests of both claimants and defendants? I do not think so. Arbitration has produced disadvantages but not many advantages. I urge the Committee to give some thought to the question of reverting to the normal law courts.

Let us look now at the case of small floodings where only £100 or £200 worth of damage is done, or under £1,000 worth. Why cannot the landholder approach his local County Court or court of petty sessions instead of being forced to face an unfamiliar and more vexatious procedure? For many years, the Commission has enjoyed protection because of the arbitration system. This should be abolished. There would be no difficulty in bringing this under rule of law—the rule of *Rylands* v. *Fletcher* should be made to apply.

In his submission, Mr. East mentioned apportionment of damage. That is a common thing, recognized in motor-car and shipping matters. I can see no difficulty whatsoever about its being handled by ordinary courts of law.

On page 17, Mr. East makes a somewhat amusing statement to the effect that arbitration must favour the landholder as it was introduced when Parliament was dominated by the large landholders. Obviously, Parliament is not so dominated now. If Mr. East wants justice, I suggest it could be obtained by abolishing the arbitration system. I point out to the Committee that I have nothing personal against Mr. East; he is merely a public servant as far as I am concerned. Lord Hewart does not question the bona fides of civil servants who, like Mr. East, try to get protection from legal responsibility for their department's acts. Lord Hewart said:—

> There is no good reason why departmental officials should have the power of giving a decision which an aggrieved person is unable to submit to the test of judicial enquiry.

Lord Hewart then proceeded to say:—

> In remarks upon the mischiefs of bureaucracy one may assume the excellence of the civil service. Yet it may perhaps be well to remember that high capacity and ardent zeal never need to be more carefully watched than when they appear to have entered with all their might upon a wrong road.

In support of my contentions, I quote a small case that has happened to me in actual practice. This supports my view that the landholder needs protection against the Commission and not vice versa, and secondly, that the Act should be widened to allow landholders access to their nearest courts. In October, 1953, a case was heard in the Numurkah Court of Petty Sessions—it was the case of *W. G. Sellick* v. *State Rivers and Water Supply Commission.* I quote this case to reveal to the Committee the method of the Commission's workings in actual practice. One of the innocent amendments brought forward in September, 1954, was to allow the Commission to acquire land instead of building a bridge where its works sever an area. Mr. Sellick had 14 acres of land cut off and under section 290 applied to the magistrate. Legally, the Commission had to give him a crossing. Section 285 said it was "to do as little damage as may be", but what actually happened? In February, 1952, the Commission sent a scoop on to Mr. Sellick's land to commence the Katandra outfall channel. Mr. Sellick's farm was already crossed by two other drains to serve irrigators in another part of the country. The Commission did not serve Mr. Sellick with any notice to treat; no warning was given. In other words, he was treated with contempt. If this had been done by a private citizen, an action for trespass might have followed. Mr. Sellick came to me and we contacted the Shepparton office of the Water Commission. Mr. Sellick's land had been prepared for sowing that year, and he asked for a bridge to be provided in the most convenient place, but that request was refused. In May, 1952, we wrote to head office asking for some finality and in June of that year the Commission replied that it was not prepared to give a bridge at all. In September, 1952, we finally arranged a conference with the senior engineer, but with no result until November, 1952, the Commission repeated that no bridge would be provided but it offered to buy the land at £16 10s. an acre. Finally, we discovered section 290 of the Water Act and brought the Commission before a magistrate in October, 1953. The matter was dealt with in the Numurkah Court of Petty Sessions. The delay was our own fault; we did not know our remedy until the middle of 1953. Within two months the case was heard. One week prior to its coming on, the Commission revived its first offer, made in 1952, to build the bridge in an inconvenient place. When the case was heard, the magistrate ordered that the Commission comply with the provisions of section 290 and decided that the most convenient place for the bridge

was where Sellick had asked for it. Reference was made to section 285, which requires the Commission to do as little harm as possible in carrying out the provisions of section 290. However, I say that the Commission did not comply with those provisions, because Sellick lost the cropping on 14 acres for the years 1953 and 1954.

Mr. White.—Was he recompensed?

Mr. Newman.—No. There was still no bridge constructed in 1954. Unfortunately, section 290 does not provide that a bridge must be built within a specified time after the magistrate's decision.

Mr. White.—If you had not discovered section 290, there would have been no case at all?

Mr. Newman.—Probably Sellick would have disposed of his land at £16 10s. an acre.

Mr. Brennan.—What is the current value of the land?

Mr. Newman.—At the time the case was heard, the Commission's valuer valued the land at £20 an acre.

Mr. Brennan.—What is the general value in the district?

Mr. Newman.—Possibly £30 an acre.

Mr. Randles.—If you had accepted the Commission's first offer, not knowing of the existence of section 290, would not your rights accrue to you if you ascertained the existence of the section subsequently?

Mr. Newman.—Yes, but the point I am making is that in regard to the bridge there was recourse to the court of petty sessions. The costs of each side were £30, and the matter was cleaned up.

Mr. White.—You are advancing this argument in support of a landholder who has been flooded being able to approach the lower court?

Mr. Newman.—Yes. Many of my clients have been flooded and have sustained damage to the extent of perhaps £100 or £200. They have not had recourse to the court of petty sessions but only to the unfamiliar and vexatious procedure of arbitration. In every case they have abandoned their claims or have accepted the compensation the Commission has been prepared to offer.

Mr. White.—Have you been approached on this subject?

Mr. Newman.—Yes. I can quote the case of Keith Morris, of Strathmerton, which is one of the cases referred to by Mr. East who said that some 1,100 cases have been settled by the Commission. The Commission can settle with the farmers on its own terms, because the landholders will not and cannot go to arbitration when they have sustained flood damage amounting to perhaps £100 or £200. From memory, Morris was compensated £120, whereas his actual loss was over £200.

Mr. White.—Disgruntled irrigators have come to you on this very matter?

Mr. Newman.—We acted for Morris and finally advised him to take what was offered.

Mr. Byrnes.—It would have been beyond his means to go to arbitration?

Mr. Newman.—Yes. If there had been recourse to petty sessions, we would have been most happy, but a landholder who has sustained damage by flooding is not able to take the matter to court as Sellick did in regard to the case I have quoted. However, as a result of the amendment that was passed in 1954 that remedy has gone.

Mr. White.—You do not agree that the Commission has been very reasonable.

Mr. Newman.—No. Again quoting the case of Sellick, the drain through his property was not to benefit Sellick, but people in the Katandra district, 10 miles away. At least for one year after the case the channel was built to a distance of only three-quarters of a mile past his property, and I do not know whether it has yet been connected to the Katandra system.

Mr. Randles.—When a matter is taken to arbitration, is there an apportionment of costs or do both sides pay their own costs?

Mr. Newman.—The arbitrator awarded costs against the Commission in both the Williamson and Armstrong cases. However, I would point out that in a law case the successful party does not receive the whole of his costs, which are awarded on a minimum scale. The successful litigant is always out of pocket. Only the rich can afford to fight the State Rivers and Water Supply Commission.

Mr. Thomas.—To what extent can the court of petty sessions award damages?

Mr. Newman.—Up to £250.

Mr. Thomas.—If a claim is over that amount, the court of petty sessions cannot deal with it.

Mr. Newman.—No. The County Court can deal with cases of damages up to £1,250. I should like to extend my argument to include the County Court.

Mr. Thomas.—If a man assesses his damages at £500 he must approach the County Court?

Mr. Newman.—That is so, or he can abandon the excess.

Mr. White.—If landholders had had access to the court of petty sessions, would many cases have been taken to that court?

Mr. Newman.—I do not know, as I have not handled many of these cases. Probably there would have been a considerable number. I have been dealing with flood cases for only two or three years, but I have dealt with notices to treat on the acquisition of easements and land by the State Rivers and Water Supply Commission for many years. There again, the Parliament has taken it out of the hands of the landholder to obtain any redress. I should say that there have been not more than three awards of compensation out of hundreds handled in my office during the last five years. The Act provides that the arbitrator when considering the land owner's claim must take into consideration any enhancement of the value of the land. That can react against the landholder, because one man who has a one-in-one water right for 100 acres may have a channel only up to his fence, with the result that he loses no ground, whereas another man may have a channel one chain and a half wide going through his property and may lose 30 acres but receive no compensation. In that regard Mr. Justice Sholl has said that if the Commission has put through a channel that benefits the whole or a section of the community the whole or the section should pay the cost and one person should not be expected to pay it. However, for ease of administration, the Commission wants to brush these little payments aside. I have seen many cases of injustice in regard to acquisitions of easements in that way.

Mr. Brennan.—Can any of the land of which you speak be classified as "swamp land"?

Mr. Newman.—A small proportion of it could be.

Mr. Brennan.—That land would naturally be subject to flooding?

Mr. Newman.—In almost every claim, some land could be said to be naturally subject to flooding.

Mr. Brennan.—Without any works of the Commission at all?

Mr. Newman.—That is so. Mr. East begs the question when he speaks about water that would be on the land but for the Commission's works. He forgets one vital point. In our flat country there are shallow depressions that one can hardly see. Prior to the Commission constructing works in the area, if there were 4 or 5 inches of rain and flooding occurred the water was off the land in two days. Now that there are channels across the depressions, and with the extra water that irrigators let go during periods of heavy rains, there is more water on those areas and it stays on longer, for periods of up to fourteen days. If water lies on pastures for two days it will not kill those pastures, but where areas are subject to flooding for fourteen days the pasture is killed and has to be resown. Mr. East has not mentioned that aspect. If the Commission holds water on the swamp land for a longer time it causes damage.

Mr. East has stated that his department is a good one. In the Sellick case, the drain to which I have referred ran some 7 or 8 chains from Sellick's fence and cut off a long strip of his land. When the case was heard at petty sessions, a senior engineer of the Commission said that the drain could have run along Sellick's boundary. That would have been done if the Commission had thought of the landholder, but it just put the drain through and cut off 14 acres without any thought.

Mr. Brennan.—Was it constructed in this position to save expense?

Mr. Newman.—Possibly. It is realized that curved drainage channels are not as efficient as straight channels.

Mr. Byrnes.—There may have been some difference in the contour of the land.

Mr. Newman.—It would not have mattered if the drain had been placed 10 chains away in either direction. The landholder wants every protection that Parliament can give him.

Mr. Thomas.—How many people derived a benefit from the drain that was constructed through Sellick's property?

Mr. Newman.—All the Katandra irrigation area was benefited.

Mr. Thomas.—Sellick was the person who sustained a loss?

Mr. Newman.—The adjoining landholders had the drain put through their land, but perhaps in those cases there was not the same combination of circumstances.

Mr. Randles.—If the Commission put a curved drain through a property and as a result the water could not get away and flooding occurred, it could be said that the Commission was liable.

Mr. Newman.—I realize that in some cases the Commission would be forced to cut off 14 acres of land to construct a drain efficiently, but in the Sellick case there was a complete absence of thought. The drain could have been placed on the boundary of the property, as was stated by the engineer of the Commission.

Mr. Randles.—Such a drain would not have caused flooding?

Mr. Newman.—No.

Mr. White.—Did the State Rivers and Water Supply Commission fight the Sellick case in the court of petty sessions?

Mr. Newman.—Yes. The case took two days. The Commission brought its engineers from Melbourne. It was not a very large case like the arbitrations.

Mr. Brennan.—What makes arbitration so costly?

Mr. Newman.—I would not say it is more costly than an ordinary law case, but it is just as costly because leading counsel are engaged. In flooding cases, even with the onus of proof resting on the Water Commission, the landowners concerned still have to carry out a preliminary engineering survey. In Williamson's case that cost £300. When acting on behalf of ten landowners at Mundoona, I could not obtain a quotation, but was informed that it would cost between £500 and £600. My clients could not afford to pay that amount.

Mr. Thomas.—What is the nature of their production?

Mr. Newman.—Wheat and sheep.

Mr. Brennan.—Do the people pay any special rate to the Commission for the improvement work?

Mr. Newman.—No. I understand the Commission makes every district bear its own proportion of costs, but they pay no special improvement rate for drainage.

Mr. Byrnes.—Do not they pay a drainage rate for maintenance purposes in addition to water charges if a drainage system has been laid?

Mr. Newman.—That is so.

Mr. Brennan.—Who paid for the drains running through Sellick's property?

Mr. Newman.—The Katandra irrigators.

Mr. Pettiona.—Did the Commission's engineer admit in court that the drain could have been constructed on the boundary?

Mr. Newman.—Yes. I looked up my notes on the case last night. It was only 5 or 7 chains away.

Mr. Randles.—Has Sellick any water rights?

Mr. Newman.—No. He receives no supply at all, but he has the drains running through his property.

Mr. Randles.—He is suffering all the disabilities without receiving any of the benefits of the Commission's works?

Mr. Newman.—That is so.

Mr. Brennan.—Would it be possible for him to obtain water from those drains?

Mr. Newman.—I think they are allowed to obtain some for domestic purposes.

Mr. Brennan.—Is the supply reserved for Katandra?

Mr. Newman.—I could not say. I think the Commission has some system whereby people are permitted to pump water from drainage channels.

Mr. Byrnes.—I know of one instance of that on land adjoining the Merbein irrigation area. A man with a dairy farm has been permitted to use the overflow, for which he pays some charge.

Mr. Newman.—Yes, it is a small charge. The Commission has pressed the benefit clause very hard in the acquisition of lands for easements over a long period. That seems to be unfair. Apparently the Commission thinks that all the enhancement of the land is due to the supply of water. The landholders pay for the water they use, and a lot of the improvement is due to their own work, plus investment of their capital. I say those aspects should be treated separately. If one landholder suffers a disability through flooding, he ought to receive compensation borne by the general body. On the question of

arbitration costs, I should like to quote the following extract from a letter written to me by Mr. Lush of Counsel:—

When I wrote the first of the flooding opinions I indicated that I would write a general memorandum on claims against the State Rivers and Water Supply Commission.

For reasons which I shall explain in a moment, I am unable to do this, but I think I can set out the most dangerous points very briefly.

The first is the question of cost, which I mentioned to you when I was in Numurkah. I told you that the costs of the plaintiffs in *Armstrong's Case* were £3,400, and I see no reason to suppose that the costs of the claim in *Osborne's Case* would be any less. Some money can be saved by using only one Counsel, but the cases are really very heavy indeed for one Counsel to carry alone. Anyway, it is not to be expected that the Commission would limit itself to one Counsel, so that their costs would be undiminished, a point which would be important in the event of a loss.

The next point is that it is essential to have a competent engineer engaged to make an exhaustive and expensive initial examination and report, so that the case can be started. The onus is on the claimant to show that the works of the Commission caused the flooding—the onus only moves when it comes to be decided whether the matters which caused the flooding involved intentional flooding or negligence on the Commission's part.

The third point is that these cases display changing aspects as they proceed. In both *Armstrong's Case* and *Williamson's Case* the argument that was presented in the final address for the claimant put a case very different from what was originally conceived. The reason for this is that no private litigant could afford the exhaustive engineering investigation necessary to get a full picture. When the Commission comes to light with its evidence the situation may be quite different from that which the claimant originally thought existed. There is no way of avoiding this but it obviously adds a great element of litigation risk.

My people are only small farmers holding about 1,000 acres. I cannot see how they can possibly go to arbitration with this claim, although Mr. Lush has advised that they have a good case. In another case in which I was acting for a widow with a small holding, Mr. Lush wrote to me as follows:—

Generally speaking, action against the Commission is a difficult matter for those with short purses. Section 260, which throws the burden of proof of certain matters on the Commission, does not relieve the claimant of the burden that the flooding resulted from some act or omission on the part of the Commission. The discharge of this burden nearly always involves the production of expensive technical evidence.

Even with the 1928 Act as it stood, Mr. East's assertion that it favoured the landholder is not, in my opinion, correct. The Commission possesses the technical evidence.

Mr. Randles.—You need an engineer's opinion to counteract the evidence brought forward by the Commission?

Mr. Newman.—No, we have to prove that flooding occurred and that in some way it came partly or wholly from the Commission's works.

Mr. Randles.—I thought you would only have to prove that flooding occurred, and that then the onus would be on the Commission to prove it was not caused by its actions.

Mr. Newman.—In that case the arbitrator could well say to us, "It might have been rain." We are some miles from the Shepparton area. When rain is impending the Commission releases all the water in its channels right back to the source of supply. The landholders let water go into the channels and sometimes my people are flooded by this release of water before the rain falls. However, we have to prove that. If the two lots of water arrive at the same time we have to prove that the Commission's water at least contributed to the flooding. Then the Commission has to prove that it was not due to negligence. I would have to get an engineer to make a survey of my client's land, tracing the drain right through, measuring the cusecs of water that it will carry, and estimating how many cusecs were flowing past a point at a certain time.

Mr. Brennan.—How far are you from one of the big channels such as Waranga?

Mr. Newman.—We are 20 miles from Shepparton and about 20 miles from the large channel which breaks up into feeders. I think the point Mr. East raised about apportionment is a good one. That was mentioned by Mr. Justice Sholl. Our people say that with ordinary rain we would be flooded to a certain depth for two days and that anything additional is the responsibility of the Commission. If this was brought within the jurisdiction of the courts, with the addition of the apportionment power, I think justice would be done. The apportioning would still be only guesswork, of course.

Mr. Pettiona.—If the authority constructed drains to carry a greater amount of water away than had ever been known, and that increased the rate payable by water users, I suppose they would be dissatisfied?

Mr. Newman.—One cannot work on maxima. Mr. East put that case very well. In practice I do not think it would be necessary, especially if the apportionment clause was inserted. The Commission would only have to provide for the extra water which it contributed. That would make the position satisfactory and it would be workable. I think Mr. East and Parliament are working on the principle that the Commission, before building drains, always endeavours to calculate the amount of water coming from ordinary rains. I refute that emphatically. I quote from Mr. Lush's opinion in our Mundoona case:—

From experience gained in *Armstrong's* and *Williamson's Cases* I would have little doubt that the Commission at no time calculated the capacity of the two creeks to carry drainage or storm waters at the time when their works were built and made no check of their carrying capacity at any other time. Nevertheless, they continue to put water into them to suit their own convenience.

Mr. Brennan.—Would you agree that the Commission is not responsible for an Act of God or an extraordinary and unforeseeable flood?

Mr. Newman.—We have had 4 or 5 inches of rain; we have not had a very large fall during the last ten years.

Mr. Byrnes.—That is a very important point. With the development of the territory, in both dry and irrigation farming, and the use of the land it is becoming more and more difficult to get rid of the water. Even something slightly over the average rainfall will cause a heavy flood because of the concentration of water from a large area into a particular locality. Tremendous expenditure would be involved in dealing with that situation. That was one reason why the City of Shepparton, in conjunction with the Public Works Department, was so anxious to plan an exhaustive drainage system, costing £200,000, for the town. The same thing was done at Cobram. Before proceeding they wanted to be certain that the drainage works of the Commission, plus the increased liability to flooding, would not bring all the water into those towns. That is the danger. It is a complicated and expensive matter. I do not wish the Committee to hold the idea that this work could be done cheaply or if it was done that the irrigator should bear the whole cost. I do not agree with that.

Mr. Pettiona.—One of the great dangers confronting this Committee is the fact that if the authority is not going to have some protection, governments will find it necessary to curtail activities. That must be averted.

Mr. Newman.—This Committee, and Parliament, probably works on the assumption that the Water Commission calculates these risks and puts in its drains after due thought. However, Mr. Tehan, I understand, gave evidence pointing out that a good deal of the trouble had arisen because of the completely insufficient syphons provided by the Commission in its channels. In my opinion, it should not be assumed that the Commission is a careful body and it must be given protection.

Mr. Thomas.—The Committee appreciates your desire to assist it with this important problem. The evidence that you have submitted will be considered when the Committee's final report is being prepared.

The Committee adjourned.

APPENDICES.

APPENDIX A.

LETTER OF THE HONORABLE THE MINISTER OF WATER SUPPLY, WITH MEMORANDUM OF THE HONORABLE THE ATTORNEY-GENERAL ANNEXED.

21st February, 1955.

Dear Sir,

During the course of the debate on the Water Bill in the Legislative Assembly on 2nd December, 1954, I gave an undertaking to refer to the Statute Law Revision Committee the provisions of the Water Acts with regard to compensation for injury by flooding, which provisions are contained in Division 2 of Part VI. of the principal Act. I also gave an undertaking to bring down legislation in the next session of Parliament to amend these provisions, having regard to any recommendations which might be made by the Statute Law Revision Committee.

I now seek the co-operation of the Committee in putting this undertaking into effect.

The provisions concerned apply to all authorities under the Water Acts, but it is because of their effect on the State Rivers and Water Supply Commission in particular that they are being brought to notice at the present time.

The State Rivers and Water Supply Commission is a statutory authority constituted under the Water Acts and charged with the construction, maintenance and management of water supply and irrigation works, drainage works and flood protection works throughout the State.

Recent arbitration proceedings arising out of claims for compensation for damage caused by flooding in irrigation areas following exceptional rainfalls showed that the provisions of the Water Acts dealing with compensation for injuries by flooding were far from clear and were most unsatisfactory both to water authorities and claimants.

The view was expressed by counsel for claimants that a complete revision of the relevant division of the Water Acts was justified. The State Rivers and Water Supply Commission and its advisers concur in this view, which was also expressed by honorable members in the Legislative Assembly, and certain amendments were included in the Water Bill of 1954 to overcome some of these difficulties. These amendments dealt only with certain sections of Division 2 of Part VI., but it was realized that the whole provisions of this portion of the principal Act, which had been evolved by piecemeal amendments over the years, were in need of clarification and comprehensive review.

It might be mentioned that these provisions deal also with compensation for the infringement of rights to or easements over water, though no difficulties have ever arisen in regard to such rights and it has never been necessary for the provisions to be applied in this regard.

I feel that the terms of reference to the Statute Law Revision Committee should be:—

> "To examine and report upon and make recommendations for the removal of any anomalies in the provisions of Division 2 of Part VI. of the *Water Act* 1928, as amended, relating to the liability of water authorities to make compensation in respect of injury, loss or damage caused by works of such authorities and the procedure for settling disputes in relation thereto."

To aid the Committee's inquiry, the Chairman of the Commission and senior officers would be available to give evidence on aspects of the problem as it affects the Commission.

The Victorian Bar Council has also expressed interest in the matter.

I would be pleased if you could arrange for this matter to be referred to the Statute Law Revision Committee under the terms of reference quoted above.

Yours faithfully,

C. P. STONEHAM,
Minister of Water Supply.

The Hon. W. Slater, M.L.C.,
Attorney-General,
Crown Law Offices,
Melbourne, C.1.

I approve of the reference to the Statute Law Revision Committee for enquiry in the terms of reference herein recommended by the Minister of Agriculture.

W. SLATER,
Attorney-General.

22nd February, 1955.

APPENDIX B.

REPORT ON TOUR (23RD AND 24TH FEBRUARY, 1955) OF AREAS OF THE GOULBURN VALLEY RECENTLY AFFECTED BY FLOODING.

On Tour: The Hon. F. M. Thomas, M.L.C., H. E. Harding, Esq., Senior Divisional Engineer, State Rivers and Water Supply Commission, G. Grose, Esq., Joint Secretary, Statute Law Revision Committee.

Mr. Chairman and Gentlemen of the Committee:

Sirs,

I have the honour to submit my report of the inspectorial survey in the matter of flooding in the following irrigation districts:—Rodney, Tongala-Stanhope, Deakin, Rochester. The localities visited were:—Nagambie, Murchison, Tatura, Stanhope, Nanneela, Rochester, Echuca, Echuca Village Settlement, Tongala, Kyabram, Mooroopna, Waranga Reservoir.

The flooding was mainly due to torrential rains on Sunday, 13th February. During four or five days up to 14th February, heavy rain fell over a wide area of the Goulburn Valley—up to 6 inches being reported in some localities, more than half the total being recorded in one period of 24 hours. On the dates of the inspection (23rd and 24th February), thousands of acres were still inundated. The rainfall was far in excess of that normally experienced in similar periods—the average annual rainfall being 21½ inches.

The whole of the area visited is remarkably level. The general fall of the land is to the north. Natural drainage is slow and is through a series of wide shallow depressions which meander from south to north, draining finally into the River Murray. Not all of the irrigated area is served by the State Rivers and Water Supply Commission drainage system.

Water which overflowed from the depressions became trapped wherever any obstacle was in its path—be it check banks, drainage channel or road formation. The flat nature of the country is such that an obstacle 3 to 4 inches high holds back a sheet of water over several acres.

Without interference irrigation channels have never been responsible for excess flooding, although on one occasion, I was informed, some private individual did release a lock and create some damage.

In the matter of drainage there is a problem. The State Rivers and Water Supply Commission has to be cautious because of its liability for damages. The Commission has constructed many miles of drains with beneficial results to farmers and orchardists. Before drains are built, easements of drainage are normally granted freely by landholders, but there are exceptions. In the case of one Williamson of Tongala v. the Commission, flooding had occurred mainly due to torrential rain, and had destroyed part of an orchard. A claim for damages was made and judgment given by Mr. Justice Sholl against the Commission.

Damages were paid by the Commission to one, Armstrong, as a result of flooding in 1950 (see *Re Armstrong and State Rivers and Water Supply Commission* 1952 ALR 472).

The Commission say that the construction of further drainage works has become a risk which they are not prepared to take. This is a matter in which the Committee could examine the effect of the provisions of the Water Acts relating to flooding and compensation. Section 80 and subsequent sections may be looked at. In the matter of compensation, section 259 *et seq* may be given consideration.

This report is based on my inspection, and should the members of the Committee desire to see at first hand the country and conditions under which flooding occurs, I would say that a visit to the districts I have mentioned would be of advantage to the Committee in their present enquiry, and to the State.

Personally, I wish to thank Mr. Harding of the State Rivers and Water Supply Commission, and Mr. Grose for their assistance during my inspection, without which my trip would have been of no value.

F. M. THOMAS.

APPENDIX C.

IN THE MATTER OF THE WATER ACT 1928
AND
IN THE MATTER OF AN ARBITRATION BETWEEN ALLAN ALFRED WILLIAMSON AND THE STATE RIVERS AND WATER SUPPLY COMMISSION.

AWARD BY THE HONORABLE MR. JUSTICE SHOLL (ARBITRATOR).

THE WATER ACT 1928.

Whereas Allan Alfred Williamson, of Stanhope, in the State of Victoria, orchardist and dairy farmer (hereinafter called "the Claimant"), having given a notice of claim dated the 12th day of May, 1950, but which was enclosed in and forwarded together with a letter of his solicitors dated the 17th day of May, 1950, to the State Rivers and Water Supply Commission (hereinafter called "The Commission"), claimed against the Commission compensation for injury, loss or damage alleged by him to have been caused to his orchard property at Stanhope aforesaid, consisting of the lands comprised in allotments 26 and 39, section B, Parish of Girgarre, County of Rodney, by flooding which occurred on and after the 18th day of March, 1950, by the act or omission (of the kind and in the manner mentioned in and within the meaning of section 260 of the *Water Act* 1928) of the Commission, its servants, agents or contractors; And whereas the claimant and the Commission did not agree on the questions raised by such claim for compensation: And whereas it is provided by sections 247 and 262 of the *Water Act* 1928 that when in any question of disputed compensation as aforesaid the compensation claimed exceeds Three hundred pounds the questions whether any and if so what compensation shall be made shall be determined by a single Arbitrator who shall be a Judge of the Supreme Court appointed by the Governor in Council to act as such Arbitrator: And whereas the Claimant claimed compensation exceeding Three hundred pounds: And whereas the questions whether any and if so what compensation should be made to the Claimant by the Commission were by an Order in Council dated the 13th day of September, 1950, referred to me, Reginald Richard Sholl, a Judge of the Supreme Court, as Arbitrator, pursuant to the provisions of the *Water Act* 1928: And whereas on the 15th day of September, 1950, the Claimant and the Commission appeared by Counsel before me as such Arbitrator aforesaid and it was then and there agreed by the parties that the further hearing of such arbitration should be adjourned to a date to be fixed and the said arbitration was by consent adjourned by me accordingly: And whereas I having so taken upon myself the burden of the said reference resumed the said hearing on the 12th day of April, 1954, and on the 12th, 14th, 22nd, 23rd, 26th, 27th, 28th, 29th, and 30th days of April, and the 3rd, 4th, 5th, 10th, 11th, 12th, and 13th days of May, 1954, was attended by the said respective parties and their Counsel, solicitors, and witnesses, and heard the evidence, allegations, proofs, and exhibits of the said parties and what was alleged by Mr. D. I. Menzies of Queen's Counsel and Mr. Lush of Counsel for the Claimant and by Dr. E. G. Coppel of Queen's Counsel and Mr. Pape of Counsel for the Commission: And whereas by consent of the parties, I, on the 13th day of April, 1954, viewed the said property of the Claimant and the works of the Commission in and near the same and otherwise relating to the said claim: And whereas with the consent of the said parties and on their nomination I appointed pursuant to section 125 of the *Evidence Act* 1928 the firm of Anderson Secretarial Services, of 422 Collins-street, Melbourne, as shorthand writers for the purpose of taking down and transcribing the evidence given before me and ordered that the incidence of the costs of such shorthand notes abide my award and order and the evidence was by that firm taken down and transcribed accordingly: Now therefore I, the said Reginald Richard Sholl, having taken upon myself the burden of the said reference as aforesaid and having considered the said matters and having done all other things necessary in the premises to enable me to make this award Do Hereby Award Determine and Declare, and Do Hereby State my Award, in the form of a Special Case for the opinion of the Supreme Court, as follows:—

1. The Claimant has at all material times (and in fact from the year 1925 in the case of allotment 26 and the year 1929 in the case of allotment 39) resided and carried on the business of an orchardist and dairy farmer on his property at Stanhope aforesaid, and still resides and carries on such business there. Allotment 39 is north of allotment 26, which it adjoins. Between the two allotments was and is part of the Commission's Irrigation Channel No. 3/1, hereafter mentioned.

2. In March, 1950, the Claimant had on his said property (*inter alia*)—

(*a*) On allotment 26 (known as "the home block")
- (i) a haystack, containing 20 tons of pasture hay,
- (ii) an orchard of Pullar peaches, and
- (iii) an orchard of approximately 400 apricots some fifteen years old (known as "the old apricots").

(*b*) On allotment 39 (known as "the back block")
- (i) an orchard of approximately 400 apricots two years old, and not yet bearing (known as "the young apricots"),
- (ii) an orchard of approximately 780 Levis peaches, nine years old, and
- (iii) an orchard of approximately 560 Kelvin peaches, five years old.

The Pullar peaches were then ripe for picking; while from the old apricots and the Levis and Kelvin peaches that summer's crop had already been picked.

3. The Claimant's and a large number of other properties in that neighbourhood were then and at all material times prior and subsequent to March, 1950, irrigated by means of a system of irrigation channels and drains installed many years before by the Commission, and maintained and operated by its servants and agents. The water for irrigation was supplied to the area by the Commission from a large reservoir, the Waranga Basin, situated some miles to the south, via a main channel known as "the Wyuna Main Channel", which travels substantially northwards from the Basin to a point many miles to the north of Stanhope, and passes some distance to the east of Stanhope and the Claimant's property. From the Wyuna Main Channel irrigation water is fed to the neighbouring areas by smaller Commission channels, and the irrigated areas are drained by the Commission's drains. In particular, the area which includes the claimant's land is fed by (*inter alia*) the Commission's irrigation channels known as "No. 1", "No. 3/1", and "No. 3A/1", and is drained by (*inter alia*) the Commission's drain known as "No. 3/10". The said drain, which is banked, was in March, 1950, so sited as to cause its banks to cut across, to an appreciable degree, the natural lines of drainage to, and the natural outlet for water from, an area which included the claimant's back block and some of his home block. The banks of the Channel No. 3A/1 were also so placed as further to restrict the natural drainage of, and the said natural outlet from, such area. The said natural outlet was beyond and to the north of the northern boundary of the claimant's back block. Parts of Channels Nos. 3/1 and 3A/1 adjoined portion of the claimant's land, and No. 1 also was so placed that water overflowing from certain parts of it would tend to flow into a natural catchment, the natural drainage of and from which was into and across the claimant's back block and towards and through the aforesaid natural outlet from the area, which, however, as above stated, was then restricted by the banks of the drain and Channel No. 3A/1.

4. On the Claimant's back block, and so placed that roughly about half the Levis orchard and rather more than three-quarters of the Kelvin orchard fell within it, was a depression, lying on the natural line of drainage of the area, but below the level of the aforesaid natural outlet, so that water which fell or flowed into such depression would not drain away by natural surface flow, but could only be removed by evaporation, sub-surface flow, or pumping.

5. In the 24-hour periods ended 9 a.m. on Friday, March 17th, Saturday, March 18th, Sunday, March 19th, and, to a small degree, Monday, March 20th, respectively, very heavy rain fell over a large district of Northern Victoria, including the Stanhope area. As a result, widespread flooding occurred, and in particular the claimant's two blocks, including the said depression, were both extensively flooded.

6. The configuration of the natural catchment hereinbefore mentioned, and the amount of rain which fell, were such that in any event, apart from any effect of any of the Commission's works referred to above, parts of the claimant's land would have been flooded by the natural rainfall on the catchment, and the said depression would have been filled.

7. But in two respects the Commission's works caused an increase both in the area of the claimant's land flooded, and in the duration of the flood thereon, as follows:—

(*a*) From the 17th to the 20th March, or thereabouts, substantial quantities of water overflowed from Channels Nos. 3/1 and 3A/1 on to both blocks of the claimant's land, including parts of the natural catchment aforesaid, and overflowed from Channel No. 1 on to parts of the said catchment from which it naturally flowed towards and on to the claimant's back block.

(*b*) On the back block, the natural rainfall of the catchment, augmented by the said overflow from the Channels, was restricted in its outflow at the natural outlet, earlier referred to, by the banks of the drain No. 3/10 and the Channel No. 3A/1.

This augmentation of the flood on the claimant's land is for convenience hereinafter referred to as "the Commission's contribution." The matters referred to in both (*a*) and (*b*) affected the claimant's back block, but part only of (*a*) and none of (*b*) affected his home block.

8. The Commission has not proved that the Commission's contribution was not due to negligence or any negligent act or omission of it or its servants agents or contractors.

9. At the hearing before me, the claimant by his amended "Details of Loss Claim", delivered on the 27th April, 1954, which was marked "Exhibit B1", and which is annexed to and forms part of this Special Case, claimed compensation from the Commission for the following items of injury, loss, and damage, which were alleged by him to have been caused to him on the occasion referred to by flooding occasioned by the negligence of the Commission its servants agents or contractors—

(*a*) 20 tons of pasture hay lost ..	£80	0	0
(*b*) 40 tons of Pullar peaches—flooding prevented harvesting	£920	0	0
(*c*) Old apricots, loss of production, and replanting	£672	0	0
(*d*) Young apricots, loss of production, and replanting	£672	0	0
(*e*) Loss of production, Levis peaches ..	£4,624	0	0
(*f*) 350 Levis trees, replanting ..	£63	0	0
(*g*) Loss of production, Kelvin peaches	£6,798	16	7
(*h*) 560 Kelvin trees, replanting ..	£100	0	0
	£14,929	16	7

10. At the hearing, the claim in respect of Pullar peaches (item (*b*)) was ultimately abandoned, and I accordingly award nothing in respect of it.

11. The claimant has not proved to my satisfaction that the claims relating to the hay and the old apricot orchard (items (*a*) and (*c*)) were due to flooding, and I accordingly award nothing in respect thereof.

12. The claimant's claim for compensation for injury, loss and damage in relation to the home block therefore fails altogether.

13. With respect to the young apricot orchard (item (*d*)), the claimant lost all 400 or so trees, and, in consequence, suffered injury, loss and damage to the extent of £672, as a result of the flooding to which the Commission contributed as aforesaid.

14. With respect to the Levis orchard (items (*e*) and (*f*)), approximately 350 out of 780 or so trees were lost as a result of the flooding to which the Commission contributed, and the claimant in consequence suffered injury, loss, and damage to the extent of £5,600.

15. Of the Kelvin orchard (items (*g*) and (*h*)), all 560 or so trees were lost as a result of the flooding to which the Commission contributed, except for about 20-40 at the higher end, which however, were justifiably and reasonably removed also when the dead other trees were removed; and the claimant in consequence suffered injury, loss, and damage to the extent of £4,950.

16. In 1950 the claimant received from the Government by way of flood relief towards his flood losses the sum of £100, which it is agreed by the parties should be deducted from any amount which would otherwise be awarded to him in this arbitration.

17. With respect to the injury, loss, and damage incurred as a result of the flooding by the loss of the 400 young apricot trees, the claimant (so far as it is material) has not proved that the whole or any specific and ascertainable portion or proportion of it was due to the Commission's contribution; nor (so far as it is material) has the Commission proved that the same injury, loss, and damage as in fact occurred, or any specific and ascertainable portion or proportion of it, would have been suffered by the claimant in the absence of the Commission's contribution. All that can be said, upon the basis of such evidence as I am prepared to act upon, is (and I so find) that it is more probable than not that a majority of the trees would have survived, in good condition, without the Commission's contribution, though it is possible that all, or none, might have done so.

18. With respect to the injury, loss, and damage incurred as a result of the flooding by the loss of the 350 Levis peach trees, the claimant (so far as it is material) has not proved that the whole or any specific or ascertainable portion or proportion of it was due to the Commission's contribution; nor (so far as it is material) has the Commission proved that the same injury, loss, and damage as in fact occurred, or any specific or ascertainable portion or proportion of it, would have been suffered by the claimant in the absence of the Commission's contribution. All that can be said upon the basis of such evidence as I am prepared to act upon, is (and I so find) that, without the Commission's contribution—

(*a*) it is certain that some of the 350 trees would have survived, in good condition;

(*b*) it is more probable than not that the number so surviving would have been a substantial majority of the 350, though it is possible that a minority only might have so survived;

(*c*) it is more probable than not that some, though a minority, of the 350, would have been lost in any event, though it is possible that all might have survived.

19. With respect to the injury, loss and damage incurred as a result of the flooding by the loss of the 560 Kelvin peach trees, the claimant (so far as it is material) has not proved that the whole or any specific or ascertainable portion or proportion of it was due to the Commission's contribution; nor (so far as it is material) has the Commission proved that the same injury, loss, and damage as in fact occurred, or any specific or ascertainable portion or proportion of it, would have been suffered by the claimant in the absence of the Commission's contribution. All that can be said, upon the basis of such evidence as I am prepared to act upon, is (and I so find) that, without the Commission's contribution, and excluding the 20-40 which did survive—

(*a*) it is certain that some few of the other 520-540 would have survived, in good condition;

(*b*) it is possible that, of the remainder of the 520-540, after deducting those few referred to in (*a*), all, or none, might have so survived;

(*c*) but it is more probable than not that, of the remainder referred to in (*b*), the large majority would have been lost in any event.

20. (*a*) Any actual overflowing of water from irrigation Channels, and any actual restriction of outflow of flood waters by the Drain No. 3/10 or the Channel No. 3A/1 had ceased before the 28th March, 1950.

(*b*) Such outflow, if any, as there then still was, was less than the capacity of the restricted outlet could discharge, but the depression, previously mentioned, was full of water, and the Commission's contribution had had a part in filling it, and delayed the commencement of pumping operations by the claimant to drain it. These operations began on March 28th. On or about April 3rd, the surface of all relevant land of the claimant on the back block was drained substantially dry, but further pumping at intervals was necessary till April 13th, in order to drain off water which still flowed or seeped into the temporary drain leading to the pump, and the hole which had been dug for the foot of the pump, below the surface of the depression. In that sense, the last of the flood on the back block was not gone till April 13th. It has not been established to my satisfaction with any preciseness when the last of the flood was gone from the home block, save that it was probably not earlier than April 13th, and it may have been as late as April 20th.

(*c*) By April 13th, on which date a Government orchard supervisor visited the claimant's property and inspected the peach orchards on the back block with him, it was apparent to the claimant that he was very likely to suffer as a result of the flooding some losses, and probably serious losses, of (*inter alia*) his young apricots, his Levis peaches, and his Kelvin peaches. But as it was then autumn, it was not practicable to make any accurate calculation, or even close estimate, of the actual losses, until the following spring. By October, 1950, the Kelvins were grubbed out as valueless; by January, 1951, the young apricots were similarly removed. The Levis trees have not even yet been grubbed out, but by the end of 1950 it was, or should have been, apparent that 300 of the 350 now claimed for were dead, and 50 were "sick". By the end of 1951, it was or should have been apparent that the 50 were, for practical purposes, valueless.

(*d*) So far as the home block was concerned, the full extent of the loss of the hay and of the Pullar peaches was known to the claimant (if that fact be relevant) by the end of March, 1950. By the end of April, 1950 (if the fact be relevant), the claimant formed the view that some substantial loss of the old apricots would result from the flooding; but the subsequent loss of the old apricots, which in fact occurred over a period, and which has not been proved to have been due to flooding, was not capable of any reasonably definite ascertainment till at least the summer of 1951.

21. The end of the year 1951 was thus the earliest date at which it could be said that the extent of loss either actually due to the flood, or alleged by the claimant to be due to the flood, was fully ascertained, unless it could further be said that all details of loss of profits could not be calculated till the end of five years either from the flood, or from the death of the trees, since peach and apricot trees cannot be brought to commercial production under five years.

22. The only written communication proved before me to have been furnished to the Commission on behalf of the claimant, as to which it has been or conceivably might be contended that section 261 of the *Water Act*, 1928, as amended, requiring "a notice in writing stating the nature of the injury complained of", and section 263, first paragraph, providing that "no compensation shall be awarded save in respect of some items set forth in the notice in writing stating the nature of the injury complained of", were thereby satisfied, and the only documents relevant to the question whether—if the Commission can legally be precluded from reliance on non-compliance by the claimant with those provisions of the Act—it is so precluded, are to be found among the following documents, copies of all of which, except that numbered (1), were marked before me "Exhibit A", and are annexed hereto and form part of this Special Case—

(*a*) notice of claim dated 12th May, 1950, signed by the claimant and addressed to the Commission, but forwarded to the Commission only with the letter referred to in (*b*) below;

(*b*) letter from the claimant's solicitors to the Commission, dated 17th May, 1950, enclosing the notice referred to in (*a*) above;

(*c*) letter from the Commission to the claimant's solicitors, dated 23rd May, 1950;

(*d*) letter from the Commission to the claimant's solicitors, dated 12th September, 1950;

(*e*) letter from the claimant's solicitors to the Commission dated 15th September, 1950;

(*f*) letter from the Commission's solicitor to the claimant's solicitors, dated 5th March, 1954;

(*g*) letter from the claimant's solicitor to the Commission's solicitor, dated 9th March, 1954;

(*h*) letter from the Commission's solicitor to the claimant's solicitors, dated 10th March, 1954;

(*i*) letter from the claimant's solicitors to the Commission's solicitor, dated 13th March, 1954;

(*j*) letter from the claimant's solicitors to the Commission's solicitors, dated 2nd April, 1954, with enclosed particulars dated 30th March, 1954;

(*k*) letter from the Commission's solicitor to the claimant's solicitors, dated 5th April, 1954;

(*l*) "Details of Loss Claim", undated, but delivered by the claimant's solicitors to the Commission's solicitor in 1954, before April 12th; which was marked before me "Exhibit B" and is annexed to and forms part of this Special Case.

23. In no written communication sent by himself or on his behalf to the Commission or anyone on its behalf, before 1954, did the claimant intend to refer to or to claim for the loss of any apricot trees; but there is no evidence that the Commission understood, or was likely to have understood, any references in any of the aforesaid documents to loss of "trees" to exclude apricot trees. It was at all material times well known to the Commission's servants and agents that the claimant was conducting on his said property, at the time of the relevant flood, orchards of (*inter alia*) peaches and apricots.

24. The facts relevant to the question (if it be material) whether the Commission is precluded from relying against the claimant on either of the provisions referred to in paragraph 22 above are all stated in this Case. Counsel for the Commission took on the 12th April, 1954, the first day of the resumed hearing before me, the objection of non-compliance by the claimant with section 261.

25. The questions for the opinion of the Court are, upon the facts and matters herein stated or referred to—

(1) Is the claimant in the circumstances precluded by section 261 or section 263 (first paragraph) of the *Water Act*, 1928, from recovering from the Commission compensation for injury, loss, and damage suffered by him, as hereinbefore stated, in respect of:—
(*a*) His young apricot orchard?
(*b*) His Levis and Kelvin peach orchards?

(2) If and to the extent that question (1) is answered in favour of the claimant, is the claimant otherwise entitled to recover from the Commission, as compensation for injury, loss, and damage caused to him by negligent flooding by the Commission, or its servants, agents, or contractors—the sums of £671, £5,600 and £4,950, respectively referred to in paragraphs 13, 14, and 15 hereof, or any one or two of those sums, subject (in any case) to deduction, from the total otherwise recoverable, of the sum of £100 referred to in paragraph 16 hereof?

26. (*a*) If the Court in relation to question (1) should be of an opinion wholly in favour of the Commission, then I award that the claimant is not entitled to recover anything from the Commission, and I award, order and direct that the claimant pay to the Commission its costs of the arbitration, as hereinafter defined.

(*b*) If the Court in relation to question (1) should be of an opinion wholly in favour of the claimant, or in favour of the claimant save as to the matter of the young apricots, then I award, in accordance with the Court's opinion in relation to question (2), as I hereinafter in the next paragraph declare.

27. (*a*) If the Court in relation to question (2) should be of an opinion wholly in favour of the Commission, then I award that the claimant is not entitled to recover anything from the Commission, and I award, order and direct that the claimant pay to the Commission its costs of the arbitration, as hereinafter defined.

(*b*) If the Court in relation to question (2) should be of an opinion in favour of the claimant as to the matter of the Levis peaches, or the Levis peaches and the young apricots, but in favour of the Commission as to the matter of the Kelvin peaches and the young apricots or the Kelvin peaches only, then I award that the claimant is entitled to recover from the Commission £5,600, or £6,272 (as the case may be, according as the Court is not or is of an opinion in favour of the claimant as to the young apricots), less in either case £100—i.e., in the result £5,500, or £6,172, respectively—and I award, order and direct that the Commission pay to the claimant one-half of his costs of the arbitration, as hereinafter defined.

(*c*) If the Court in relation to question (2) should be of an opinion wholly in favour of the claimant, then I award that the claimant is entitled to recover from the Commission £11,122 (being the total of the aforesaid sums of £672, £5,600, and £4,950, less £100); and I award, order, and direct that the Commission pay to the claimant his costs of the arbitration as hereinafter defined.

28. I do further, pursuant to section 255 of the *Water Act*, 1928, as applied to division 2 of Part VI. thereof by the provisions of section 262 thereof, award, order and direct if and insofar as, pursuant to paragraph 27 above, costs, or under paragraph (*b*) thereof, half costs, are payable under my award by one party to the other—

(*a*) by consent of the parties, that such costs (or half costs) shall be taxed by the Taxing Master of the Supreme Court and that the amount fixed by such taxation shall be the amount payable;

(*b*) that such costs (or half costs) shall include the whole (or, as the case may be, one-half of) the amount already paid in respect of the aforesaid shorthand transcript to the said firm of Anderson Secretarial Services by the the party to whom such costs (or half costs) are payable; and I here record for the purposes of this paragraph that each party has already paid to the said firm one-half of its total charges, which said total charges were £398 6s. 6d.

29. I do further, pursuant to section 254 of the *Water Act*, 1928, as applied to division 2 of Part VI. thereof by the provisions of section 262 thereof, award, order, and direct as to my travelling expenses as arbitrator, which I fix at £26 18s.—

(*a*) That the sum of £5 13s., portion thereof, be paid within seven days of the date hereof by each party paying one-half thereof, viz., £2 16s. 6d., to E. Wanliss Esq., Associate, Law Courts, Melbourne.

(*b*) That the sum of £21 5s., the balance thereof, be paid within seven days of the date hereof by each party paying one-half thereof, viz., £10 12s. 6d., to the Accountant, Crown Law Department, Melbourne.

(*c*) That the ultimate liability for such travelling expenses be as it would be if they were part of the costs of the arbitration.

In Witness whereof I have hereunto set my hand at Judges' Chambers, Supreme Court, Melbourne, this 18th day of October, 1954.

(Sgd.) R. R. SHOLL.

Exhibit A.

LETTER DATED 17TH MAY, 1950, MESSRS. MORRISON AND SAWERS TO THE COMMISSION.

Dear Sir,

re Claim for Damages—A. A. Williamson of Stanhope.

On behalf of our above-named client we now forward formal notice of intention to claim damages. Our client's property was still flooded less than a month ago and it was only about a week ago that he became fully aware of the serious damage which has been done to his orchard property. He now instructs us that he faces a total loss of 12,000 trees. Kindly acknowledge receipt of the enclosed notice.

Enclosure with letter dated 17th May, 1950.

Water Acts.

NOTICE OF CLAIM.

Notice is hereby given pursuant to section 261 of the *Water Act* 1928, as amended by section 28 of Act No. 4678, of my intention to claim compensation pursuant to the provisions of the said Acts. The nature of the injury complained of is flooding to my orchard property situated at Stanhope from State Rivers and Water Supply Commission Drainage and Irrigation Channels. As a result of such flooding I have suffered loss and damage. The said flooding occurred on and after the 18th day of March, 1950.

Dated the 12th day of May, 1950.

A. A. WILLIAMSON.

To:

The Secretary,
State Rivers and Water Supply Commission,
100-110 Exhibition-street,
Melbourne.

LETTER DATED 23RD MAY, 1950, THE COMMISSION TO MESSRS. MORRISON AND SAWERS.

Dear Sirs,

I desire to acknowledge receipt of your letter of 17th May, forwarding formal notice by Mr. A. A. Williamson of Stanhope, of intention to claim damages from alleged flooding of his orchard property. In reply I am to say that the matter is receiving attention and that you will be further advised.

LETTER DATED 12TH SEPTEMBER, 1950, THE COMMISSION TO MESSRS. MORRISON AND SAWERS.

Dear Sirs,

re Claim for Damages under the Water Acts A. A. Williamson, Stanhope.

With reference to your letter of 17th May last, giving written notice to this Commission, pursuant to section 261 of the *Water Act* 1928 (as amended), of your above-mentioned client's intention to claim compensation for alleged loss resulting from flooding on his property, I have to request that your client furnish the Commission with the following particulars in relation to his claim:—

(*a*) Description and area of land affected by alleged flooding;

(*b*) Details of nature and extent of alleged injury;

(*c*) Length of time of continuance of alleged flooding;

(*d*) Details of nature and extent of each item of alleged loss, and compensation claimed in respect of each item.

Your further advice in the above matters will be awaited.

LETTER DATED 15TH SEPTEMBER, 1950, MESSRS. MORRISON AND SAWERS TO THE COMMISSION.

Dear Sir,

re Claim for Compensation, Flood Damage. A. A. Williamson, Stanhope.

We refer to notice in writing already served on you under section 261 of the Water Act in this matter. Under instructions from our above-named client we now forward you further particulars of his claim for compensation.

Our client's property was flooded as a direct result of the negligence of the Commission and its servants and agents in failing to make adequate and proper provision to prevent flooding in the construction and maintenance of its works.

Details of our client's claim for compensation are set out below—

Loss of 40 tons of Pullar peaches ..	£920
Loss of 20 tons of pasture hay	£80
1,100 fruit trees completely lost—cost of replanting	£120
Loss of income from bearing trees destroyed and while new trees are coming to growth	£11,000
	£12,120

As we understand that the Commission do not agree with us on the question raised by this claim we have taken the necessary action to have an Arbitrator appointed under the provisions of the Water Acts and arrangements have also been made for a formal preliminary hearing some time prior to the 17th instant.

EXHIBIT D.

EXTRACT FROM WATER ACTS.

PROVISIONS IN REGARD TO COMPENSATION FOR INJURY BY WORKS.

Comprising Sections 259 to 265, being Division 2 of Part VI. of the Principal Act, No. 3801, as amended to the present time by Acts Nos. 4678 and 5838.

DIVISION 2.—COMPENSATION FOR INJURY BY WORKS.

Water Act 1915. No action against Authority. Ib. s. 259.

259. Notwithstanding anything in this Act contained no action claim or proceeding whatsoever shall be maintainable except as hereinafter provided against any Authority or against any servants or agents of or contractors under any Authority for or in respect of any of the following matters:—

For injury to riparian rights.

Any injury loss or damage caused by any violation or infringement by such Authority its servants agents or contractors of any rights to or easements over any water constantly or intermittently flowing in or through any place whatsoever;

Or for flooding.

Any injury loss or damage to property caused by flooding or by water in any way sent on to such property by any act of any Authority its servants agents or contractors.

Authority to make compensation for injury to riparian rights and by flooding.

Ib. s. 260. *Water Act* 1916. s. 6. *Water Act* 1954. s. 12.

260. (1) Notwithstanding anything in the last preceding section contained any Authority shall be liable to make compensation subject to the conditions and limitations in this Act contained to any person for any injury loss or damage caused by any violation or infringement by the Authority or its servants agents or contractors of any rights to or easements over any water constantly or intermittently flowing in or through any place whatsoever or by intentional or negligent flooding or by water in any way sent on to property by any negligent act or omission of the Authority or its servants agents or contractors but the onus of proof that any flooding from any water supply works of an Authority was not due to any intentional or negligent act or omission of the Authority shall rest with the Authority.

(2) Notwithstanding anything in the last preceding sub-section no Authority shall in any case be liable to make any compensation in respect of any injury loss or damage caused by—

(*a*) flooding by water from drainage works of the Authority of; or

(*b*) water in any way flowing from drainage works of the Authority onto—

lands classified in the register of any irrigation and water supply district as swamp lands.

Claim within 30 days and no delay. *Water Act* 1915. s. 261. *Water Act* 1939. s. 28. *Water Act* 1954. s. 12.

261. (1) No Authority shall be liable to make any compensation in respect of any injury to any rights to or easements over any water constantly or intermittently flowing or by flooding as aforesaid unless a notice in writing stating the nature of the injury complained of has been furnished to the Authority within 30 days after it has taken the steps or done the thing in respect of which such notice is given and unless the person claiming compensation proceeds within two years after the giving of the notice aforesaid to obtain such compensation in the manner hereinafter provided.

Water Act 1939. s. 281.

(2) The person claiming compensation shall answer in writing all such reasonable inquiries relating to the claim as are addressed to him by or on behalf of the Authority.

Disputes as to compensation —how settled. *Water Act* 1915. s. 262.

262. Where any claim is made by any person against any Authority in respect of any such injury and such person and the Authority do not agree on the questions raised by such claim the questions whether any and if so what compensation shall be made to such person shall save as otherwise expressly provided in this Division be determined in the manner provided by the *Lands Compensation Act* 1928 as modified by and incorporated with this Act for determining the compensation to be paid for lands taken or acquired for any works or undertaking.

Ib. s. 263 *Water Act* 1954. s. 12. Principles in awarding compensation.

263. In determining whether any and what compensation is to be made under this division the arbitrator shall in each case have regard to and is hereby empowered and directed to apply the following principles:—

None where injury to water supply temporary only.

No compensation shall be awarded for any diminution or deterioration of the supply of water to which any person was or is entitled unless in the opinion of the arbitrator such diminution or deterioration is such as to deprive the claimant of a supply of water previously legally enjoyed by him and which supply was sufficient for domestic purposes for watering cattle or other stock for carrying on any mill or work for irrigation or for any other beneficial purpose for which a supply of water is necessary; and unless in the opinion of the arbitrator such diminution or deterioration is the direct and will be the permanent result of the completed works.

None for taking waters by legal powers.

No compensation shall be made for the taking or diverting of any water which the Authority is or was empowered by or under this Act or any corresponding previous enactment to take or divert either permanently or temporarily from any river creek stream or water-course lake lagoon swamp or marsh.

There shall be considered in reduction of all claims for compensation for injury whether (by reason of the execution of any works by the Authority against which any claim is made) any and if so what enhancement in value of any property of the claimant wherever situate has been directly or indirectly caused and whether any and if so what immediate or proximate benefit has been gained by or become available to such claimant by reason of the construction or use of such works or of any other works by the same Authority under this Act or under any corresponding previous enactment; and a deduction shall be made accordingly from the amount which but for this provision would have been paid or payable as compensation. Benefit to claimant by works under this Act.

The measure of damages shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing and shall not include remote indirect or speculative damages. *Water Act* 1915. Measure of damages. s. 263.

In any case where the injury complained of appears to be of a permanent or continuing character or likely to be repeated a sum may be awarded which the arbitrator may declare to be a compensation for all injury loss or damage sustained in respect of the matter complained of to the date of the making of the award and also for all future injury loss or damage in respect of the same matter; and after such award no further compensation shall be made in respect of any such future injury loss or damage. Continuing injury.

Where compensation is claimed in respect of flooding of land or of water being in any way sent thereon the arbitrator shall determine the cause of the flooding or sending of water and the amount of damages assessable under this Act in respect thereof and shall also determine the proportion (if any) of the responsibility of the Authority therefor and shall award against the Authority only such proportion of such amount. *Water Act* 1954. s. 12.

264. If compensation is sought to be recovered under the provisions of this Division for any such injury alleged to be the result of the execution of works which at the time of the alleged injury and of the claim to compensation in respect thereof are incomplete it shall be lawful for any Judge of the Supreme Court upon an application by the Authority made without action and either by summons or by motion upon notice to the claimant for compensation to make an order directing that the proceedings upon the claim for compensation shall be stayed until the completion of such works or for such period to be stated in the order as the Judge considers sufficient for the completion of such works and the proceedings to recover such compensation shall be stayed accordingly; but at the expiration of the stay limited in such order the claimant shall be at liberty to resume his proceedings for the recovery of such compensation without commencing any fresh proceedings. *Water Act* 1915. s. 264. Stay of proceedings where work not completed.

265. Where compensation is sought to be recovered under this Division in respect of any act or acts causing or likely to cause the same kind of injury to the same property and such acts may injure interests in reversion as well as in possession in such property, before any sum is awarded as compensation the person claiming compensation shall satisfy the arbitrator as to the nature and extent of the respective estates or interests of such claimant and all other persons (if any) in such property said to be injured, and that he has given sufficient notice to all such other persons of his proceedings to obtain compensation under this Act; and all such other persons whether they have received such notice or not who appear before such arbitrator shall be entitled to be heard on behalf of their respective interests in the compensation to be awarded. One sum may be awarded for interests affected. Ib. s. 265. *Water Act* 1915. s. 265.

In awarding any sum by way of compensation for such injury such arbitrator shall award and apportion as between such claimant and such other persons in such manner in all respects as to such arbitrator seems fit the amounts to be received by any or some or all of them respectively out of such sum as compensation for all injury of the same kind caused or likely to result to the respective interests of such claimant or other persons in such property; and such amounts shall be received by such claimant or other persons and shall be in full discharge and satisfaction of the claims of such persons to compensation in respect of the matter complained of and all future injury loss or damage in respect of the same matter.

Any person to whom any such sum has been awarded or apportioned as aforesaid shall have all such remedies and means of recovering the said sum from the party against which the claim has been made as though such person had originally been a claimant under the arbitration in which such award or apportionment has been so made.

WATER ACTS.

COMPENSATION FOR INJURY BY WORKS.

Water Act 1915, No. 2747.	Proposal of State Rivers and Water Supply Commission *Water Bill* 1916.	*Water Act* 1928, No. 3801.	*Water Bill* 1954 as Introduced to Legislative Assembly.	*Water Act* 1954, No. 5838.
260. Notwithstanding anything in the last preceding section contained any Authority shall be liable to make compensation subject to the conditions and limitations in this Act contained to any person for any injury loss or damage caused by any violation or infringement by the Authority or its servants agents or contractors of any rights to or easements over any water constantly or intermittently flowing in or through any place whatsoever or by (see below)	As before	As before	As before	As before
flooding or by water in any way sent on to property by any act of the Authority or its servants agents or contractors; if such injury loss or damage is such as would but for the provisions of this Act have been a good cause of action to such person against the Authority or against its servants agents or contractors	intentional or negligent flooding or by water in any way sent on to property by any negligent act of the Authority or its servants agents or contractors.	intentional or negligent flooding or by water in any way sent on to property by any negligent act or omission of the Authority or its servants agents or contractors but (in all cases) the onus of proof that such flooding was not intentional or due to negligence or any negligent act or omission of the Authority or its servants agents or contractors shall rest with the Authority.	intentional or negligent flooding or by water in any way sent on to property by any negligent act or omission of the Authority or its servants agents or contractors provided that this section shall have no application in any case where injury loss or damage is caused by flooding of or by water in any way sent on to lands classified in the register of any irrigation and water supply district as swamp lands	intentional or negligent flooding or by water in any way sent on to property by any negligent act or omission of the Authority or its servants agents or contractors but the onus of proof that any flooding from any water supply works of an Authority was not due to any intentional or negligent act or omission of the Authority shall rest with the Authority. (2) Notwithstanding anything in the last preceding sub-section no Authority shall in any case be liable to make any compensation in respect of any injury loss or damage caused by— (*a*) flooding by water from drainage works of the Authority of; or (*b*) water in any way flowing from drainage works of the Authority onto— lands classified in the register of any irrigation and water supply district as swamp lands.

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

COUNCIL CHAMBER

VICTORIA • MINUTES OF THE PROCEEDINGS OF THE LEG. COUNCIL, SESSION 1954-55