

VICTORIA - MINUTES OF THE PROCEEDINGS OF THE LEG. COUNCIL, SESSION 1949



COUNCIL  
GRANDER



VICTORIA.



MINUTES OF THE PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL

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SESSION 1949.

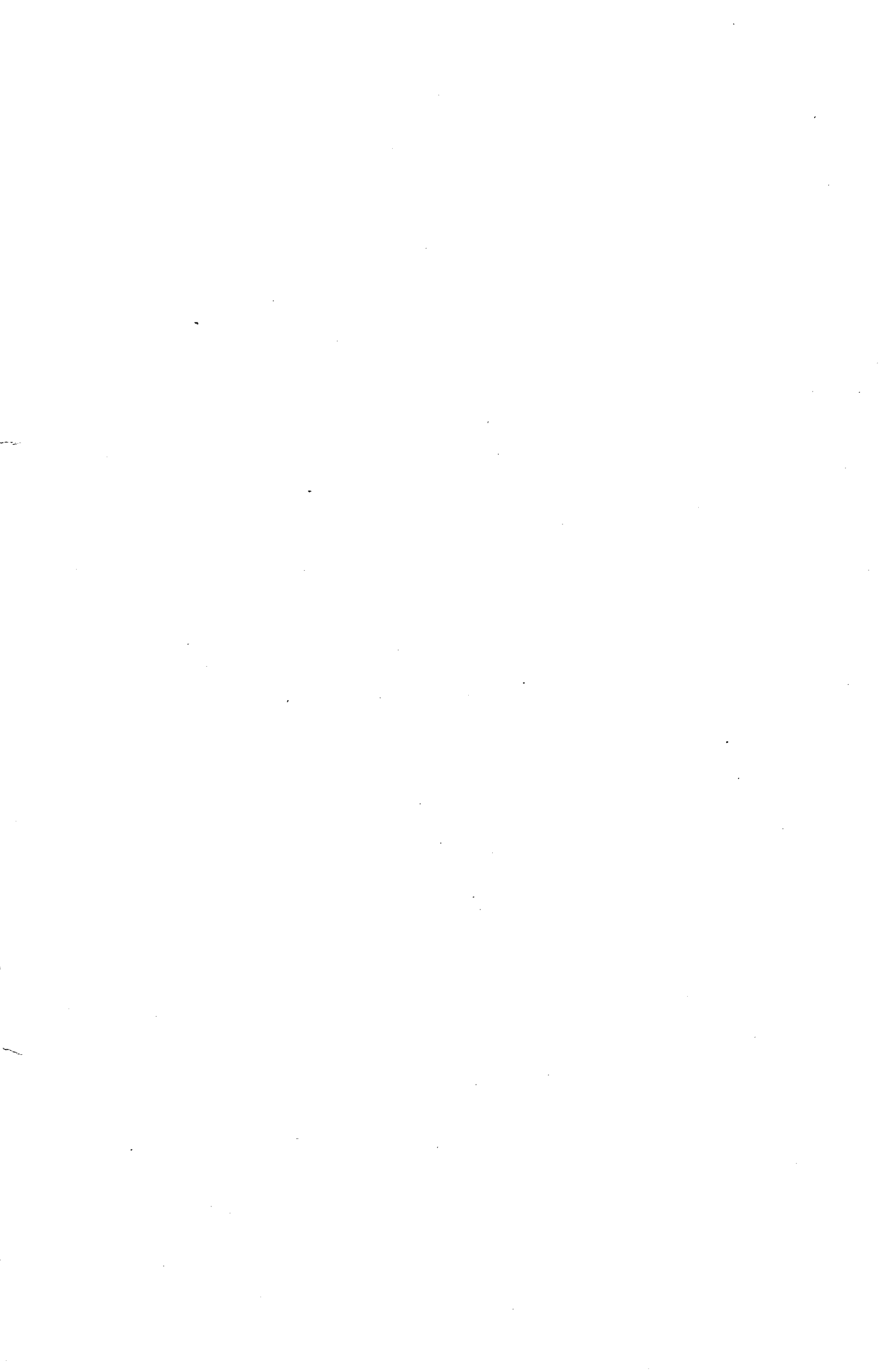
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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 1.

TUESDAY, 29<sup>TH</sup> MARCH, 1949.

1. The Council met pursuant to the Proclamation of His Excellency the Lieutenant-Governor, bearing date the eighth day of March, 1949, which Proclamation was read by the Clerk and is as follows:—

FIXING THE TIME FOR HOLDING THE SECOND SESSION OF THE THIRTY-SEVENTH PARLIAMENT OF VICTORIA.

PROCLAMATION

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

I, THE Lieutenant-Governor of the State of Victoria, in the Commonwealth of Australia, do by this my Proclamation fix Tuesday, the 29th day of March, 1949, as the time for the commencement and holding of the Second Session of the Thirty-seventh Parliament of Victoria, for the despatch of business, at the hour of Two-thirty o'clock in the afternoon, 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 eighth day of March, in the year of our Lord One thousand nine hundred and forty-nine, and in the thirteenth year of the reign of His Majesty King George VI.

(L.S.)

E. F. HERRING.

By His Excellency's Command,

T. T. HOLLWAY,

Premier.

GOD SAVE THE KING!

2. APPROACH OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The approach of His Excellency the Lieutenant-Governor was announced by the Usher.

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

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL:

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY:

My Advisers received with deep regret the announcement that His Majesty the King had been forced to postpone his visit to Australia because of ill-health.

They earnestly hope that His Majesty's health will continue to improve and that, with Her Majesty the Queen and Her Royal Highness the Princess Margaret, he will be able to visit our country in the near future.

His Excellency the Governor, Lord Dugan, and Lady Dugan, after ten years of valuable service to this State, left for England in February.

The appointment of Lord Dugan's successor is now under consideration.

The object of this early Session is to enable my Ministers to submit urgent legislation to promote the development of the State.



MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

A Supply Bill for the initial months of the next financial year will be introduced.

Although the Commonwealth Government increased the tax reimbursement grants payable to the States in 1948-49, the increased grant received by Victoria was insufficient to meet needs.

At the Premiers' Conference at Canberra in August last, the Prime Minister intimated that the Victorian Government should raise railway charges to bridge the gap between revenue and operating costs. The necessary action has, however, been deferred until June pending the completion of the present investigation into both country and metropolitan transport systems.

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

An important feature of the Government's rural policy will be the establishment of a Rural Finance Corporation, designed to afford additional and more effective credit facilities for protecting, encouraging and developing country industries, both primary and secondary. With agencies throughout the country the Corporation will be responsible for the administration of all rural finance provided by the State.

My Ministers are fully aware of the importance of conserving and making full use of our natural water resources.

Tenders have been called for the construction of the first 8 miles of the duplicate water channel from Goulburn Weir to Waranga Basin.

Approval has been given for the construction of reservoirs at Tullaroop Creek and at Cobbledick's Ford.

Legislation will be introduced to ratify the Agreement between the Governments of the Commonwealth and the States of New South Wales, South Australia and Victoria for greatly increasing the capacity of the Hume Reservoir.

A recent conference of Commonwealth, New South Wales and Victorian Ministers adopted a revised scheme for the diversion inland of portion of the waters of the Snowy River. Under the scheme more water will be available for irrigation and the output of electrical power will be greatly increased. My Advisers insisted that the interests of all settlers on the lower reaches of the Snowy River, and particularly on the Orbost flats, should be properly safeguarded.

The Government intends to amend, and to proclaim at an early date, the Soil Conservation and Land Utilization Act of 1947 so that effective measures may be put in hand to protect vital water catchments, and promote soil conservation throughout the State.

My Advisers will continue to implement a progressive policy for the conservation and development of the forest resources of the State.

In pursuance of its policy of decentralization, the Government is fostering the concentration in selected country centres of sawmilling and other forest industries.

By improving existing facilities and providing greater reserves of modern equipment my Ministers are endeavouring to ensure that the forests of the State are adequately protected against fire.

Developmental and decentralization plans for Victoria are being closely related to increasing Immigration activities.

The development of the brown coal resources of the State is one of the most urgent problems facing my Ministers.

The State Electricity Commission is expediting the establishment of a new open-cut and briquette factories at Morwell. The stripping of overburden from the first section of the open-cut will commence shortly.

To hasten the progress of this great project engineers of the Commission have been sent to England and Europe to negotiate the purchase of plant.

A Bill will be introduced under which the Government will provide the sum of £1,000,000 for the purpose of assisting in the development of the Latrobe Valley in respect of certain matters for which expenditure is not directly chargeable against any particular authority.

The rapidly increasing demand for electricity threatens to overload the Commission's generating system. Major works designed to cope with the increased load include the extension of the Kiewa Hydro-Electric Project, the installation of additional turbo-generators at Newport and the enlargement of Yallourn Generating Station.

In addition Victoria will share with New South Wales the output of electricity from stations to be established in connection with the Hume Reservoir and Snowy River projects.

The inability of New South Wales to meet the full requirements of Victoria in black coal for 1949 was foreseen. The Government purchased 220,000 tons of coal from the United Kingdom and India. Without this imported coal the Victorian Railways would not have been able to carry the record wheat harvest.



The rehabilitation and modernization of the railway system is proceeding as rapidly as supplies of material and labour permit. Particular attention is being given to improvements in passenger rolling stock to provide greater comfort and convenience for railway travellers. Modern diesel rail cars are being imported from England.

To promote the development of Gippsland East an aerial survey of the proposed railway extension from Bombala to Orbost, together with a soil survey of the area, is being undertaken.

The Parliamentary Public Works Committee has been asked to report on proposals for the electrification of the Gippsland line and the Melbourne-Geelong line.

My Advisers appreciate the co-operation of the Right Honorable A. J. Barnes, Minister of Transport in the British Government, in granting leave to Mr. J. Elliot, Chief Executive Officer, Southern Region of the British Railways, to enable him to examine and report upon the Victorian railway system in particular and transport in general.

A Bill will be brought forward to co-ordinate the work of the various transport authorities.

Legislation will be introduced to authorize the raising of £5,000,000 for works of construction and reconstruction of State highways, tourists' roads and forest roads. As a result, additional moneys will be available from the Country Roads Board Fund, and the Federal grant, for the maintenance of main roads, and for works on unclassified roads carried out by Municipalities. This is one of the practical steps to be taken by the Government to relieve country municipalities of some of their pressing financial difficulties.

The Government will vigorously promote agricultural education and research work, and measures dealing with these matters will be submitted. It is intended to establish two dairying colleges, one in the Western District and one in Gippsland, and to develop these into major research centres.

An Animal Husbandry Research Institute is to be established at the State Research Farm, Werribee.

Steady progress in Soldier Settlement has been made notwithstanding the difficulties associated with labour and materials in country centres.

Since November, 1947, 1,073 ex-servicemen have been settled under the Victorian Soldier Settlement Acts. Of this number 543 were allotted farms and a further 530 were advanced approximately £2,000,000 to enable them to buy farms. In addition £460,000 has been advanced under the *Commonwealth Re-establishment and Employment Act* 1945 to assist eligible ex-servicemen to finance the purchase of farms, stock, plant and equipment.

During the period under review 63 properties aggregating 200,000 acres were purchased for Soldier Settlement at a cost of £2,000,000.

A Bill to amend the Vermin and Noxious Weeds Act will be brought before you.

During the past year, my Advisers have obtained increased deliveries to this State of housing materials such as galvanized iron and timber, and the output of many locally produced materials has been increased.

During 1948 the Housing Commission built 2,361 houses, an increase of 432 on the previous year. It is expected that 3,000 houses will be completed by the Commission this year, and 11,000 by private builders.

To assist in alleviating the distressing shortage of houses and hospitals, legislation will be submitted making available the sum of £2,000,000 to meet the difference in the cost between imported and local building materials.

In furtherance of the general decentralization policy of the Government, the percentage of houses to be erected in country districts is being increased.

Since the development of the State is largely dependent upon housing and decentralization, the portfolios of the Minister of Housing and the Minister of State Development have been allotted to one Minister.

It is further proposed to co-ordinate under this Minister activities in relation to Housing, the State Development Committee, the Decentralization Committee, Regional Committees, and the Central Planning Authority.

An important feature of the decentralization proposals of the Government is the development of the Port of Portland. Major harbour works are now being planned and legislation will be introduced to provide for the establishment of a Harbour Trust to control and manage the Port.

The Government will provide increasing educational facilities, particularly in country districts.

The school leaving age will be raised to fifteen years as soon as teachers and buildings can be provided. This will involve widening the courses of study in high schools and technical schools, establishing multi-purpose high schools in small country centres, providing junior secondary schools of a new type and continuing the process of consolidation of rural schools.

A determined effort is being made to overtake the war-time and post-war lag in providing buildings and teachers' residences. The system of training teachers is being completely overhauled, and gradual decentralization of educational administration is being effected by giving increasing powers to District Inspectors, Head Masters, and School Committees and Councils.

Important reforms have been suggested by the Chief Justice's Law Reform Committee. It is proposed to implement these suggestions by legislation to amend the Trustee Act, the Crimes Act, the Transfer of Land Act, the Wrongs Act, and the law relating to the Limitation of Actions.

The transfer of the administration of prices and rent control from the Commonwealth to the State was smoothly effected. Full co-operation with other States is being maintained, although the withdrawal by the Commonwealth of subsidies has created many difficulties.

Major problems concerning the relaxation of controls are receiving the earnest consideration of my Ministers and important announcements will be made shortly.

Since the coming into operation in May, 1947, of the Free Library Service Board Act the number of municipal libraries of a standard qualifying them for subsidy has doubled. The Government is encouraging the establishment of a complete library service covering the whole State.

Legislation will be submitted for the registration of Mothercraft Nurses, and Bills to amend the Medical Act and the Nurses Act will be introduced.

The recently appointed Hospitals and Charities Commission is considering comprehensive plans for the construction and improvement of Hospitals and Institutions. These plans will proceed as soon as materials become available.

Legislation will be introduced to set aside 10 acres of land at Royal Park upon which a modern Children's Hospital will be constructed.

Advanced measures for combating tuberculosis to be undertaken by the Government in co-operation with the Commonwealth include the erection of a 400-bed Hospital at Watsonia, increased X-Ray examination and home visitation.

The Bill to provide for the constitution of a Mental Hygiene Authority, which was before Parliament last Session, will be re-submitted with modifications.

Legislation will be introduced to authorize an agreement with the Commonwealth under which mental patients and their relatives will be relieved of the obligation to pay maintenance fees.

The erection of a large treatment block at Mont Park Mental Hospital is to be commenced at an early date.

The Government has arranged to purchase from the Commonwealth the property known as Attwood Camp, near Broadmeadows, where it is proposed to re-establish the police remount depot and develop a police training centre.

Consideration is being given to the establishment of a system of probation for first offenders based on the system in operation in England.

It is proposed to amend the Indeterminate Sentences provisions of the Crimes Act to permit separate treatment of young delinquents likely to benefit from reformatory training. A property suitable for development as a training centre for certain trades and rural occupations has been purchased. The training will follow the pattern of the English Borstal system.

Provision will also be made for separate treatment for habitual criminals.

Plans have been prepared for modernization of the female division at Pentridge.

The whole of the industrial legislation of the State is now under review. When this review is completed consideration will be given to the amendment and consolidation of the Factories and Shops Acts.

Among other important measures to be submitted will be the following Bills:—

- Shearers Accommodation.
- Soldier Settlement.
- Governor's Salary.
- Miners Phthisis.
- Firearms.
- Children's Court.
- Forestry Paper and Pulp.
- Administration and Probate.
- Building Regulations Committee.
- Town and Country Planning.
- Milk Board.
- Workers' Compensation.
- Grain Elevators.
- Metropolitan Gas Company.
- Mines.
- Education.
- Teaching Service.
- Local Government.
- Drainage Areas.
- Valuation of Land.
- Police Regulation.
- Water.
- Motor Car.



MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

I now declare this Session of Parliament open, and I trust that the blessing of Divine Providence may attend your deliberations.

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

The Legislative Assembly then withdrew.

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

4. DECLARATIONS OF MEMBERS.—The Honorables the President (Sir Clifden Eager), Sir William Angliss, Sir Frank Beaurepaire, W. J. Beckett, P. T. Byrnes, E. P. Cameron, G. L. Chandler, Sir Frank Clarke, P. L. Coleman, A. M. Fraser, C. P. Gartside, T. Harvey, P. P. Inchbold, C. E. Isaac, P. Jones, J. A. Kennedy, P. J. Kennelly, J. F. Kittson, Col. G. V. Lansell, J. H. Lienhop, G. S. McArthur, W. MacAulay, L. H. McBrien, A. E. McDonald, H. V. MacLeod, A. J. Pittard, R. C. Rankin, I. A. Swinburne, F. M. Thomas, G. J. Tuckett, D. J. Walters, and A. G. Warner severally delivered to the Clerk the Declaration required by the fifty-fifth section of the Act No. 3660, as hereunder set forth :—

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, CLIFDEN HENRY ANDREWS EAGER, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal districts of Kew and Camberwell, and are known as No. 26 Barrington-avenue, Kew, and No. 3 Peppin-street, Camberwell.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Kew are rated in the rate-book of the said municipality upon a yearly value of £69, and that such of the said lands or tenements as are situate in the municipal district of Camberwell are rated in the rate-book of the said municipality upon a yearly value of £52.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ CLIFDEN EAGER.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, WILLIAM CHARLES ANGLISS, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Melbourne, and are known as part of allotment 6, section 24, city of Melbourne, parish of North Melbourne, county of Bourke, and being the whole of the land comprised in certificate of title, volume 3701, folio 740157.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Melbourne are rated in the rate-book of the said municipality upon a yearly value of £720.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ W. ANGLISS.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, FRANCIS JOSEPH EDMUND BEAUREPAIRE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Hawthorn, and are known as No. 2 Fordholm-road, Hawthorn.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Hawthorn are rated in the rate-book of the said municipality upon a yearly value of £245.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ FRANK BEAUREPAIRE.”

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, WILLIAM JAMES BECKETT, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of St. Kilda and are known as 'Aloha,' Shakespeare-grove, St. Kilda.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of St. Kilda are rated in the rate-book of the said municipality upon a yearly value of £130.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"W. J. BECKETT."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, PERCY THOMAS BYRNES, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of shire of Swan Hill and are known as vineyard, being allotment 5, Section B1, part allotment 15, Section B, and lot 2 of parts 9, 10, and 14, parish of Tyntynder, and shop and dwelling being part 1 of Section B, Nyah Township.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Shire of Swan Hill are rated in the rate-book of the said municipality upon a yearly value of £222.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"P. T. BYRNES."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, EWEN PAUL CAMERON, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Camberwell, and are known as 10 Orrong-crescent, Camberwell.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Camberwell are rated in the rate-book of the said municipality upon a yearly value of £80.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"E. P. CAMERON."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, GILBERT LAWRENCE CHANDLER, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Ferntree Gully, and are known as property situate at corner of Boronia and Forest-roads, Boronia.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Ferntree Gully are rated in the rate-book of the said municipality upon a yearly value of £140.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"G. L. CHANDLER."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, FRANCIS GRENVILLE CLARKE, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Prahran, and are known as 28 Jackson-street, Toorak, being part of Crown portion 14, parish of Prahran, county of Bourke.



"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of the said municipality upon a yearly value of £65.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"FRANK CLARKE."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, PATRICK LESLIE COLEMAN, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Melbourne, and are known as Nos. 234 and 236 Chetwynd-street, North Melbourne.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Melbourne are rated in the rate-book of the said municipality upon a yearly value of £104.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"P. L. COLEMAN."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, ARCHIBALD McDONALD FRASER, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Preston, and are known as 12 Oakhill-avenue, East Preston.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Preston are rated in the rate-book of the said municipality upon a yearly value of £34.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"A. M. FRASER."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, CHARLES PERCIVAL GARTSIDE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Dandenong, and are known as my homestead.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Dandenong are rated in the rate-book of the said municipality upon a yearly value of £130.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"C. P. GARTSIDE."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, TREVOR HARVEY, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Maffra, and are known as 'Jerseyholm,' Boisdale.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Maffra are rated in the rate-book of the said municipality upon a yearly value of £132.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"TREVOR HARVEY."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I*, PERCIVAL PENNELL INCHBOLD, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of the Borough of Wangaratta, and are known as 'Whitwell,' 18 Docker-street, Wangaratta.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of the Borough of Wangaratta are rated in the rate-book of the said municipality upon a yearly value of £80.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"P. P. INCHBOLD."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I*, CYRIL EVERETT ISAAC, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Dandenong, and are known as Nursery, Corrigan-road, Noble Park.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Dandenong are rated in the rate-book of the said municipality upon a yearly value of £80.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"C. E. ISAAC."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I*, PAUL JONES, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal districts of Richmond and Prahran, and are known as 68-72 Lord-street, Richmond, and 10 Clarke-street, Prahran.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Richmond are rated in the rate-book of the said municipality upon a yearly value of £100, and that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of the said municipality upon a yearly value of £60.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"PAUL JONES."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I*, JAMES ARTHUR KENNEDY, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Brighton, and are known as 28 Cosham-street, Brighton, certificate of title volume 4486, folio 897116.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Brighton are rated in the rate-book of the said municipality upon a yearly value of £105.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"J. A. KENNEDY."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I*, PATRICK JOHN KENNELLY, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of South Melbourne, and are known as 164-166 Nelson-road, South Melbourne.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of South Melbourne are rated in the rate-book of the said municipality upon a yearly value of £70.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"P. J. KENNELLY."



"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, JAMES FREDERICK KITTSON, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Ballarat, and are known as 'Endale,' 7 Burnbank-street, Ballarat.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Ballarat are rated in the rate-book of the said municipality upon a yearly value of £75.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"J. F. KITTSON."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, GEORGE VICTOR LANSELL, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Bendigo, and are known as 'Denderah,' View Hill, Bendigo.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Bendigo are rated in the rate-book of the said municipality upon a yearly value of £250.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"GEO. V. LANSELL."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, JOHN HERMAN LIENHOP, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Bendigo, and are known as No. 296 Williamson-street, Bendigo, and No. 23 Pyke-street, Bendigo.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Bendigo are rated in the rate-book of the said municipality upon a yearly value of £180.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"J. H. LIENHOP."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, GORDON STEWART MCARTHUR, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Hampden, and are known as 'Meningoort,' Camperdown.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Hampden are rated in the rate-book of the said municipality upon a yearly value of £1,260.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"G. S. MCARTHUR."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, WILLIAM MACAULAY, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Alberton, and are known as 'Albert Valley,' being allotments 21, 21A, 21B, 22, and 90, parish of Bingenwarri.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Alberton are rated in the rate-book of the said municipality upon a yearly value of £277.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"WM. MACAULAY."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, LIKELY HERMAN MCBRIEN*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Heidelberg, and are known as 14 Salisbury-Avenue, Ivanhoe.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Heidelberg are rated in the rate-book of the said municipality upon a yearly value of £60.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"L. H. MCBRIEN."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, ALLAN ELLIOTT McDONALD*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Newtown and Chilwell, and are known as Number 35 Laurel Bank-parade, Newtown.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Newtown and Chilwell are rated in the rate-book of the said municipality upon a yearly value of £59.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"ALLAN E. McDONALD."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, HUGH VERNON MACLEOD*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal districts of the Borough of Portland, and the Shire of Portland, and are known as 'Yerella,' Gawler-street, Portland, and allotments 1, 2, 4, and 5, Section B, Parish of Homerton, County of Normanby.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of the Borough of Portland are rated in the rate-book of the said municipality upon a yearly value of £75, and that such of the said lands or tenements as are situate in the municipal district of the Shire of Portland are rated in the rate-book of the said municipality upon a yearly value of £119.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"H. V. MACLEOD."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, ALFRED JAMES PITTARD*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Ballarat, and are known as shops, 313 Sturt-street, 317 Sturt-street, and 611 Sturt-street, Ballarat.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Ballarat are rated in the rate-book of the said municipality upon a yearly value of £421.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"ALF. J. PITTARD."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, ROBERT CHISHOLM RANKIN*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of the Town of Horsham, and are known as 'Kalimna Park,' Horsham.



“ And I further declare that such of the said lands or tenements as are situate in the municipal district of the Town of Horsham are rated in the rate-book of the said municipality upon a yearly value of £70.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ R. C. RANKIN.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, IVAN ARCHIE SWINBURNE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Bright, and are known as allotments 4A, 4B, 4C, 5A, and 6, and part of allotment 5 of section 17, parish of Eurandelong, certificate of title, volume 5967, folio 1193304 (Joint Tenancy).

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Bright are rated in the rate-book of the said municipality upon a yearly value of £46.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ IVAN A. SWINBURNE.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, FREDERICK MILES THOMAS, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Collingwood, and are known as 18 Emma-Street, Collingwood.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Collingwood are rated in the rate-book of the said municipality upon a yearly value of £50.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ F. M. THOMAS.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, GEORGE JOSEPH TUCKETT, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Numurkah, and are known as allotments 6, 7, 8, 9, 10, and part of allotment 11 of section D, parish of Yalca.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Numurkah are rated in the rate-book of the said municipality upon a yearly value of £637.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ GEO. J. TUCKETT.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, DUDLEY JOSEPH WALTERS, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Kerang, and are known as allotment 32A, section A, parish of Murrabit West, allotment 40A, section A, parish of Murrabit West, and allotment 24B, section A, Murrabit township.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Kerang are rated in the rate-book of the said municipality upon a yearly value of £206.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ DUDLEY J. WALTERS.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, ARTHUR GEORGE WARNER, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Brighton, and are known as 37 North-road, Brighton.*

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Brighton are rated in the rate-book of the said municipality upon a yearly value of £120.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ A. G. WARNER.”

5. MESSAGES FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy presented Messages from His Excellency the Lieutenant-Governor informing the Council that the following Air Mail letters had been received from the Right Honorable the Secretary of State for Commonwealth Relations, London, viz. :—

“ Governor of Victoria, Melbourne.

Your telegram of the 2nd December has been laid before His Majesty the King. I have it in Command from His Majesty to request you to convey to the Legislative Council an expression of his sincere thanks for their message of loyalty and congratulation on the birth of his grandson, Prince Charles.”

“ Governor of Victoria, Melbourne.

Your telegram of the 2nd December has been laid before His Majesty the King. I have it in Command from His Majesty to request you to convey to the Legislative Council of Victoria an expression of His Majesty's sincere thanks for the message of regret for his illness and their good wishes for his recovery.”

6. PRIVILEGE BILL.—MELBOURNE AND METROPOLITAN TRAMWAYS (CHAIRMAN) BILL.—On the motion of the Honorable J. A. Kennedy, leave was given to bring in a Bill to amend Section Fifteen of the *Melbourne and Metropolitan Tramways Act 1928*, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.
7. 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 William James Beckett,  
The Honorable Gilbert Lawrence Chandler,  
The Honorable Sir George Goudie,  
The Honorable Patrick John Kennelly,  
The Honorable Gordon Stewart McArthur,  
The Honorable Allan Elliott McDonald, and  
The Honorable Alfred James Pittard

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

Given under my hand this twenty-ninth day of March, One thousand nine hundred and forty-nine.

CLIFDEN EAGER,

President of the Legislative Council.

8. 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 Sir William Angliss,  
The Honorable Paul Jones,  
The Honorable Alfred James Pittard, and  
The Honorable George Joseph Tuckett

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-ninth day of March, One thousand nine hundred and forty-nine.

CLIFDEN EAGER,

President of the Legislative Council.

9. **STATUTE LAW REVISION COMMITTEE.**—The Honorable J. A. Kennedy moved, by leave, That the following Members of this House be appointed members of the Statute Law Revision Committee, viz. :—the Honorables A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

Question—put and resolved in the affirmative.

10. **LEAVE OF ABSENCE.**—The Honorable P. T. Byrnes moved, by leave, That leave of absence be granted to the Honorable Sir George Goudie for three months on account of ill-health.

Question—put and resolved in the affirmative.

11. **TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL.**—On the motion (by leave without notice) of the Honorable J. A. Kennedy, leave was given to bring in a Bill to make Provision for the Preparation of a Planning Scheme under the *Town and Country Planning Act 1944* in respect of the Metropolitan Area, 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.

12. **MOTHERCRAFT NURSES BILL.**—On the motion (by leave without notice) of the Honorable C. P. Gartside, leave was given to bring in a Bill relating to Mothercraft Nurses and the Registration thereof, and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

13. **WRONGS (TORT-FEASORS) BILL.**—On the motion (by leave without notice) of the Honorable A. E. McDonald, leave was given to bring in a Bill to amend the Law relating to Proceedings against and Contribution between Tort-feasors, 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. **PAPERS.**—The Honorable J. A. Kennedy presented, by command of His Excellency the Governor—  
Indeterminate Sentences Board—Report for the year 1947–48.

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 :—

Coal Mine Workers Pensions Act 1942—Amendment of Regulations.

Coal Mines Regulation Act 1928—Report of the General Manager, including the State Coal Mines Balance-sheet and Statement of Accounts duly audited, &c., for the year 1947–48.

Companies Act 1938—Return by Prothonotary of business of the Supreme Court in connexion with the winding-up of Companies during the year 1948.

Constitution Act Amendment Acts—Amendment of Regulations—

Legislative Assembly Elections Regulations.

Legislative Council Elections Regulations.

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

Country Roads Act 1928—Report of the Country Roads Board for the year 1947–48.

Dairy Products Acts—Report of the Victorian Dairy Products Board for the six months ended 31st December, 1948.

Dried Fruits Acts—Statement showing details of Receipts and Expenditure under the Dried Fruits Acts during the year 1948.

Education Act 1928—Amendment of Regulations—

Regulation XX.—Allowances for school requisites and maintenance to pupils attending post-primary schools and classes.

Regulation XXI.—Scholarships (two papers).

Regulation XXXIII.—School Committees.

Regulation XXXVI. (B).—Consolidated Schools and Group Schools.

Regulation XL.—Special classes in approved subjects.

Evidence Act 1928—Amendment of Regulations—Fees to be paid to Shorthand Writers and Commissioners.

Explosives Act 1928—Orders in Council relating to—

Classification of Explosives.

Definition of Explosives.

Fire Brigades Act 1928—Report of the Metropolitan Fire Brigades Board for the year 1947–48.

Fisheries Acts—Notice of intention to issue a Proclamation to prescribe Gummy and School or Snapper Sharks as “Fish”, and to fix a minimum length therefor.

Forests Act 1928—Report of the Forests Commission for the year 1947–48.

Geelong Harbor Trust Act 1928—Amendment of Superannuation Regulations.

Grain Elevators Act 1934—Report of the Grain Elevators Board for the year ended 31st October, 1947.

Land Act 1928—

Certificates of the Chief Secretary relating to the proposed compulsory resumption of land for the purposes of police stations at Benambra and Ivanhoe (two papers).

Certificates of the Minister of Public Instruction relating to the proposed compulsory resumption of land for the purposes of schools at Dousta Galla, Korumburra, Laverton, Manifold Heights, Millgrove, Ocean Grove, Pakenham, Preston, Strathmore, and Wantirna South (ten papers).

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



- Landlord and Tenant Act 1948—Landlord and Tenant Regulations (No. 1).
- Marketing of Primary Products Act 1935—Regulations—Chicory Marketing Board—  
 Periods of time for computation of or accounting for the net proceeds of the sale of  
 chicory.  
 Travelling expenses of members of the Board.
- Medical Act 1928—Pharmacy Board of Victoria—Pharmacy Regulations 1948.
- 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 1947–48.
- Milk Board Acts—Regulations—Milk Depots.
- Motor Car (Third-Party Insurance) Act 1939—State Motor Car Insurance Office—Report,  
 Profit and Loss Account, and Balance-sheet for the year 1947–48.
- Police Regulation Acts—  
 Amendment of Police Regulations (two papers).  
 Determination No. 14 of the Police Classification Board.
- Public Library National Gallery and Museums Act 1944—Amendment of the National  
 Gallery Regulations (two papers).
- Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—  
 Part I.—Appointments to the Administrative, Professional, and Technical and General  
 Divisions—  
 Regulation 22B—Department of Chief Secretary.  
 Regulation 33—Department of Agriculture.  
 Part II.—Promotions and Transfers—Regulations 36 and 36A.  
 Part III.—Salaries, Increments and Allowances—  
 Administrative Division—  
 Department of Labour.  
 Department of Law (two papers).  
 Department of Premier.  
 Administrative and Professional Divisions—Scales of Rates of Annual Salaries.  
 Professional Division—  
 Department of Agriculture (six papers).  
 Department of Chief Secretary (three papers).  
 Department of Health (three papers).  
 Department of Lands and Survey (five papers).  
 Department of Law (four papers).  
 Department of Mines.  
 Department of Public Instruction.  
 Department of State Forests (three papers).  
 Department of Treasurer.  
 Department of Water Supply (two papers).  
 Departments of Chief Secretary, and Health.  
 Departments of Chief Secretary, Law, Public Works, Health, and  
 Agriculture.  
 Departments of Lands and Survey, and Water Supply.  
 Departments of Law, and Lands and Survey.
- Technical and General Division—  
 Department of Agriculture.  
 Department of Chief Secretary.  
 Department of Health (three papers).  
 Department of Lands and Survey.  
 Department of Law.  
 Department of Mines.  
 Department of Public Works.  
 Department of Treasurer (three papers).  
 Department of Water Supply.  
 Departments of Agriculture, and Water Supply.  
 Departments of Health and Labour.
- Temporary Employees.—  
 Department of Agriculture (eight papers).  
 Department of Chief Secretary (two papers).  
 Department of Health (four papers).  
 Department of Lands and Survey.  
 Department of Law.  
 Department of Mines (two papers).  
 Department of Premier.  
 Department of Public Works (two papers).  
 Department of State Forests (two papers).  
 Department of Treasurer (two papers).  
 Department of Water Supply.  
 Departments of Agriculture, State Forests, Water Supply, and General  
 (two papers).  
 Departments of Chief Secretary, and Health.  
 Departments of Health, and Water Supply.  
 Departments of Premier and Labour.  
 General.  
 General and Departments of Mines, Agriculture, and Water Supply.

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 30th September, 1948.

Registration of Births Deaths and Marriages Act 1928—General Abstract of Births, Deaths, and Marriages registered during the year 1948.

State Savings Bank Act 1928—General Order No. 38—Provident Fund.

Superannuation Act 1928—Report of the State Superannuation Board for the year 1947–48.

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

Teaching Service Act 1946—Amendment of Regulations—

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

Teaching Service (Governor in Council) Regulations (two papers).

Teaching Service (Teachers' Tribunal) Regulations (five papers).

Transfer of Land (Acquisitions) Act 1948—Transfer of Land (Acquisitions) Regulations (two papers).

Water Acts—Report of the State Rivers and Water Supply Commission for the year 1947–48.

Workers' Compensation Acts—

Amendment of the Workers' Compensation Regulations 1942.

State Accident Insurance Office—Report, Profit and Loss Account, and Balance-sheet for the year 1947–48.

15. **SPEECH OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.**—The President reported the Speech of His Excellency the Lieutenant-Governor.

The Honorable E. P. Cameron moved, That the Council agree to the following Address to His Excellency the Lieutenant-Governor in reply to His Excellency's Opening Speech :—

MAY IT PLEASE YOUR EXCELLENCY—

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

Debate ensued.

The Honorable P. J. Kennelly 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.

16. **DECLARATION OF MEMBER.**—The Honorable P. J. Clarey delivered to the Clerk the Declaration required by the fifty-fifth section of the Act No. 3660 as hereunder set forth :—

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, PERCY JAMES CLAREY, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Caulfield, and are known as 'Boomerang,' 692 Inkerman-road, Caulfield.*

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Caulfield are rated in the rate-book of the said municipality upon a yearly value of £68.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ P. J. CLAREY.”

17. **ADJOURNMENT.**—The Honorable J. A. Kennedy moved, That the Council, at its rising, adjourn until Tuesday next at half-past Four o'clock.

Question—put and resolved in the affirmative.

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

HUGH B. JAMIESON,

*Clerk of the Legislative Council.*



# LEGISLATIVE COUNCIL

## Notices of Motion and Orders of the Day.

No. 1.

TUESDAY, 5TH APRIL, 1949.

### Questions.

1. The Hon. A. M. FRASER : To ask the Honorable the Commissioner of Public Works—
  - (a) Has he seen the following report in the "Herald" newspaper dated the 26th March, 1949, referring to the Conference of Prices Ministers in Adelaide :—
 

"State views on petrol price increase were so irreconcilable that it appeared a cleavage would be inevitable, with some States, notably Victoria, insisting on granting a rise".
  - (b) Was Victoria insistent on granting a rise in the price of petrol.
  - (c) Did the Attorney-General as Victorian Prices Minister support the proposal for an increase.
  - (d) Will the Minister lay on the table of the Library the report or data on which the Attorney-General based such support.
2. The Hon. A. M. FRASER : To ask the Honorable the Commissioner of Public Works—Has the Chief Commissioner of Police made any report to the Chief Secretary on his investigation of the allegations of one, Albert Drewett, made in the Supreme Court on 16th March, 1949, that he had been manhandled and threatened by certain members of the Police Force ; if so, will the Minister lay the report on the table of the Library.

### NOTICES OF MOTION :—

#### *Government Business.*

1. The Hon. J. A. KENNEDY : 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 ; and that on Wednesday in each week Private Members' business shall take precedence of Government business ; and that no new business be taken after half-past Ten o'clock.
2. The Hon. J. A. KENNEDY : To move, That the Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie, T. Harvey, P. P. Inchbold, and J. H. Lienhop be members of the Select Committee on the Standing Orders of the House ; three to be the quorum.
3. The Hon. J. A. KENNEDY : To move, That the Honorables Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett be members of the House Committee.
4. The Hon. J. A. KENNEDY : To move, That the Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin be members of the Joint Committee to manage the Library.
5. The Hon. J. A. KENNEDY : To move, That the Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin be members of the Printing Committee ; three to be the quorum.

### ORDER OF THE DAY (to take precedence) :—

1. ADDRESS-IN-REPLY TO SPEECH OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR—MOTION FOR—  
*Resumption of debate (Hon. P. J. Kennelly).*

### ORDERS OF THE DAY :—

#### *Government Business.*

1. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—(Hon. J. A. Kennedy)—Second reading.
2. MOTHERCRAFT NURSES BILL—(Hon. C. P. Gartside)—Second reading.
3. MELBOURNE AND METROPOLITAN TRAMWAYS (CHAIRMAN) BILL—(Hon. J. A. Kennedy)—Second reading.
4. WRONGS (TORT-FEASORS) BILL—(Hon. A. E. McDonald)—Second reading.

HUGH B. JAMIESON,  
Clerk of the Legislative Council.

CLIFDEN EAGER,  
President.



## SESSIONAL COMMITTEES—SESSION 1949.

**ELECTIONS AND QUALIFICATIONS.**—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.

**STATUTE LAW REVISION (JOINT).**—(Appointed 29th March, 1949).— The Honorables A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

# LEGISLATIVE COUNCIL

## Notices of Motion and Orders of the Day.

No. 2.

WEDNESDAY, 6TH APRIL, 1949.

### Questions.

- \*1. The Hon. W. J. BECKETT: To ask the Honorable the Commissioner of Public Works—
  - (a) Is the Forestry Pulp and Paper Co. of Australia identical with the Forestry Co. of Australia Pty. Ltd. whose registered office was originally situated in Geelong and which operated in the Dartmoor district.
  - (b) How many bonds have been sold by the Forestry Pulp and Paper Co. and what is their face value.
  - (c) Where are such bonds held and in what countries.
  - (d) How many acres are held by the Company and where.
  - (e) How many acres have been planted with trees, what are the maximum and minimum ages of the trees planted, and how many acres of trees have been destroyed by fire.
  - (f) What amount of money has already been received from bondholders and what amount is still owing.
  - (g) What amount has been expended by the Company, for what purposes has such amount been expended, and what amount is now in the hands of the Company.
- \*2. The Hon. P. T. BYRNES: To ask the Honorable the Commissioner of Public Works—
  - (a) How many licences known as "two-gallon licences" have been issued to vigneron (i) in Victoria, and (ii) in the electoral district of Swan Hill.
  - (b) What supervision is exercised over the quality of the wine produced, the hours of trading, and the trading methods employed by these licensees.
- \*3. The Hon. P. J. KENNELLY: To ask the Honorable the Commissioner of Public Works—Will he lay on the table of the Library the file relating to the payments in connexion with the attempted salvaging of the wreck of the steamship "Kakariki".
- \*4. The Hon. A. M. FRASER: To ask the Honorable the Minister in Charge of Housing—
  - (a) Does a tenant who changes his tenancy from one Housing Commission dwelling to another forfeit his share of the amortization payments included in his rent on the prior tenancy.
  - (b) Since the execution of the Commonwealth and State Housing Agreement of 1945, is it the practice in Victoria to allow the purchaser-tenant, on the purchase of a dwelling, a reduction in the purchase price equal to the total payments of principal made in the rent paid by him as the tenant of the house being purchased; if not, what is the Victorian practice.
- \*5. The Hon. P. J. KENNELLY: To ask the Honorable the Commissioner of Public Works—Was approval given by the Honorable the Treasurer to the payment of overtime to officers of the Technical and General Division in the Department of the Legislative Assembly, and, as a result, was overtime paid to those officers in respect of the period October to December, 1948; if so, why has payment of overtime to officers of the Technical and General Division in the Department of the Legislative Council not been approved also.

### ORDER OF THE DAY (to take precedence):—

- 1. ADDRESS-IN-REPLY TO SPEECH OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR—MOTION FOR—  
*Resumption of debate (Hon. F. M. Thomas.)*

### Government Business.

#### ORDERS OF THE DAY:—

- \*1. GOVERNOR'S SALARY BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
- \*2. MINERS' PHTHISIS (TREASURY ALLOWANCES) AMENDMENT BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
- 3. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—(Hon. J. A. Kennedy)—Second reading.

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

4. MOTHERCRAFT NURSES BILL—(*Hon. C. P. Gartside*)—Second reading.
5. MELBOURNE AND METROPOLITAN TRAMWAYS (CHAIRMAN) BILL—(*Hon. J. A. Kennedy*)—Second reading.
6. WRONGS (TORT-FEASORS) BILL—(*Hon. A. E. McDonald*)—Second reading.
- \*7. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

### SESSIONAL COMMITTEES—SESSION 1949.

- ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.
- STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.
- STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie, T. Harvey, P. P. Inchbold, and J. H. Lienhop.
- HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.
- LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.
- PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

## VICTORIA.

## LEGISLATIVE COUNCIL

## MINUTES OF THE PROCEEDINGS.

## No. 2.

TUESDAY, 5TH APRIL, 1949.

1. The President took the Chair and read the Prayer.
2. GOVERNOR'S SALARY BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend Section Ten of ‘The Constitution Act Amendment Act 1928’* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.
3. 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 A. E. McDonald, 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. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to make provision for Facilitating the Realization of certain Forestry Lands and Plantations and the Produce thereof and for matters incidental thereto, and for other purposes* ” and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable A. G. Warner moved, That this Bill be dealt with as a Public Bill.

Debate ensued.

Question—put.

The Council divided.

Ayes, 16.

The Hon. Sir William Angliss,  
Sir Frank Beaurepaire,  
E. P. Cameron (*Teller*),  
G. L. Chandler,  
C. P. Gartside,  
C. E. Isaac,  
J. A. Kennedy,  
J. F. Kittson,  
Col. G. V. Lansell,  
J. H. Lienhop,  
W. MacAulay (*Teller*),  
A. E. McDonald,  
H. V. MacLeod,  
A. J. Pittard,  
R. C. Rankin,  
A. G. Warner.

Noes, 12.

The Hon. W. J. Beckett,  
P. T. Byrnes,  
Sir Frank Clarke,  
P. L. Coleman,  
A. M. Fraser,  
T. Harvey,  
P. P. Inchbold,  
P. J. Kennelly,  
I. A. Swinburne,  
F. M. Thomas (*Teller*),  
G. J. Tuckett (*Teller*),  
D. J. Walters.

And so it was resolved in the affirmative.

The Honorable A. G. Warner moved, That this Bill be now read a first time.

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



5. STATUTE LAW REVISION COMMITTEE—LIMITATION OF ACTIONS BILL.—The Honorable A. E. McDonald brought up a Report from the Statute Law Revision Committee on this Bill.  
Ordered to lie on the Table and be printed together with the Minutes of Evidence.
6. STATUTE LAW REVISION COMMITTEE—WRONGS (TORT-FEASORS) BILL.—The Honorable A. E. McDonald brought up a Report from the Statute Law Revision Committee on this Bill.  
Ordered to lie on the Table and be printed together with the Minutes of Evidence.
7. 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—  
Professional Division—Department of Chief Secretary.  
Technical and General Division—Department of Chief Secretary.  
Public Works Committee Act 1935—Thirteenth General Report of the Public Works Committee.  
Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 31st December, 1948.  
Teaching Service Act 1946—Amendment of Teaching Service (Classification, Salaries and Allowances) Regulations (two papers).
8. DAYS OF BUSINESS.—The Honorable J. A. Kennedy moved, That Tuesday, Wednesday, and Thursday in each week be the days on which the Council shall meet for the despatch of business during the present Session, and that half-past Four o'clock be the hour of meeting on each day ; that on Tuesday and Thursday in each week the transaction of Government business shall take precedence of all other business ; and that on Wednesday in each week Private Members' business shall take precedence of Government business ; and that no new business be taken after half-past Ten o'clock.  
Question—put and resolved in the affirmative.
9. STANDING ORDERS COMMITTEE.—The Honorable J. A. Kennedy moved, That the Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie, T. Harvey, P. P. Inchbold, and J. H. Lienhop 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.
10. HOUSE COMMITTEE.—The Honorable J. A. Kennedy moved, That the Honorables Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett be members of the House Committee.  
Question—put and resolved in the affirmative.
11. LIBRARY COMMITTEE.—The Honorable J. A. Kennedy moved, That the Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin be members of the Joint Committee to manage the Library.  
Question—put and resolved in the affirmative.
12. PRINTING COMMITTEE.—The Honorable J. A. Kennedy moved, That the Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin be members of the Printing Committee ; three to be the quorum.  
Question—put and resolved in the affirmative.
13. ADDRESS-IN-REPLY TO SPEECH OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Order of the Day for the resumption of the debate on the question, That the Council agree to the Address to His Excellency the Lieutenant-Governor in reply to His Excellency's Opening Speech (for Address, see page 15 *ante*), having been read—  
Debate resumed.  
The Honorable F. M. Thomas 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 J. A. Kennedy 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 to-morrow.

## No. 3.

WEDNESDAY, 6TH APRIL, 1949.

1. The President took the Chair and read the Prayer.
2. ADJOURNMENT—MOTION UNDER STANDING ORDER NO. 53.—The Honorable L. H. McBrien moved, That the Council do now adjourn, and said he proposed to speak on the subject of the refusal of “The Government to approve of the payment of overtime to officers of the Technical and General Division in the Department of the Legislative Council on the same basis as that approved for doorkeepers in the Department of the Legislative Assembly”; and six members having risen in their places and required the motion to be proposed—  
Debate ensued.  
Motion, by leave, withdrawn.
3. PAPER.—The following Paper, pursuant to the direction of an Act of Parliament, was laid upon the Table by the Clerk :—  
Soldier Settlement Act 1945—Report of the Soldier Settlement Commission for the period ended 30th June, 1948.
4. ADDRESS-IN-REPLY TO SPEECH OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Order of the Day for the resumption of the debate on the question, That the Council agree to the Address to His Excellency the Lieutenant-Governor in reply to His Excellency’s Opening Speech (for Address, see page 15 *ante*), having been read—  
Debate resumed.  
The Honorable Sir Frank Beaurepaire 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.
5. 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.
6. 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 P. P. Inchbold 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. ST. GEORGE’S HOSPITAL BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act to authorize The Church of England Trusts Corporation for the Diocese of Melbourne to raise Moneys on the Security of certain Lands at Kew upon which St. George’s Hospital is established and for purposes connected therewith*” and desiring the concurrence of the Council therein.  
Bill ruled to be a Private Bill.  
The Honorable C. P. Gartside moved, That this Bill be dealt with as a Public Bill.  
Debate ensued.  
Question—put and resolved in the affirmative.  
The Honorable C. P. Gartside moved, That this Bill be now read a first time.  
Question—put and resolved in the affirmative.—Bill read a first time and ordered to be printed and to be read a second time on the next day of meeting.
8. ADJOURNMENT.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Tuesday next.  
Debate ensued.  
Question—put and resolved in the affirmative.

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

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*



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, 12<sup>TH</sup> APRIL, 1949.

*Question.*

1. The Hon. A. M. FRASER: To ask the Honorable the Minister in Charge of Housing—
  - (a) Does a tenant who changes his tenancy from one Housing Commission dwelling to another forfeit his share of the amortization payments included in his rent on the prior tenancy.
  - (b) Since the execution of the Commonwealth and State Housing Agreement of 1945, is it the practice in Victoria to allow the purchaser-tenant, on the purchase of a dwelling, a reduction in the purchase price equal to the total payments of principal made in the rent paid by him as the tenant of the house being purchased; if not, what is the Victorian practice.

ORDER OF THE DAY (*to take precedence*):—

1. ADDRESS-IN-REPLY TO SPEECH OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR—MOTION FOR—  
*Resumption of debate (Hon. Sir Frank Beaufrepaire).*

*Government Business.*

ORDERS OF THE DAY:—

1. GOVERNOR'S SALARY BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.
2. MOTHERCRAFT NURSES BILL—(*Hon. C. P. Gartside*)—Second reading.
3. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—(*Hon. J. A. Kennedy*)—Second reading.
4. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
5. MELBOURNE AND METROPOLITAN TRAMWAYS (CHAIRMAN) BILL—(*Hon. J. A. Kennedy*)—Second reading.
- \*6. ST. GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
7. WRONGS (TORT-FEASORS) BILL—(*Hon. A. E. McDonald*)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

### SESSIONAL COMMITTEES—SESSION 1949.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.

STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie, T. Harvey, P. P. Inchbold, and J. H. Lienhop.

HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.

PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

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



## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS

## No. 4.

TUESDAY, 12<sup>TH</sup> APRIL, 1949.

1. The President took the Chair and read the Prayer.
2. MINES (AMENDMENT) BILL.—On the motion (by leave without notice) of the Honorable J. A. Kennedy, leave was given to bring in a Bill to amend the *Mines Act* 1928, and for other purposes connected therewith, 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.
3. STATE DEVELOPMENT BILL.—On the motion (by leave without notice) of the Honorable A. G. Warner, leave was given to bring in a Bill to make Permanent Provision with respect to the Constitution of the State Development Committee, 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. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—
  - Cemeteries Acts—Certificate of the Minister of Health in relation to the purchase or taking of certain lands for the purposes of the New Melbourne General Cemetery.
  - Country Fire Authority Acts—Amendment of the Country Fire Authority (General) Regulations.
  - Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—
    - Part I.—Appointments to the Administrative, Professional, and Technical and General Divisions—Professional Division—Regulation 22B—Department of Chief Secretary.
    - Part III.—Salaries, Increments and Allowances—
      - Professional Division—
        - Department of Public Works.
        - Department of Treasurer (two papers).
      - Technical and General Division—Department of Health.
      - Temporary Employees—
        - Department of Water Supply.
        - Departments of Public Instruction, and Public Works.
        - General and Departments of Lands and Survey, and Water Supply.
  - Supreme Court Act 1928—Solicitors' Remuneration Order 1949.
5. ADDRESS-IN-REPLY TO SPEECH OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Order of the Day for the resumption of the debate on the question, That the Council agree to the Address to His Excellency the Lieutenant-Governor in reply to His Excellency's Opening Speech (for Address) see page 15 *ante*, having been read—
  - Debate resumed.
  - Question—put and resolved in the affirmative.
  - The Honorable J. A. Kennedy moved, That the Address be presented to His Excellency the Lieutenant-Governor by the President and such Members of the Council as may wish to accompany him.
  - Question—put and resolved in the affirmative.
6. GOVERNOR'S SALARY 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 P. P. Inchbold 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.

7. MOTHERCRAFT NURSES 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.

Debate ensued.

The Honorable W. J. Beckett 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. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.

Debate ensued.

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

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

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

9. ADJOURNMENT.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 26th instant.

Question—put and resolved in the affirmative.

The Honorable J. A. Kennedy moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at forty-four minutes past Ten o'clock, adjourned until Tuesday, the 26th instant.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 4.

TUESDAY, 26TH APRIL, 1949.

### *Questions.*

- \*1. The Hon. W. J. BECKETT: To ask the Honorable the Commissioner of Public Works—
- What are the names of the directors of the Forestry Pulp and Paper Company of Australia.
  - What are the names of the shareholders and how many shares are held by each.
  - What is the paid up capital of the company.
  - How has the capital of the company, apart from the monies received from the bond holders, been expended.
  - What dividends or return of capital have the shareholders received.
  - When will a reply be available to paragraph (g) of the question asked in the Legislative Council on Wednesday last, the 6th April, with regard to this company.
  - Will he make available a copy of the evidence given before the Select Committee of the Legislative Assembly appointed to inquire into the proposals contained in the Forestry Pulp and Paper Company's Afforestation Contracts Bill.
- \*2. The Hon. G. L. CHANDLER: To ask the Honorable the Commissioner of Public Works—
- What was the amount of (i) revenue received and (ii) expenditure incurred by the Melbourne City Council in respect of the Queen Victoria Market and the Fish Market respectively during each of the years 1930, 1935, 1940, 1945, 1946, 1947, and 1948.
  - Have any increases been made in stall rentals in such markets since 1930; if so, what are the amounts of the increases and when were they made.

### *Government Business.*

#### ORDERS OF THE DAY:—

- MELBOURNE AND METROPOLITAN TRAMWAYS (CHAIRMAN) BILL—(*Hon. J. A. Kennedy*)—Second reading.
- MOTHERCRAFT NURSES BILL—(*Hon. C. P. Gartside*)—Second reading—*Resumption of debate* (*Hon. W. J. Beckett*).
- FORESTY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- WRONGS (TORT-FEASORS) BILL—(*Hon. A. E. McDonald*)—Second reading.
- TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate* (*Hon. W. J. Beckett*).
- STATE DEVELOPMENT BILL—(*Hon. A. G. Warner*)—Second reading.
- MINES (AMENDMENT) BILL—(*Hon. J. A. Kennedy*)—Second reading.
- ST. GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

## MEETING OF SELECT COMMITTEE.

*Wednesday, 27th April.*

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

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

## SESSIONAL COMMITTEES—SESSION 1949.

- ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.
- STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.
- STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie, T. Harvey, P. P. Inchbold, and J. H. Lienhop.
- HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.
- LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.
- PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 5.

WEDNESDAY, 27<sup>TH</sup> APRIL, 1949.

### *Questions.*

- \*1. The Hon. T. HARVEY : To ask the Honorable the Commissioner of Public Works—
- How many employees of the State Electricity Commission are paid a salary of £1,000 per annum.
  - What are the names of those employees who are paid a salary of more than £1,000 per annum and what is the amount paid to each.
  - What are the names of the members of the Commission and what is the salary paid to each.
- \*2. The Hon. W. MACAULAY : To ask the Honorable the Commissioner of Public Works—
- Have municipal rates been paid on properties purchased by the Soldier Settlement Commission where actual settlement has not yet been made; if not, when will such payments be made.
  - Will such payments be made retrospective to the date of purchase.
- \*3. The Hon. T. HARVEY : To ask the Honorable the Commissioner of Public Works—
- What is the approximate number of gallons of milk received in the metropolitan area daily.
  - What is the approximate number of gallons of milk received in the metropolitan area daily (i) from milk depots in the country, and (ii) from producers whose milk is carted from the farm to the retail sellers.
- \*4. The Hon. T. HARVEY : To ask the Honorable the Commissioner of Public Works—
- What is—
    - the contract price per cubic yard of earth removed by horse teams; and
    - the cost per cubic yard of earth removed by mechanical methods and day labor by employees of the State Rivers and Water Supply Commission—
 in the construction of irrigation channels at Heyfield.
  - What is the tender price per cubic yard for earth removing by mechanical methods for the construction of these irrigation channels.
- \*5. The Hon. T. HARVEY : To ask the Honorable the Commissioner of Public Works—How many (i) passenger trains, and (ii) goods trains passed through Longwarry railway station on the 4th and 5th April, 1949, respectively.

### *Government Business.*

#### ORDERS OF THE DAY :—

- TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
- FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- MENTAL INSTITUTION BENEFITS BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
- WRONGS (TORT-FEASORS) BILL—(*Hon. A. E. McDonald*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
- COUNTRY ROADS (FINANCIAL) BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.
- HORSHAM LAND BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
- MINES (AMENDMENT) BILL—(*Hon. J. A. Kennedy*)—Second reading.
- STATE DEVELOPMENT BILL—(*Hon. A. G. Warner*)—Second reading.
- ST. GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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

## SESSIONAL COMMITTEES—SESSION 1949.

- ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.
- STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.
- STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie, T. Harvey, P. P. Inchbold, and J. H. Lienhop.
- HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.
- LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.
- PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.



## VICTORIA.

## LEGISLATIVE COUNCIL

## MINUTES OF THE PROCEEDINGS.

## No. 5.

TUESDAY, 26TH APRIL, 1949.

1. The President took the Chair and read the Prayer.
2. MESSAGES FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy presented Messages from His Excellency the Lieutenant-Governor—
 

Informing the Council that he had, this day, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—

*Miners' Phthisis (Treasury Allowances) Amendment Act.*

Informing the Council that he had, this day, reserved for the signification of His Majesty's pleasure thereon the undermentioned Bill, presented to him by the Clerk of the Parliaments, viz.:—

*Governor's Salary Bill.*
3. HORSHAM LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for an Enlargement of the purposes of the Reservation of certain Land at Horsham now reserved as a Site for a Race-course and other purposes of public recreation*" and desiring the concurrence of the Council therein.
 

On the motion of the Honorable A. E. McDonald, 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. MENTAL INSTITUTION BENEFITS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to authorize and approve the Execution by the State of Victoria of an Agreement between the Commonwealth of Australia and the State of Victoria relating to Mental Institution Benefits, and for other purposes*" and desiring the concurrence of the Council therein.
 

On the motion of the Honorable C. P. Gartside, 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 :—
 

Cemeteries Acts—Certificate of the Minister of Health relating to the purchase or taking of certain lands for the purposes of the Port Fairy Public Cemetery.

Fisheries Acts—Notices of intention to issue Proclamations—

To alter the restrictions on the use of certain nets in Port Phillip Bay.

To restrict the use of mesh or set nets in Western Port Bay.

Marketing of Primary Products Acts—

Chicory Marketing Board—Regulations—Travelling expenses.

Maize Marketing Board—Regulations—Fourteenth period of time for the computation of or accounting for the net proceeds of the sale of maize.

Potato Marketing Board—Regulations—Poll of potato growers.

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

Professional Division—

Department of Agriculture.

Department of Health.

Temporary Employees—

Department of Agriculture.

Department of Health.

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

6. MELBOURNE AND METROPOLITAN TRAMWAYS (CHAIRMAN) 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. P. Inchbold having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.
7. MOTHERCRAFT NURSES 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. P. Inchbold having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be transmitted to the Assembly with a Message desiring their concurrence therein.
8. COUNTRY ROADS (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act to authorize the Raising of Money for Permanent Works on State Highways, Tourists’ Roads and Forest Roads and to sanction the Issue and Application for that purpose of the Money so raised or of Money in the State Loans Repayment Fund, to amend the Country Roads Acts, and for other purposes*” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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. 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.
10. WRONGS (TORT-FEASORS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett 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 thirty-four minutes past Ten o’clock, adjourned until to-morrow.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

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No. 6.

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WEDNESDAY, 27<sup>TH</sup> APRIL, 1949.

1. The President took the Chair and read the Prayer.
2. 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 to amend the River Murray Waters Acts, and for other purposes*” and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. G. Warner, 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. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Police Regulation Acts—Amendment of the Police Regulations.

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

Part II.—Promotions and Transfers—Regulation 47A—General—Shorthand Writers and Typists (Female).

Part III.—Salaries, Increments, and Allowances—

Technical and General Division—

Department of Health.

Department of Public Works.

General and Departments of Public Works, and Water Supply.

Temporary Employees—

Department of Health.

General and Departments of Chief Secretary, and Lands and Survey.

River Murray Waters Act 1915—Report of the River Murray Commission for the year 1947–48.

4. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) 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. P. Inchbold 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.

5. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner moved, That this Bill be now read a second time.

The Honorable W. J. Beckett 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.

6. 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.

7. WRONGS (TORT-FEASORS) 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. P. Inchbold having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

8. COUNTRY ROADS (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 P. P. Inchbold 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. HORSHAM LAND BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable P. P. Inchbold 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. ADJOURNMENT.—The Honorable J. A. Kennedy 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 four minutes past Nine o'clock, adjourned until Tuesday next.

HUGH B. JAMIESON,  
Clerk of the Legislative Council.



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, 3RD MAY, 1949.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. MENTAL INSTITUTION BENEFITS BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
2. MINES (AMENDMENT) BILL—(Hon. J. A. Kennedy)—Second reading.
3. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL—(from Assembly—Hon. A. G. Warner)—Second reading—Resumption of debate (Hon. W. J. Beckett).
4. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—(Hon. J. A. Kennedy)—Second reading—Resumption of debate (Hon. P. P. Inchbold).
- \*5. RIVER MURRAY WATERS BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
6. STATE DEVELOPMENT BILL—(Hon. A. G. Warner)—Second reading.
7. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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

## MEETING OF SELECT COMMITTEE

*Wednesday, 4th May.*

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

### SESSIONAL COMMITTEES—SESSION 1949.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.

STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie, T. Harvey, P. P. Inchbold, and J. H. Lienhop.

HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.

PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 7.

WEDNESDAY, 4TH MAY, 1949.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. P. J. Clarey)*.
2. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
3. RIVER MURRAY WATERS BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- \*4. STATE ELECTRICITY COMMISSION (CHAIRMAN) BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
5. STATE DEVELOPMENT BILL—(*Hon. A. G. Warner*)—Second reading.
6. ST. GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

TUESDAY, 10TH MAY.

### *Government Business.*

#### ORDER OF THE DAY :—

1. MINES (AMENDMENT) BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. P. J. Clarey)*.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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

### SESSIONAL COMMITTEES—SESSION 1949.

- ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie†, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.
- STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie†, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.
- STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie†, T. Harvey, P. P. Inchbold, and J. H. Lienhop.
- HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.
- LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.
- PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

† Died 30th April, 1949.



## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS.

## No. 7.

TUESDAY, 3RD MAY, 1949.

1. The President took the Chair and read the Prayer.
  2. THE LATE HONORABLE SIR GEORGE LOUIS GOUDIE.—The Honorable J. A. Kennedy moved, by leave, That this House place on record its deep regret at the death of the Honorable Sir George Louis Goudie, one of the Members for the North-Western 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 J. A. Kennedy moved, That the House, out of respect to the memory of the late Honorable Sir George Louis Goudie, 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-seven minutes past Five o'clock, adjourned until a quarter to Eight o'clock this day.

- 
1. The President resumed the Chair.
  2. STATE ELECTRICITY COMMISSION (CHAIRMAN) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Eight of the 'State Electricity Commission Act 1928'*" and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. E. McDonald, 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. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—
    - Land Act 1928—Certificate of the Minister of Public Instruction relating to the proposed compulsory resumption of land for the purpose of a school at Stawell.
    - Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—
      - Part III.—Salaries, Increments, and Allowances—Temporary Employees—
        - Department of Chief Secretary.
        - Department of Water Supply.
      - Part V.—Travelling Expenses—Reimbursement for use of Motor Car, Motor Cycle or Bicycle.
    - Slum Reclamation and Housing Act 1938—Report of the Housing Commission for the year 1946-47.
  4. MENTAL INSTITUTION BENEFITS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.  
House in Committee.  
The President resumed the Chair; and the Honorable P. P. Inchbold having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

5. MINES (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.

Debate ensued.

The Honorable P. J. Clarey moved, That the debate be now adjourned.

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

Ordered—That the debate be adjourned until Tuesday next.

6. 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.

7. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) 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. J. Clarey 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 forty-four minutes past Ten o'clock adjourned until to-morrow.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

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## No. 8.

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WEDNESDAY, 4<sup>TH</sup> MAY, 1949.

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:—

Land Act 1928—Schedule of Country Lands proposed to be sold by public auction.

3. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) 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. P. Inchbold 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.

4. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS 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. P. Inchbold reported that the Committee had made progress in the Bill, and asked leave to sit again.

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

5. ADJOURNMENT.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable J. A. Kennedy moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 8.

TUESDAY, 10<sup>TH</sup> MAY, 1949.

*Government Business.*

ORDERS OF THE DAY :—

1. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL—(*from Assembly—Hon. A. G. Warner*)—To be further considered in Committee.
2. STATE ELECTRICITY COMMISSION (CHAIRMAN) BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
3. RIVER MURRAY WATERS BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
4. MINES (AMENDMENT) BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. P. J. Clarey)*.
5. STATE DEVELOPMENT BILL—(*Hon. A. G. Warner*)—Second reading.
6. ST. GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

### SESSIONAL COMMITTEES—SESSION 1949.

- ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie†, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.
- STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie†, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.
- STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie†, T. Harvey, P. P. Inchbold, and J. H. Lienhop.
- HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.
- LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.
- PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

† Died 30th April, 1949.

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 9.

WEDNESDAY, 11TH MAY, 1949.

### *Government Business.*

#### NOTICE OF MOTION :—

- \*1. The Hon. J. A. KENNEDY : To move, That so much of the Sessional Orders as provides 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 be suspended during the present month and that during the present month Government business shall take precedence of all other business and new business may be taken at any hour.

#### ORDERS OF THE DAY :—

1. RIVER MURRAY WATERS BILL—(from Assembly—Hon. A. G. Warner)—Second reading—*Resumption of debate* (Hon. A. M. Fraser).
- \*2. CRIMES BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
- \*3. SOLDIER SETTLEMENT BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
4. STATE DEVELOPMENT BILL—(Hon. A. G. Warner)—Second reading.
5. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

HUGH B. JAMIESON,  
Clerk of the Legislative Council.

CLIFDEN EAGER,  
President.

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

### SESSIONAL COMMITTEES—SESSION 1949.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie†, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.

STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie†, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie†, T. Harvey, P. P. Inchbold, and J. H. Lienhop.

HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.

PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

† Died 30th April, 1949.

## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS.

## No. 9.

TUESDAY, 10<sup>TH</sup> MAY, 1949.

1. The President took the Chair and read the Prayer.
2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy 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. :—
  - Country Roads (Financial) Act.*
  - Horsham Land Act.*
3. CRIMES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend the Law relating to Crimes and Criminal Offenders* ” and desiring the concurrence of the Council therein.
 

On the motion of the Honorable A. E. McDonald, 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. SOLDIER SETTLEMENT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend the Soldier Settlement Acts* ” and desiring the concurrence of the Council therein.
 

On the motion of the Honorable A. G. Warner, 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 :—
  - Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—
    - Part II.—Promotions and Transfers—Department of Health—Regulation 46A.
    - Part III.—Salaries, Increments, and Allowances—
      - Administrative Division—Department of Treasurer.
      - Professional Division—
        - Department of Lands and Survey.
        - Department of State Forests.
      - Technical and General Division—
        - Department of Health.
        - Departments of Public Instruction and Agriculture.
      - Temporary Employees—
        - Department of Agriculture (two papers).
        - Department of Labour.
        - Department of Public Instruction (two papers).
        - Departments of Public Instruction and Water Supply.
    - Teaching Service Act 1946—Amendment of Teaching Service (Teachers' Tribunal) Regulations (three papers).
  - 6. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 1, be postponed until later this day.
  - 7. STATE ELECTRICITY COMMISSION (CHAIRMAN) 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. P. Inghold 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. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS 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 P. P. Inchbold 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. RIVER MURRAY WATERS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner moved, That this Bill be now read a second time.  
Debate ensued.  
The Honorable A. M. Fraser 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.
10. MINES (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 P. P. Inchbold 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.

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

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

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## No. 10.

WEDNESDAY, 11<sup>TH</sup> MAY, 1949.

- The President took the Chair and read the Prayer.
- CONSOLIDATED REVENUE BILL.—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 Six million and fifty-four thousand nine hundred and twenty-six pounds to the service of the year One thousand nine hundred and forty-nine and One thousand nine hundred and fifty*" and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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.
- MELBOURNE AND METROPOLITAN TRAMWAYS (CHAIRMAN) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.
- PAPER.—The following Paper, pursuant to the direction of an Act of Parliament, was 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—Professional Division—Department of Law.
- ALTERATION OF SESSIONAL ORDERS.—The Honorable J. A. Kennedy moved, That so much of the Sessional Orders as provides 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 be suspended during the present month and that during the present month Government business shall take precedence of all other business and new business may be taken at any hour.  
Debate ensued.  
Question—put and resolved in the affirmative.



6. RIVER MURRAY WATERS 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. P. Inchbold 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. CRIMES BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.

The Honorable W. J. Beckett 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. SOLDIER SETTLEMENT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner moved, That this Bill be now read a second time.

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

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

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

9. ADJOURNMENT.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Debate ensued.

Question—put and resolved in the affirmative.

The Honorable J. A. Kennedy moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*



# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 10.

TUESDAY, 17TH MAY, 1949.

### *Government Business.*

#### NOTICE OF MOTION :—

- \*1. The Hon. J. A. KENNEDY : To move, That so much of the Sessional Orders as provides that the hour of meeting on Wednesday and Thursday in each week shall be half-past Four o'clock be suspended during the present month, and that during the present month the Council shall meet on Wednesday and Thursday in each week at Two o'clock.

#### ORDERS OF THE DAY :—

- \*1. CONSOLIDATED REVENUE BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.  
 2. SOLDIER SETTLEMENT BILL—(from Assembly—Hon. A. G. Warner)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).  
 3. CRIMES BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).  
 4. STATE DEVELOPMENT BILL—(Hon. A. G. Warner)—Second reading.  
 5. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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

### SESSIONAL COMMITTEES—SESSION 1949.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie†, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.

STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie†, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie†, T. Harvey, P. P. Inchbold, and J. H. Lienhop.

HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.

PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

† Died 30th April, 1949.

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 11.

WEDNESDAY, 18TH MAY, 1949.

*Question.*

- \*1. The Hon. P. JONES : To ask the Honorable the Commissioner of Public Works—  
 (a) How many State primary schools are there in the metropolitan area.  
 (b) How many of such schools are provided with central heating.

*Government Business.*

ORDERS OF THE DAY :—

- \*1. ROYAL COMMISSION (COMMUNIST PARTY) BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. P. T. Byrnes).  
 \*2. AGRICULTURAL EDUCATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.  
 \*3. SHEARERS ACCOMMODATION BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. P. T. Byrnes).  
 \*4. WATER BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.  
 5. CRIMES BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).  
 6. STATE DEVELOPMENT BILL—(Hon. A. G. Warner)—Second reading.  
 7. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

HUGH B. JAMIESON,  
 Clerk of the Legislative Council.

CLIFDEN EAGER,  
 President.

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

### SESSIONAL COMMITTEES—SESSION 1949.

- ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie†, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.  
 STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie†, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.  
 STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie†, T. Harvey, P. P. Inchbold, and J. H. Lienhop.  
 HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.  
 LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.  
 PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

† Died 30th April, 1949.

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 12.

THURSDAY, 19TH MAY, 1949.

*Question.*

- \*1. The Hon. A. M. FRASER: To ask the Honorable the Commissioner of Public Works—  
In how many actions for damages for loss and injuries sustained in road accidents have the damages been ascertained by the Prothonotary of the Supreme Court since the 1st November, 1948.

*Government Business.*

ORDERS OF THE DAY:—

1. CRIMES BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—Resumption of debate (Hon. W. J. Beckett).
- \*2. COLLINGWOOD (UNIMPROVED RATING POLL) BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
3. STATE DEVELOPMENT BILL—(Hon. A. G. Warner)—Second reading.
4. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

HUGH B. JAMIESON,  
Clerk of the Legislative Council.

CLIFDEN EAGER,  
President.

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

### SESSIONAL COMMITTEES—SESSION 1949.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 29th March, 1949).—The Honorables W. J. Beckett, G. L. Chandler, Sir George Goudie†, P. J. Kennelly, G. S. McArthur, A. E. McDonald, and A. J. Pittard.

STATUTE LAW REVISION (JOINT).—(Appointed 29th March, 1949).—The Honorables A. M. Fraser, Sir George Goudie†, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—(Appointed 5th April, 1949).—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, Sir George Goudie†, T. Harvey, P. P. Inchbold, and J. H. Lienhop.

HOUSE (JOINT).—(Appointed 5th April, 1949).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—(Appointed 5th April, 1949).—The Honorables the President, P. J. Clarey, P. L. Coleman, J. A. Kennedy, and R. C. Rankin.

PRINTING.—(Appointed 5th April, 1949).—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, Colonel G. V. Lansell, W. MacAulay, L. H. McBrien, A. J. Pittard, and R. C. Rankin.

† Died 30th April, 1949.

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 11.

TUESDAY, 17TH MAY, 1949.

1. The President took the Chair and read the Prayer.
2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy presented a Message from His Excellency the Lieutenant-Governor informing the Council that he had, on the 16th instant, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—  
*Mental Institution Benefits Act.*
3. ROYAL COMMISSION (COMMUNIST PARTY) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act relating to a Royal Commission to inquire into and report upon the Origins, Aims, Objects and Funds of the Communist Party in Victoria and the Operations and Activities in Victoria of that Party and Members thereof and Organizations and Persons associated therewith* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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. SHEARERS ACCOMMODATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to consolidate and amend the Law relating to Shearers Accommodation* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. E. McDonald, 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. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—  
Marketing of Primary Products Acts—Regulations—Potato Marketing Board—Poll of potato growers.  
Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments, and Allowances—  
    Technical and General Division—Department of Treasurer (two papers).  
    Temporary Employees—Department of Treasurer.  
State Development Act 1941—Report of the State Development Committee on the Geelong District Water Supply.
6. ALTERATION OF SESSIONAL ORDERS.—The Honorable J. A. Kennedy moved, That so much of the Sessional Orders as provides that the hour of meeting on Wednesday and Thursday in each week shall be half-past Four o'clock be suspended during the present month, and that during the present month the Council shall meet on Wednesday and Thursday in each week at Two o'clock.  
Debate ensued.  
Question—put and resolved in the affirmative.



7. CONSOLIDATED 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 P. P. Inchbold 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. SOLDIER SETTLEMENT 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.

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

WEDNESDAY, 18TH MAY, 1949.

- The President resumed the Chair; and the Honorable P. P. Inchbold 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. ROYAL COMMISSION (COMMUNIST PARTY) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy 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.
10. 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 desiring the concurrence of the Council therein.  
On the motion of the Honorable C. P. Gartside, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.
11. AGRICULTURAL EDUCATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate and amend the Law relating to Agricultural Education*" and desiring the concurrence of the Council therein.  
On the motion of the Honorable C. P. Gartside, 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. FORESTRY PULP AND PAPER COMPANY'S AFFORESTATION CONTRACTS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Message from the Deputy for His Excellency the Lieutenant-Governor, pursuant to the provisions of Section XXXVI. of The Constitution Act, recommending the following amendment which His Excellency desires to be made in this Bill, and acquainting the Council that the Assembly have agreed to such amendment, and desiring the concurrence of the Council therein:—  
Clause 15, omit "lost" (where first occurring).  
Ordered—That the foregoing Message be now taken into consideration.  
On the motion of the Honorable A. G. Warner, the Council agreed to the amendment recommended by His Excellency the Lieutenant-Governor and ordered the Message from the Deputy for His Excellency to be returned to the Assembly with a Message acquainting them therewith.
13. SHEARERS ACCOMMODATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald 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.

And then the Council, at forty-three minutes past One o'clock in the morning, adjourned until this day.

HUGH B. JAMIESON,  
Clerk of the Legislative Council.

## No. 12.

WEDNESDAY, 18TH MAY, 1949.

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 :—
  - Land Act 1928—Certificate of the Minister of Public Works relating to the proposed compulsory resumption of land at Portland for the purpose of the construction of works.
  - Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments, and Allowances—
    - Technical and General Division—Departments of Chief Secretary and Water Supply.
    - Temporary Employees—
      - Department of Chief Secretary.
      - Department of Health.
3. 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.
4. AGRICULTURAL EDUCATION 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. P. Inchbold having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.
5. SHEARERS ACCOMMODATION 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. P. Inchbold 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.
6. MILDURA IRRIGATION AND WATER TRUSTS (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act relating to the Loan Liability of the First Mildura Irrigation Trust* ” and desiring the concurrence of the Council therein.
 

On the motion of the Honorable A. G. Warner, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.
7. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—
  - Marketing of Primary Products Act 1935—Proclamation declaring that maize shall become the property of the Maize Marketing Board.
  - Police Regulation Act 1946—Determinations Nos. 15 to 18 of the Police Classification Board (four papers).
8. ROYAL COMMISSION (COMMUNIST PARTY) 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. P. Inchbold 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. WATER 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.

Debate ensued.

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

THURSDAY, 19TH MAY, 1949.

Debate continued.

Question—put and 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. P. Inchbold 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. 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 Eight hundred and forty thousand pounds to the service of the year One thousand nine hundred and forty-eight and One thousand nine hundred and forty-nine*” and desiring the concurrence of the Council therein.

On the motion of the Honorable J. A. Kennedy, 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. COLLINGWOOD (UNIMPROVED RATING POLL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act to postpone the Time for taking the Poll on a Proposal to adopt Rating on Unimproved Values in the City of Collingwood, and for other purposes connected therewith*” and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable J. A. Kennedy moved, That this Bill be dealt with as a Public Bill.

Question—put and resolved in the affirmative.

The Honorable J. A. Kennedy moved, That this Bill be now read a first time.

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

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

13. CONSOLIDATED REVENUE BILL (No. 2).—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable P. P. Inchbold 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. MILDURA IRRIGATION AND WATER TRUSTS (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 P. P. Inchbold 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. ADJOURNMENT.—The Honorable J. A. Kennedy moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at twenty-four minutes past One o'clock in the morning, adjourned until this day.

HUGH B. JAMIESON,  
Clerk of the Legislative Council.

## No. 13.

THURSDAY, 19TH MAY, 1949.

1. The President took the Chair and read the Prayer.
2. **ISSUE OF WRITS.**—The President announced that he had this day issued Writs for the periodical election of Members of the Legislative Council (one Member for each of the seventeen Provinces) to hold the seats which will shortly become vacant by effluxion of time, and that by such Writs the following dates have been fixed for the election :—
 

Nomination Day	..	Tuesday, 31st May, 1949.
Polling Day	..	Saturday, 18th June, 1949.
Return of Writs	..	Before or on Friday, 1st July, 1949.
3. **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.
4. **COLLINGWOOD (UNIMPROVED RATING POLL) 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. P. Inchbold having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.
5. **MESSAGE FROM THE DEPUTY FOR HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.**—The Honorable J. A. Kennedy presented a Message from the Deputy for His Excellency the Lieutenant-Governor informing the Council that he had, this day, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—  
*Royal Commission (Communist Party) Act.*
6. **CRIMES 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. P. Inchbold 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. **PAPERS.**—The following Papers, pursuant to the direction of an Act 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—  
    Technical and General Division—Department of Mines.  
    Temporary Employees—Department of Treasurer.
8. **CRIMES BILL.**—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.
9. **ADJOURNMENT.**—The Honorable J. A. Kennedy 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 Nine 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.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*



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

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# LEGISLATIVE COUNCIL

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## *Notices of Motion and Orders of the Day.*

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No. 13.

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TUESDAY, 2ND AUGUST, 1949.

*Government Business.*

ORDERS OF THE DAY:—

1. STATE DEVELOPMENT BILL—(*Hon. A. G. Warner*)—Second reading.
2. ST. GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS.

## No. 14.

TUESDAY, 2ND AUGUST, 1949.

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 (PERIODICAL ELECTION).—The President announced that there had been received returns to writs issued by him on the 19th day of May last for the election of Members to serve for the undermentioned Provinces in the place of Members whose seats became vacant by effluxion of time, and that by the indorsements on such writs it appeared that the following Members had been elected in pursuance thereof :—
  - The Honorable Herbert Charles Ludbrook for the Ballaarat Province.
  - The Honorable John Herman Lienhop for the Bendigo Province.
  - The Honorable William Slater for the Doutta Galla Province.
  - The Honorable Ewen Paul Cameron for the East Yarra Province.
  - The Honorable William MacAulay for the Gippsland Province.
  - The Honorable James Arthur Kennedy for the Higinbotham Province.
  - The Honorable Frederick Miles Thomas for the Melbourne Province.
  - The Honorable John William Galbally for the Melbourne North Province.
  - The Honorable Patrick Leslie Coleman for the Melbourne West Province.
  - The Honorable Francis Grenville Clarke for the Monash Province.
  - The Honorable George Joseph Tuckett for the Northern Province.
  - The Honorable Percival Pennell Inchbold for the North-Eastern Province.
  - The Honorable Colin Ernest McNally for the North-Western Province.
  - The Honorable Gilbert Lawrence Chandler for the Southern Province.
  - The Honorable Charles Percival Gartside for the South-Eastern Province.
  - The Honorable Gordon Stewart McArthur for the South-Western Province.
  - The Honorable Hugh Vernon MacLeod for the Western Province.
4. SWEARING-IN OF NEW MEMBERS.—The Honorables E. P. Cameron, G. L. Chandler, Sir Frank Clarke, J. W. Galbally, C. P. Gartside, P. P. Inchbold, J. A. Kennedy, J. H. Lienhop, H. C. Ludbrook, G. S. McArthur, W. MacAulay, H. V. MacLeod, C. E. McNally, W. Slater, F. M. Thomas, and G. J. Tuckett, having severally approached the Table, took and subscribed the Oath required by law, and severally delivered to the Clerk the Declaration required by the fifty-fifth section of the Act No. 3660, as hereunder set forth :—

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, EWEN PAUL CAMERON, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Camberwell, and are known as 10 Orrong-crescent, Camberwell.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Camberwell are rated in the rate-book of the said municipality upon a yearly value of £80.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ E. P. CAMERON.”

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, GILBERT LAWRENCE CHANDLER*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Fernree Gully, and are known as property situate at corner of Boronia and Forest-roads, Boronia.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Fernree Gully are rated in the rate-book of the said municipality upon a yearly value of £140.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"G. L. CHANDLER."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, FRANCIS GRENVILLE CLARKE*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Prahran, and are known as 28 Jackson-street, Toorak, being part of Crown portion 14, parish of Prahran, county of Bourke.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of the said municipality upon a yearly value of £65.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"FRANK CLARKE."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, JOHN WILLIAM GALBALLY*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Coburg, and are known as 34 Blair-street, Coburg.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Coburg are rated in the rate-book of the said municipality upon a yearly value of £41.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"J. W. GALBALLY."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, CHARLES PERCIVAL GARTSIDE*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Dandenong, and are known as my homestead.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Dandenong are rated in the rate-book of the said municipality upon a yearly value of £130.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"C. P. GARTSIDE."

"In compliance with the provisions of *The Constitution Act Amendment Act 1928, I, PERCIVAL PENNELL INCHBOLD*, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of the Borough of Wangaratta, and are known as 'Whitwell,' 18 Docker-street, Wangaratta.



“ And I further declare that such of the said lands or tenements as are situate in the municipal district of the Borough of Wangaratta are rated in the rate-book of the said municipality upon a yearly value of £80.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ P. P. INCHBOLD.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, JAMES ARTHUR KENNEDY, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Brighton, and are known as 28 Cosham-street, Brighton, certificate of title volume 4486, folio 897116.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Brighton are rated in the rate-book of the said municipality upon a yearly value of £105.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ J. A. KENNEDY.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, JOHN HERMAN LIENHOP, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Bendigo, and are known as No. 296 Williamson-street, Bendigo, and No. 23 Pyke-street, Bendigo.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Bendigo are rated in the rate-book of the said municipality upon a yearly value of £180.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ J. H. LIENHOP.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, HERBERT CHARLES LUDBROOK, do declare and testify that I am legally or equitably seised or of entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Ballarat, and are known as 16 East-street South, Ballarat, and 17 Clissold-street, Ballarat.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Ballarat are rated in the rate-book of the said municipality upon a yearly value of £80.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ H. LUDBROOK.”

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, GORDON STEWART MCARTHUR, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Hampden, and are known as ‘ Meningoort,’ Camperdown.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Hampden are rated in the rate-book of the said municipality upon a yearly value of £1,260.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“ G. S. MCARTHUR.”

“In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, WILLIAM MACAULAY, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Alberton, and are known as ‘Albert Valley,’ being allotments 21, 21A, 21B, 22, and 90, parish of Binginwarri.

“And I further declare that such of the said lands or tenements as are situate in the municipal district of Alberton are rated in the rate-book of the said municipality upon a yearly value of £277.

“And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“WM. MACAULAY.”

“In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, HUGH VERNON MACLEOD, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of the Shire of Portland, and are known as allotments 1, 2, 4, and 5, Section B, Parish of Homerton, County of Normanby.

“And I further declare that such of the said lands or tenements as are situate in the municipal district of the Shire of Portland are rated in the rate-book of the said municipality upon a yearly value of £106.

“And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“H. V. MACLEOD.”

“In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, COLIN ERNEST McNALLY, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of the Shire of Mildura, and are known as allotments 531, 531A, 532, and 532B, and parts of allotments 533A, 533C, and 533E, Section B, Parish of Mildura, County of Karkaroc.

“And I further declare that such of the said lands or tenements as are situate in the municipal district of the Shire of Mildura are rated in the rate-book of the said municipality upon a yearly value of £361.

“And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“C. E. McNALLY.”

“In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, WILLIAM SLATER, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Essendon, and are known as 25 Raleigh-street, Essendon.

“And I further declare that such of the said lands or tenements as are situate in the municipal district of Essendon are rated in the rate-book of the said municipality upon a yearly value of £44.

“And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“W. SLATER.”

“In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, FREDERICK MILES THOMAS, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Collingwood, and are known as 18 Emma-Street, Collingwood.

“And I further declare that such of the said lands or tenements as are situate in the municipal district of Collingwood are rated in the rate-book of the said municipality upon a yearly value of £50.

“And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“F. M. THOMAS.”

“In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, GEORGE JOSEPH TUCKETT, do declare and testify that I am legally or equitably seized of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Numurkah, and are known as allotments 6, 7, 8, 9, 10, and part of allotment 11 of section D, parish of Yalca.

“And I further declare that such of the said lands or tenements as are situate in the municipal district of Numurkah are rated in the rate-book of the said municipality upon a yearly value of £637.

“And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

“GEO. J. TUCKETT.”

5. MESSAGES FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy, presented Messages from His Excellency the Lieutenant-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 24th May last—

*Melbourne and Metropolitan Tramways (Chairman) Act.*  
*State Electricity Commission (Chairman) Act.*  
*River Murray Waters Act.*

On the 7th June last—

*Soldier Settlement Act.*  
*Consolidated Revenue Act (No. 1).*  
*Agricultural Education Act.*

On the 31st May last—

*Forestry Pulp and Paper Company's Afforestation Contracts Act.*  
*Shearers Accommodation Act.*  
*Water Act.*  
*Consolidated Revenue Act (No. 2).*  
*Mildura Irrigation and Water Trusts (Financial) Act.*  
*Collingwood (Unimproved Rating Poll) Act.*  
*Crimes Act.*

That he had caused the *Governor's Salary Bill*, which was reserved on the 26th April, 1949, for the signification of His Majesty's pleasure thereon, and which received His Majesty's Assent on the 30th June, 1949, to be proclaimed in the *Victoria Government Gazette*, and forwarding a copy of such Proclamation. (*For Proclamation, see "Victoria Government Gazette" of the 13th July, 1949, page 4105.*)

6. PRESENTATION OF ADDRESS TO HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The President reported that, accompanied by Honorable Members, he had, on the 24th May last, waited upon His Excellency the Lieutenant-Governor and had presented to him the Address of the Legislative Council, adopted on the 12th April last, in reply to His Excellency's Opening Speech, and that His Excellency had been pleased to make the following reply :—

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

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

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

7. CHAIRMAN OF COMMITTEES.—The Honorable J. A. Kennedy moved, by leave, That the Honorable Robert Chisholm Rankin be Chairman of Committees of the Council.

Debate ensued.

Question—put.

The Council divided.

Ayes, 17.

The Hon. Sir William Angliss,  
 Sir Frank Beaurepaire (*Teller*),  
 E. P. Cameron (*Teller*),  
 G. L. Chandler,  
 Sir Frank Clarke,  
 C. P. Gartside,  
 C. E. Isaac,  
 J. A. Kennedy,  
 J. F. Kittson,  
 Col. G. V. Lansell,  
 J. H. Lienhop,  
 H. C. Ludbrook,  
 G. S. McArthur,  
 A. E. McDonald,  
 H. V. MacLeod,  
 R. C. Rankin,  
 A. G. Warner.

Noes, 14.

The Hon. P. T. Byrnes,  
 A. M. Fraser (*Teller*),  
 J. W. Galbally,  
 T. Harvey,  
 P. P. Inchbold,  
 P. Jones,  
 P. J. Kennelly,  
 W. MacAulay,  
 C. E. McNally,  
 W. Slater,  
 I. A. Swinburne (*Teller*),  
 F. M. Thomas,  
 G. J. Tuckett,  
 D. J. Walters.

And so it was resolved in the affirmative.

8. PUBLIC WORKS COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the Honorable Hugh Vernon MacLeod be a member of the Public Works Committee.

Question—put and resolved in the affirmative.

9. STATUTE LAW REVISION COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the Honorables P. T. Byrnes, G. S. McArthur, and F. M. Thomas be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

10. STANDING ORDERS COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the Honorables Sir Frank Clarke, C. P. Gartside, P. P. Inchbold, J. H. Lienhop, and W. MacAulay be members of the Select Committee on the Standing Orders of the House.

Question—put and resolved in the affirmative.

11. HOUSE COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the Honorables Sir Frank Clarke and G. J. Tuckett be members of the House Committee.

Question—put and resolved in the affirmative.

12. LIBRARY COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the Honorables P. L. Coleman, J. A. Kennedy, and W. Slater be members of the Joint Committee to manage the Library.

Question—put and resolved in the affirmative.

13. PRINTING COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the Honorables G. L. Chandler, J. F. Kittson, W. MacAulay, and F. M. Thomas be members of the Printing Committee.

Question—put and resolved in the affirmative.

14. LEAVE OF ABSENCE.—The Honorable P. J. Kennelly moved, by leave, That leave of absence be granted to the Honorable Patrick Leslie Coleman for one month on account of urgent private business.

Question—put and resolved in the affirmative.

15. PAPERS.—The Honorable J. A. Kennedy presented, by command of His Excellency the Lieutenant-Governor—

Bread Industry in Victoria—Report of the Royal Commission appointed to inquire into and report upon the effects of the Organization and Practices of the Industry, together with Minutes of Evidence.

Education—Report of the Minister of Public Instruction for the year 1947-48.

Penal Establishments, Gaols, and Reformatory Prisons—Report and Statistical Tables for the year 1948.

Zoological Gardens, Melbourne—Report by E. J. L. Hallstrom, Esq., F.R.Z.S., on his investigation.

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 :—

Agricultural Colleges Act 1944—Regulations—Admission of Students.

Country Fire Authority Act 1944—Report of the Country Fire Authority for the year 1947-48.

Dried Fruits Acts—

Amendment of Regulations—Packing of dried tree fruits.

Statement showing details of Receipts and Expenditure under the Dried Fruits Acts during the year 1948.

Education Act 1928—Amendment of Regulations—

Regulation IV. (H)—Accountancy Certificate.

Regulation X. (A)—Second Class Honours; Regulation X. (B)—First Class Honours; and Regulation XII. (B)—Singing Teacher's Secondary Certificate.

Regulation XVI.—Tuition Fees for Secondary Education.

Regulation XVII.—Allowance for conveyance of pupils to Primary Schools.

Regulation XX.—Allowances for school requisites and maintenance to pupils attending Post-primary Schools and Classes.

Regulation XXI.—Scholarships (two papers).

Regulation XXXIII.—School Committees.

Regulation XXXIII.—School Committees; Regulation XXXVI. (B)—Consolidated Schools and Group Schools; Regulation XXXVIII.—Girls' Schools; Regulation XXXIX.—District High Schools; and Regulation XLIV.—Allowance for maintenance of State Schools.

Regulation XXXVI. (B)—Consolidated Schools and Group Schools.

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—

Respecting netting in Cunninghame Arm at Lakes Entrance.

To fix a minimum length for bream.

Friendly Societies Act 1928, Trade Unions Act 1928, Industrial and Provident Societies Act 1928, and Superannuation and Other Trust Funds Validation Act 1932—Report of the Registrar of Friendly Societies for the year 1948.

Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (Nos. 64 to 67) (four papers).

Hospitals and Charities Act 1948—

Certificates of the Minister of Health relating to the proposed compulsory resumption of land for the purposes of the—

Ballan and District Soldiers Memorial Hospital.

St. Vincent's Hospital.

Hospitals and Charities Additional Regulations.

Land Act 1928—

Certificates of the Minister of Public Instruction relating to the proposed compulsory resumption of land for the purposes of schools at Ballaarat, Braybrook, Clunes, and Lockington (four papers).

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

Landlord and Tenant Act 1948—Landlord and Tenant Regulations No. 2.

Legal Profession Practice Acts—

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

Solicitors (Professional Conduct and Practice) Rules 1949.

Marine Act 1928—Amendment of Regulations relating to Pilots and Pilotage.

Marketing of Primary Products Act 1935—Regulations—Chicory Marketing Board—Period of time for computation of and accounting for the net proceeds of the sale of chicory.

Milk and Dairy Supervision Act 1943—Regulations prescribing Milk Depots (two papers).

Milk Board Acts—

Regulations—Contributions by sellers and distributors.

Report of the Milk Board for the year 1947-48.

Police Regulation Acts—

Amendment of the Police Regulations (three papers).

Determinations Nos. 19 to 21 of the Police Classification Board (three papers).

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

Part II.—Promotions and Transfers—Technical and General Division—Department of Chief Secretary (two papers).

Part III.—Salaries, Increments and Allowances—

Administrative Division—

Department of Labour.

Department of Water Supply.

Administrative and Professional Divisions—Regulation 60.

## Professional Division—

Department of Agriculture.  
 Department of Chief Secretary (four papers).  
 Department of Health.  
 Department of Lands and Survey.  
 Department of Law.  
 Department of Premier.  
 Department of Public Works.  
 Department of Treasurer.  
 Department of Water Supply (four papers).  
 Departments of Law and Agriculture.

## Technical and General Division—

Department of Agriculture.  
 Department of Chief Secretary (four papers).  
 Department of Health.  
 Department of Lands and Survey (two papers).  
 Department of Public Instruction (two papers).  
 Department of State Forests.  
 Department of Treasurer.  
 Department of Water Supply.  
 General and Department of Agriculture.  
 General and Department of Law.

## Temporary Employees—

Department of Chief Secretary (two papers).  
 Department of Health (five papers).  
 Department of Lands and Survey.  
 Department of Law.  
 Department of Mines.  
 Department of Public Instruction.  
 Department of Public Works (two papers).  
 Department of State Forests (two papers).  
 Department of Treasurer (two papers).  
 General (two papers).  
 General and Department of Agriculture.  
 General and Department of Water Supply.

## Part V.—Travelling Expenses (two papers).

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 31st March, 1949.

State Savings Bank Act 1928—General Orders Nos. 39 and 40 (two papers).

Supreme Courts Acts—Amendment of Rules of the Supreme Court, Chapter 1, Order XXXI.

Supreme Court Acts and Companies Act 1938—Rules of the Supreme Court—Amendment of Companies Rules.

Teaching Service Act 1946—Amendment of Regulations—

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

Teaching Service (Governor in Council) Regulations.

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

Totalizator Acts—Amendment of Totalizator Regulations 1931.

Town and Country Planning Act 1944—City of Sandringham Planning Scheme 1948.

Trade Unions Act 1928—Report of the Government Statist for the year 1948.

16. ADJOURNMENT.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Debate ensued.

Question—put and resolved in the affirmative.

The Honorable J. A. Kennedy 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 Five o'clock, adjourned until Tuesday next.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 14.

TUESDAY, 9<sup>TH</sup> AUGUST, 1949

### *Questions.*

1. The Hon. T. HARVEY: To ask the Honorable the Commissioner of Public Works—
  - (a) What was the amount of revenue paid into the Rivers and Streams Fund during the year ended 30th June, 1949.
  - (b) What was the amount expended from the fund during that year.
  - (c) What was the amount standing to the credit of the fund at the 30th June, 1949.
2. The Hon. T. HARVEY: To ask the Honorable the Commissioner of Public Works—What was the amount standing to the credit of the Unemployment Relief Fund at the 30th June, 1949.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. STATE DEVELOPMENT BILL—(*Hon. A. G. Warner*)—Second reading.
2. ST. GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

### *General Business.*

#### NOTICE OF MOTION :—

1. The Hon. A. M. FRASER: To move, That he have leave to bring in a Bill to amend Section Sixty-seven of *The Constitution Act Amendment Act 1928*, and for other purposes.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

## SESSIONAL COMMITTEES.

- STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.
- STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, P. P. Inchbold, J. H. Lienhop, and W. MacAulay.
- HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.
- LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, J. A. Kennedy, R. C. Rankin, and W. Slater.
- PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, J. F. Kittson, P. Jones, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

## VICTORIA.

## LEGISLATIVE COUNCIL

## MINUTES OF THE PROCEEDINGS.

## No. 15.

TUESDAY, 9TH AUGUST, 1949.

1. The President took the Chair and read the Prayer.
2. MINISTER OF EDUCATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to change the Title of Minister of Public Instruction to that of Minister of Education*" and desiring the concurrence of the Council therein.  
On the motion of the Honorable C. P. Gartside, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.
3. IMPORTED MATERIALS LOAN AND APPLICATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to authorize the Raising of Money towards the Cost of certain Materials imported from outside Victoria and to sanction the Issue and Application for such Purposes of the Money so raised or of Money in the State Loans Repayment Fund, and for other purposes*" and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. G. Warner, 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. 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 Six million five hundred and forty-six thousand two hundred and twenty-two pounds to the service of the year One thousand nine hundred and forty-nine and One thousand nine hundred and fifty*" and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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. 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 Gilbert Lawrence Chandler,  
The Honorable Percival Pennell Inchbold,  
The Honorable James Arthur Kennedy, and  
The Honorable Gordon Stewart McArthur,

to be members of The Committee of Elections and Qualifications.

Given under my hand this ninth day of August, One thousand nine hundred and forty-nine.

CLIFDEN EAGER,

President of the Legislative Council.

6. TEMPORARY CHAIRMEN OF COMMITTEES.—The President laid upon the Table the following Warrant nominating 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, 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 ninth day of August, One thousand nine hundred and forty-nine.

CLIFDEN EAGER,

President of the Legislative Council.



7. **STANDING ORDERS COMMITTEE.**—The Honorable J. A. Kennedy moved, by leave, That the Honorable P. P. Inchbold be discharged from attendance upon the Select Committee on the Standing Orders of the House and that the Honorable R. C. Rankin be added to such Committee.

Question—put and resolved in the affirmative.

8. **LIBRARY COMMITTEE.**—The Honorable J. A. Kennedy moved, by leave, That the Honorable J. A. Kennedy be discharged from attendance upon the Joint Committee to manage the Library and that the Honorable P. P. Inchbold be added to such Committee.

Question—put and resolved in the affirmative.

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

Friendly Societies Act 1928—Report of the Government Statist for the year 1947–48.

Local Government (Streets) Act 1948—Alignment of Streets Regulations 1949.

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

Part III.—Salaries, Increments and Allowances—

Technical and General Division—

Department of Chief Secretary.

Department of Health.

Temporary Employees—

Department of Agriculture.

Department of Public Works.

Department of Water Supply.

Part V.—Travelling Expenses.

State Electricity Commission Acts—Regulations—

Matters upon which the Yallourn Town Advisory Council may make By-laws.

Protection of Electrical Operations Regulations.

Restrictions on Electrical Apparatus Regulations.

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

10. **STATE DEVELOPMENT 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 R. C. Rankin 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. **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.

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

WEDNESDAY, 10TH AUGUST, 1949.

The President resumed the Chair; and the Honorable R. C. Rankin 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. **GRAIN ELEVATORS (FINANCIAL) BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act to amend Section Thirty-seven of the ‘Grain Elevators Act 1934’*” and desiring the concurrence of the Council therein.

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

13. **ROYAL COMMISSION (COMMUNIST PARTY) AMENDMENT BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act to amend Section Three of the ‘Royal Commission (Communist Party) Act 1949’*” and desiring the concurrence of the Council therein.

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

14. **ADJOURNMENT.**—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 30th instant.

Question—put and resolved in the affirmative.

And then the Council, at six minutes past Twelve o'clock in the morning, adjourned until Tuesday, the 30th instant.

HUGH B. JAMIESON,  
Clerk of the Legislative Council.

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 15.

TUESDAY, 30<sup>TH</sup> AUGUST, 1949.

*Question.*

- \*1. The Hon. I. A. SWINBURNE: To ask the Honorable the Commissioner of Public Works—Has any action been taken by the Government to set up inland killing centres for the killing of stock in this State; if so, where are such centres and when will they be established.

*Government Business.*

NOTICE OF MOTION:—

- \*1. The Hon. J. A. KENNEDY: To move, That he have leave to bring in a Bill to amend the Local Government Acts, and for other purposes.

ORDERS OF THE DAY:—

- \*1. GRAIN ELEVATORS (FINANCIAL) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.  
 \*2. IMPORTED MATERIALS LOAN AND APPLICATION BILL—(from Assembly—Hon. A. G. Warner)—Second reading.  
 \*3. ROYAL COMMISSION (COMMUNIST PARTY) AMENDMENT BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.  
 \*4. MINISTER OF EDUCATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.  
 5. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

*General Business.*

NOTICE OF MOTION:—

1. The Hon. A. M. FRASER: To move, That he have leave to bring in a Bill to amend Section Sixty-seven of *The Constitution Act Amendment Act 1928*, and for other purposes.

HUGH B. JAMIESON,

*Clerk of the Legislative Council.*

CLIFDEN EAGER,

*President.*

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

### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS.

No. 16.

TUESDAY, 30<sup>TH</sup> AUGUST, 1949.

1. The President took the Chair and read the Prayer.
2. SWEARING-IN OF NEW MEMBER.—The Honorable Patrick Leslie Coleman, having approached the Table, took and subscribed the Oath required by law, and delivered to the Clerk the Declaration required by the fifty-fifth section of the Act No. 3660 as hereunder set forth:—
 

“ In compliance with the provisions of *The Constitution Act Amendment Act 1928*, I, PATRICK LESLIE COLEMAN, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in Victoria of the yearly value of Twenty-five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situate in the municipal district of Melbourne, and are known as Nos. 234 and 236 Chetwynd-street, North Melbourne.

“ And I further declare that such of the said lands or tenements as are situate in the municipal district of Melbourne are rated in the rate-book of the said municipality upon a yearly value of £104.

“ And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purposes of enabling me to be returned a Member of the Legislative Council.

“ P. L. COLEMAN.”
3. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy presented a Message from His Excellency the Lieutenant-Governor informing the Council that he had, on the 16th instant, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—
 

*Consolidated Revenue Act (No. 3).*  
*Wrongs (Tort-feasors) Act.*  
*State Development Act.*
4. SOIL CONSERVATION AND LAND UTILIZATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend the ‘ Soil Conservation and Land Utilization Act 1947’* ” and desiring the concurrence of the Council therein.
 

On the motion of the Honorable C. P. Gartside, 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. WRONGS (TORT-FEASORS) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.
6. STATE DEVELOPMENT 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. TITLE OF “ HONORABLE ”.—The President announced that he had received from the Honorable the Premier a copy of a despatch from the Secretary of State for Commonwealth Relations intimating that His Majesty the King had been pleased to approve the retention of the title of “ Honorable ” by Mr. Alfred James Pittard, C.B.E., who had served continuously as a Member of the Legislative Council for a period of more than ten years.
8. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—
 

Constitution Statute—Statement of Expenditure under Schedule D to Act 18 and 19 Vict., Cap. 55, and Act No. 3660 during the year 1948–49.

Country Fire Authority Acts—Amendment of Regulations—Duties and conduct of officers and employees.

Fisheries Acts—Notices of Intention to issue Proclamations—

To prohibit certain methods of fishing in the waters of Corner Inlet and Port Albert and Shoal or Shallow Inlet.

To vary the Proclamation regarding the use of long lines in Port Phillip Bay.

Land Act 1928—Certificate of the Minister of Public Instruction relating to the proposed compulsory resumption of land for the purposes of a school at Brighton.

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 1948–49.

Marketing of Primary Products Act 1935—Proclamation declaring that Eggs shall become the property of the Egg and Egg Pulp Marketing Board for a further period of two years.

Melbourne Harbor Trust Act 1928—Statement of Accounts of the Melbourne Harbor Trust Commissioners for the year 1948.

Mines Act 1928—Statement of Accounts of the Victorian Mining Accident Relief Fund for the year 1948.

Poisons Act 1928—Pharmacy Board of Victoria—

Dangerous Drugs Regulations 1949.

Poisons Regulations 1949.

Police Regulation Acts—Determination No. 22 of the Police Classification Board.

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

Part III.—Salaries, Increments, and Allowances—

Professional Division—

Department of Health.

Department of Mines.

Departments of Law, Public Works, Health, and Water Supply.

Technical and General Division—

Department of Health.

Department of Law.

Department of Premier (two papers).

Department of State Forests.

General and Department of Lands and Survey.

Temporary Employees—

Department of Agriculture.

Department of Chief Secretary.

Department of Health.

Department of Mines.

Department of Premier.

General and Departments of Public Instruction, Lands and Survey, Agriculture, and Water Supply.

Part III.—Salaries, Increments and Allowances—Regulation 64 ; and Part V.—Travelling Expenses—Regulation 83.

Part V.—Travelling Expenses (two papers).

Road Traffic Act 1935—Amendment of Regulation—Major Streets.

State Development Acts—Report of the State Development Committee on the suggested Extension of Electricity from Mansfield to Woods Point district.

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

9. LOCAL GOVERNMENT BILL.—On the motion of the Honorable J. A. Kennedy, leave was given to bring in a Bill to amend the Local Government Acts, and for other purposes, 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. GRAIN ELEVATORS (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 R. C. Rankin 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. IMPORTED MATERIALS LOAN AND 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 R. C. Rankin reported that the Committee had made progress in the Bill, and had agreed to the following resolution:—

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

1. Clause 3, page 3, paragraph (c), sub-paragraph (i), line 18, before "delivery" insert "purchase and".
2. Clause 3, page 3, paragraph (c), sub-paragraph (ii), line 23, omit "normal" and insert "local equivalent" —

and asked leave to sit again.

On the motion of the Honorable A. G. Warner, the Council adopted the resolution reported from the Committee of the whole.

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

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

12. ADJOURNMENT.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 20th September next, at half-past Four o'clock, or such earlier day and hour as may 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, and notified to each Honorable Member by telegram or letter.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at forty-four minutes past Ten o'clock, adjourned until Tuesday, the 20th September next, at half-past Four o'clock, or such earlier day and hour as may 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, and notified to each Honorable Member by telegram or letter.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*



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, 20<sup>TH</sup> SEPTEMBER, 1949.

### *Questions.*

- \*1. The Hon. J. H. LIENHOP: To ask the Honorable the Minister of Health—
- (a) Has the Minister read an article published in last week's Melbourne "Truth" newspaper directing attention to the commencement in business in Carlton of one, Mick Petridis, who advertises that he can successfully treat cancer, leprosy, and numerous infectious diseases.
  - (b) Was Petridis two years ago completely discredited from a medical point of view in a report to the Government by Dr. K. G. Kerr, the Bendigo District Health Officer.
  - (c) Did Dr. Kerr in a final report indicate that, of two specific cases of cancer which Petridis was treating and which he, Dr. Kerr, had examined over a period, one had died in the period between his interim and final reports and the condition of the other had deteriorated seriously.
  - (d) Has the attention of former Ministers of Health been, on several occasions, directed to the activities of Petridis.
  - (e) Will the Government introduce legislation which will prohibit activities similar to those of Petridis.
- \*2. The Hon. I. A. SWINBURNE: To ask the Honorable the Commissioner of Public Works—
- (a) What is the total area of land purchased by the Soldier Settlement Commission within the State of Victoria, and what is the total amount paid for such land.
  - (b) How many settlers have been settled on such land to date, and what is the total area of the land settled.
  - (c) How many approved settlers are still awaiting allotment of areas, and how many applications still await approval.

### *Government Business.*

#### NOTICE OF MOTION:—

- \*1. The Hon. J. A. KENNEDY: To move, That he have leave to bring in a Bill to make certain Alterations in the Franchise for the Legislative Council.

#### ORDERS OF THE DAY:—

- \*1. LOCAL GOVERNMENT BILL—(*Hon. J. A. Kennedy*)—Second reading.
2. IMPORTED MATERIALS LOAN AND APPLICATION BILL—(*from Assembly—Hon. A. G. Warner*)—To be further considered in Committee.
3. ROYAL COMMISSION (COMMUNIST PARTY) AMENDMENT BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
- \*4. SOIL CONSERVATION AND LAND UTILIZATION BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
5. MINISTER OF EDUCATION BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
6. ST. GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

### *General Business.*

#### NOTICE OF MOTION:—

- 1 The Hon. A. M. FRASER: To move, That he have leave to bring in a Bill to amend Section Sixty-seven of *The Constitution Act Amendment Act 1928*, and for other purposes.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.



# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 17.

WEDNESDAY, 21ST SEPTEMBER, 1949.

### Questions.

- \*1. The Hon. P. L. COLEMAN: To ask the Honorable the Minister in Charge of Housing—  
What quantity of bricks, terracotta tiles, cement, cement tiles, cement sheets, cement pipes, and timber respectively was produced in Victoria during each of the years ended 30th June, 1947, 1948, and 1949.
- \*2. The Hon. A. M. FRASER: To ask the Honorable the Commissioner of Public Works—  
(a) How many advisory committees have been appointed under section 48 of the *Prices Regulation Act 1948*.  
(b) Has any advisory committee inquired into or investigated the price of gas or given any advice to the Minister thereon.  
(c) Was the Minister supplied with the facts and data upon which the Prices Decontrol Commissioner made the recent order fixing and declaring the price of gas; if so, will the Minister lay on the table of the Library the file containing such facts, data, and reasons for the order.
- \*3. The Hon. P. L. COLEMAN: To ask the Honorable the Commissioner of Public Works—  
(a) What quantity of black coal was imported from England, India, and New South Wales respectively during each of the years ended 30th June, 1947, 1948, and 1949.  
(b) What quantity of brown coal was produced in this State during each of those years.  
(c) What quantity of briquettes was produced in this State during each of those years.  
(d) In what quantities and to whom were the briquettes which were produced in this State distributed during each of those years.
- \*4. The Hon. A. M. FRASER: To ask the Honorable the Commissioner of Public Works—  
(a) What declared goods and declared services have been decontrolled since the 20th September, 1948, by the Prices Decontrol Commissioner.  
(b) What declared goods and declared services have been increased in price by the Commissioner since the 20th September, 1948, and what is the extent of each such price rise.  
(c) In relation to any such price rise or recommendation for same, did the Minister make any request to the Commissioner to consider further the order or proposed order under section 13 of the *Prices Regulation Act 1948*.

### General Business.

#### NOTICE OF MOTION:—

1. The Hon. A. M. FRASER: To move, That he have leave to bring in a Bill to amend Section Sixty-seven of *The Constitution Act Amendment Act 1928*, and for other purposes.

### Government Business.

#### ORDERS OF THE DAY:—

- \*1. LEGISLATIVE COUNCIL FRANCHISE BILL—(*Hon. J. A. Kennedy*)—Second reading.  
\*2. CONSOLIDATED REVENUE BILL (No. 4)—(*from Assembly—Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.  
\*3. LAND TAX BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.  
\*4. STAMPS (INCREASED DUTY CONTINUANCE) BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.  
\*5. COAL (OVERSEAS PURCHASE) AMENDMENT BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.  
\*6. RAILWAYS (LONG SERVICE) BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

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

- \*7. SUPERANNUATION (AMENDMENT) BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.  
 \*8. WILLIAMSTOWN LANDS BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.  
 \*9. GRETA LANDS EXCHANGE BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.  
 \*10. FOOTWEAR REGULATION (AMENDMENT) BILL—(*Hon. A. E. McDonald*)—Second reading.  
 11. LOCAL GOVERNMENT BILL—(*Hon. J. A. Kennedy*)—Second reading.  
 \*12. LEGAL PROFESSION PRACTICE BILL—(*Hon. A. E. McDonald*)—Second reading.  
 \*13. JUSTICES (SERVICE OF PROCESS) BILL—(*Hon. A. E. McDonald*)—Second reading.  
 14. ST GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

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## TUESDAY, 27<sup>TH</sup> SEPTEMBER.

### *Government Business.*

#### ORDER OF THE DAY :—

1. SOIL CONSERVATION AND LAND UTILIZATION BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading—*Resumption of debate (Hon. W. J. Beckett).*

HUGH B. JAMIESON,  
*Tierk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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## MEETING OF SELECT COMMITTEE.

*Thursday, 22nd September.*

STATUTE LAW REVISION (JOINT)—*At Ten o'clock.*

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### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day*

No. 18.

THURSDAY, 22<sup>ND</sup> SEPTEMBER, 1949.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. CONSOLIDATED REVENUE BILL (No. 4)—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate (Hon. W. J. Beckett).*
2. LAND TAX BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
3. STAMPS (INCREASED DUTY CONTINUANCE) BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
4. COAL (OVERSEAS PURCHASE) AMENDMENT BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
5. RAILWAYS (LONG SERVICE) BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
6. SUPERANNUATION (AMENDMENT) BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
7. WILLIAMSTOWN LANDS BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
8. GRETA LANDS EXCHANGE BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
9. FOOTWEAR REGULATION (AMENDMENT) BILL—(Hon. A. E. McDonald)—Second reading.
10. LOCAL GOVERNMENT BILL—(Hon. J. A. Kennedy)—Second reading.
11. LEGAL PROFESSION PRACTICE BILL—(Hon. A. E. McDonald)—Second reading.
12. JUSTICES (SERVICE OF PROCESS) BILL—(Hon. A. E. McDonald)—Second reading.
- \*13. NORTH-WEST MALLEE SETTLEMENT AREAS (AMENDMENT) BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
- \*14. RURAL FINANCE CORPORATION BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
15. ST GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

### *General Business.*

#### ORDER OF THE DAY :—

- \*1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

TUESDAY, 27<sup>TH</sup> SEPTEMBER.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. SOIL CONSERVATION AND LAND UTILIZATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—*Resumption of debate (Hon. W. J. Beckett).*
2. LEGISLATIVE COUNCIL FRANCHISE BILL—(Hon. J. A. Kennedy)—Second reading—*Resumption of debate (Hon. W. J. Beckett).*

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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

# MEETING OF SELECT COMMITTEE.

Wednesday, 28th September.

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

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS

## No. 17.

TUESDAY, 20<sup>TH</sup> SEPTEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy presented a Message from His Excellency the Lieutenant-Governor informing the Council that he had, on the 6th instant, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—  
*Grain Elevators (Financial) Act.*
3. 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 One million one hundred and twenty-eight thousand seven hundred and eighty-five pounds to the service of the year One thousand nine hundred and forty-eight and One thousand nine hundred and forty-nine* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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. LAND TAX BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to declare the rate of Land Tax for the year ending the thirty-first day of December One thousand nine hundred and fifty* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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.
5. MUNICIPAL ENDOWMENT (TEMPORARY DISCONTINUANCE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to provide for the Temporary Discontinuance of the Payment of Municipal Endowment* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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. RAILWAYS (LONG SERVICE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend Sub-section (4) of Section Two of the ‘ Railways (Long Service) Act 1942 ’* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable C. P. Gartside, 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. COAL (OVERSEAS PURCHASE) AMENDMENT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend the ‘ Coal (Overseas Purchase) Loan and Application Act 1948 ’* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. G. Warner, 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.
8. STAMPS (INCREASED DUTY CONTINUANCE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to continue the Operation of certain Provisions of the ‘ Stamps Act 1946 ’ relating to the Imposition of Increased Stamp Duties on certain Instruments* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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.
9. WILLIAMSTOWN LANDS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to revoke the Permanent Reservations and Crown Grants of certain Lands at Williamstown, and for other purposes* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. E. McDonald, 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. **GRETA LANDS EXCHANGE BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to provide for the Revocation of the Reservation of certain Land in the Parish of Greta temporarily reserved as a Site for Public Recreation and for the Exchange thereof for certain other Land in the said Parish to be reserved as a Site for Public Recreation* ” and desiring the concurrence of the Council therein.
- On the motion of the Honorable A. E. McDonald, 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. **SUPERANNUATION (AMENDMENT) BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend Section Three of the ‘ Superannuation Act 1928 ’* ” and desiring the concurrence of the Council therein.
- On the motion of the Honorable A. G. Warner, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.
12. **IMPORTED MATERIALS LOAN AND APPLICATION BILL.**—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that the Assembly, having considered the Message of the Council suggesting on the consideration of the Bill in Committee that the Assembly make certain amendments in such Bill, have made the suggested amendments.
- Ordered—That the foregoing Message be referred to the Committee of the whole on the Bill.
13. **FOOTWEAR REGULATION (AMENDMENT) BILL.**—On the motion (by leave without notice) of the Honorable A. E. McDonald, leave was given to bring in a Bill to amend the *Footwear Regulation Act 1928*, 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.
14. **LEGAL PROFESSION PRACTICE BILL.**—On the motion (by leave without notice) of the Honorable A. E. McDonald, leave was given to bring in a Bill to amend the *Legal Profession Practice Act 1928* with respect to the Admission to practise in Victoria of Persons admitted to practise in other States of the Commonwealth of Australia, and the said Bill was read a first time and ordered to be printed and, by leave and after debate, to be read a second time later this day.
15. **STATUTE LAW REVISION COMMITTEE—TRANSFER OF LAND BILL.**—The Honorable A. M. Fraser brought up a Progress Report from the Statute Law Revision Committee on this Bill.
- Ordered to lie on the Table and be printed together with the Minutes of Evidence.
16. **JUSTICES (SERVICE OF PROCESS) BILL.**—On the motion (by leave without notice) of the Honorable A. E. McDonald, leave was given to bring in a Bill to make Provision with respect to the Service of Process in Certain Cases in Courts of Petty Sessions, 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.
17. **LEGISLATIVE COUNCIL FRANCHISE BILL.**—On the motion of the Honorable J. A. Kennedy, leave was given to bring in a Bill to make certain Alterations in the Franchise for the Legislative Council, 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.
18. **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—
      - Definition of Explosives—Class 7—Firework.
      - Prohibition of the manufacture, keeping, importation, conveyance, and sale of certain explosives, except under certain conditions or restrictions.
      - Report of the Chief Inspector of Explosives on the working of the Act during the year 1948.
    - Fisheries Acts—Notices of Intention to issue Proclamations—
      - Respecting Fishing Licences and renewal of such licences.
      - To prohibit all fishing in or the taking of fish from Lake Konongwotong from 1st May to 30th September in each year.
    - Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (No. 68).
    - Land Act 1928—Schedule of country lands proposed to be sold by public auction.
    - Motor Car Acts—Amendment of Motor Car Regulations 1931.
    - Police Regulation Acts—Amendment of Police Regulations (two papers).
    - Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—
      - Part I.—Appointments to the Administrative, Professional, and Technical and General Divisions—
        - General Provisions and Administrative Division.
        - Technical and General Division—Department of Health.
      - Part II.—Promotions and Transfers—Technical and General Division—Department of Health.
      - Part III.—Salaries, Increments, and Allowances—
        - Professional Division—
          - Department of Health.
          - Department of Public Works.
        - Technical and General Division—
          - Department of Health.
          - General—Regulation 64A.

Temporary Employees—Department of State Forests.  
Part V.—Travelling Expenses.

Teaching Service Act 1946—Amendment of Regulations—

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

19. **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.
20. **IMPORTED MATERIALS LOAN AND APPLICATION 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 R. C. Rankin having reported that the Committee had agreed to the Bill, including the amendments made by the Assembly which were suggested by the Council, without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That a Message be sent to the Assembly acquainting them that the Council have agreed to the Bill, including the amendments made by the Assembly which were suggested by the Council, without amendment.
21. **ROYAL COMMISSION (COMMUNIST PARTY) AMENDMENT BILL.**—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.  
House in Committee.  
The Deputy-President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.
22. **SOIL CONSERVATION AND LAND UTILIZATION 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. J. Beckett moved, That the debate be now adjourned.  
Question—That the debate be now adjourned—put and resolved in the affirmative.  
Ordered—That the debate be adjourned until Tuesday next.
23. **MINISTER OF EDUCATION 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.
24. **CONSOLIDATED REVENUE BILL (No. 4).**—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett 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.
25. **MUNICIPAL ENDOWMENT (TEMPORARY DISCONTINUANCE) 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.
26. **ADJOURNMENT.**—The Honorable J. A. Kennedy moved, That the House do now adjourn.  
Debate ensued.  
Question—put and resolved in the affirmative.

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

WEDNESDAY, 21ST SEPTEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. ADJOURNMENT.—MOTION UNDER STANDING ORDER No. 53.—The Honorable P. J. Kennelly moved, That the Council do now adjourn, and said he proposed to speak on the subject of “The failure of the Government to protect the public of this State against increased costs and prices, as is evidenced by recent increases in gas, transport, beer, and picture theatre charges, and other living costs”; and six Members having risen in their places and required the motion to be proposed—  
 Debate ensued.  
 Question—put.  
 The Council divided.

Ayes, 12.

The Hon. P. T. Byrnes,  
 P. L. Coleman,  
 A. M. Fraser,  
 J. W. Galbally,  
 P. Jones (*Teller*),  
 P. J. Kennelly,  
 C. E. McNally (*Teller*),  
 W. Slater,  
 I. A. Swinburne,  
 F. M. Thomas,  
 G. J. Tuckett,  
 D. J. Walters.

Noes, 17.

The Hon. Sir William Angliss,  
 Sir Frank Beaurepaire,  
 W. J. Beckett,  
 E. P. Cameron,  
 G. L. Chandler,  
 Sir Frank Clarke,  
 C. P. Gartside,  
 C. E. Isaac (*Teller*),  
 J. A. Kennedy,  
 J. F. Kittson,  
 Col. G. V. Lansell,  
 J. H. Lienhop,  
 H. C. Ludbrook,  
 G. S. McArthur (*Teller*),  
 A. E. McDonald,  
 R. C. Rankin,  
 A. G. Warner.

And so it passed in the negative.

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—Certificate of the Minister of Public Instruction relating to the proposed compulsory resumption of land for the purposes of a Technical School at Dandenong.  
 Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—  
 Part III.—Salaries, Increments, and Allowances—  
 Professional Division—  
     Department of Premier.  
     Department of Public Works (two papers).  
     Department of Water Supply.  
 Technical and General Division—Department of Treasurer.  
 Temporary Employees—  
     Department of Health.  
     Department of Public Works.  
     Department of Water Supply (two papers).  
     Departments of Health and Water Supply.
4. LEGISLATIVE COUNCIL ELECTORS BILL.—On the motion of the Honorable A. M. Fraser, leave was given to bring in a Bill to amend Section Sixty-seven of *The Constitution Act Amendment Act 1928*, 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.
5. RURAL FINANCE CORPORATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act to provide for the Establishment of a Rural Finance Corporation and the Objects Constitution Functions Powers and Management thereof, and for other purposes*” and desiring the concurrence of the Council therein.  
 On the motion of the Honorable A. E. McDonald, 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. LEGISLATIVE COUNCIL FRANCHISE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.  
 The Honorable W. J. Beckett moved, That the debate be now adjourned.  
 Question—That the debate be now adjourned—put and resolved in the affirmative.  
 Ordered—That the debate be adjourned until Tuesday next.



7. NORTH-WEST MALLEE SETTLEMENT AREAS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend Sections Five and Six of the ‘North-west Mallee Settlement Areas Act 1948’* ” and desiring the concurrence of the Council therein.

On the motion of the Honorable C. P. Gartside, 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 thirty-three minutes past Ten o'clock, adjourned until to-morrow.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

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## No. 19.

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THURSDAY, 22<sup>ND</sup> SEPTEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. CASTLEMAINE LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to revoke the Crown Grant of certain Land at Castlemaine set apart for a General Market, and for other purposes* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. G. Warner, 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. MINES (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 on the next day of meeting.
4. PAPERS.—The following Papers, pursuant to the direction of an Act 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—  
Professional Division—Department of Chief Secretary.  
Technical and General Division—Department of Chief Secretary.  
Temporary Employees—  
Department of Agriculture (two papers).  
Department of Chief Secretary.
5. CONSOLIDATED REVENUE BILL (No. 4).—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. J. Kennelly 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.
6. 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 R. C. Rankin 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. STAMPS (INCREASED DUTY CONTINUANCE) 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 R. C. Rankin 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. 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.

9. RAILWAYS (LONG SERVICE) 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 R. C. Rankin 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. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 6 to 9 inclusive, be postponed until later this day.
11. LOCAL GOVERNMENT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett 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. COAL (OVERSEAS PURCHASE) AMENDMENT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett 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. WILLIAMSTOWN LANDS 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 R. C. Rankin 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. GRETA 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 R. C. Rankin 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 five minutes past Ten o'clock, adjourned until Tuesday next.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 19.

TUESDAY, 27<sup>TH</sup> SEPTEMBER, 1949.

### *Question.*

- \*1. The Hon. P. JONES: To ask the Honorable the Commissioner of Public Works—
- (a) How many scholarships, bursaries, and free places were awarded by the State Government during the year ended 31st December, 1948, what was their value, and how were they allotted as between State and registered schools.
  - (b) How many students, excluding those training under the Commonwealth Rehabilitation Scheme, attended the University of Melbourne during each of the years from 1943 to 1948 inclusive, and what amount was received in fees from them.
  - (c) How many trainees (trades and professions) under the Commonwealth Rehabilitation Scheme attended the University in each of those years.
  - (d) What was the amount of Government grants, (i) State and (ii) Commonwealth, received by the University, and what was the total amount of its expenditure, excluding that on buildings, during each of those years.
  - (e) What is the total amount of State Government grants received by the University from the date of its inception until the 31st December, 1948.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. LEGISLATIVE COUNCIL FRANCHISE BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
2. CONSOLIDATED REVENUE BILL (No. 4)—(*from Assembly—Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. P. J. Kennelly)*.
3. SUPERANNUATION (AMENDMENT) BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
4. FOOTWEAR REGULATION (AMENDMENT) BILL—(*Hon. A. E. McDonald*)—Second reading.
5. SOIL CONSERVATION AND LAND UTILIZATION BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
6. LEGAL PROFESSION PRACTICE BILL—(*Hon. A. E. McDonald*)—Second reading.
7. JUSTICES (SERVICE OF PROCESS) BILL—(*Hon. A. E. McDonald*)—Second reading.
8. COAL (OVERSEAS PURCHASE) AMENDMENT BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
9. NORTH-WEST MALLEE SETTLEMENT AREAS (AMENDMENT) BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
10. RURAL FINANCE CORPORATION BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
- \*11. MINES (AMENDMENT) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.
- \*12. CASTLEMAINE LAND BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
13. LOCAL GOVERNMENT BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
14. ST GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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

# MEETING OF SELECT COMMITTEE.

Wednesday, 28th September.

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

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## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 20.

WEDNESDAY, 28<sup>TH</sup> SEPTEMBER, 1949.

### *Questions.*

- \*1. The Hon. I. A. SWINBURNE : To ask the Honorable the Minister in Charge of State Development—  
What industries in this State obtained financial assistance from the Decentralization Fund during the year ended 30th June, 1949, and what amount was received by each.
- \*2. The Hon. A. M. FRASER : To ask the Honorable the Commissioner of Public Works—
- Are gas residuals of the Metropolitan Gas Company such as coke, tar, sulphates, &c., declared goods under the *Prices Regulation Act 1948*.
  - What was the price of each residual in (i) September, 1948, (ii) December, 1948, and (iii) March, 1949.
  - What is the proposed price of each residual as at 1st October, 1949.
  - Was any application in relation to any particular residual made to the Prices Decontrol Commissioner prior to any of the aforementioned dates; if so, when, and on what material.

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

### *Government Business.*

#### NOTICE OF MOTION :—

- \*1. The Hon. A. G. WARNER : To move, That he have leave to bring in a Bill to amend the *Building Operations and Building Materials Control Act 1946*, and for other purposes.

#### ORDERS OF THE DAY :—

- CONSOLIDATED REVENUE BILL (No. 4)—(*from Assembly—Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. P. J. Kennelly)*.
- SUPERANNUATION (AMENDMENT) BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- FOOTWEAR REGULATION (AMENDMENT) BILL—(*Hon. A. E. McDonald*)—Second reading.
- SOIL CONSERVATION AND LAND UTILIZATION BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
- LEGAL PROFESSION PRACTICE BILL—(*Hon. A. E. McDonald*)—Second reading.
- JUSTICES (SERVICE OF PROCESS) BILL—(*Hon. A. E. McDonald*)—Second reading.
- COAL (OVERSEAS PURCHASE) AMENDMENT BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
- NORTH-WEST MALLEE SETTLEMENT AREAS (AMENDMENT) BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
- RURAL FINANCE CORPORATION BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
- MINES (AMENDMENT) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.
- CASTLEMAINE LAND BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- LOCAL GOVERNMENT BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
- PORTLAND HARBOR TRUST BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.
- ST GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

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

TUESDAY, 11TH OCTOBER.

*Government Business.*

ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL FRANCHISE BILL—(*Hon. J. A. Kennedy*)—Consideration of Report

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS.

No. 20.

TUESDAY, 27<sup>TH</sup> SEPTEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy 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. :—
  - Imported Materials Loan and Application Act.*
  - Royal Commission (Communist Party) Amendment Act.*
  - Minister of Education Act.*
  - Municipal Endowment (Temporary Discontinuance) Act.*
3. PORTLAND HARBOR TRUST BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act relating to Portland Harbor, and for other purposes* ” and desiring the concurrence of the Council therein.
 

On the motion of the Honorable J. A. Kennedy, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.
4. PAPERS.—The 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 Commissioners for the year 1948.
  - Grain Elevators Act 1934—Report of the Grain Elevators Board for the year ended 31st October, 1948.
  - Land Act 1928—Certificate of the Minister of Public Instruction relating to the proposed compulsory resumption of land for the purpose of a school at Morwell.
  - Marketing of Primary Products Act 1935—Onion Marketing Board—Regulations—Registration of Producers of Onions.
  - Public Service Act 1946—Amendment of Public Service (Governor in Council) Regulations—Part IV.—Leave of Absence.
  - Seeds Acts—Amendment of Regulations—Peas.
5. LEGISLATIVE COUNCIL FRANCHISE 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.
 

The Honorable A. M. Fraser moved, by leave, That it be an instruction to the Committee that they have power to consider an amendment to provide for the extension of the franchise for the Legislative Council to the wives or husbands of ratepaying electors.

Question—put and resolved in the affirmative.

The President left the Chair.

House in Committee.

The President resumed the Chair ; and the Honorable R. C. Rankin reported that the Committee had agreed to the Bill with amendments.

Ordered—That the Report be taken into consideration on Tuesday, the 11th October next.
6. ADJOURNMENT.—The Honorable J. A. Kennedy moved, That the House do now adjourn.
 

Debate ensued.

Question—put and resolved in the affirmative.

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

HUGH B. JAMIESON,  
Clerk of the Legislative Council.

## No. 21.

WEDNESDAY, 28TH SEPTEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to authorize the Raising of Money for the Purposes of the Development of the Latrobe Valley and the Application of such Money and for other purposes* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. G. Warner, 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. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—
  - Explosives Act 1928—Order in Council relating to Conditions as to Sale of Explosives.
  - Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—
    - Part III.—Salaries, Increments, and Allowances—
      - Technical and General Division—
        - Department of Agriculture.
        - Department of Health.
        - Department of Mines.
      - Temporary Employees—Department of Agriculture.
4. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of the Order of the Day, General Business, be postponed until Wednesday, the 12th October next.
5. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL.—On the motion of the Honorable A. G. Warner, leave was given to bring in a Bill to amend the *Building Operations and Building Materials Control Act 1946*, 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. CONSOLIDATED REVENUE BILL (No. 4).—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 R. C. Rankin 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. LANCEFIELD AND KILMORE RAILWAY (DISPOSAL OF LAND) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to provide for the Sale and otherwise dealing with Land upon which the Lancefield and Kilmore Railway was constructed* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. E. McDonald, 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. COUNTRY ROADS BOARD FUND (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to further amend Section Three of the Country Roads Board Fund Act 1932 (No. 2)* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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. TREASURY BONDS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to authorize the Issue of Treasury Bonds* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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. ADJOURNMENT.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Tuesday next.  
Question—put and resolved in the affirmative.  
The Honorable J. A. Kennedy moved, That the House do now adjourn.  
Debate ensued.  
Question—put and resolved in the affirmative.

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

HUGH B. JAMIESON,  
Clerk of the Legislative Council.



# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 21.

TUESDAY, 4TH OCTOBER, 1949.

### *Questions.*

- \*1. The Hon. P. L. COLEMAN: To ask the Honorable the Minister in Charge of Materials—Is the Committee appointed to advise the Minister on the production of building materials still in existence; if so, how often does it meet, and when did it meet last.
- \*2. The Hon. G. L. CHANDLER: To ask the Honorable the Commissioner of Public Works—
- What is the area of the Kinglake National Park.
  - What are the names of the present trustees, when was each appointed, and for what period.
  - What particular section of the community does each trustee represent.
  - What Government assistance has been received by the trustees during each of the last five financial years.
  - What amount of money is at present held by the trustees and how was it obtained.

### *Government Business.*

#### ORDERS OF THE DAY:—

1. FOOTWEAR REGULATION (AMENDMENT) BILL—(Hon. A. E. McDonald)—Second reading.
2. SUPERANNUATION (AMENDMENT) BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
3. SOIL CONSERVATION AND LAND UTILIZATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
4. LEGAL PROFESSION PRACTICE BILL—(Hon. A. E. McDonald)—Second reading.
5. JUSTICES (SERVICE OF PROCESS) BILL—(Hon. A. E. McDonald)—Second reading.
6. COAL (OVERSEAS PURCHASE) AMENDMENT BILL—(from Assembly—Hon. A. G. Warner)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
7. NORTH-WEST MALLEE SETTLEMENT AREAS (AMENDMENT) BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
8. RURAL FINANCE CORPORATION BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
9. MINES (AMENDMENT) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.
10. CASTLEMAINE LAND BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
11. LOCAL GOVERNMENT BILL—(Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
12. PORTLAND HARBOR TRUST BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
- \*13. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
- \*14. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(Hon. A. G. Warner)—Second reading.
- \*15. LANCEFIELD AND KILMORE RAILWAY (DISPOSAL OF LAND) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
- \*16. COUNTRY ROADS BOARD FUND (AMENDMENT) BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
- \*17. TREASURY BONDS BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
18. ST GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

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

TUESDAY, 11TH OCTOBER.

*Government Business.*

ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL FRANCHISE BILL—(*Hon. J. A. Kennedy*)—Consideration of Report.

WEDNESDAY, 12TH OCTOBER.

*General Business.*

ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

HUGH B. JAMIESON,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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## MEETINGS OF SELECT COMMITTEES.

*Wednesday, 5th October.*

HOUSE (JOINT)—*At Twelve o'clock.*

*Tuesday, 11th October.*

STATUTE LAW REVISION (JOINT)—*At Ten o'clock.*

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## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 22.

WEDNESDAY, 5TH OCTOBER, 1949.

### *Question.*

- \*1. The Hon. D. J. WALTERS : To ask the Honorable the Minister in Charge of State Development—
- (a) Does the Government intend to continue to encourage industries to move to the country ; if so, has there been a change in policy with regard to the types of industries to be assisted.
  - (b) What is the policy of the Government on housing assistance to country towns through the Housing Commission, especially where decentralized industries need housing facilities.
  - (c) Has the plan of building up rural population through industrial decentralization, both as a means to more stable economy in peace time and to rendering Australia less vulnerable in time of war, been abandoned.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. JUSTICES (SERVICE OF PROCESS) BILL—(*Hon. A. E. McDonald*)—Second reading—*Resumption of debate (Hon. J. W. Galbally).*
2. COAL (OVERSEAS PURCHASE) AMENDMENT BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading—*Resumption of debate (Hon. W. J. Beckett).*
3. COUNTRY ROADS BOARD FUND (AMENDMENT) BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.
4. LANCEFIELD AND KILMORE RAILWAY (DISPOSAL OF LAND) BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
5. SOIL CONSERVATION AND LAND UTILIZATION BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading—*Resumption of debate (Hon. W. J. Beckett).*
6. NORTH-WEST MALLEE SETTLEMENT AREAS (AMENDMENT) BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
7. RURAL FINANCE CORPORATION BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
8. LOCAL GOVERNMENT BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. W. J. Beckett).*
9. PORTLAND HARBOR TRUST BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. W. J. Beckett).*
10. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
11. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(*Hon. A. G. Warner*)—Second reading.
12. TREASURY BONDS BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.
13. CASTLEMAINE LAND BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
14. ST GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

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

TUESDAY, 11<sup>TH</sup> OCTOBER.

*Government Business.*

ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL FRANCHISE BILL—(*Hon. J. A. Kennedy*)—Consideration of Report.

WEDNESDAY, 12<sup>TH</sup> OCTOBER.

*General Business.*

ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

ROY S. SARAH,  
*Acting—Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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## MEETING OF SELECT COMMITTEE.

*Tuesday, 11th October.*

STATUTE LAW REVISION (JOINT)—*At Ten o'clock.*

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### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 23.

THURSDAY, 6TH OCTOBER, 1949.

### *Question.*

1. The Hon. D. J. WALTERS: To ask the Honorable the Minister in Charge of State Development—
  - (a) Does the Government intend to continue to encourage industries to move to the country; if so, has there been a change in policy with regard to the types of industries to be assisted.
  - (b) What is the policy of the Government on housing assistance to country towns through the Housing Commission, especially where decentralized industries need housing facilities.
  - (c) Has the plan of building up rural population through industrial decentralization, both as a means to more stable economy in peace time and to rendering Australia less vulnerable in time of war, been abandoned.

### *Government Business.*

#### ORDERS OF THE DAY:—

1. NORTH-WEST MALLEE SETTLEMENT AREAS (AMENDMENT) BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
2. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
3. ADMINISTRATION AND PROBATE DUTIES BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
4. RURAL FINANCE CORPORATION BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
5. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(Hon. A. G. Warner)—Second reading.
6. SOIL CONSERVATION AND LAND UTILIZATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. P. T. Byrnes).
7. PORTLAND HARBOR TRUST BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
8. LOCAL GOVERNMENT BILL—(Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
9. JUSTICES (SERVICE OF PROCESS) BILL—(Hon. A. E. McDonald)—To be further considered in Committee.
10. STATE FORESTS LOAN AND APPLICATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
11. JUDGES PENSIONS BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
12. CASTLEMAINE LAND BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
13. ST GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

TUESDAY, 11TH OCTOBER.

*Government Business.*

ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL FRANCHISE BILL—(*Hon. J. A. Kennedy*)—Consideration of Report.

WEDNESDAY, 12TH OCTOBER.

*General Business.*

ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

ROY S. SARAH,  
*Acting-Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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## MEETING OF SELECT COMMITTEE.

*Tuesday, 11th October.*

STATUTE LAW REVISION (JOINT)—*At Ten o'clock.*

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## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

## VICTORIA.

## LEGISLATIVE COUNCIL

## MINUTES OF THE PROCEEDINGS.

No. 22.

TUESDAY, 4TH OCTOBER, 1949.

1. The President took the Chair and read the Prayer.
2. DEATH OF THE CLERK.—The death, this day, of Hugh Blair Jamieson, Clerk of the Legislative Council, having been announced to the House—  
The Honorable J. A. Kennedy moved, by leave, That this House place on record its deep sense of the loss it has sustained through the death of its Clerk, Hugh Blair Jamieson, and its high appreciation of the valuable services rendered by him as an Officer of Parliament.  
And other Honorable Members and the President having addressed the House—  
The question was put and, Honorable Members signifying their assent by standing in their places, unanimously resolved in the affirmative.
3. ADJOURNMENT.—The Honorable J. A. Kennedy moved, That the House, out of respect to the memory of the late Hugh Blair Jamieson, do now adjourn until half-past Seven o'clock this day.  
Question—put and resolved in the affirmative.  
And then the Council at Twenty-five minutes past Five o'clock adjourned until half-past Seven o'clock this day.

1. The President resumed the Chair.
2. ACTING—CLERK OF THE COUNCIL.—The Honorable J. A. Kennedy moved, by leave, That the Clerk-Assistant act as Clerk of the Council, and take the chair at the Table.  
Question—put and resolved in the affirmative.
3. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Acting-Clerk :—  
Education Act 1928—Report of the Council of Public Education for the year 1948–49.  
State Savings Bank Act 1928—State Savings Bank of Victoria—Statements and Returns for the year 1948–49.
4. FOOTWEAR 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 R. C. Rankin 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.
5. SUPERANNUATION (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 R. C. Rankin, 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. **POSTPONEMENT OF ORDERS OF THE DAY.**—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 3 to 8 inclusive, be postponed until later this day.
7. **MINES (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 follow :—
1. Clause 11, sub-clause (1), paragraph (a), line 11, after “ shall ” insert “ if so required in writing by the Minister ”.
  2. Clause 11, page 9, at the end of the clause insert the following sub-clause :—  
“(5) The provisions of this section shall not apply in the case of a person who by himself or his servants or agents sinks a borehole or shaft for the purpose of searching for or getting water on land of which he is the owner or occupier.”
- Amendment 1 agreed to.  
Amendment 2, after debate, agreed to.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them therewith.
8. **LEGAL PROFESSION PRACTICE 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 R. C. Rankin, 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.
9. **JUSTICES (SERVICE OF PROCESS) BILL.**—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.  
Debate ensued.  
The Honorable J. W. Galbally moved, That the debate be now adjourned.  
Question—That the debate be now adjourned—put and resolved in the affirmative.  
Ordered—That the debate be adjourned until the next day of meeting.
10. **POSTPONEMENT OF ORDERS OF THE DAY.**—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 10 and 11, be postponed until later this day.
11. **PORTLAND HARBOR TRUST BILL.**—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett 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 fifty-one minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,  
*Acting-Clerk of the Legislative Council.*

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## No. 23.

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WEDNESDAY, 5TH OCTOBER, 1949.

1. The President took the Chair and read the Prayer.
2. **STATE FORESTS LOAN AND APPLICATION BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to authorize the Raising of Money for State Forests and to sanction the Issue and Application for that purpose of the Money so raised or of Money in the State Loans Repayment Fund, and for other purposes* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy for the Honorable C. P. Gartside, 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. **JUDGES PENSIONS BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act relating to Pensions 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 A. E. McDonald, 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. ADMINISTRATION AND PROBATE DUTIES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to continue the Operation of Part III. of the ‘ Finance Act 1930’* ” and desiring the concurrence of the Council therein.

On the motion of the Honorable J. A. Kennedy, 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 Acting-Clerk :—

Local Government Act 1946—Proposed amendments of the Uniform Building Regulations.

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

Administrative Division—

Department of Law.

Department of Treasurer.

Departments of Treasurer and Health.

Professional Division—Departments of Chief Secretary and Law.

Temporary Employees—

Department of Agriculture.

Department of Treasurer, General, and Department of Water Supply.

Soil Conservation Act 1940—Report of the Soil Conservation Board for the year 1948–49.

6. JUSTICES (SERVICE OF PROCESS) 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 R. C. Rankin reported that the Committee had made progress in the Bill, and asked leave to sit again.

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

7. COAL (OVERSEAS PURCHASE) 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 R. C. Rankin 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. COUNTRY ROADS BOARD FUND (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 R. C. Rankin 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. LANCEFIELD AND KILMORE RAILWAY (DISPOSAL 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 President resumed the Chair ; and the Honorable R. C. Rankin 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. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 5 to 11 inclusive, be postponed until later this day.

11. TREASURY BONDS 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 R. C. Rankin 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. SOIL CONSERVATION AND LAND UTILIZATION BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—  
Debate resumed.  
The Honorable P. T. Byrnes moved, That the debate be now adjourned.  
Question—That the debate be now adjourned—put and resolved in the affirmative.  
Ordered—That the debate be adjourned until the next day of meeting.
13. ADJOURNMENT.—ALTERATION OF HOUR OF MEETING.—The Honorable J. A. Kennedy 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 fifty-one minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,  
*Acting-Clerk of the Legislative Council.*

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## No. 24.

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THURSDAY, 6TH OCTOBER, 1949.

1. The President took the Chair and read the Prayer.
2. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) 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.
3. NORTH-WEST MALLEE SETTLEMENT AREAS (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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.
4. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner moved, That this Bill be now read a second time.  
Debate ensued.  
The Honorable F. M. Thomas 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.
5. VICTORIAN MINING ACCIDENT RELIEF FUND (WINDING-UP) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Winding-up of The Victorian Mining Accident Relief Fund, and for other purposes*" and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. E. McDonald, 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. ADMINISTRATION AND PROBATE DUTIES 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 R. C. Rankin 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. RURAL FINANCE CORPORATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett 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. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 5 to 10 inclusive, be postponed until later this day.

9. JUDGES PENSIONS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.

Debate ensued.

The Honorable F. M. Thomas 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.

10. STATE FORESTS LOAN AND APPLICATION 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. J. Beckett 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 twenty-eight minutes past Six o'clock, adjourned until Tuesday next.

ROY S. SARAH,

*Acting-Clerk of the Legislative Council.*

The first part of the report deals with the general situation of the country. It is noted that the population is increasing rapidly, and that the government is making every effort to improve the living conditions of the people. The report also mentions the progress made in the various branches of industry and agriculture.

In the second part, the author discusses the financial situation of the country. It is stated that the government has managed to reduce its debt and to increase its revenue. This has been achieved through a combination of measures, including the introduction of new taxes and the improvement of the tax system.

The third part of the report deals with the social and educational progress of the country. It is noted that the government has made significant investments in education and social welfare. This has led to a steady improvement in the living standards of the population.

Finally, the author concludes the report by expressing his confidence in the future of the country. He believes that the government's policies are sound and that the country is on a path of steady progress.

The following table shows the population of the country from 1900 to 1910. It is seen that the population has increased by approximately 20% during this period.

Year	Population
1900	10,000,000
1905	12,000,000
1910	14,000,000

The following table shows the government's revenue and expenditure from 1900 to 1910. It is seen that the revenue has increased significantly, while the expenditure has remained relatively stable.

Year	Revenue	Expenditure
1900	100,000,000	120,000,000
1905	150,000,000	130,000,000
1910	200,000,000	140,000,000

The following table shows the government's debt from 1900 to 1910. It is seen that the debt has decreased significantly during this period.

Year	Debt
1900	500,000,000
1905	300,000,000
1910	100,000,000

The following table shows the government's investments in education and social welfare from 1900 to 1910. It is seen that the government has made significant investments in these areas.

Year	Investment
1900	50,000,000
1905	100,000,000
1910	150,000,000

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 24.

TUESDAY, 11<sup>TH</sup> OCTOBER, 1949.

### *Government Business.*

#### NOTICES OF MOTION.—

- \*1. The Hon. J. A. KENNEDY: To move, That so much of the Sessional Orders as provides 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 be rescinded and that for the remainder of the Session Government business shall take precedence of all other business and new business may be taken at any hour.
- \*2. The Hon. J. A. KENNEDY: To move, That so much of the Sessional Orders as provides that the hour of meeting on Wednesdays and Thursdays shall be half-past Four o'clock be suspended and that during the remainder of the Session the Council shall meet on Wednesdays at half-past Three o'clock and on Thursdays at Eleven o'clock.

#### ORDERS OF THE DAY:—

1. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(from Assembly—Hon. A. G. Warner)—Second reading—Resumption of debate (Hon. F. M. Thomas).
2. SOIL CONSERVATION AND LAND UTILIZATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—Resumption of debate (Hon. P. T. Byrnes).
- \*3. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.
- \*4. VICTORIAN MINING ACCIDENT RELIEF FUND (WINDING-UP) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
5. JUDGES PENSIONS BILL—(from Assembly—A. E. McDonald)—Second reading—Resumption of debate (Hon. F. M. Thomas).
6. PORTLAND HARBOR TRUST BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—Resumption of debate (Hon. W. J. Beckett).
7. LEGISLATIVE COUNCIL FRANCHISE BILL—(Hon. J. A. Kennedy)—Consideration of Report.
8. RURAL FINANCE CORPORATION BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—Resumption of debate (Hon. W. J. Beckett).
9. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(Hon. A. G. Warner)—Second reading.
10. LOCAL GOVERNMENT BILL—(Hon. J. A. Kennedy)—Second reading—Resumption of debate (Hon. W. J. Beckett).
11. JUSTICES (SERVICE OF PROCESS) BILL—(Hon. A. E. McDonald)—To be further considered in Committee.
12. STATE FORESTS LOAN AND APPLICATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—Resumption of debate (Hon. W. J. Beckett).
13. CASTLEMAINE LAND BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
14. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

WEDNESDAY, 12<sup>TH</sup> OCTOBER.

*General Business.*

ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

ROY S. SARAH,  
*Acting-Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 25.

WEDNESDAY, 12<sup>TH</sup> OCTOBER, 1949.

### *Questions.*

- \*1. The Hon. W. SLATER: To ask the Honorable the Commissioner of Public Works—Whether the Government, having increased the rates of pensions to members of the Police Force who joined the Force after November, 1902, intends increasing the pensions of ex-members of the Force who joined prior to November, 1902.
- \*2. The Hon. A. M. FRASER: To ask the Honorable the Commissioner of Public Works—How many (a) tons of coke ex works and by contract; (b) tons of breeze ex works; and (c) gallons of tar ex works, are sold annually by the Metropolitan Gas Company.

### *Government Business.*

#### ORDERS OF THE DAY:—

1. SOIL CONSERVATION AND LAND UTILIZATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. P. T. Byrnes).
2. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL—AMENDMENTS OF THE ASSEMBLY—To be further considered.
3. VICTORIAN MINING ACCIDENT RELIEF FUND (WINDING-UP) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
4. JUDGES PENSIONS BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. F. M. Thomas).
5. PORTLAND HARBOR TRUST BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
6. RURAL FINANCE CORPORATION BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
7. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(Hon. A. G. Warner)—Second reading.
8. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(from Assembly—Hon. A. G. Warner)—To be further considered in Committee.
9. LOCAL GOVERNMENT BILL—(Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
10. JUSTICES (SERVICE OF PROCESS) BILL—(Hon. A. E. McDonald)—To be further considered in Committee.
11. STATE FORESTS LOAN AND APPLICATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
12. CASTLEMAINE LAND BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
13. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

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

*General Business.*

## ORDER OF THE DAY:—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(
- Hon. A. M. Fraser*
- )—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.



# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 26.

THURSDAY, 13TH OCTOBER, 1949.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. VICTORIAN MINING ACCIDENT RELIEF FUND (WINDING-UP) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—Resumption of debate (Hon. W. J. Beckett).
2. SOIL CONSERVATION AND LAND UTILIZATION BILL—(from Assembly—Hon. C. P. Gartside)—To be further considered in Committee.
3. PORTLAND HARBOR TRUST BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—Resumption of debate (Hon. W. J. Beckett).
4. STATE FORESTS LOAN AND APPLICATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—Resumption of debate (Hon. W. J. Beckett).
5. LOCAL GOVERNMENT BILL—(Hon. J. A. Kennedy)—Second reading—Resumption of debate (Hon. W. J. Beckett).
6. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(from Assembly—Hon. A. G. Warner)—To be further considered in Committee.
7. RURAL FINANCE CORPORATION BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—Resumption of debate (Hon. W. J. Beckett).
8. CASTLEMAINE LAND BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
- \*9. FORESTS (EXCHANGE OF LANDS) EXTENSION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
10. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

TUESDAY, 18TH OCTOBER.

### *Government Business.*

#### ORDER OF THE DAY :—

1. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(Hon. A. G. Warner)—Second reading—Resumption of debate (Hon. W. J. Beckett).

ROY S. SARAH,  
*Clerk of the Legislative Council.*

R. C. RANKIN,  
*Acting-President.*

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

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS.

No. 25.

TUESDAY, 11TH OCTOBER, 1949.

1. The President took the Chair and read the Prayer.
2. CLERK OF THE LEGISLATIVE COUNCIL—APPOINTMENT OF MR. R. S. SARAH.—The President announced that, by virtue of the powers conferred on him by *The Constitution Act Amendment Act 1928*, he had nominated Mr. Roy Stanley Sarah, previously Clerk-Assistant and Clerk of Committees, for the office of Clerk of the Legislative Council in the place of Mr. H. B. Jamieson, deceased, and that His Excellency the Governor in Council had been pleased to confirm that nomination.
3. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy 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. :—

*Land Tax Act.*  
*Stamps (Increased Duty Continuance) Act.*  
*Railways (Long Service) Act.*  
*Williamstown Lands Act.*  
*Greta Lands Exchange Act.*  
*Consolidated Revenue Act (No. 4).*  
*Superannuation (Amendment) Act.*  
*Mines (Amendment) Act.*  
*Coal (Overseas Purchase) Amendment Act.*  
*Country Roads Board Fund (Amendment) Act.*  
*Lancefield and Kilmore Railway (Disposal of Land) Act.*  
*Treasury Bonds Act.*  
*North-West Mallee Settlement Areas (Amendment) Act.*  
*Administration and Probate Duties Act.*

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

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Broadmeadows, Dandenong, Morwell, and Natimuk (five papers).

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

Melbourne and Metropolitan Tramways Act 1928—Report and Statement of Accounts of the Melbourne and Metropolitan Tramways Board for the year 1948-49.

Motor Car (Third-Party Insurance) Act 1939—Amendment of Regulations—Rates of Insurance Premiums.

Railways Act 1928—Report of the Victorian Railways Commissioners for the year 1948-49.

5. ALTERATION OF SESSIONAL ORDERS.—The Honorable J. A. Kennedy moved, That so much of the Sessional Orders as provides 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 be rescinded and that for the remainder of the Session Government business shall take precedence of all other business and new business may be taken at any hour.

Debate ensued.

Question—put and resolved in the affirmative.

The Honorable J. A. Kennedy moved, That so much of the Sessional Orders as provides that the hour of meeting on Wednesdays and Thursdays shall be half-past Four o'clock be suspended and that during the remainder of the Session the Council shall meet on Wednesdays at half-past Three o'clock and on Thursdays at Eleven o'clock.

Question—put and resolved in the affirmative.

6. LATROBE VALLEY DEVELOPMENT LOAN AND 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 R. C. Rankin reported that the Committee had made progress in the Bill, and had agreed to the following resolution :—

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

1. Clause 3, page 3, at the end of the clause insert the following sub-clause :—

“( ) At any meeting of the committee three shall be a quorum.”

2. Clause 5, line 21, after “ Act ” insert “ Amendment Act ”.

3. Clause 7, line 27, omit “ on the ” and insert “ after considering any relevant ”—

and asked leave to sit again.

On the motion of the Honorable A. G. Warner, the Council adopted the resolution reported from the Committee of the whole.

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

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

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. TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL.—The Order of the Day for the consideration of the amendments made in this Bill by the Assembly having been read, the said amendments were read and are as follow :—

1. Clause 2, sub-clause (1), page 2, interpretation of “ Metropolitan area ” lines 5–13, omit this interpretation and insert :—

“ ‘ Metropolitan area ’ means the area comprised within the municipal districts (as existing at the commencement of this Act) of the municipalities and parts of municipalities referred to in the Schedule to this Act and any other area contiguous therewith or with any area previously declared pursuant to this Act which the Governor in Council by Order published in the *Government Gazette* declares to be added to and to form part of the metropolitan area for the purposes of this Act.”

2. Clause 2, page 2, sub-clause (2), lines 16–18, omit “ the metropolis within the meaning of the Melbourne and Metropolitan Board of Works Acts ” and insert “ the municipal districts or parts of municipal districts referred to in the Schedule to this Act ”.

3. Clause 3, sub-clause (1), line 26, after “ thereof ” insert “ (including; without limiting the generality of the foregoing, the making publication and enforcement of interim development orders in relation thereto) ”.

4. „ page 3, line 10, insert the following sub-clauses to follow sub-clause (4) :—

“(5) In the preparation of any planning scheme and before the publication of any interim development order the Board of Works shall consult with the Council of each municipality whose municipal district or any part of whose municipal district is affected by the scheme or order.

(6) Every interim development order in respect of the whole or any part of the metropolitan area published before the commencement of this Act shall be re-submitted to the Governor in Council by the responsible authority within twelve months after the said commencement, and every such order published after the said commencement shall be so re-submitted within twelve months after the publication thereof, and thereafter every such order shall from time to time be so re-submitted within twelve months after the last publication thereof, and unless the order is again approved by the Governor in Council after consideration of a report by the Board and is re-published as provided in sub-section (2) of section twelve of the Principal Act within fifteen months after the said commencement publication or last publication (as the case may be) it shall cease to have any force or effect.

(7) Any interim development order re-published pursuant to this section may incorporate such modifications of the original or last published order as are proposed by the responsible authority and approved by the Governor in Council after consideration of the report of the Board.”

5. Insert the following Schedule at the end of the Bill :—

“ SCHEDULE.

*Municipal Districts and parts of Municipal Districts comprised in Metropolitan Area.*

The municipal districts of the following cities :—

Box Hill, Brighton, Brunswick, Camberwell, Caulfield, Chelsea, Coburg, Collingwood, Essendon, Fitzroy, Footscray, Hawthorn, Heidelberg, Kew, Malvern, Melbourne, Moorabbin, Mordialloc, Northcote, Nunawading, Oakleigh, Port Melbourne, Prahran, Preston, Richmond, Sandringham, South Melbourne, St. Kilda, Williamstown.

The municipal district of the borough of Ringwood.

The municipal districts of the following shires :—

Braybrook, Dandenong, Doncaster and Templestowe, Keilor, Mulgrave.

So much as lies within a distance of fifteen miles from the post office situate at the corner of Bourke-street and Elizabeth-street in the city of Melbourne of the municipal districts of the following shires :—

Broadmeadows, Bulla, Eltham, Werribee, Whittlesea.

So much as lies within a distance of twenty-six miles from the said post office of the municipal district of the shire of Frankston and Hastings.”

Amendment 1—The Honorable J. A. Kennedy moved, That the Council agree to this amendment made by the Assembly.

The Honorable W. J. Beckett 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 further consideration of the amendments made by the Assembly be postponed until the next day of meeting.

9. VICTORIAN MINING ACCIDENT RELIEF FUND (WINDING-UP) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.

The Honorable W. J. Beckett 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.

10. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 5 and 6, be postponed until later this day.

11. LEGISLATIVE COUNCIL FRANCHISE BILL.—The Order of the Day for the consideration of the Report from the Committee of the whole on this Bill having been read—

The Honorable J. A. Kennedy moved, That the Report be now adopted.

Question—put and resolved in the affirmative.

The Honorable P. Jones moved, That the Bill be now read a third time.

Debate ensued.

Question—put.

The Council divided.

Ayes, 13.

The Hon. W. J. Beckett,  
P. L. Coleman (*Teller*),  
A. M. Fraser,  
T. Harvey (*Teller*),  
P. P. Inchbold,  
P. Jones,  
P. J. Kennelly,  
W. MacAulay,  
W. Slater,  
I. A. Swinburne,  
F. M. Thomas,  
G. J. Tuckett,  
D. J. Walters.

Noes, 15.

The Hon. Sir Frank Beaufort,  
E. P. Cameron (*Teller*),  
G. L. Chandler,  
Sir Frank Clarke,  
C. P. Gartside,  
C. E. Isaac (*Teller*),  
J. A. Kennedy,  
J. F. Kittson,  
Col. G. V. Lansell,  
J. H. Lienhop,  
H. C. Ludbrook,  
G. S. McArthur,  
A. E. McDonald,  
R. C. Rankin,  
A. G. Warner.

And so it passed in the negative.

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

ROY S. SARAH,  
*Clerk of the Legislative Council.*

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## No. 26.

WEDNESDAY, 12TH OCTOBER, 1949.

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 through a family bereavement, the Honorable R. C. Rankin, on the motion of the Honorable J. A. Kennedy, 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. **FORESTS (EXCHANGE OF LANDS) EXTENSION BILL.**—The Acting-President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to further extend the Operation of the ‘ Forests (Exchange of Lands) Act 1943’* ” and desiring the concurrence of the Council therein.

On the motion of the Honorable C. P. Gartside, 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 :—

Anti-Cancer Council Act 1936—Report of the Anti-Cancer Council for the year 1948–49.  
Landlord and Tenant Act 1948—Amendment of Landlord and Tenant Regulations No. 1.

6. **SOIL CONSERVATION AND LAND UTILIZATION 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 Acting-President resumed the Chair; and the Honorable W. MacAulay reported that the Committee had made progress in the Bill, and asked leave to sit again.

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

7. **TOWN AND COUNTRY PLANNING (METROPOLITAN AREA) BILL.**—The Order of the Day for the further consideration of the amendments made by the Assembly in this Bill having been read—  
(For amendments see pages 68 and 69 ante.)

Amendment 1—Debate resumed on the question, That the Council agree to this amendment made by the Assembly.

Question—put and resolved in the affirmative.

Amendments 2 and 3 agreed to.

Amendments 4 and 5, after debate, agreed to.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the amendments made by the Assembly in this Bill.

8. **POSTPONEMENT OF ORDERS OF THE DAY.**—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 3 to 9 inclusive, be postponed until later this day.

9. **JUSTICES (SERVICE OF PROCESS) BILL.**—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the Acting-President left the Chair.

House in Committee.

The Acting-President resumed the Chair; and the Honorable W. MacAulay 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.

10. **JUDGES PENSIONS 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 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 Acting-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 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.

11. **BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL.**—The order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner moved, That this Bill be now read a second time.

The Honorable P. T. Byrnes for the Honorable W. J. Beckett moved, That the debate be now adjourned.

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

Ordered—That the debate be adjourned until Tuesday next.

12. **ADJOURNMENT.**—The Honorable J. A. Kennedy moved, That the House do now adjourn.  
Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,  
Clerk of the Legislative Council.

## No. 27.

THURSDAY, 13TH OCTOBER, 1949.

1. The Acting-President took the Chair and read the Prayer.
2. PUBLIC ACCOUNT ADVANCES (AMENDMENT) BILL.—The Acting-President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Seven and Eight of the 'Public Account Advances Act 1924'*" and desiring the concurrence of the Council therein. On the motion of the Honorable A. G. Warner, 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. VICTORIAN MINING ACCIDENT RELIEF FUND (WINDING-UP) 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 Acting-President resumed the Chair; and the Honorable G. L. Chandler 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. SOIL CONSERVATION AND LAND UTILIZATION BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the Acting-President left the Chair.  
House in Committee.  
The Acting-President resumed the Chair; and the Honorable G. L. Chandler reported that the Committee had agreed to the Bill with amendments.  
On the motion of the Honorable C. P. Gartside, the Bill was re-committed to a Committee of the whole in respect of clause 5.  
House in Committee.  
The Acting-President resumed the Chair; and the Honorable G. L. Chandler having reported that the Committee had agreed to the Bill with a further 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 amendments and desiring their concurrence therein.
5. PORTLAND HARBOR TRUST 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 Acting-President resumed the Chair; and the Honorable P. Jones 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.
6. ADJOURNMENT.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Wednesday next.  
Question—put and resolved in the affirmative.

And then the Council, at forty-seven minutes past Four o'clock, adjourned until Wednesday next.

ROY S. SARAH,  
*Clerk of the Legislative Council.*





# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 27.

WEDNESDAY, 19TH OCTOBER, 1949.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. STATE FORESTS LOAN AND APPLICATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
2. RURAL FINANCE CORPORATION BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
3. LOCAL GOVERNMENT BILL—(Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
4. FORESTS (EXCHANGE OF LANDS) EXTENSION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
5. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(Hon. A. G. Warner)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
- \*6. PUBLIC ACCOUNT ADVANCES (AMENDMENT) BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
7. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(from Assembly—Hon. A. G. Warner)—To be further considered in Committee.
8. CASTLEMAINE LAND BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
9. ST. GEORGE'S HOSPITAL BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

R. C. RANKIN,  
*Acting-President.*

### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 28.

THURSDAY, 20<sup>TH</sup> OCTOBER, 1949.

### *Government Business.*

#### ORDERS OF THE DAY:—

1. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(*Hon. A. G. Warner*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
2. LOCAL GOVERNMENT BILL—(*Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
3. FORESTS (EXCHANGE OF LANDS) EXTENSION BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
4. PUBLIC ACCOUNT ADVANCES (AMENDMENT) BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
5. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(*from Assembly—Hon. A. G. Warner*)—To be further considered in Committee.
6. RURAL FINANCE CORPORATION BILL—(*from Assembly—Hon. A. E. McDonald*)—To be further considered in Committee.
7. CASTLEMAINE LAND BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
8. ST. GEORGE'S HOSPITAL BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.

### *General Business.*

#### ORDER OF THE DAY:—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS.

No. 28.

WEDNESDAY, 19TH OCTOBER, 1949.

1. The President took the Chair and read the Prayer.
2. ADDRESS OF WELCOME TO HIS EXCELLENCY THE GOVERNOR.—The Honorable A. G. Warner moved, by leave, That the Council agree to the following Address to His Excellency the Governor, viz. :—  
MAY IT PLEASE YOUR EXCELLENCY—

We, His Majesty's faithful and loyal subjects, the Members of the Legislative Council of Victoria, in Parliament assembled, desire to convey to Your Excellency the expression of our loyalty to His Majesty's Throne and Person, and our regard for the high office which His Majesty has been pleased to confer upon Your Excellency.

We extend to Your Excellency on behalf of the people of this State a cordial welcome to Victoria, and we beg that Your Excellency will receive our assurances that we shall at all times readily co-operate with Your Excellency in advancing the welfare of this part of His Majesty's Dominions beyond the Seas, and in preserving the connexion with the Mother Country.

Debate ensued.

Question—put and resolved in the affirmative.

Ordered—That the said Address be presented to His Excellency the Governor by the President and Members of the Council.

3. 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—

Administrative Division—

Department of Law.

Department of Public Works.

Professional Division—Department of Public Works.

Technical and General Division—

Department of Health.

Departments of Treasurer and Public Works.

Temporary Employees—Department of Agriculture.

Part V.—Travelling Expenses (three papers).

Teaching Service Act 1946—Amendment of Regulations—

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

Teaching Service (Teachers' Tribunal) Regulations.

4. STATE FORESTS LOAN AND 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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

5. RURAL FINANCE CORPORATION 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 Deputy-President resumed the Chair; and the Honorable W. MacAulay reported that the Committee had made progress in the Bill, and had agreed to the following resolution:—

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

Clause 47, line 6, omit "*Wire Netting Act 1928*"—

and asked leave to sit again.

On the motion of the Honorable A. E. McDonald, the Council adopted the resolution reported from the Committee of the whole.

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

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

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

ROY S. SARAH,  
*Clerk of the Legislative Council.*

## No. 29.

THURSDAY, 20<sup>TH</sup> OCTOBER, 1949.

1. The President took the Chair and read the Prayer.
2. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (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 R. C. Rankin reported that the Committee had made progress in the Bill, and asked leave to sit again.  
Resolved—That the Council will, on the next day of meeting, again resolve itself into the said Committee.
3. 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.
4. FORESTS (EXCHANGE OF LANDS) EXTENSION 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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.
5. LOCAL GOVERNMENT BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.  
House in Committee.  
The President resumed the Chair; and the Honorable G. L. Chandler reported that the Committee had made progress in the Bill, and asked leave to sit again.  
Resolved—That the Council will, on the next day of meeting, again resolve itself into the said Committee.
6. LEGAL PROFESSION PRACTICE 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. PAPER.—The following Paper, pursuant to the direction of an Act of Parliament, was laid upon the Table by the Clerk:—  
Zoological Gardens Act 1936—Amendment of Regulations—Admission Charges.
8. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 4 to 7 inclusive, be postponed until the next day of meeting.
9. ST. GEORGE'S HOSPITAL BILL.—DISCHARGE OF ORDER OF THE DAY.—The Order of the Day for the second reading of this Bill having been read, the Honorable C. P. Gartside moved, That the said Order be discharged.  
Debate ensued.  
Question—put and resolved in the affirmative.

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

ROY S. SARAH,  
*Clerk of the Legislative Council.*

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 29.

TUESDAY, 25TH OCTOBER, 1949.

### *Government Business.*

#### NOTICES OF MOTION :—

- \*1. The Hon. C. P. GARTSIDE : To move, That he have leave to bring in a Bill to amend Section Nineteen of the *Health Act 1935*.
- \*2. The Hon. C. P. GARTSIDE : To move, That he have leave to bring in a Bill to amend the Law relating to Masseurs.

#### ORDERS OF THE DAY :—

- 1. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(*Hon. A. G. Warner*)—To be further considered in Committee.
- 2. CASTLEMAINE LAND BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- 3. LOCAL GOVERNMENT BILL—(*Hon. J. A. Kennedy*)—To be further considered in Committee.
- 4. PUBLIC ACCOUNT ADVANCES (AMENDMENT) BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- 5. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(*from Assembly—Hon. A. G. Warner*)—To be further considered in Committee.
- 6. RURAL FINANCE CORPORATION BILL—(*from Assembly—Hon. A. E. McDonald*)—To be further considered in Committee.

### *General Business.*

#### ORDER OF THE DAY :—

- 1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 30.

WEDNESDAY, 26TH OCTOBER, 1949.

### *Government Business.*

#### NOTICE OF MOTION :—

- \*1. The Hon. J. A. KENNEDY : To move, That he have leave to bring in a Bill to amend the *Local Authorities Superannuation Act 1947*.

#### ORDERS OF THE DAY :—

1. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL—(*Hon. A. G. Warner*)—To be further considered in Committee.
2. PUBLIC ACCOUNT ADVANCES (AMENDMENT) BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
3. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL—(*from Assembly—Hon. A. G. Warner*)—To be further considered in Committee.
4. RURAL FINANCE CORPORATION BILL—(*from Assembly—Hon. A. E. McDonald*)—To be further considered in Committee.
- \*5. HEALTH (CATTLE) BILL—(*Hon. C. P. Gartside*)—Second reading.
- \*6. MASSEURS (REGISTRATION) BILL—(*Hon. C. P. Gartside*)—Second reading.
- \*7. CO-OPERATIVE HOUSING SOCIETIES BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- \*8. VERMIN AND NOXIOUS WEEDS BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
- \*9. WATER SUPPLY LOAN AND APPLICATION BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

VICTORIA.

LEGISLATIVE COUNCIL

MINUTES OF THE PROCEEDINGS.

No. 30.

TUESDAY, 25TH OCTOBER, 1949.

- 1. The President took the Chair and read the Prayer.
- 2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable J. A. Kennedy 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. :—

*Judges Pensions Act.*  
*Town and Country Planning (Metropolitan Area) Act.*  
*State Forests Loan and Application Act.*  
*Legal Profession Practice Act.*  
*Forests (Exchange of Lands) Extension Act.*  
*Victorian Mining Accident Relief Fund (Winding-up) Act.*

- 3. CO-OPERATIVE HOUSING SOCIETIES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend the ‘Co-operative Housing Societies Act 1944’*, and for other purposes ” and desiring the concurrence of the Council therein.

On the motion of the Honorable A. G. Warner, 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. VERMIN AND NOXIOUS WEEDS 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 Vermin and Noxious Weeds* ” and desiring the concurrence of the Council therein.

On the motion of the Honorable C. P. Gartside, 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. WATER SUPPLY LOAN AND APPLICATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to authorize the Raising of Money for Irrigation Works, Water Supply Works, Drainage Flood Protection and River Improvement Works in Country Districts and Works under the River Murray Waters Acts, and to sanction the Issue and Application of the Money so raised and of other Money available for such purposes under Loan Acts or in the State Loans Repayment Fund, and for other purposes* ” and desiring the concurrence of the Council therein.

On the motion of the Honorable J. A. Kennedy, 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. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that the Assembly, having considered the Message of the Council suggesting on the consideration of the Bill in Committee that the Assembly make certain amendments in such Bill, have made the suggested amendments.

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

- 7. PORTLAND HARBOR TRUST 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.

- 8. VICTORIAN MINING ACCIDENT RELIEF FUND (WINDING-UP) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

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

Police Regulation Act 1946—Determination No. 23 of the Police Classification Board.  
 Teaching Service Act 1946—Amendment of Teaching Service (Teachers Tribunal) Regulations.

- 10. HEALTH (CATTLE) BILL.—On the motion of the Honorable C. P. Gartside, leave was given to bring in a Bill to amend Section Nineteen of the *Health Act 1935*, 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.

11. MASSEURS (REGISTRATION) BILL.—On the motion of the Honorable C. P. Gartside, leave was given to bring in a Bill to amend the Law relating to Masseurs, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.
12. 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.
13. CASTLEMAINE LAND BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable R. C. Rankin 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 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 R. C. Rankin 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 two minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,  
Clerk of the Legislative Council.

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## No. 31.

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WEDNESDAY, 26TH OCTOBER, 1949.

1. The President took the Chair and read the Prayer.
2. PUBLIC WORKS LOAN AND APPLICATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to authorize the Raising of further Money for Public Works and other purposes and to sanction the Issue and Application for such Purposes of the Money so raised or of Money in the State Loans Repayment Fund, and for other purposes*" and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, 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. RURAL FINANCE CORPORATION BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that the Assembly, having considered the Message of the Council suggesting on the consideration of the Bill in Committee that the Assembly make a certain amendment in such Bill, have made the suggested amendment.  
Ordered, after debate—That the foregoing Message be referred to the Committee of the whole on the Bill.
4. SOIL CONSERVATION AND LAND UTILIZATION BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.
5. LOCAL AUTHORITIES SUPERANNUATION (AMENDMENT) BILL.—On the motion of the Honorable J. A. Kennedy, leave was given to bring in a Bill to amend the *Local Authorities Superannuation Act 1947*, 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.
6. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (AMENDMENT) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.  
House in Committee.  
The President resumed the Chair; and the Honorable R. C. Rankin 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.



7. PUBLIC ACCOUNT ADVANCES (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 G. L. Chandler having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.
8. LATROBE VALLEY DEVELOPMENT LOAN AND APPLICATION 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 W. MacAulay having reported that the Committee had agreed to the Bill, including the amendments made by the Assembly which were suggested by the Council, without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the Bill, including the amendments made by the Assembly which were suggested by the Council, without amendment.
9. RURAL FINANCE CORPORATION 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 R. C. Rankin reported that the Committee had agreed to the Bill, including the amendment made by the Assembly which was suggested by the Council, with an amendment.  
On the motion of the Honorable P. T. Byrnes, the Bill was re-committed to a Committee of the whole in respect of clause 43.  
House in Committee.  
The President resumed the Chair; and the Honorable R. C. Rankin having reported that the Committee had agreed to the Bill without further 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 Bill, including the amendment made by the Assembly which was suggested by the Council, with an amendment and desiring their concurrence therein.
10. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 5 and 6, be postponed until later this day.
11. CO-OPERATIVE HOUSING SOCIETIES BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.  
House in Committee.  
The President resumed the Chair; and the Honorable R. C. Rankin having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same with an amendment and desiring their concurrence therein.
12. HEALTH (CATTLE) 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. J. Beckett 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. MASSEURS (REGISTRATION) 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. J. Beckett 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. LOCAL AUTHORITIES SUPERANNUATION (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett 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.

15. ADJOURNMENT.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until Wednesday next.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,  
*Clerk of the Legislative Council.*

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 31.

WEDNESDAY, 2ND NOVEMBER, 1949.

### *Question.*

- \*1. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Health—What number of cattle from Werribee Sewerage Farm was slaughtered under supervision during the year ended 30th June, 1949, and what number was found to be infected with beef measles.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. VERMIN AND NOXIOUS WEEDS BILL—(from Assembly—Hon. C. P. Garstide)—Second reading.
2. WATER SUPPLY LOAN AND APPLICATION BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
3. HEALTH (CATTLE) BILL—(Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
- \*4. PUBLIC WORKS LOAN AND APPLICATION BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
5. MASSEURS (REGISTRATION) BILL—(Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
- \*6. LOCAL AUTHORITIES SUPERANNUATION (AMENDMENT) BILL—(Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 32.

THURSDAY, 3RD NOVEMBER, 1949.

### *Government Business.*

#### NOTICE OF MOTION :—

1. The Hon. J. A. KENNEDY : To move, That during the remainder of the Session the Council shall meet for the despatch of business on Fridays and that Eleven o'clock shall be the hour of meeting.

#### ORDERS OF THE DAY :—

1. VERMIN AND NOXIOUS WEEDS BILL—(from Assembly—Hon. C. P. Garstide)—Second reading.
2. FIRE BRIGADES (APPEAL TRIBUNAL) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
3. LIQUID FUEL BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
4. LOCAL AUTHORITIES SUPERANNUATION (AMENDMENT) BILL—(Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
5. PUBLIC WORKS LOAN AND APPLICATION BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

VICTORIA.

LEGISLATIVE COUNCIL

MINUTES OF THE PROCEEDINGS.

No. 32.

WEDNESDAY, 2ND NOVEMBER, 1949.

- 1. The President took the Chair and read the Prayer.
- 2. PRESENTATION OF ADDRESS OF WELCOME TO HIS EXCELLENCY THE GOVERNOR.—The President reported that, accompanied by Honorable Members, he had, this day, waited upon His Excellency the Governor and had presented to him the Address of the Legislative Council which was agreed to on the 19th October last, and that His Excellency had been pleased to make the following reply :—

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

In the name and on behalf of His Majesty the King I thank you for the expression of loyalty to His Majesty's Throne and Person, and it will afford me great pleasure to convey to His Majesty the sentiments expressed in the Address which you have just presented to me.

For the cordial and friendly welcome which you, on behalf of the people of this State, have extended to me, I thank you sincerely and I assure you that it will always be my earnest wish to associate myself with you in advancing the welfare of this part of His Majesty's Dominions, and in preserving the close connexion which so happily exists between the Mother Country and our State.

- 3. LIQUID FUEL BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Equitable Distribution of Supplies of Liquid Fuel available in Victoria, and for other purposes*" and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. G. Warner, 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. MOTHERCRAFT NURSES BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.
- 5. RURAL FINANCE CORPORATION 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.
- 6. CO-OPERATIVE HOUSING SOCIETIES BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendment made by the Council in this Bill.
- 7. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Adult Education Act 1946—Report of the Council of Adult Education for the year 1948-49.

Apprenticeship Acts—Amendment of Regulations—

- Dental Mechanic Trade Regulations (No. 2).
- Fibrous Plaster Trade Regulations.
- Pastrycook Trade Regulations (Nos. 1 and 2).
- Plumbing and Gasfitting Trades 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 Sale.

Mental Hygiene Act 1928—Report of the Director of Mental Hygiene for the year 1948.

Police Regulation Acts—Amendment of the Police Regulations.

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

Professional Division—

- Department of Agriculture.
- Department of Health (two papers).
- Departments of Treasurer, Agriculture and Water Supply.

Technical and General Division—

- Departments of Agriculture and Water Supply.
- General and Department of Treasurer.

Temporary Employees—General and Department of Treasurer.

Transport Regulation Acts—Report of the Transport Regulation Board for the year 1948-49.

- 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. WATER SUPPLY LOAN AND APPLICATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.

The Honorable W. J. Beckett 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.

10. HEALTH (CATTLE) 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 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 later this day.

11. CO-OPERATIVE HOUSING SOCIETIES 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 2, sub-clause (2), line 19, the word “inserted” has been inserted instead of the word “substituted”, and acquainting the Council that they have agreed that such error be corrected by the insertion of the word “substituted” instead of the word “inserted” in clause 2, sub-clause (2), line 19, and desiring the concurrence of the Council therein.

On the motion of the Honorable J. A. Kennedy, and after debate, 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.

12. 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.

13. MASSEURS (REGISTRATION) 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 R. C. Rankin 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.

14. FIRE BRIGADES (APPEAL TRIBUNAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act to provide for the Constitution Functions and Proceedings of a Metropolitan Fire Brigades Appeal Tribunal, and for other purposes*” and desiring the concurrence of the Council therein.

On the motion of the Honorable A. E. McDonald, 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. HEALTH (CATTLE) 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 with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

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

16. WATER SUPPLY LOAN AND 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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

17. PUBLIC WORKS LOAN AND APPLICATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.

The Honorable W. J. Beckett 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 thirty-five minutes past Ten o'clock, adjourned until to-morrow.

## No. 33.

THURSDAY, 3RD NOVEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. CONSOLIDATED REVENUE BILL (No. 5).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to apply out of the Consolidated Revenue the sum of Twenty million one hundred and ninety-two thousand and fourteen pounds to the service of the year One thousand nine hundred and forty-nine and One thousand nine hundred and fifty* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.
3. ALTERATION OF SESSIONAL ORDERS.—The Honorable J. A. Kennedy moved, That during the remainder of the Session the Council shall meet for the despatch of business on Fridays and that Eleven o'clock shall be the hour of meeting.  
Debate ensued.  
Question—put and resolved in the affirmative.
4. VERMIN AND NOXIOUS WEEDS 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 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.
5. FIRE BRIGADES (APPEAL TRIBUNAL) 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 R. C. Rankin 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. CONSOLIDATED REVENUE BILL (No. 5).—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 R. C. Rankin 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. LIQUID FUEL BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner moved, That this Bill be now read a second time.  
The Honorable P. L. Coleman moved, That the debate be now adjourned.  
Question—That the debate be now adjourned—put and resolved in the affirmative.  
Ordered—That the debate be adjourned until the next day of meeting.
8. LOCAL AUTHORITIES SUPERANNUATION (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 Sir William Angliss 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.
9. ADJOURNMENT.—The Honorable J. A. Kennedy 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 seventeen minutes past Three o'clock, adjourned until Tuesday next.

ROY S. SARAH,  
Clerk of the Legislative Council.





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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 33.

TUESDAY, 8TH NOVEMBER, 1949.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. VERMIN AND NOXIOUS WEEDS BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. P. T. Byrnes).
2. LIQUID FUEL BILL—(from Assembly—Hon. A. G. Warner)—Second reading—*Resumption of debate* (Hon. P. L. Coleman).
3. PUBLIC WORKS LOAN AND APPLICATION BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 34.

WEDNESDAY, 9TH NOVEMBER, 1949.

### *Questions.*

- \*1. The Hon. P. L. COLEMAN: To ask the Honorable the Commissioner of Public Works—Has the Government received a report from the Town and Country Planning Board regarding the widening of Bridge-road, Richmond; if so (i) is it the intention of the Government to have same printed; and (ii) has the Government taken or contemplated taking action on the report.
- \*2. The Hon. J. H. LIENHOP: To ask the Honorable the Commissioner of Public Works—
- (a) Does the Government consider to be satisfactory the present system of contracts for the covering of dangerous unprotected shafts in Bendigo and other gold mining districts; if not, will the Government undertake to provide a gang of three experienced full-time men to be employed under supervision of a mining inspector in the covering of all shafts.
  - (b) In whom is vested the lands upon which old mining shafts are now situated.
  - (c) Was any condition included in mining leases prior to 1935 requiring the lessees to adequately protect the public during and upon cessation of mining operations.
  - (d) What is the number of shafts unprotected and believed to be dangerous in Bendigo and other mining districts; if such information is not available, will the Government undertake to have a survey made forthwith.
  - (e) Will the Government undertake to make available an adequate sum of money for removal of sand dumps and improving areas left unsightly by former mining activities with the view of co-operating with the appropriate authorities for the purpose of making such areas available for children's playgrounds, recreation and other public purposes.
- \*3. The Hon. A. M. FRASER: To ask the Honorable the Minister in Charge of Housing—
- (a) What authority is responsible for (i) the construction; (ii) maintenance and repair; and (iii) the safety of users of the streets in the West Heidelberg Housing Settlement and, in particular, Laws-street, West Heidelberg.
  - (b) Has the Minister seen the report of the narrow escape from death by drowning of a child in Laws-street, West Heidelberg; if so, will he indicate what action has been or will be taken to guard against such possibilities in the future.
- \*4. The Hon. A. M. FRASER: To ask the Honorable the Minister in Charge of Housing—In respect of the land known as the Northcote—East Preston railway land, which was blanketed by the Housing Commission, what is the policy of the Commission in relation to (i) releasing lots from the blanket; and (ii) the sale of lots actually acquired by the Commission.

### *Government Business.*

#### NOTICE OF MOTION :—

- \*1. The Hon. A. E. McDONALD: To move, That he have leave to bring in a Bill to amend Section Thirty-seven of the *Police Offences Act 1928*.

#### ORDERS OF THE DAY :—

- \*1. RAILWAY LOAN APPLICATION BILL—(from Assembly—Hon. J. A. Kennedy)—To be further considered in Committee.
2. VERMIN AND NOXIOUS WEEDS BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—Resumption of debate (Hon. C. E. McNally).
3. PUBLIC WORKS LOAN AND APPLICATION BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—Resumption of debate (Hon. W. J. Beckett).
- \*4. MOTOR CAR (REGISTRATION) BILL—(from Assembly—Hon. A. G. Warner)—Second reading.

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

- \*5. BARWON RIVER IMPROVEMENT (AMENDMENT) BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
- \*6. LAND (GRANTS AND LEASES) BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- \*7. GEELONG WATERWORKS AND SEWERAGE BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.

*General Business.*

ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

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THURSDAY, 10<sup>TH</sup> NOVEMBER.

*Government Business.*

ORDER OF THE DAY :—

- \*1. BREAD INDUSTRY BILL—(*Hon. A. E. McDonald*)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

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MEETING OF SELECT COMMITTEE.

*Wednesday, 16th November.*

LIBRARY (JOINT)—*At half-past Twelve o'clock.*

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SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 35.

THURSDAY, 10<sup>TH</sup> NOVEMBER, 1949.

### *Question.*

1. The Hon. A. M. FRASER: To ask the Honorable the Minister in Charge of Housing—
  - (a) What authority is responsible for (i) the construction; (ii) maintenance and repair; and (iii) the safety of users of the streets in the West Heidelberg Housing Settlement and, in particular, Laws-street, West Heidelberg.
  - (b) Has the Minister seen the report of the narrow escape from death by drowning of a child in Laws-street, West Heidelberg; if so, will he indicate what action has been or will be taken to guard against such possibilities in the future.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. PUBLIC WORKS LOAN AND APPLICATION BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
2. MOTOR CAR (REGISTRATION) BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
3. BARWON RIVER IMPROVEMENT (AMENDMENT) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
4. LAND (GRANTS AND LEASES) BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
5. GEELONG WATERWORKS AND SEWERAGE BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
6. BREAD INDUSTRY BILL—(Hon. A. E. McDonald)—Second reading.
7. VERMIN AND NOXIOUS WEEDS BILL—(from Assembly—Hon. C. P. Gartside)—To be further considered in Committee.
8. POLICE OFFENCES (AMENDMENT) BILL—(Hon. A. E. McDonald)—Second reading.
9. METROPOLITAN GAS COMPANY'S BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

ROY S. SARAH,  
Clerk of the Legislative Council.

CLIFDEN EAGER,  
President.

# MEETING OF SELECT COMMITTEE.

Wednesday, 16th November.

LIBRARY (JOINT)—*At half-past Twelve o'clock.*

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS.

## No. 34.

TUESDAY, 8TH NOVEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable J. A. Kennedy 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 4th instant—
    - Consolidated Revenue Act (No. 5).*
  - On the 8th instant—
    - Castlemaine Land Act.*
    - Soil Conservation and Land Utilization Act.*
    - Public Account Advances (Amendment) Act.*
    - Mothercraft Nurses Act.*
    - Rural Finance Corporation Act.*
    - Co-operative Housing Societies Act.*
    - Latrobe Valley Development Loan and Application Act.*
3. BARWON RIVER IMPROVEMENT (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend the ‘ Barwon River Improvement Act 1939’ , and for other purposes* ” and desiring the concurrence of the Council therein.
 

On the motion of the Honorable A. E. McDonald, 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. MOTOR CAR (REGISTRATION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend Section Six of the ‘ Motor Car (Amendment) Act 1942’ ”* and desiring the concurrence of the Council therein.
 

On the motion of the Honorable A. G. Warner, 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. LAND (GRANTS AND LEASES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend Sections Twelve and One hundred and twenty-five of the ‘ Land Act 1928’ ”* and desiring the concurrence of the Council therein.
 

On the motion of the Honorable A. G. Warner, 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. 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 certain Sums of Moneys available for Railways under Loan Acts or in the State Loans Repayment Fund, and for other purposes* ” and desiring the concurrence of the Council therein.
 

On the motion of the Honorable J. A. Kennedy, 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. BREAD INDUSTRY BILL.—On the motion (by leave without notice) of the Honorable A. E. McDonald, leave was given to bring in a Bill relating to the Bread Industry, and the said Bill was read a first time and ordered to be printed and to be read a second time on Thursday next.

8. 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 vary the Proclamation respecting Fishing Licences and renewal of such Licences.
- Hospitals and Charities Act 1948—Report of the Hospitals and Charities Commission for the year 1948–49.
- Motor Car (Third-Party) Insurance Act 1939—Statistical Returns by Authorized Insurers for the year 1948–49.
- Teaching Service Act 1946—Amendment of Regulations—  
Teaching Service (Classification, Salaries and Allowances) Regulations.  
Teaching Service (Teachers Tribunal) Regulations.
- 9 VERMIN AND NOXIOUS WEEDS 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 C. E. McNally 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.
10. GEELONG WATERWORKS AND SEWERAGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to reconstitute the Geelong Waterworks and Sewerage Trust and to amend the Geelong Waterworks and Sewerage Acts, and for other purposes* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy for the Honorable A. E. McDonald, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.
11. LIQUID FUEL 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 R. C. Rankin 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. 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 R. C. Rankin reported that the Committee had made progress in the Bill, and asked leave to sit again.  
Resolved—That the Council will, on the next day of meeting, again resolve itself into the said Committee.
13. ADJOURNMENT.—ALTERATION OF HOUR OF MEETING.—The Honorable J. A. Kennedy 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 twelve minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

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## No. 35.

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WEDNESDAY, 9TH NOVEMBER, 1949.

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 :—
  - Hospitals and Charities Act 1948—Certificate of the Minister of Health relating to the proposed compulsory resumption of land for the purposes of St. Vincent's Hospital.
  - Melbourne and Metropolitan Tramways Act 1928—Copy of Special Construction Scheme in its final form, Copy of Report of the Public Works Committee thereon in its final form, and Copy of Recommendation of the Melbourne and Metropolitan Tramways Board relating to the construction of an electric tramway in Burwood-road and Camberwell-road, Hawthorn, from Power-street to Burke-road, within the Municipality of Hawthorn.

3. **POLICE OFFENCES (AMENDMENT) BILL.**—On the motion of the Honorable A. E. McDonald, leave was given to bring in a Bill to amend Section Thirty-seven of the *Police Offences Act 1928*, and the said Bill was read a first time and ordered to be printed and, by leave and after debate, to be read a second time later this day.

4. **RAILWAY LOAN APPLICATION 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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

5. **VERMIN AND NOXIOUS WEEDS 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 R. C. Rankin reported that the Committee had made progress in the Bill, and asked leave to sit again.

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

6. **MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.**—The Honorable J. A. Kennedy presented a Message from His Excellency the Governor, informing the Council that he had, this day, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—

*Liquid Fuel Act.*

7. **METROPOLITAN GAS COMPANY'S BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Increase of the Capital and the Subdivision of the Shares of The Metropolitan Gas Company and to re-enact Section Two hundred and forty-nine of and to amend consequentially 'The Metropolitan Gas Company's Act 1878'*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

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

Debate ensued.

Question—put and resolved in the affirmative.

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

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

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

ROY S. SARAH,  
Clerk of the Legislative Council.

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## No. 36.

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THURSDAY, 10TH NOVEMBER, 1949.

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

2. **PRICES REGULATION BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to extend the Operation of and amend the Prices Regulation Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable A. G. Warner, 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. **HEALTH (TUBERCULOSIS ARRANGEMENT) BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to ratify and approve an Arrangement with the Commonwealth of Australia with respect to Tuberculosis, to provide for the Appointment of a Director of Tuberculosis, and for other purposes*" and desiring the concurrence of the Council therein.

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



4. LOCAL AUTHORITIES SUPERANNUATION (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.
5. PUBLIC WORKS LOAN AND 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 R. C. Rankin 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. MOTOR CAR (REGISTRATION) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.
- House in Committee.
- The Deputy-President resumed the Chair; and the Honorable Sir William Angliss 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. BARWON RIVER IMPROVEMENT (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.
- House in Committee.
- The Deputy-President resumed the Chair; and the Honorable W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.
- Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.
8. LAND (GRANTS AND LEASES) 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.
9. GEELONG WATERWORKS AND SEWERAGE BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.
- House in Committee.
- The President resumed the Chair; and the Honorable W. MacAulay 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. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 6 and 7, be postponed until later this day.
11. POLICE OFFENCES (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.
- The Honorable W. J. Beckett moved, That the debate be now adjourned.
- Question—That the debate be now adjourned—put and resolved in the affirmative.
- Ordered—That the debate be adjourned until the next day of meeting.
12. METROPOLITAN GAS COMPANY'S BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.
- The Honorable W. J. Beckett 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. MOTOR CAR (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Motor Car Acts*" and desiring the concurrence of the Council therein.
- On the motion of the Honorable A. E. McDonald, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

14. BREAD INDUSTRY BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett 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.
15. ADJOURNMENT.—The Honorable J. A. Kennedy 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 Five o'clock, adjourned until Tuesday next.

ROY S. SARAH.  
*Clerk of the Legislative Council.*



# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 36.

TUESDAY, 15TH NOVEMBER, 1949.

### *Questions.*

- \*1. The Hon I. A. SWINBURNE : To ask the Honorable the Commissioner of Public Works—Who were the tenderers for the recent contract for the supply of meat at the Kiewa hydro-electricity works, what were the respective prices submitted by them, and who was the successful tenderer.
- \*2. The Hon. P. L. COLEMAN : To ask the Honorable the Commissioner of Public Works—
- (a) What retiring allowance will the Chairman of the Railways Commissioners, Mr. Harris, receive when he retires at the end of this year.
  - (b) For what length of time would he have had to be re-appointed to reach the usual retiring age.
  - (c) What retiring allowance would he have received had he been re-appointed for that period.
  - (d) Were there special reasons why Mr. Harris should not have been re-appointed for the period mentioned.
- \*3. The Hon. T. HARVEY : To ask the Honorable the Minister in Charge of Housing—
- (a) (i) On what date did the Housing Commission take possession of the Air Force huts at the Ascot Vale end of the Royal Agricultural Showgrounds, (ii) what amount has been paid to the Royal Agricultural Society by the Commission for the use of the land occupied by the huts, (iii) does the Commission pay the rates and other charges on the land, (iv) what is the number of tenants of the huts, (v) what is the total amount received in rent, and (vi) what is the total amount of arrears of rent.
  - (b) (i) What is the amount paid by the Commission to the Society for the use of the brick house owned by the Society at the Flemington end of the Showgrounds, (ii) what is the number of tenants of the house, (iii) what is the total amount received in rent, and (iv) what is the total amount of arrears of rent.
  - (c) (i) How many huts are adjacent to the above-mentioned brick house, (ii) are they still the property of the Federal Government or have they been purchased by the Commission ; if so, what price was paid, (iii) what is the number of tenants of the huts, and (iv) what is the total amount received in rent.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. POLICE OFFENCES (AMENDMENT) BILL—(*Hon. A. E. McDonald*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
2. VERMIN AND NOXIOUS WEEDS BILL—(*from Assembly—Hon. C. P. Gartside*)—To be further considered in Committee.
3. BREAD INDUSTRY BILL—(*Hon. A. E. McDonald*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
4. METROPOLITAN GAS COMPANY'S BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading—*Resumption of debate (Hon. W. J. Beckett)*.
- \*5. PRICES REGULATION BILL—(*from Assembly—Hon. A. G. Warner*)—Second reading.
- \*6. HEALTH (TUBERCULOSIS ARRANGEMENT) BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
- \*7. MOTOR CAR (AMENDMENT) BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—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.

## MEETING OF SELECT COMMITTEE.

Wednesday, 16th November.

LIBRARY (JOINT)—*At half-past Twelve o'clock.*

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 37.

WEDNESDAY, 16TH NOVEMBER, 1949.

### *Government Business.*

#### ORDERS OF THE DAY:—

1. BREAD INDUSTRY BILL—(Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
2. METROPOLITAN GAS COMPANY'S BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
3. PRICES REGULATION BILL—(from Assembly—Hon. A. G. Warner)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
4. HEALTH (TUBERCULOSIS ARRANGEMENT) BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
5. MOTOR CAR (AMENDMENT) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
- \*6. REVOCATION AND EXCISION OF CROWN RESERVATIONS BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
- \*7. APPROPRIATION BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.

### *General Business.*

#### ORDER OF THE DAY:—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

## SESSIONAL COMMITTEES.

- ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.
- STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.
- STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.
- HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.
- LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.
- PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 38.

THURSDAY, 17TH NOVEMBER, 1949.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. PRICES REGULATION BILL—(*from Assembly—Hon. A. G. Warner*)—To be further considered in Committee.
2. HEALTH (TUBERCULOSIS ARRANGEMENT) BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
3. MOTOR CAR (AMENDMENT) BILL—(*from Assembly—Hon. A. E. McDonald*)—Second reading.
- \*4. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.
- \*5. MASSEURS (REGISTRATION) BILL—AMENDMENT OF THE ASSEMBLY—To be considered.
6. REVOCATION AND EXCISION OF CROWN RESERVATIONS BILL—(*from Assembly—Hon. C. P. Gartside*)—Second reading.
7. APPROPRIATION BILL—(*from Assembly—Hon. J. A. Kennedy*)—Second reading.

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(*Hon. A. M. Fraser*)—Second reading.

TUESDAY, 22ND NOVEMBER, 1949.

### *Government Business.*

#### ORDER OF THE DAY :—

1. BREAD INDUSTRY BILL—(*Hon. A. E. McDonald*)—Second reading—*Resumption of debate (Hon. J. H. Lienhop).*

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

VICTORIA.

LEGISLATIVE COUNCIL

MINUTES OF THE PROCEEDINGS.

No. 37.

TUESDAY, 15TH NOVEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable J. A. Kennedy 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 and Application Act.*  
*Fire Brigades (Appeal Tribunal) Act.*
3. 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 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 J. A. Kennedy, 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. REVOCATION AND EXCISION OF CROWN RESERVATIONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to provide for the Revocation of the Permanent Reservations of certain Lands* ” and desiring the concurrence of the Council therein.  
 On the motion of the Honorable C. P. Gartside, 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. SUSPENSION OF STANDING ORDER.—The Honorable R. C. Rankin moved, by leave, That Standing Order No. 128 be suspended to enable him, when making a personal explanation this day, to refer to a debate in the Legislative Assembly this Session.  
 Question—put and resolved in the affirmative.
6. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—  
 Companies Act 1938—Prescribed form of summons.  
 Co-operative Housing Societies Act 1944—Report of the Registrar of Co-operative Housing Societies for the year 1947-48.  
 Fire Brigades Acts—Amendment of Regulations.  
 Marketing of Primary Products Act 1935—Regulations—Travelling Expenses payable to members of—  
     Chicory Marketing Board.  
     Onion Marketing Board, Maize Marketing Board, Egg and Egg Pulp Marketing Board, and Potato Marketing Board.  
 Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances—  
     Technical and General Division—  
         Department of State Forests.  
         Department of Treasurer.  
     Temporary Employees—Department of Chief Secretary.  
 Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 30th June, 1949.  
 Soldier Settlement Act 1945—Report of the Soldier Settlement Commission for the year 1948-49.  
 Victorian Inland Meat Authority Act 1942—Amendment of Regulations—Travelling expenses.



7. **POLICE OFFENCES (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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

8. **VERMIN AND NOXIOUS WEEDS 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 W. MacAulay 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.

9. **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.

10. **PRICES REGULATION BILL.**—The Order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner moved, That this Bill be now read a second time.

The Honorable W. J. Beckett 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 twenty-three minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

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## No. 38.

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WEDNESDAY, 16<sup>TH</sup> NOVEMBER, 1949.

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 :—
  - Cancer Institute Act 1948—Cancer Institute Regulations 1949.
  - Dairy Products Acts—Report of Victorian Dairy Products Board for the six months ended 30th June, 1949.
  - Town and Country Planning Act 1944—Report of the Town and Country Planning Board for the year 1948-49.
3. **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.
4. **METROPOLITAN GAS COMPANY'S 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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.
5. **PRICES REGULATION 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 R. C. Rankin reported that the Committee had made progress in the Bill, and asked leave to sit again.

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

6. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to increase Certain Pensions and Additional Payments under the Coal Mine Workers Pensions Acts* ” and desiring the concurrence of the Council therein.

On the motion of the Honorable J. A. Kennedy, 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. MASSEURS (REGISTRATION) 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 later this day.

8. GEELONG WATERWORKS AND SEWERAGE BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

9. BREAD INDUSTRY BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

The Honorable J. H. Lienhop moved, That the debate be now adjourned.

Debate ensued.

Question—That the debate be now adjourned—put.

The Council divided.

Ayes, 14.

The Hon. P. T. Byrnes,  
P. L. Coleman,  
A. M. Fraser,  
T. Harvey,  
P. P. Inchbold,  
P. Jones,  
P. J. Kennelly,  
Col. G. V. Lansell,  
J. H. Lienhop,  
W. MacAulay,  
C. E. McNally (*Teller*),  
I. A. Swinburne,  
F. M. Thomas (*Teller*),  
D. J. Walters.

Noes, 11.

The Hon. W. J. Beckett,  
E. P. Cameron (*Teller*),  
G. L. Chandler,  
C. P. Gartside,  
J. A. Kennedy,  
J. F. Kittson (*Teller*),  
H. C. Ludbrook,  
G. S. McArthur,  
A. E. McDonald,  
H. V. MacLeod,  
R. C. Rankin.

And so it was resolved in the affirmative.

The Honorable J. H. Lienhop moved, That the debate be adjourned until Tuesday next.

The Honorable A. E. McDonald moved, as an amendment, That the words “ Tuesday next ” be omitted with the view of inserting in place thereof the words “ the next day of meeting ”.

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

The Council divided.

Ayes, 14.

The Hon. P. T. Byrnes,  
P. L. Coleman (*Teller*),  
A. M. Fraser,  
T. Harvey,  
P. P. Inchbold,  
P. Jones,  
P. J. Kennelly,  
Col. G. V. Lansell,  
J. H. Lienhop,  
W. MacAulay,  
C. E. McNally,  
I. A. Swinburne (*Teller*),  
F. M. Thomas,  
D. J. Walters.

Noes, 11.

The Hon. W. J. Beckett,  
E. P. Cameron,  
G. L. Chandler,  
C. P. Gartside,  
J. A. Kennedy,  
J. F. Kittson,  
H. C. Ludbrook (*Teller*),  
G. S. McArthur,  
A. E. McDonald,  
H. V. MacLeod (*Teller*),  
R. C. Rankin.

And so it was resolved in the affirmative.

Question—That the debate be adjourned until Tuesday next—put and resolved in the affirmative.

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

## No. 39.

THURSDAY, 17TH NOVEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. **SOLDIER SETTLEMENT (AMENDMENT) BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act to amend the Soldier Settlement Acts*” and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. G. Warner, 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. **PAPERS.**—The following Papers, pursuant to the directions of an Act of Parliament, were laid upon the Table by the Clerk :—  
Teaching Service Act 1946—Amendment of Regulations—  
Teaching Service (Classification, Salaries and Allowances) Regulations.  
Teaching Service (Teachers Tribunal) Regulations.
4. **PRICES REGULATION 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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.  
Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.
5. **HEALTH (TUBERCULOSIS ARRANGEMENT) 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.  
Debate ensued.  
The Honorable P. Jones 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.
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. **MASSEURS (REGISTRATION) 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 23, omit “this Act” and insert “the Principal Act”.  
On the motion of the Honorable C. P. Gartside, 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.
8. **MOTOR CAR (AMENDMENT) BILL.**—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.  
Debate ensued.  
The Honorable F. M. Thomas moved, That the debate be now adjourned.  
Question—That the debate be now adjourned—put and resolved in the affirmative.  
Ordered—That the debate be adjourned until the next day of meeting.
9. **HEALTH (CATTLE) 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.
10. **POLICE REGULATION (AMENDMENT) BILL.**—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act to amend the Police Regulation Acts*” and desiring the concurrence of the Council therein.  
On the motion of the Honorable J. A. Kennedy, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.
11. **COAL MINE WORKERS PENSIONS (AMENDMENT) BILL.**—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett moved, That the debate be now adjourned.  
Question—That the debate be now adjourned—put and resolved in the affirmative.  
Ordered—That the debate be adjourned until the next day of meeting.
12. **ADJOURNMENT.**—The Honorable J. A. Kennedy 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-six minutes past Five o'clock, adjourned until Tuesday next.

ROY S. SARAH,  
Clerk of the Legislative Council.

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 39.

TUESDAY, 22ND NOVEMBER, 1949.

### *Government Business.*

#### ORDERS OF THE DAY :—

1. HEALTH (TUBERCULOSIS ARRANGEMENT) BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. P. Jones).
- \*2. SOLDIER SETTLEMENT (AMENDMENT) BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
3. REVOCATION AND EXCISION OF CROWN RESERVATIONS BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
- \*4. HEALTH (CATTLE) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.
5. MOTOR CAR (AMENDMENT) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. F. M. Thomas).
6. APPROPRIATION BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
7. BREAD INDUSTRY BILL—(Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. J. H. Lienhop).
8. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
- \*9. POLICE REGULATION (AMENDMENT) BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.

### *General Business.*

#### ORDER OF THE DAY :—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

### SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 40.

WEDNESDAY, 23RD NOVEMBER, 1949.

### Question.

- \*1. The Hon. A. M. FRASER: To ask the Honorable the Commissioner of Public Works—
- Was the increase of 2d. to 2½d. per lb. in the price of beef recommended by the Prices Ministers of the various States; if so, was same approved by Victoria.
  - If not recommended by the Prices Ministers, was the increase recommended by the Prices Decontrol Commissioner and approved by the Minister or the Government.
  - Is the same increase applicable in all States; if not, what are the relative increases in each State.

### Government Business.

#### NOTICE OF MOTION :—

- \*1. The Hon. C. P. GARTSIDE: To move, That he have leave to bring in a Bill to amend Section Seventeen of the *Medical Act* 1928.

#### ORDERS OF THE DAY :—

- POLICE REGULATION (AMENDMENT) BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
- REVOCATION AND EXCISION OF CROWN RESERVATIONS BILL—(from Assembly—Hon. C. P. Gartside)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
- COAL MINE WORKERS PENSIONS (AMENDMENT) BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading—*Resumption of debate* (Hon. W. J. Beckett).
- HEALTH (CATTLE) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.
- MOTOR CAR (AMENDMENT) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading—*Resumption of debate* (Hon. F. M. Thomas).
- APPROPRIATION BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
- BREAD INDUSTRY BILL—(Hon. A. E. McDonald)—To be further considered in Committee.
- LICENSING (AMENDMENT) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.

### General Business.

#### ORDER OF THE DAY :—

- LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

ROY S. SARAH,  
Clerk of the Legislative Council.

CLIFDEN EAGER,  
President.

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

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

# LEGISLATIVE COUNCIL

## *Notices of Motion and Orders of the Day.*

No. 41.

THURSDAY, 24<sup>TH</sup> NOVEMBER, 1949.

### *Government Business.*

#### ORDERS OF THE DAY:—

1. LICENSING (AMENDMENT) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading.
- \*2. MILK PASTEURIZATION BILL—(from Assembly—Hon. C. P. Gartside)—Second reading.
- \*3. CROYDON FRUIT COOL STORES BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading.
- \*4. BUSINESS INVESTIGATIONS BILL—(from Assembly—Hon. A. G. Warner)—Second reading.
- \*5. MEDICAL (CANCER) BILL—(Hon. C. P. Gartside)—Second reading.
6. POLICE REGULATION (AMENDMENT) BILL—(from Assembly—Hon. J. A. Kennedy)—Second reading  
—Resumption of debate (Hon. A. M. Fraser).
7. MOTOR CAR (AMENDMENT) BILL—(from Assembly—Hon. A. E. McDonald)—Second reading  
—Resumption of debate (Hon. H. C. Ludbrook).
8. BREAD INDUSTRY BILL—(Hon. A. E. McDonald)—To be further considered in Committee.

### *General Business.*

#### ORDER OF THE DAY:—

1. LEGISLATIVE COUNCIL ELECTORS BILL—(Hon. A. M. Fraser)—Second reading.

ROY S. SARAH,  
*Clerk of the Legislative Council.*

CLIFDEN EAGER,  
*President.*

## SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—The Honorables W. J. Beckett, G. L. Chandler, P. P. Inchbold, J. A. Kennedy, P. J. Kennelly, G. S. McArthur, and A. E. McDonald.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, A. M. Fraser, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

STANDING ORDERS.—The Honorables the President, Sir William Angliss, W. J. Beckett, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, J. H. Lienhop, W. MacAulay, and R. C. Rankin.

HOUSE (JOINT).—The Honorables the President (*ex officio*), Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. J. Kennelly, and G. J. Tuckett.

LIBRARY (JOINT).—The Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater.

PRINTING.—The Honorables the President, P. T. Byrnes, G. L. Chandler, C. E. Isaac, P. Jones, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, R. C. Rankin, and F. M. Thomas.

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

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

## VICTORIA.

## LEGISLATIVE COUNCIL.

## MINUTES OF THE PROCEEDINGS

## No. 40.

TUESDAY, 22ND NOVEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. DISTINGUISHED VISITOR.—The Honorable J. A. Kennedy moved, by leave, That a chair be provided on the floor of the Council Chamber for the Honorable James A. Dimmitt, Chairman of Committees of the Legislative Council of Western Australia.  
Question—put and resolved in the affirmative.  
The Honorable James A. Dimmitt then entered the Chamber and was accommodated with a chair at the right of the President.
3. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable J. A. Kennedy 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. :—  
*Railway Loan Application Act.*  
*Local Authorities Superannuation (Amendment) Act.*  
*Public Works Loan and Application Act.*  
*Motor Car (Registration) Act.*  
*Barwon River Improvement (Amendment) Act.*
4. LICENSING (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “ *An Act to amend Section Ninety of the ‘ Licensing Act 1928 ’* ” and desiring the concurrence of the Council therein.  
On the motion of the Honorable A. E. McDonald, 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.
5. JUSTICES (SERVICE OF PROCESS) BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have agreed to the same with an amendment and desiring the concurrence of the Council therein.  
Ordered—That the foregoing Message be taken into consideration later this day.
6. VERMIN AND NOXIOUS WEEDS 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.
7. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—  
Explosives Act 1928—Order in Council relating to Definition of Explosives—Class 3—Nitro-compound.  
Land Act 1928—Schedule of Country lands proposed to be sold by public auction.  
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 1948–49.  
Motor Car (Third-Party Insurance) Act 1939—State Motor Car Insurance Office—Report, Profit and Loss Account, and Balance-sheet for the year 1948–49.  
Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—  
Part I.—Appointments to the Administrative, Professional, and Technical and General Divisions—Regulation 11.  
Part III.—Salaries, Increments and Allowances—  
Administrative Division—Department of Premier.  
Temporary Employees—Department of Chief Secretary.  
Town and Country Planning Act 1944—City of Brunswick Planning Scheme 1949.  
Workers’ Compensation Act 1928—State Accident Insurance Office—Report, Profit and Loss Account, and Balance-sheet for the year 1948–49.

8. **HEALTH (TUBERCULOSIS ARRANGEMENT) 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 Sir William Angliss 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. **SOLDIER SETTLEMENT (AMENDMENT) BILL.**—The Order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner moved, That this Bill be now read a second time.

Debate ensued.

The Honorable P. J. Kennelly 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.

10. **VERMIN AND NOXIOUS WEEDS 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 15, sub-clause (2), line 28, the word “on” has been inserted instead of the word “to”, and acquainting the Council that they have agreed that such error be corrected by the insertion of the word “to” instead of the word “on” in clause 15, sub-clause (2), line 28, and desiring the concurrence of the Council therein.

On the motion of the Honorable C. P. Gartside, 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.

11. **POSTPONEMENT OF ORDERS OF THE DAY.**—Ordered, after debate—That the consideration of Orders of the Day, Government Business, Nos. 3 to 6 inclusive, be postponed until later this day.

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

House in Committee.

The President resumed the Chair; and the Honorable R. C. Rankin reported that the Committee had made progress in the Bill, and asked leave to sit again.

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

13. **SOLDIER SETTLEMENT (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 R. C. Rankin having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

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

14. **JUSTICES (SERVICE OF PROCESS) 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 3, insert the following sub-clauses to follow sub-clause (3) :—

“( ) In any case in which a copy of a summons posted pursuant to this section does not in fact come to the notice of the defendant prior to his being convicted by the court he shall be entitled within seven days after his becoming aware of his conviction to serve by registered post upon the clerk of the court of petty sessions by which he was so convicted a notice that he desires a re-hearing of the information referred to in the summons.

( ) As soon as practicable after the receipt of any such notice the said clerk shall fix the day and time for the re-hearing and shall notify the informant and the defendant of the day and time so fixed by notice sent by ordinary prepaid post or by personal service (whichever may be more practicable or convenient).

( ) On the day so fixed the court shall proceed to consider the information and unless the court otherwise orders the conviction already recorded shall be set aside by the court and the information referred to in the summons shall be re-heard by the court either at a time then fixed by the court or at such later time as to the court may seem just and proper.”

On the motion of the Honorable A. E. McDonald, 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.



- <sup>1</sup> 5. REVOCATION AND EXCISION OF CROWN RESERVATIONS 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. J. Beckett 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.

16. ADJOURNMENT.—The Honorable J. A. Kennedy moved, That the House do now adjourn.  
Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,  
*Clerk of the Legislative Council.*

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## No. 41.

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WEDNESDAY, 23RD NOVEMBER, 1949.

1. The President took the Chair and read the Prayer.
2. MILK PASTEURIZATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act relating to the Pasteurization of Milk*” and desiring the concurrence of the Council therein.

On the motion of the Honorable C. P. Gartside, 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. POLICE OFFENCES (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.

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

Apprenticeship Act 1928—Amendment of Regulations—

Aircraft Trades Regulations (No. 1).

Boilermaking and/or Steel Construction Trades Regulations (No. 2).

Boot Trades Regulations (No. 2).

Bricklaying Trade Regulations (No. 1).

Butchering and/or Small Goods Making Trades Regulations (No. 1).

Carpentry and Joinery Regulations (No. 1).

Dental Mechanic Trade Regulations (No. 1).

Electrical Trades Regulations.

Electroplating Trade Regulations (No. 1).

Engineering Trades Regulations (No. 2).

Engineering Trades Regulations (No. 4).

Fibrous Plastering Trade Regulations (No. 2).

Ladies' and/or Men's Hairdressing Trades Regulations (No. 1).

Motor Mechanics Trades Regulations.

Moulding Trades Regulations (No. 2).

Painting, Decorating and Signwriting Regulations (No. 2).

Pastrycooking Trade Regulations (No. 1).

Plastering Regulations (No. 2).

Plumbing and Gasfitting Trades Regulations.

Printing and Allied Trades Regulations.

Printing Trades Regulations (No. 1).

Sheet Metal Trade Regulations (No. 2).

Watch and/or Clock Making Trades Regulations (No. 1).

Hospitals and Charities Act 1948—Certificate of the Minister of Health relating to the proposed compulsory resumption of land for the purposes of the Latrobe Valley Community Hospital.

Vermin and Noxious Weeds Act 1928—Amendment of the Bonus for Vermin Destruction Regulations 1928.

5. MEDICAL (CANCER) BILL.—On the motion of the Honorable C. P. Gartside, leave was given to bring in a Bill to amend Section Seventeen of the *Medical Act* 1928, 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.

6. POLICE REGULATION (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. A. Kennedy moved, That this Bill be now read a second time.

Debate ensued.

The Honorable A. M. Fraser 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.

7. REVOCATION AND EXCISION OF CROWN RESERVATIONS 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 R. C. Rankin 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. COAL MINE WORKERS PENSIONS (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 R. C. Rankin 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 (CATTLE) BILL.—The Order of the Day for the consideration of the amendments made in this Bill by the Assembly having been read, the said amendments were read and are as follow :—

1. Clause 2, paragraph (a), page 2, line 4, omit “an export” and insert “a meat export”.

2. „ paragraph (a), page 2, sub-paragraph (ii), lines 14–16, omit “whether in viable, dead or degenerate (caseous or calcified) state” and insert “in viable state”.

Amendment 1 agreed to.

Amendment 2, after debate, agreed to.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the amendments made by the Assembly in this Bill.

10. MOTOR CAR (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 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 later this day.

11. APPROPRIATION 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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was, after debate, 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. SOLDIER SETTLEMENT (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.

13. FOOTWEAR REGULATION (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.

14. BREAD INDUSTRY 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.

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

THURSDAY, 24TH NOVEMBER, 1949.

The President resumed the Chair; and the Honorable R. C. Rankin reported that the Committee had made progress in the Bill, and asked leave to sit again.

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

15. CROYDON FRUIT COOL STORES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act relating to the Croydon Fruit Cool Stores*” and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable J. A. Kennedy moved, That this Bill be dealt with as a Public Bill.

Debate ensued.

Question—put and resolved in the affirmative.

The Honorable J. A. Kennedy moved, That this Bill be now read a first time.

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

16. BUSINESS INVESTIGATIONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled “*An Act relating to the Investigation of the Affairs of certain Businesses and Restrictions on the Offering of Interests in certain Businesses for Subscription or Purchase, and for other purposes*” and desiring the concurrence of the Council therein.

On the motion of the Honorable A. G. Warner, 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.—ALTERATION OF HOUR OF MEETING.—The Honorable J. A. Kennedy moved, by leave, That the Council, at its rising, adjourn until this day at Two o'clock.

Question—put and resolved in the affirmative.

The Honorable J. A. Kennedy moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at twenty-eight minutes past One o'clock in the morning, adjourned until this day.

ROY S. SARAH,

*Clerk of the Legislative Council.*

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## No. 42.

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THURSDAY, 24<sup>TH</sup> NOVEMBER, 1949.

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 :—
  - Free Library Service Board Act 1946—Report of the Free Library Service Board for the year 1948–49.
  - Public Library National Gallery and Museums Act 1944—Reports, with Statements of Income and Expenditure, for the year 1948–49 of the—
    - Trustees of the Public Library.
    - Trustees of the National Gallery.
    - Trustees of the National Museum and Museum of Applied Science.
    - Building Trustees of the Public Library, National Gallery and Museums.
3. LICENSING (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. E. McDonald moved, That this Bill be now read a second time.  
The Honorable W. J. Beckett 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.
4. MILK PASTEURIZATION 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. J. Beckett 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.
5. CROYDON FRUIT COOL STORES 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 R. C. Rankin 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. 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.
7. MEDICAL (CANCER) 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 R. C. Rankin 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. LICENSING (AMENDMENT) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable R. C. Rankin 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. MILK PASTEURIZATION 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 R. C. Rankin 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. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 6, be postponed until later this day.

11. MOTOR CAR (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 Deputy-President resumed the Chair; and the Honorable Sir William Angliss 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.

12. POLICE REGULATION (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 R. C. Rankin 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.

13. LOCAL GOVERNMENT BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have agreed to the same with amendments and desiring the concurrence of the Council therein.

Ordered—That the foregoing Message be taken into consideration later this day.

14. TOURISTS' RESORTS DEVELOPMENT (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Three and Five of the Tourists' Resorts Development Act 1938*" and desiring the concurrence of the Council therein.

On the motion of the Honorable J. A. Kennedy, 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.

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

State Electricity Commission Act 1928—Report of the State Electricity Commission for the year 1948-49.

Workers' Compensation Acts—Workers' Compensation Board Fund—Balance-sheet and Statement of Receipts and Expenditure for the year 1948-49.

16. BUSINESS INVESTIGATIONS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable A. G. Warner 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—  
FRIDAY, 25TH NOVEMBER, 1949.

Debate continued.

Question—put and 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 R. C. Rankin 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.

17. LOCAL GOVERNMENT 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 follow :—

1. Clause 3, omit this clause.
2. Clause 5, paragraph (a), line 27, before “No person” insert “Except with the consent of the Minister”.
3. „ page 3, paragraph (b), line 7, after “section” insert “except with the consent of the Minister”.
4. Clause 6, page 6, paragraph (d), line 25, after “used” insert “immediately”.
5. Clause 11, line 11, omit “Ten” and insert “Five”.
6. „ line 17, omit “Ten” and insert “Five”.
7. Clause 14, line 6, omit “shall” and insert “may”.
8. „ line 20, omit “one acre” and insert “five acres”.

*Insert the following new clauses to follow clause 28 :—*

9. A. In section eight hundred and sixty-one of the Principal Act after the words “or joint regulation made thereunder” there shall be inserted the words “or of any other enactment by-law regulation or joint regulation which is administered by the municipality”.
10. AA. (1) After paragraph (n) of section eight hundred and ninety-eight of the Principal Act there shall be inserted the following paragraph :—  

“(o) empower any council to make by-laws for or with respect to any matter left to be determined applied dispensed with or regulated by the council or any matter in respect of which powers are conferred or duties are imposed on the council under the regulations, and any such by-law shall be made as if the making thereof were authorized by paragraph (a) of sub-section (1) of section one hundred and ninety-eight of this Act.”

(2) This section shall apply and be deemed to have applied in respect of any regulation made before the commencement of this Act under Part XLIX. of the Principal Act or any corresponding previous enactment, and any by-law made or purporting to have been made under any such regulation before the commencement of this Act shall be deemed to have been made under paragraph (a) of sub-section (1) of section one hundred and ninety-eight of the Principal Act or any corresponding previous enactment.
11. BB. At the end of section nine hundred and one of the Principal Act there shall be inserted the following sub-section :—  

“(6) The Governor in Council may by Order provide for and allow the relaxation of the requirements of any regulation under this Part or of any other regulation joint regulation or by-law under this Act so far as relates to pre-cut houses imported for any Government Department which are erected within a period of twelve months after the commencement of the *Local Government Act 1949*”.

Amendments 1 to 3, after debate, agreed to.

Amendment 4 agreed to.

Amendments 5 to 7, after debate, agreed to.

Amendments 8 to 10 agreed to.

Amendment 11, after debate, agreed to.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the amendments made by the Assembly in this Bill.

18. PUBLIC LIBRARY NATIONAL GALLERY AND MUSEUMS 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 Museum of Applied Science of Victoria, and for other purposes*” and desiring the concurrence of the Council therein.

On the motion of the Honorable A. E. McDonald, 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.

19. MILK PASTEURIZATION 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.

20. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (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 foregoing Message be now taken into consideration.

And the said amendments were read and are as follow :—

1. Clause 3, omit this clause.
2. Clause 4, omit this clause.
3. Clause 6, line 13, omit “ production ”.
4. „ line 18, omit “ production ”.

*Insert the following new clause to follow clause 6 :—*

5. A. At the end of section eighteen of the Principal Act there shall be inserted the following sub-section :—

“(2) Where any structure other than a dwelling house is erected or altered in contravention of the provisions of this Act the Court, in addition to imposing a penalty under the last preceding sub-section, may order that the owner of the structure shall, within such period as the Court directs, pull down such structure and sell the materials thereof by public auction.”

Amendments 1 and 2, after debate, agreed to.

Amendments 3 and 4 agreed to.

Amendment 5, after debate, agreed to.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the amendments made by the Assembly in this Bill.

21. TOURISTS' RESORTS DEVELOPMENT (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 R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

22. PUBLIC LIBRARY NATIONAL GALLERY AND MUSEUMS 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 R. C. Rankin 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. POLICE REGULATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

24. BUSINESS INVESTIGATIONS 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.

25. MOTOR CAR (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to some of the amendments made by the Council in this Bill and have disagreed with one of the said amendments.

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

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

Amendments made by the Legislative Council.

How dealt with by the  
Legislative Assembly.

- |   |   |                 |
|---|---|-----------------|
| 15. Clause 17, page 20, lines 21-3, omit “ or unless there are reasonable grounds for the belief that he intends to start or drive the motor car ”. | } | Disagreed with. |
|---|---|-----------------|

On the motion of the Honorable A. E. McDonald, and after debate, the Council did not insist on their amendment disagreed with by the Assembly, and ordered the Bill to be returned to the Assembly with a Message acquainting them therewith.

26. ADJOURNMENT.—The Honorable J. A. Kennedy 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.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at forty-six 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.*

BILLS ASSENTED TO AFTER THE FINAL ADJOURNMENT OF BOTH HOUSES AND  
BEFORE THE PROROGATION.

The following Messages from His Excellency the Governor were received after the final adjournment of both Houses :—

DALLAS BROOKS,  
*Governor of Victoria.*

The Governor informs the Legislative Council that he has, on this day, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz :—

Portland Harbor Trust Act 1949.  
Land (Grants and Leases) Act 1949.  
Geelong Waterworks and Sewerage Act 1949.  
Metropolitan Gas Company's Act 1949.

The Governor's Office,  
Melbourne, 28th November, 1949.

DALLAS BROOKS,  
*Governor of Victoria.*

The Governor informs the Legislative Council that he has, on this day, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz :—

Prices Regulation Act 1949.  
Masseurs (Registration) Act 1949.  
Vermin and Noxious Weeds Act 1949.  
Health (Tuberculosis Arrangement) Act 1949.  
Justices (Service of Process) Act 1949.  
Police Offences (Amendment) Act 1949.  
Revocation and Excision of Crown Reservations Act 1949.  
Coal Mine Workers Pensions (Amendment) Act 1949.  
Health (Cattle) Act 1949.  
Soldier Settlement (Amendment) Act 1949.  
Footwear Regulation (Amendment) Act 1949.  
Croydon Fruit Cool Stores Act 1949.  
Licensing (Amendment) Act 1949.  
Local Government Act 1949.  
Milk Pasteurization Act 1949.  
Building Operations and Building Materials Control (Amendment) Act 1949.  
Tourists' Resorts Development (Financial) Act 1949.  
Public Library National Gallery and Museums Act 1949.  
Police Regulation (Amendment) Act 1949.  
Business Investigations Act 1949.  
• Motor Car (Amendment) Act 1949.

The Governor's Office,  
Melbourne, 6th December, 1949.

On the 6th December, 1949, His Excellency the Governor gave the Royal Assent to the following Act, presented by Mr. Speaker :—

Appropriation Act 1949.





## QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO.

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CHANDLER, Hon. G. L.— Kinglake National Park .. .. .	21	2413
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COLEMAN, Hon. P. L.— Building Materials— Advisory Committee .. .. .	21	2413
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Coal—Importation and production in Victoria .. .. .	17	2078
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Town Planning—Bridge-road, Richmond .. .. .	34	3639
FRASER, Hon. A. M.— Housing Commission— Amortization Payments—Concessions to purchaser-tenants .. .. .	3	274
Northcote-East Preston railway land—Policy in regard to acquisition .. .. .	34	3640
Street Construction in West Heidelberg Settlement .. .. .	35	3726
Metropolitan Gas Company—Sale of gas residuals .. .. .	25	2730
Police—Alleged intimidation of person arrested .. .. .	1	79
Prices Regulation— Appointment of Advisory Committees—Price of gas .. .. .	17	2077
Beef—Increased price in various States .. .. .	40	4249
Goods and Services Decontrolled—Price increases .. .. .	17	2078
Metropolitan Gas Company—Price of gas residuals .. .. .	20	2336
Petrol Price—Conference of Prices Ministers .. .. .	1	79
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HARVEY, Hon. T.— Housing Commission—Housing accommodation at Royal Agricultural Showgrounds .. .. .	36	3850
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McBRIEN, Hon. L. H.— Legislative Council Staff—Overtime .. .. .	*	507
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SWINBURNE, Hon. I. A.— Decentralization Fund—Assistance to industries .. .. .	20	2335
Inland Meat Killing Centres .. .. .	15	1571
Meat Contracts at Kiewa .. .. .	36	3850
Soldier Settlement—Holdings and applications .. .. .	16	1990
Werribee Sewerage Farm—Beef measles infection .. .. .	31	3340
WALTERS, Hon. D. J.— Decentralization—Ministerial policy .. .. .	23	2585

\* Question asked without notice.





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GOVERNMENT GAZETTE.

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THURSDAY, APRIL 13.

[1950

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.

**W**HEREAS the Parliament of Victoria stands adjourned until such day and hour as may be fixed by the President of the Legislative Council and the Speaker of the Legislative Assembly respectively: Now I, the Governor of the State of Victoria, in the Commonwealth of Australia, do by this my Proclamation prorogue the said Parliament of Victoria until Wednesday, the twenty-sixth day of April, 1950.

Given under my Hand and the Seal of the State of Victoria aforesaid, at Melbourne, this thirteenth day of April, in the year of our Lord One thousand nine hundred and fifty, and in the fourteenth year of the reign of His Majesty King George VI.

(L.S.)

DALLAS BROOKS.

By His Excellency's Command,

T. T. HOLLWAY,  
Premier.

GOD SAVE THE KING!



[ 2225 ]



VICTORIA

## GOVERNMENT GAZETTE.

Published by Authority.

[Registered at the General Post Office, Melbourne, for transmission by post as a newspaper.]

No. 278]

THURSDAY, APRIL 13.

[1950

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-sixth day of April, 1950: 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 Honorable the Members of the Legislative Council from their meeting and attendance on Wednesday, the twenty-sixth day of April, 1950: And I do dissolve the Legislative Assembly, such dissolution to take effect on Thursday, the thirteenth day of April, 1950: 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 thirteenth day of April, in the year of our Lord One thousand nine hundred and fifty and in the fourteenth year of the reign of His Majesty King George VI.

(L.S.)

DALLAS BROOKS.

By His Excellency's Command,

T. T. HOLLWAY,

Premier.

GOD SAVE THE KING!

## 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	.. .. .	Thursday, 13th April, 1950.
Day of Nomination (before or on which nominations are to be made)	.. .. .	Monday, 24th April, 1950. (up to 12 o'clock noon).
Day of Polling	.. .. .	Saturday, 13th May, 1950.
Returns of Writs	.. .. .	Monday, 29th May, 1950.

By His Excellency's Command,

A. G. COULTHARD,

Acting Official Secretary.

The Governor's Office,  
Melbourne, 13th April, 1950.

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



# SELECT COMMITTEES

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## APPOINTED DURING THE SESSION 1949.

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### No. 1.—ELECTIONS AND QUALIFICATIONS.

Appointed (by President's Warrant) 29th March, 1949.

The Hon. W. J. Beckett	The Hon. J. A. Kennedy† (vice Hon. A.
G. L. Chandler*	J. Pittard)
P. J. Kennelly	G. S. McArthur*
P. P. Inchbold†	A. E. McDonald.

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### No. 2.—STANDING ORDERS.

Appointed 5th April, 1949.

The Hon. the President	The Hon. C. P. Gartside*
Sir William Angliss	T. Harvey
W. J. Beckett	J. H. Lienhop*
Sir Frank Clarke*	W. MacAulay†
A. M. Fraser	R. C. Rankin§ (vice Hon. P.
	P. Inchbold).

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### No. 3.—HOUSE (JOINT).

Appointed 5th April, 1949, under Act No. 3660, s. 367.

The Hon. the President ( <i>ex officio</i> )	The Hon. Sir Frank Clarke*
Sir William Angliss	P. J. Kennelly
P. T. Byrnes	G. J. Tuckett.*

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### No. 4.—LIBRARY (JOINT).

Appointed 5th April, 1949.

The Hon. the President	The Hon. R. C. Rankin
P. L. Coleman*	W. Slater† (vice Hon. P. J.
P. P. Inchbold§ (vice Hon. J.	Clarey).
A. Kennedy)	

\* Vacated office on retirement by effluxion of time. re-appointed after re-election as a Member of the Council.

† Appointed *vice* Hon. Sir George Goudie, deceased.

‡ Appointed in place of a Member who vacated office on retirement by effluxion of time and who was not re-elected as a Member of the Council.

§ Appointed 9th August, 1949, in place of a Member discharged from attendance on the Committee.

SELECT COMMITTEES—*continued.*

## No. 5.—PRINTING.

Appointed 5th April, 1949.

The Hon. the President	The Hon. Colonel G. V. Lansell
P. T. Byrnes	W. MacAulay*
G. L. Chandler*	R. C. Rankin
C. E. Isaac	F. M. Thomas‡ ( <i>vice</i> Hon. L.
P. Jones	H. McBrien).
J. F. Kittson‡ ( <i>vice</i> Hon. A. J. Pittard)	

## No. 6.—STATUTE LAW REVISION.

Appointed 29th March, 1949.

*(See Act No. 5285, Sections 2 and 11.)*

The Hon. P. T. Byrnes†	The Hon. A. E. McDonald
A. M. Fraser	F. M. Thomas*
G. S. McArthur*	D. J. Walters.

\* Vacated office on retirement by effluxion of time ; re-appointed after re-election as a Member of the Council.

† Appointed *vice* Hon. Sir George Goudie deceased.

‡ Appointed in place of a Member who vacated office on retirement by effluxion of time and who was not re-elected as a Member of the Council.



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VICTORIA.

## LEGISLATIVE COUNCIL.

SESSION 1949.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL

No. 1.

Extracted from the Minutes.

TUESDAY, 26TH APRIL, 1949.

No. 1.—MOTHERCRAFT NURSES BILL.—Clause 1—

1. This Act may be cited as the *Mothercraft Nurses Act* 1949.

—(Hon. C. P. Gartside.)

Amendment proposed—That the word “*Nurses*” be omitted with the view of inserting in place thereof the word “*Advisers*”.

—(Hon. W. J. Beckett.)

Question—That the word proposed to be omitted stand part of the clause—put.

Committee divided—the Hon. P. P. Inchbold in the Chair.

Ayes, 13.

The Hon. Sir William Angliss,  
 E. P. Cameron,  
 G. L. Chandler (*Teller*),  
 C. P. Gartside,  
 C. E. Isaac,  
 J. A. Kennedy,  
 J. F. Kittson,  
 G. S. McArthur (*Teller*),  
 L. H. McBrien,  
 A. E. McDonald,  
 H. V. MacLeod,  
 A. J. Pittard,  
 R. C. Rankin.

Noes, 11.

The Hon. W. J. Beckett,  
 P. T. Byrnes,  
 P. L. Coleman,  
 A. M. Fraser,  
 T. Harvey,  
 P. Jones (*Teller*),  
 P. J. Kennelly,  
 W. MacAulay (*Teller*),  
 I. A. Swinburne,  
 F. M. Thomas,  
 G. J. Tuckett.

And so it was resolved in the affirmative.



VICTORIA.

## LEGISLATIVE COUNCIL.

SESSION 1949.

WEEKLY REPORT OF DIVISIONS

IN

## COMMITTEE OF THE WHOLE COUNCIL.

No. 2.

Extracted from the Minutes

TUESDAY, 10<sup>TH</sup> MAY, 1949.

No. 1.—STATE ELECTRICITY COMMISSION (CHAIRMAN) BILL.—Clause 2—

2. In paragraph (d) of sub-section (1) of section eight of the Principal Act for the words "Three thousand pounds" there shall be substituted the words "Six thousand pounds".

—(Hon. A. E. McDonald.)

Amendment proposed—That the words "Six thousand pounds" be omitted with the view of inserting in place thereof the words "Four thousand five hundred pounds".

—(Hon. P. T. Byrnes.)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided—the Hon. P. P. Inchbold in the Chair.

Ayes, 18.

The Hon. Sir William Angliss,  
W. J. Beckett,  
E. P. Cameron,  
G. L. Chandler,  
Sir Frank Clarke,  
C. P. Gartside,  
C. E. Isaac (*Teller*),  
J. A. Kennedy,  
J. F. Kittson,  
Col. G. V. Lansell,  
J. H. Lienhop,  
G. S. McArthur,  
L. H. McBrien,  
A. E. McDonald,  
H. V. MacLeod,  
A. J. Pittard,  
R. C. Rankin (*Teller*),  
A. G. Warner.

Noes, 9.

The Hon. P. T. Byrnes,  
A. M. Fraser,  
T. Harvey,  
P. Jones,  
W. MacAulay,  
I. A. Swinburne (*Teller*),  
F. M. Thomas,  
G. J. Tuckett,  
D. J. Walters (*Teller*).

And so it was resolved in the affirmative.



VICTORIA.  
 —  
 LEGISLATIVE COUNCIL.

—  
 SESSION 1949.  
 —

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

—  
 No. 3.  
 —

Extracted from the Minutes.

WEDNESDAY, 18TH MAY, 1949.

No. 1.—ROYAL COMMISSION (COMMUNIST PARTY) BILL.—Clause 2—

2. The Governor in Council may issue a commission to, and appoint as sole commissioner, a Judge of The Supreme Court of the State of Victoria (hereinafter referred to as "the Commissioner") to inquire into and report upon the following matters, namely:—

\* \* \* \* \*

—(Hon. J. A. Kennedy.)

Amendment proposed—That the words "as sole Commissioner, a Judge of The Supreme Court of the State of Victoria" be omitted with the view of inserting in place thereof the words "a Commissioner".

—(Hon. P. T. Byrnes.)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided—the Hon. P. P. Inchbold in the Chair.

Ayes, 15.

The Hon. E. P. Cameron,  
 G. L. Chandler (*Teller*),  
 Sir Frank Clarke,  
 C. P. Gartside,  
 C. E. Isaac,  
 J. A. Kennedy,  
 J. F. Kittson,  
 Col. G. V. Lansell,  
 J. H. Lienhop,  
 G. S. McArthur,  
 A. E. McDonald,  
 H. V. MacLeod,  
 A. J. Pittard,  
 R. C. Rankin (*Teller*),  
 A. G. Warner.

Noes, 10.

The Hon. P. T. Byrnes,  
 P. J. Clarey,  
 A. M. Fraser,  
 T. Harvey,  
 P. Jones (*Teller*),  
 P. J. Kennelly,  
 I. A. Swinburne (*Teller*),  
 F. M. Thomas,  
 G. J. Tuckett,  
 D. J. Walters.

And so it was resolved in the affirmative.



# LEGISLATIVE COUNCIL.

SESSION 1949.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 4.

Extracted from the Minutes

TUESDAY, 27<sup>TH</sup> SEPTEMBER, 1949.

No. 1.—LEGISLATIVE COUNCIL FRANCHISE BILL.—Clause 2 (*as amended*)—

2. Section sixty-seven of the Principal Act is hereby amended as follows:—

- (a) In paragraph (f) of sub-section (1) for the words "land or sea forces" there shall be substituted the words "land sea or air forces";
- (b) In sub-section (1) for the expression—

"or

(g) a person"—

there shall be substituted the expression—

"(g) a person —

- (i) who during the war which commenced in the year One thousand nine hundred and fourteen or during the war which commenced in the year One thousand nine hundred and thirty-nine or any continuation thereof and before the twenty-fifth day of August One thousand nine hundred and forty-five served as an officer or member of His Majesty's land sea or air forces; and

- (ii) who was not discharged therefrom on account of default or misconduct—

or the wife or husband of any such person;

(h) a person"; and

\* \* \* \* \*

—(*Hon. J. A. Kennedy.*)

Amendment proposed—That the expression "(h) a person" be omitted with the view of inserting in place thereof the expression—

"(h) the wife or husband of any ratepaying elector who resides with such elector; or (i) a person".

—(*Hon. A. M. Fraser.*)

Question—That the expression proposed to be omitted stand part of the clause—put.

Committee divided—the Hon. R. C. Rankin in the Chair.

Ayes, 14.

The Hon. Sir Frank Beaurepaire,  
 E. P. Cameron (*Teller*),  
 G. L. Chandler,  
 C. P. Gartside,  
 C. E. Isaac,  
 J. A. Kennedy,  
 J. F. Kittson,  
 Col. G. V. Lansell,  
 J. H. Lienhop,  
 H. C. Ludbrook,  
 G. S. McArthur,  
 A. E. McDonald,  
 H. V. MacLeod (*Teller*),  
 A. G. Warner.

Noes, 15.

The Hon. W. J. Beckett,  
 P. T. Byrnes,  
 P. L. Coleman,  
 A. M. Fraser,  
 J. W. Galbally,  
 T. Harvey,  
 P. P. Inchbold,  
 P. Jones,  
 P. J. Kennelly,  
 W. MacAulay,  
 C. E. McNally,  
 W. Slater (*Teller*),  
 I. A. Swinburne (*Teller*),  
 F. M. Thomas,  
 D. J. Walters.

And so it passed in the negative.



VICTORIA.  
—  
LEGISLATIVE COUNCIL.

SESSION 1949.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 5.

Extracted from the Minutes

TUESDAY, 25TH OCTOBER, 1949.

No. 1.—LOCAL GOVERNMENT BILL.—Clause 10 (*as amended*)—

(1) In sub-section (2) of section two hundred and sixty-four of the Principal Act—

(a) for the words “Three shillings” there shall be substituted the words “ ”;

\* \* \* \* \*

—(*Hon. J. A. Kennedy.*)

*The clause having been amended by the omission of the words “Five shillings” at the end of paragraph (a)—*

Amendment proposed—That the words “Three shillings and sixpence” be inserted in place of the words omitted.

—(*Hon. W. J. Beckett.*)

Question—That the words proposed to be inserted be so inserted—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 7.

The Hon. W. J. Beckett,  
P. T. Byrnes,  
P. P. Inchbold,  
W. MacAulay,  
C. E. McNally (*Teller*),  
I. A. Swinburne,  
D. J. Walters (*Teller*).

Noes, 18.

The Hon. Sir William Angliss,  
Sir Frank Beaurepaire,  
E. P. Cameron,  
G. L. Chandler,  
Sir Frank Clarke,  
A. M. Fraser,  
C. P. Gartside,  
C. E. Isaac,  
P. Jones,  
J. A. Kennedy,  
J. H. Lienhop,  
H. C. Ludbrook (*Teller*),  
G. S. McArthur,  
A. E. McDonald,  
H. V. MacLeod,  
W. Slater,  
F. M. Thomas (*Teller*),  
A. G. Warner.

And so it passed in the negative.

WEDNESDAY, 26TH OCTOBER, 1949.

No. 2.—CO-OPERATIVE HOUSING SOCIETIES BILL.—Clause 2 (*as amended*)—

(1) In sub-paragraph (iii) of paragraph (a) of sub-section (1) of section five of the Principal Act as re-enacted by section three of the *Co-operative Housing Societies Act 1948* for the words "ten years" there shall be substituted the words "five years".

(2) In paragraph (a) of sub-section (2) of section twenty of the Principal Act as amended by any Act for the words "ten years" there shall be inserted the words "five years".

(3) Where before the commencement of this Act any society has adopted any rules or any alteration of any rules whereby the objects of the society include, and advances may be made by the society for the purpose of, enabling any member to purchase a dwelling-house erected by any person (not including the Housing Commission) within the period of ten years immediately prior to the application for the advance in question, then, by virtue of and without any further or other authority than this Act, those rules shall be altered by the substitution of references to a period of five years for the references to a period of ten years contained therein.

(4) Nothing in the amendments to the Principal Act made by sub-sections (1) and (2) of this section or in the alteration of any society's rules made by sub-section (3) of this section shall apply to or in any manner affect the making of an advance where the application therefor was lodged with the society before the commencement of this Act or to the making of an advance in relation to any dwelling-house in respect of which an advance had previously been made by a society.

—(*Hon. A. G. Warner.*)

Question—That clause 2 as amended stand part of the Bill—put.

Committee divided—the Hon. R. C. Rankin in the Chair.

Ayes, 14.

The Hon. Sir William Angliss,  
W. J. Beckett,  
E. P. Cameron,  
G. L. Chandler,  
Sir Frank Clarke,  
C. P. Gartside,  
C. E. Isaac (*Teller*),  
J. A. Kennedy,  
J. F. Kittson,  
H. C. Ludbrook,  
G. S. McArthur,  
A. E. McDonald,  
H. V. MacLeod (*Teller*),  
A. G. Warner.

Noes, 12.

The Hon. P. T. Byrnes (*Teller*),  
A. M. Fraser,  
J. W. Galbally (*Teller*),  
T. Harvey,  
P. P. Inchbold,  
P. Jones,  
W. MacAulay,  
C. E. McNally,  
W. Slater,  
I. A. Swinburne,  
F. M. Thomas,  
D. J. Walters.

And so it was resolved in the affirmative.

VICTORIA.

## LEGISLATIVE COUNCIL.

SESSION 1949.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 6.

Extracted from the Minutes

THURSDAY MORNING, 24<sup>TH</sup> NOVEMBER, 1949.No. 1.—BREAD INDUSTRY BILL.—Clause 2 (*as amended*)—

2. (1) In this Act unless inconsistent with the context or subject-matter—

\* \* \* \* \*

“Bread shop” means a shop at which bread is sold to the public for delivery only at such shop and which is not conducted by a baker.

\* \* \* \* \*

—(*Hon. A. E. McDonald.*)

Amendment proposed—That the following interpretation be inserted after the interpretation of “Bread Shop” :—

“ ‘Committee’ means the Bread Industry Committee constituted under this Act ”.

—(*Hon. P. T. Byrnes.*)

Question—That the interpretation proposed to be inserted be so inserted—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 14.

The Hon. W. J. Beckett,  
 P. T. Byrnes,  
 P. L. Coleman,  
 A. M. Fraser,  
 T. Harvey,  
 P. P. Inchbold,  
 P. J. Kennelly,  
 Col. G. V. Lansell,  
 J. H. Lienhop,  
 C. E. McNally (*Teller*),  
 I. A. Swinburne (*Teller*),  
 F. M. Thomas,  
 G. J. Tuckett,  
 D. J. Walters.

Noes, 10.

The Hon. E. P. Cameron,  
 G. L. Chandler,  
 C. P. Gartside,  
 C. E. Isaac,  
 J. A. Kennedy,  
 J. F. Kittson (*Teller*),  
 H. C. Ludbrook (*Teller*),  
 G. S. McArthur,  
 A. E. McDonald,  
 A. G. Warner.

And so it was resolved in the affirmative.

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

1949.

VICTORIA.

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REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

LIMITATION OF ACTIONS BILL

TOGETHER WITH

AN APPENDIX AND MINUTES OF EVIDENCE.

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*Ordered by the Legislative Council to be printed, 5th April, 1949.*

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By Authority:

J. J. GOURLEY, GOVERNMENT PRINTER, MELBOURNE.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS  
OF THE LEGISLATIVE COUNCIL.

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TUESDAY, 24<sup>TH</sup> AUGUST, 1948.

15. STATUTE LAW REVISION COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the following Members of this House be appointed members of the Statute Law Revision Committee, viz. :—The Honorables P. J. Clarey, A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, and D. J. Walters.

Question—put and resolved in the affirmative.

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EXTRACTED FROM THE VOTES AND PROCEEDINGS OF  
THE LEGISLATIVE ASSEMBLY.

---

TUESDAY, 10<sup>TH</sup> AUGUST, 1948.

13. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That the following Members be appointed members of the Statute Law Revision Committee :—Mr. Bailey, Mr. Cain, Lieutenant-Colonel Leggatt, Mr. Merrifield, Mr. Schilling, and the Mover (*Mr. Oldham*)—put and agreed to.
- 

TUESDAY, 24<sup>TH</sup> AUGUST, 1948.

9. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Cain be discharged from attendance on the Statute Law Revision Committee and that Mr. Barry be appointed in his stead (*Mr. Oldham*)—put and agreed to.
- 

TUESDAY, 7<sup>TH</sup> DECEMBER, 1948.

4. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Lieutenant-Colonel Leggatt be discharged from attendance on the Statute Law Revision Committee and that Mr. Reid be appointed in his stead (*Colonel Kent Hughes*)—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 Committee have considered the Limitation of Actions Bill—a *Bill to consolidate and amend the Law relating to the Limitation of Time for commencing Actions and Arbitrations*—which was introduced into the Legislative Assembly on the 9th June, 1948, and which, following the adjournment of the second reading debate on the 15th idem, was referred to this Committee.

2. The Bill was prepared as the result of a Report of a special sub-committee, consisting of Mr. Justice O'Bryan, who acted as Chairman, Mr. Fullagar, K.C. (now Mr. Justice Fullagar), Mr. Barry, K.C. (now Mr. Justice Barry), Professor Paton, and Messrs. A. D. G. Adam, E. H. Coghill, R. F. Hall, J. P. Adam, and A. Garran, set up by the Chief Justice's Committee on Law Reform to consider the subject of the limitation of actions, and it was based on the English Limitation Act of 1939 which followed very closely a Report on that subject by the Lord Chancellor's Committee in England.

3. The Committee in their consideration of the Bill had before them copies of the Report of the special sub-committee referred to above including a minority report by Mr. Andrew Garran, Assistant Parliamentary Draftsman. The various changes in the law proposed by the Bill and the reasons therefor are fully explained in the sub-committee's report. The Committee also had before them copies of the Minutes of Evidence given on the subject of the limitation of actions by Mr. Justice O'Bryan and Mr. Garran when they appeared before the Statute Law Revision Committee in 1947. The sub-committee's Report is set out in the Appendix to this Report, and the evidence given by Mr. Justice O'Bryan and Mr. Garran is also appended hereto. In addition Mr. Garran attended several meetings of the Committee and assisted the Committee in drafting the amendments recommended hereunder.

4. Subject to what is said hereafter in this Report, the Committee approve of the proposed changes in the law and are satisfied that the Bill if passed into law will simplify the position regarding limitation of actions and will prove to be in the best interests of the community.

5. The Committee in its study of the Bill gave considerable attention to the position of public authorities and expressed general approval of the proposal that, in respect of all those public authorities that at present have any special rights of protection, the period of limitation should be equated to that of other persons who are defendants, subject, however, to a requirement that the plaintiff should within six months of the accrual of the cause of action serve on the public authority a prescribed form of notice of action. The Committee accordingly recommend that the following amendments be made in the Bill :—

a. Clause 5, insert the following new sub-clause to follow sub-clause (8) :—

“(9) (a) In any case where an action founded on tort is brought against any of the public authorities or persons specified in the Schedule to this Act—unless—

- (i) within six months from the date on which the cause of action accrued the plaintiff or his solicitor gives to the defendant or his solicitor notice of the action as hereinafter provided; or
- (ii) the court is satisfied that there were reasonable grounds why such a notice was not so given; or
- (iii) the court is satisfied that no real hardship or injustice is likely to accrue to the defendant by reason of the fact that such a notice was not so given—

the court may order the action to be stayed.

(b) Such notice shall be in writing stating the name and address of the plaintiff and shortly setting out the matter complained of with reference to place and time, and shall be given personally to the defendant or his solicitor or sent by prepaid registered post to the defendant or his solicitor at his last known place of residence or business."

- b. For the First Schedule to the Bill substitute a Schedule similar to that which appeared in the *Limitation of Actions Bill* 1947 and which provided the consequential amendments to various Acts which are necessary to equate the position of public authorities to other persons who are defendants, subject to the requirement of giving notice of action as set out above.
- c. Insert a Schedule in the Bill to define (for the purposes of the new sub-clause 5 (9) set out above) the public authorities &c. to whom notice of action must be given within six months after cause of action accrued. This Schedule should read as follows:—

"Any municipality (including the city of Melbourne and the city of Geelong).

The Country Roads Board.

The Commission of Public Health and, in relation to anything done in his capacity as such, any member thereof the Chief Health Officer and any officer of the Department of Health.

The Melbourne and Metropolitan Board of Works and, in relation to anything done in his capacity as such, any member and officer thereof and any person acting in his aid.

The Melbourne and Metropolitan Tramways Board and, in relation to anything done in his capacity as such, any member and officer thereof and any person acting in his aid.

The Victorian Railways Commissioners.

Any Sewerage Authority and, in relation to anything done in his capacity as such, any member and officer thereof and any person acting in his aid.

The Grain Elevators Board and, in relation to anything done in his capacity as such, any member officer or employé thereof and any person acting in his aid.

The Housing Commission and, in relation to anything done or intended or omitted to be done by or under the Housing Acts, any member and officer thereof.

Any person in relation to anything done under any of the following Acts and enactments:—

The Geelong Harbor Trust Acts;

The Geelong Waterworks and Sewerage Acts;

The Harbor Boards Acts;

The Mental Hygiene Acts;

The Marine Acts;

The Melbourne Harbor Trust Acts;

Parts II. and III. of the *Railways Act* 1928;

Part I. of the *Vegetation and Vine Disease Act* 1928.

Any Judge of the Supreme Court Judge of County Courts Chairman of a Court of General Sessions justice of the peace and officer of any such court or of a court of petty sessions, in relation to anything done in his capacity as such.

Any member of the police force and any person acting by his order and in his aid in obedience to any warrant, in relation to anything done in his capacity as such.

Any inspector and assistant inspector of fisheries, in relation to anything done in his capacity as such."

d. Consequentially, omit from the Second Schedule to the Bill the references to all Acts amended by the proposed new First Schedule (see item *b* above). The Second Schedule will then consist only of references to—

*Administration and Probate Act 1928* ss. 25, 147. (Actions in tort against personal representatives, and actions to recover from a testator's estate adequate provision for widows widowers and children.)

*Wrongs Act 1928* s. 19. (Actions for a wrongful act or neglect causing death—Lord Campbell's Act.)

The periods of limitation in these cases are not extended by the Bill as it is considered expedient to expedite the winding up of deceased persons' estates.

6. During the deliberations of the Committee attention was invited to the fact that, where the Bill in clauses 16, 19, 25, and 27 referred to redemption actions and foreclosure actions in relation to mortgages, these references, because of certain technicalities, would not apply to mortgages of land under the Transfer of Land Act. It is considered that periods of limitation should apply to mortgages of land under the Transfer of Land Act to the same extent as they apply to mortgages of land not under that Act, and that the Bill should be amended accordingly.

7. The Committee recommend that the Bill be amended as indicated above and as so amended be passed into law.

Committee Room,

9th March, 1949.

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## APPENDIX.

## LIMITATION OF ACTIONS.

## 1. REPORT OF SUB-COMMITTEE.

The Honorable the Chief Justice.

SIR,

(1) The sub-committee set up under the chairmanship of the Honorable Mr. Justice O'Bryan to consider the reports made by the Lord Chancellor's Committee in England, has been devoting its attention to the subject of the Limitation of Actions. The Lord Chancellor's Committee reported on this subject in 1936, (Command 5334) and the report resulted in the enactment of the *Limitation Act* 1939 (2 and 3 Geo. VI. c. 21).

As the Act follows the Report very closely, it is unnecessary to do more than refer to the Act.

(2) The sub-committee as originally constituted comprised Mr. Justice O'Bryan, Mr. Fullagar K.C. (now Mr. Justice Fullagar), Mr. Barry K.C. (now Mr. Justice Barry), Prof. Paton, Messrs. R. F. Hall, J. P. Adam and Coghill. When considering the limitation of actions relating to real property the sub-committee felt that its deliberations would be assisted by the inclusion of Mr. A. D. G. Adam, of counsel, who lectures in that subject at the University, and he kindly agreed to join it. It was also fortunately able to persuade Mr. Garran, the Assistant Parliamentary Draftsman, to become a member.

(3) After consideration, the sub-committee agreed to accept the Limitation Act of 1939 as a basis, and submits herewith a draft Bill based on it, with the changes indicated hereunder.

(4) That Act consolidates the existing statute law on the subject, represented in Victoria by the *Supreme Court Act* 1928, secs. 80-90, the *Property Law Act* 1928, secs. 274-306, and the *Trustee Act* s. 67. It also modifies the common law doctrines which have grown up round the subject, such as "Acknowledgment" and "part payment", but not the equitable doctrines such as Laches, which are expressly preserved by s. 29 of that Act, cl. 31 of the Bill.

It also makes a number of changes in the existing law, to which attention is drawn hereunder.

Before discussing matters of detail, there are several matters of general principle to which the sub-committee wishes to call attention.

It should be mentioned that Mr. Garran is presenting a separate Report. In cases where this Report conflicts with his, he did not express any views on the particular recommendations to be made, and in such cases when all other members of the sub-committee were agreed on a proposal, we have said that the sub-committee was unanimous.

(5) Periods of Limitation.—(a) The periods of limitation at present existing are legion. The *Supreme Court Act* s. 82 fixes periods of two years (penalties, slander), four years (assault, &c.), six years (debt, &c.), and fifteen years (actions on specialties). The *Property Law Act* fixes fifteen years as the norm with possible extensions up to thirty years (sections 276, 289). Very short periods are fixed by the group of Acts discussed later under the heading of Public Authorities, of which the *Railways Act* 1928 s. 200 may be taken as typical. That particular section fixes six months preceded by a notice given at least one month before, and that seems to be the most usual.

The *Limitation Act* 1939 has simplified them as:—Public Authorities, one year; penalties, two years; all simple contracts and torts, six years; specialties, twelve years; land, twelve years rising to a possible thirty years; crown land &c., thirty years or sixty years.

(b) While to adopt this would also simplify the position in Victoria, the sub-committee was unanimously of opinion that a single limitation of six years for all simple contracts and torts sacrificed for the sake of simplicity the legitimate security of defendants, by leaving them open to actions in certain cases in which after a lapse of more than three years, difficulty in collection of their evidence might be insuperable; and in the like cases it is probable that a plaintiff who had suffered an actual wrong would have commenced his proceedings under three years after the cause arose.

(c) Mr. Garran feels so strongly that the period of limitation for all simple contracts and torts should be shorter than at present, that he is presenting a minority report urging that the period in all such cases should be three years.

(d) The rest of the sub-committee wish to point out that the period of six years for simple contracts, and in particular, debts, has been in force unchanged for over three hundred years, the commercial world throughout the common law countries is used to it, and book-keeping systems are based on it. They feel that it is not too long a period to allow a creditor who is willing to give a debtor in difficulties a reasonable extension of time in which to pay, and they strongly recommend its retention.

(e) As to torts, certain of the torts relating to injuries to property, such as conversion, seem to the majority to be so related to contracts that the same period of limitation should apply to both. Other torts were felt by certain members of the sub-committee to be in a different position, and it was finally resolved, unanimously, to recommend that the period of limitation for defamation should be three years, and, by varying majorities, that the limitation of actions of tort for personal injuries and injuries to both real and personal property should also be three years.

(f) It was suggested that the limitation of actions of contract for personal injuries (as in the case of medical malpractice) and injuries to property should also be three years, but this was rejected by the majority.

(g) In this connection it may be mentioned that it was also suggested that a person who knows of prospective claims against him should be entitled to force the claimant to take action against him within some limited time. However the majority were not persuaded that such a provision was desirable, and accordingly, a resolution that the insertion of a provision similar to the *Administration and Probate Act* 1928 s. 26 be recommended was rejected.

(h) See the draft Bill cl. 5 (1), (2) and (6) which embody the recommendations of the majority.

(6) Actions to recover Property.—Mr. Garran submits in his minority report already mentioned, that these should as a first step be statute barred in twelve years, as in England, instead of in fifteen years, as at present in Victoria. The majority do not recommend any change—see cl. 8 of the Bill.

(7) Disabilities.—(a) The English Act continues unchanged the existing disabilities of infancy and lunacy, abolishes the disabilities of coverture and absence of the defendant beyond the seas, and makes provision for a convicted felon—see s. 31 of the Act.

(b) The sub-committee was unanimously in agreement with the English Act in omitting coverture and absence of the defendant beyond the seas. It was also unanimously of opinion that if a convicted felon has a cause of action there is no reason why he should not enforce it at once, if necessary by having a curator appointed. Accordingly it does not recommend the adoption of this provision.

(c) Mr. Garran also feels that the difficulties in the way to successful litigation by both infants and lunatics have been so reduced by modern conditions, that it is not necessary to give them an extended period in which to sue. Accordingly he recommends that no extended period should be allowed in respect of any disabilities.

(d) It was felt by some of the sub-committee that a distinction should be drawn between rights to property and in trust estates, on the one hand, and ordinary actions of contract and tort on the other, and that the difficulties which confront an infant in enforcing a trust (for example) do not apply to the latter cases, so as to justify the very long periods of limitation involved.

(e) The majority however felt that a person under a disability of lunacy or infancy should not be deprived of any of the protection he now enjoys. Accordingly, it recommends the adoption of the English Act with the omission of the references to the convict. See the Bill clauses 3 (2) and (3), 24 (1).

(8) War.—Related to the question of disabilities is that of inability to sue through conditions due to War. This may be either a legal disability as in the case of the person, whether an enemy or not, who is in enemy territory, or a practical disability, as in the case of the prisoner of war, or the person in a neutral enclave entirely surrounded by enemy territory, such as Switzerland in the last War.

The sub-committee recommends the extension of the period of limitation to cover both such cases. Moved mainly by difficulties of definition, it has left the fixing of the special cases in which the extension should be granted to be worked out by the Courts—see cl. 24 (2) of the Bill. This subject is not dealt with in the *Limitation Act 1939*, but see the *Limitation (Enemies and War Prisoners) Act 1945*.

The sub-committee directs attention to the (*Commonwealth*) *Re-establishment & Employment Act 1945*, No. 11, ss. 131, 132.

It considers that cl. 24 (2) in its Bill is necessary as in its opinion the Commonwealth Act does not cover the whole ground.

(9) Public Authorities.—(a) Unlike England, Victoria has never had a Public Authorities Protection Act. The sub-committee gathered the impression that it is not the policy of the Parliamentary Draftsman's Office to insert special periods of limitation or provisions throwing unusual difficulties in the way of those desiring to sue public authorities, except for special reasons.

(b) However, there are a number of such cases, of which the *Railways Act 1928* s. 200 is typical, which the sub-committee has had to consider.

(c) These Acts usually contain provisions along these lines:—

(i) There is a very short period of limitation.

(ii) That period is further shortened by the necessity for a notice before action, which notice must be as formal as a pleading and cannot be amended.

(iii) Tender of sufficient amends before action brought shall be a defence.

The *Railways Act* secs. 201 and 205 and the *Local Government Act* s. 835 impose special restrictions on plaintiffs as to Courts and amounts recoverable.

The *Railways Act* s. 204, and the *Local Government Act* s. 834 (2), (3) and (5) also contain special regulations as to procedure in actions to which they apply.

(d) The sub-committee is unanimously of opinion that there is no reason why the position of these bodies should be any different from that of any other defendant. Accordingly it recommends that all the provisions as to notices before action and as to short periods of limitation should be repealed. As to the provisions as to tender of amends before action, and as to the provisions of s. 204 of the *Railways Act*, it feels that these are outside the scope of the present Bill, but it suggests that it might be considered whether the Rules as to payment into Court might not be amended to cover such matters in all cases. Similarly while the provisions of the *Local Government Act* s. 834 (2), (3) and (5) are so tied up with the limitation provisions of sub-sections (1) and (4) that it recommends the repeal of the whole section, it feels that the inclusion of similar powers in the Rules might be considered.

It also suggests that the Committee consider the propriety of recommending the repeal of the *Railways Act* s. 205.

(e) Mr. Garran fears that if the present periods of limitation for contract and tort are retained, the adoption by Parliament of this recommendation is unlikely. The majority of the sub-committee realise the force of this suggestion, but would prefer to exclude the public authorities from the Bill rather than to alter the period of six years in the case of simple contracts, at any rate. If it is found impracticable to secure the repeal of all these public authority provisions, the sub-committee recommends:—

(i) that the requirement of a notice before action should be abolished.

(ii) that the period of limitation should be uniform for all public authorities and should at least be one year, and that the Acts fixing a lesser period should be amended accordingly.

(10) The Crown.—(a) Crown Land. The English Act fixes a period of thirty years for land, sixty years for foreshore. In Victoria Crown Land and railways land are both exempted altogether from the provisions of the existing limitation Acts—Property Law Act s. 275, Railways Act s. 206. It is felt that this is more suitable to Victorian conditions, and no change is recommended. See now cl. 7 of the Bill.

(b) Crown Debts.—The Statutes of Limitation heretofore in force clearly did not bind the Crown, and there is authority for saying that they did not bind the subject suing the Crown. The *Limitation Act* 1939 has changed this, and the sub-committee agrees with this and recommends the acceptance here of the doctrine that the limitation of ordinary actions to which the Crown is a party should be the same as in other cases. See clause 33 of the Bill.

(11) Statutes conferring entirely new Rights.—A number of comparatively recent Statutes have enacted entirely new rights for various classes of people, and at the same time established special periods of limitation for them. In these cases the sub-committee recommends that no change be made and the limitation provisions be not consolidated. Typical examples are Workers' Compensation, Testator's Family Maintenance, and the Wrongs Act Part III. (Lord Campbell's Act).

(12) Existing Rights.—(a) Clause 34 of the Bill provides that actions already barred shall not be revived and actions already commenced shall not be affected.

(b) A more difficult problem is that of rights already accrued, when the action has not yet been commenced. The sub-committee recommends that the Bill should not come into force until some considerable period—say at least eighteen months—after it is enacted as law. This would enable persons whose rights will be affected by the new provisions to issue their writs and so bring themselves within s. 34 (b).

(13) We now turn to a detailed consideration of the changes made by the Bill in the existing law, pointing out also any variations from the *Limitation Act* 1939.

*Section 1.* As to the date of commencement see para. 12 of this Report and compare the *Limitation Act* s. 34 (2), which fixed a date of commencement fifteen months after the Act was passed.

*Section 2.* Comp. *Limitation Act* s. 34 (4).

*Section 3* (1).—This sub-section is based on the *Limitation Act* s. 31 (1)—Compare *Supreme Court Act* s. 82 (3), and *Property Law Act* s. 274.

“Action.”—A Reference to Ecclesiastical Courts is omitted.

Definitions of “Duty” and “Foreshore” omitted. The former incorporates references to Tithes, and the latter occurs only in a passage whose adoption we do not recommend.

“Land.”—References to Tithes omitted. Comp. *Property Law Act* s. 274.

Definition of “Parent” omitted, as it only occurs in a passage whose adoption we do not recommend.

Definition of “Person” in the *Property Law Act* s. 274 omitted relying on the *Acts Interpretation Act* s. 16.

“Rent.”—Comp. *Property Law Act* s. 274, which does not include rent service.

“Rent charge.”—Ecclesiastical references omitted.

“Ship.”—Throughout this Bill, we have omitted references to ships, on the ground that even when not a Commonwealth matter the subject was as highly specialized that it should not be treated in a general Bill of this type.

“Submission.”—Not in the Limitation Act s. 31, but compare Limitation Act s. 27 (7).

“Term of Years Absolute.”—This phrase is not defined in the Limitation Act, but it occurs in the Act and the Bill (an e.g. cl. 10 (2)) and we think it should be defined.

*Section 3 (2).* Based on Limitation Act s. 31 (2). The reference to a convict is omitted. References in the Property Law Act s. 289 to coverture, and in the Supreme Court Act ss. 85–87 to absence beyond the seas are also omitted. See para. 7 (b) of this Report.

*Section 3 (3).* Based on Limitation Act s. 31 (3) and redrafted to suit local conditions.

*Section 3 (4).* Limitation Act s. 31 (4), Property Law Act s. 274, omitting the reference to escheat, abolished by Administration and Probate Act s. 49.

*Section 3 (5), (6) and (7).* Limitation Act s. 31 (5)–(7). References to Tithe and to Dower omitted.

*Section 4.* Limitation Act s. 1.

*Section 5 (1).* Comp. Limitation Act s. 2 (1), Supreme Court Act ss. 82, 83. As mentioned in paragraph 5, this provision differs both from pre-existing law and from the Limitation Act. The Limitation Act bars all simple contracts and torts after six years. The old law excepted various torts, with limitations of four years for some, two years for others.

We recommend that some torts should be excepted (the list is nearly but not quite the same, libel being an important addition) and that all those excepted should be barred after three years.

The action against the Sheriff for moneys he has levied and failed to hand over is clearly “money had and received”. See Bullen and Leake, 3rd ed. p. 44, n (a). Accordingly, following the Limitation Act, we do not make any special mention of it. Contrast the Supreme Court Act s. 82 C II.

*Section 5 (2).* Limitation Act s. 2 (2). Comp. Supreme Court Act s. 82 (2).

*Section 5 (3).* Limitation Act s. 2 (3), Supreme Court Act s. 82 (1) D I. Throughout this Act we have retained the former Victorian period of fifteen years, rather than the English period of twelve years.

*Section 5 (4).* Limitation Act s. 2 (4) with fifteen years instead of twelve. Supreme Court Act s. 82 (1) D II. Property Law Act s. 304.

*Section 5 (5).* Limitation Act s. 2 (5). Comp. Supreme Court Act s. 81. The period is two years in all cases. At present the “Common Informer” has only one year.

*Section 5 (6).* Compare Supreme Court Act s. 82 (1) A and B. There is no corresponding provision in the Limitation Act. See para. 5 of this Report, and Note to s. 5 (1). Limitation Act s. 2 (6), which deals with Admiralty matters, is omitted—see note to s. 3 (1) “Ship”.

*Section 5 (7).* Supreme Court Act s. 83 contains a general provision prohibiting the recovery of more than six years arrears of interest in any circumstances. The Limitation Act contains no such general provision, but we recommend that the principle should be retained and insert the sub-section to give effect to it.

*Section 5 (8).* Limitation Act s. 2 (7).

*Section 6.* Limitation Act s. 3. This section is new. Sub-section (1) abolishes the rule that time starts to run again after each of several conversions of a chattel, and sub-section (2) provides that the title of the owner of a chattel is barred when his right to sue is barred.

*Section 7.* Property Law Act s. 275. Contrast Limitation Act s. 4 (1). We recommend the retention of the Victorian provision. See para. 10 (a) of this Report.

Limitation Act s. 4 (2) deals with spiritual corporations solely and is omitted.

*Section 8.* Limitation Act s. 4 (3), with fifteen years substituted for twelve. Comp. Property Law Act s. 276.

*Section 9.* Limitation Act s. 5. Comp. Property Law Act s. 277 (first three cases).

*Section 10 (1).* Limitation Act s. 6 (1). Comp. Property Law Act s. 277 (Fourth Case) and 279.

*Section 10 (2).* Limitation Act s. 6 (2), substituting fifteen years for twelve. This is new in Victoria, but has been law in England since 1874. We recommend its adoption.

A proviso, dealing with Crown and ecclesiastical reversions is omitted.

*Section 10 (3).* Limitation Act s. 6 (3). Comp. Property Law Act, ss. 293, 294. There must be very few (if any) estates tail left in Victoria—their creation was prohibited in 1885—but until they are formally abolished provisions such as these must be retained.

*Section 10 (4).* Limitation Act s. 6 (4). Comp. Property Law Act s. 277 (Third Case).

*Section 10 (5).* Limitation Act s. 6 (5). Comp. Property Law Act s. 292.

*Section 11 (1).* Limitation Act s. 7 (1). Comp. Property Law Act s. 296.

*Section 11 (2)–(4).* Limitation Act s. 7 (2)–(4). Comp. Property Law Act s. 279. The position of equitable owners under existing legislation is very obscure. These provisions preserve the supporting legal estates until the equitable interests arising out of them are barred.

*Section 11 (5).* Limitation Act s. 7 (5). Comp. Property Law Act s. 277 (last three lines).

*Section 12.* Limitation Act s. 8. Property Law Act s. 277 (Fifth Case), and 278.

*Section 13 (1) and (2).* Limitation Act s. 9 (1) and (2), Property Law Act ss. 281, 282.

*Section 13 (3).* Comp. Limitation Act s. 9 (3), Property Law Act s. 283. For some reason which we were unable to discover, the Limitation Act omits the reference to a “yearly” rent. This has been restored.

*Section 14 (1)–(3).* Limitation Act s. 10. Comp. Property Law Act s. 277, concluding paragraph.

*Section 14 (4).* Comp. Property Law Act s. 286. As legal joint interests are abolished in England, there is no corresponding provision in the Limitation Act.

*Section 15.* Property Law Act s. 295—Estates Tail. As the procedure to bar an entail is different in Victoria than in England, we recommend the omission of the Limitation Act s. 11, and the retention of the Property Law Act s. 295.

*Section 16.* Limitation Act s. 12 (substituting fifteen years for twelve). Comp. Property Law Act s. 300 (first three lines).

*Section 17.* Limitation Act s. 13. Property Law Act ss. 284, 285. Limitation Act s. 14 relates to Advowsons and is omitted.

*Section 18.* Limitation Act s. 15 (omitting references to advowsons), Property Law Act s. 280.

*Section 19.* Limitation Act s. 16 (omitting references to advowsons), Property Law Act s. 301. The Limitation Act contains a reference to the Land Registration Act, which corresponds to the Transfer of Land Act. This has been omitted as unnecessary.

*Section 20.* Limitation Act s. 17 (omitting references to Dower), Property Law Act s. 305.

Property Law Act s. 287 omitted as unnecessary.

*Section 21 (1).* Limitation Act s. 18 (1). Comp. Property Law Act s. 304. The reference to personal property is new. The Limitation Act also includes a reference to the proceeds of sale of land, which we omit.

*Section 21 (2)–(4).* Limitation Act s. 18 (2)–(4). New. Twelve years altered to fifteen.

*Section 21* (5). Limitation Act s. 18 (5), modified in view of our retention of the general provision that more than six years arrears of interest cannot be recovered in an action. s. 5 (7). Comp. also Property Law Act s. 305. Limitation Act s. 18 (6) relating to mortgages of ships, omitted.

*Section 22*. Limitation Act s. 19. Trustee Act s. 67.

*Section 23*. Limitation Act s. 20. Comp. Property Law Act s. 304. The concluding part of section 20 is omitted as unnecessary in view of our s. 5 (7). Fifteen years substituted for twelve.

Limitation Act s. 21, dealing with public authorities, omitted. See para. 9 of this Report.

*Section 24* (1). Limitation Act s. 22. Comp. Property Law Act s. 289 (which gave an additional period of ten years), ss. 290 and 291, and Supreme Court Act s. 84.

As we have not preserved a minimum of six years, some drafting amendments were necessary.

*Section 24* (2). New. See para. 8 of this Report.

Limitation Act s. 22 Proviso (*d*), which applies only to public authorities, is omitted.

*Section 25* (1). Limitation Act s. 23 (1), omitting references to advowsons. Comp. Property Law Act s. 288. The reference to personal property is new.

*Section 25* (2). Limitation Act s. 23 (2). (Application to estates tail.)

*Section 25* (3). Limitation Act s. 23 (3). Comp. Property Law Act s. 277 (end), and s. 300.

*Section 25* (4). Limitation Act s. 23 (4). Comp. Property Law Act s. 304, and Supreme Court Act s. 88 (1).

*Section 26*. Limitation Act s. 24. Comp. Property Law Act s. 304, and Supreme Court Act s. 88 (3).

Supreme Court Act s. 88 (2) is omitted as unnecessary, following the Limitation Act.

*Section 27* (1). Limitation Act s. 25 (1). Ecclesiastical references omitted. Comp. Property Law Act s. 288.

*Section 27* (2)–(4). Limitation Act s. 25 (2)–(4). Comp. Property Law Act s. 300.

*Section 27* (5)–(8). Limitation Act s. 25 (5)–(8). These provisions are new.

*Section 28*. Limitation Act s. 26. Comp. Property Law Act s. 298.

This section applies the doctrine of “concealed fraud” to all actions.

*Section 29*. Limitation Act s. 27 (1)–(6). New in Victoria.

Applies the Statute of Limitations to Arbitrations.

Limitation Act s. 27 (7) is included in our s. 3.

*Section 30*. Limitation Act s. 28. Comp. Supreme Court Act s. 90.

This alters the time at which the period is to be reckoned from date of counterclaim to date of writ.

*Section 31*. Limitation Act s. 29. Comp. Property Law Act s. 299.

*Section 32*. Comp. Limitation Act s. 30. Applies the Act to the Crown. See para. 10 of this Report.

*Section 33*. Comp. Limitation Act s. 32, from which the reference to the Crown is omitted, and also the Proviso (as we have omitted s. 21).

*Section 34*. Comp. Limitation Act s. 33.

## 2. MINORITY REPORT.

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 plaintiff 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 overriding 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 speciality 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 supervized 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 for 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.

A. GARRAN.

# MINUTES OF EVIDENCE.

WEDNESDAY, 4TH JUNE, 1947.

*Members Present:*

Mr. Slater in the Chair;

<i>Council.</i>	<i>Assembly.</i>
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. J. A. Kennedy,	Mr. Field,
The Hon. G. S. McArthur,	Mr. Hollway,
The Hon. A. E. McDonald.	Mr. Oldham.

The Honorable Mr. Justice O'Bryan, and Mr. Andrew Garran, Assistant Parliamentary Draftsman, were in attendance.

*The Chairman.*—This meeting of the Committee has been summoned to deal with the Limitation of Actions Bill which was submitted to the Law Department by the Chief Justice's Committee on Law Reform and which was afterwards introduced in the Assembly. Members of the Committee have had circulated to them copies of the Bill together with copies of the majority report of the sub-committee of the Chief Justice's Committee, and a minority report by Mr. A. Garran, the Assistant Parliamentary Draftsman. Mr. Justice O'Bryan is in attendance and will present to this Committee the views of the majority of the sub-committee, and I will then ask Mr. Garran to present his views. As time is limited I suggest that they address themselves primarily to the points of difference between the two reports.

*Mr. Justice O'Bryan.*—I think it is desirable at the outset that I should say a few general words about the Bill so as to give the Committee an understanding of the need for such a Bill. At the present time, the law in relation to the limitation of actions—that is, the time within which a person must pursue his rights if he wants to get redress in the Courts—is covered by a number of statutes. One member of the Chief Justice's Committee has found that there are nearly 100 statutes dealing with these matters, and the legal profession feels that it is most undesirable that the law in relation to such an important matter should be scattered over the statute-book in all sorts of places. It is considered highly desirable that the law on this subject should be collated and brought together under one heading. The same idea prevailed in England, with the result that in 1939 a new statute dealing with limitation of actions was passed by the British Parliament, bringing under the one heading all those various matters. The primary importance of this Bill is to achieve a similar result in Victoria—to simplify the multitude of statutes dealing with the one subject matter.

In addition, there are certain matters in relation to the limitation of action on which it is felt that some amendment of the law is desirable and advantage is being taken of the opportunity presented by the preparation of this Bill to deal with those matters. There is one subject of outstanding importance on which Mr. Garran and the other members of the Chief Justice's sub-Committee were not in disagreement, but which I think members of this Committee should be apprised of, so that they may appreciate the decision that has been reached in regard to it.

A number of public authorities in this State have special provisions in their statutes in relation to the limitation of actions. Those provisions, broadly speak-

ing, consist of three types. The first is that a person cannot bring an action against the authority unless he has given notice beforehand of his intention to do so. In the second, the period of limitation in most cases is very short; and in the third, there is a provision in the statutes which enables the public authority to make some offer before the action so as to render itself not liable if the offer is as great as the award ultimately made by the Court. The notice before action is, in most cases, a technical document, and has proved a trap to a number of people in the community who wanted to sue these authorities. It is a trap for the client rather than for young practitioners. I think injustice has been done over the years by such provisions. The statutes have been interpreted by the Courts with the greatest strictness, and unless notice has been given in strict compliance with the Act, the injured person finds himself unable to get redress in the Courts. One of the proposals of this Bill is to do away entirely with this notice before action.

In regard to public authorities, various periods of limitation are laid down in the statutes as to the time within which action must be brought. It is desirable that there should be one period of limitation applicable to all public authorities, and the Chief Justice's sub-Committee thinks that that period should be no greater than is the case with any ordinary private individual who is sued in the Courts. It is considered that it should be the same period of time in both instances; it is thought desirable that the period should be no less and no greater than is the case with private citizens.

So far as the third type is concerned—the offer before action—that matter is dealt with in the case of private individuals by payment into Court; this provision operates justly for private individuals, and there is no reason why the same type of provision should not yield justice to public authorities. I do not suppose it is likely that the public authorities will give up these protections, without struggle, but I am not going into the pros and cons of the matter, or beyond what I have already said. I invite this Committee to examine the report of the Chief Justice's sub-Committee regarding these matters. The Bill has been prepared on the basis that all those protections of public authorities will be deleted from their respective statutes.

I should here state that excellent work has been performed by Mr. Garran; his work on this subject is monumental. He has had the difficult job of ascertaining where those enactments existed in the statute-book. The idea is to put public authorities on the same basis as ordinary people in the community. With these words regarding public authorities, which to my mind is one of the most important parts of the Bill, I turn now to matters which have been the subject of some difference between Mr. Garran and the other members of the Chief Justice's sub-Committee.

The first difference relates to the period which should be fixed as the limit of time within which actions must be brought. Under the existing law in regard to most ordinary actions in the Court, six years is the normal period, and it is felt by the majority of the Chief Justice's sub-Committee that that period should be continued in reference to what are called simple contract debts. Those are the ordinary debts which arise

in the commercial community, when a person buys goods from another and incurs a debt to another in the ordinary course of business. We, who constitute the majority of the sub-Committee, consider that that six-year period should be continued for that class of action. Mr. Garran considers the period should be reduced to three years, and the arguments against the reduction are many. One not unimportant argument is that the six-year period is the period which exists, as far as we can ascertain, in all English law countries. It exists in every State in Australia, in England and in most English law countries. Confusion would be caused in the commercial world if Parliament were to introduce an entirely new period for ordinary simple contract debts. A man doing business with another in a sister State might find that he had a different period in that State within which he must bring action. The period of six years has been in operation for about 300 years, and members of the public have grown used to the fact that they can wait for that long before they bring action. In addition, an important aspect is that the ordinary man in trading life does not want to press his debtors into Court too early. He wishes to give them time to pay; he does not want to be rushing about saying, "Look here, the three-year period runs out to-morrow, and if I do not get an acknowledgment from you by to-morrow, I cannot sue you at all." It is felt that the people have become accustomed to the six-year period and that it should be continued with ordinary contracts.

In regard to the ordinary tort action, the same consideration applies, except in relation to some particular kinds of torts. There are some classes of wrongs which the Chief Justice's Committee feel would bring a ready and immediate writ, if the person alleging the wrong really felt that he had been wronged. A class of case which readily springs to mind is an action for slander and libel. A man who is slandered or defamed, either in writing or verbally, takes action promptly if he wants to get redress. If he waits three, four, or five years, he probably has not been hurt very much. If his name has to be cleared, he will do it straightaway. Another class of case is that of a person who suffers personal or property injury as a result of negligence or some other sort of tort. He generally acts fairly promptly. Sometimes he cannot act promptly, because he might be in hospital for a year or longer, during which time he might not bring action. My experience and the experience of other members of the Chief Justice's Committee has been that we know of very few cases in which a man has sought redress for that type of injury after three years. In my experience at the Bar and on the Bench, I can remember only two such cases.

It is felt that that length of time is quite sufficient, but we do not think that the period for other actions should be reduced below the existing period of six years. I have been dealing with the principal problems that arise in connection with the main period for certain types of actions, in relation to Mr. Garran's recommendation (a) in his report that the period for all actions, except the property actions specifically referred to in the Bill, be limited to three years. I have given the reasons why we think that there are other types of actions to which the rule does not apply. My remarks have been of a very general character; they have not touched upon minute details.

The second ground upon which we differed was Mr. Garran's suggestion regarding the special rules of limitations in certain Acts. He recommended that the special rules of limitations in Lord Campbell's Act, the Testators' Family Maintenance and other Acts, should be abolished, and that the three-year rule should apply. We feel otherwise about that. In the

first place, these are all cases in which there has been given to a person a new right which does not ordinarily exist in the Common Law. Consequently, any one who desires to enforce that right will immediately resort to the statute which grants it and see at once the period of limitation that is applicable. That person is not likely to be misled into thinking that he has more time than the statute gives him.

The next point is that most of these cases to which Mr. Garran refers are cases in which claims are given against deceased persons' estates. In some instances the claims are in favour of such estates; but, generally speaking, Testators' Family Maintenance Act and revised *actio personalis* cases comprise claims brought against the estates of deceased persons. It is desirable that when a man dies, his estate should be administered fairly quickly; it is not desirable that the property should be held or tied up for a long period of time, awaiting the possibility of an action being brought. I think it is for that reason that the new Acts said, in effect, to the people who were likely to bring an action against an estate, "You must bring it promptly." It is provided that if an action is not brought within a year of the death the claim is barred, and that the executor can proceed to distribute the estate. The members of the Chief Justice's Committee think that to extend the period to three years would be doing no more than to bring in a uniform rule which would be bad for this type of action. It is not necessary because, if the person who brings such action looks at the statute, he will learn that he must do so within the specified period. That explanation indicates why we do not agree with Mr. Garran's recommendation.

The next view expressed by Mr. Garran is that all disability periods should be abolished. This means that at present, under our law, time does not begin to run against a plaintiff in certain circumstances. If an infant is suffering a wrong, he does not have to bring his action within three years, or six years, as the case may be, of his being wronged. Time does not run against him until he reaches his majority. The same remark applies to a lunatic; if he suffers an injury, time does not run against him until he becomes sane. In the existing law there are other disabilities which are recognized but which the Chief Justice's Committee suggests should be deleted. With that suggestion Mr. Garran agrees. He thinks, however, that all these disability periods—including those applying to the two instances I have stated—should be abolished; whereas the Committee considers that the disability period applicable to those instances should be retained. If the disability periods were to be abolished straight out, it would mean that an infant who was defrauded by his trustee—that trustee possibly being his guardian and the only person who could look after the infant's interests—upon reaching the age of 21 might find that he had been denuded of all his property by the trustee and had no redress open to him.

*Mr. Garran.*—The Bill provides for an extension in a case of fraud.

*Mr. Justice O'Bryan.*—Suppose that the trustee of an infant had been negligent in the handling of trust funds; that would not be fraud. Again, suppose that an infant aged seventeen is knocked down in a street accident and that, irrespective of whether he has or has not a guardian, no action is brought on his behalf. On attaining the age of 21 he has, for example, a crippled leg and contemplates a suit for damages. He would find himself barred if the protection in question were not retained. The same argument applies in the case of a lunatic. Suppose that an infant is owed money. While he is an infant time would run continuously against him. Mr. Garran's idea is that an infant invariably has a

trustee, a guardian or a father to look after his interests, and that the interests of a lunatic are protected by the Public Trustee. There is always the possibility that a father, a guardian, or a trustee will not care for an infant in a proper manner. The committee thinks that the two disability cases should be retained; but there are other disability cases in respect of which Mr. Garran and the other members of the committee are thoroughly agreed should be abolished.

The next recommendation is that, in relation to property actions, the period of fifteen years should be reduced to twelve years. The main committee has not very strong views on that matter. At present title to property is not barred by adverse possession, unless such possession has obtained for fifteen years. In England the period has been twelve years. In Victoria we have retained the period of fifteen years for a long time. I think I am voicing the opinion of the Chief Justice's Committee when I say that the only reason that period has been retained is that there is not much difference between twelve years and fifteen years; in other words, there is not much virtue in reducing the period by three years. When people have grown used to a period, it is better to retain it. We felt that no really useful purpose would be served by a change, and so we decided to stick to fifteen years. That might sound to you gentlemen, who are accustomed to altering the laws, as mere conservatism. However, I think it fairly represents the view of our Committee.

*By the Chairman.*—Would not such a question have arisen when the English law was changed?

*Mr. Justice O'Bryan.*—The English law has not been changed. There is the position, and our Committee does not hold strong views on it. I am telling you gentlemen what actuated the minds of the members of the Committee when they retained the period of fifteen years.

The last matter to be considered is paragraph (e) of Mr. Garran's recommendations—"consideration be given to authorizing the court in extreme cases to allow actions to be brought outside the limitation period." I am opposed to that proposal. There should not be legislation which would give discretion to the court to extend the time if there were special circumstances. The argument against that is this: one of the important things about having a statutory limitation is that people may act with certainty in their affairs. They may be able to say after six years, "The debt which I thought was a debt no longer affects me." A person may have a street accident. After three years, if the Bill is passed, he will be able to say, "I am no longer troubled about that accident." An executor can say he will not be bothered about matters of that sort. It is all-important to my mind that certainty should continue to exist, and that there should not be left open to Judges—wise as Judges always are—opportunities to say even in special circumstances that in this case one can bring your action although it is beyond the period of limitation. I think that would be a revolutionary idea if brought in as a matter of general principle. In special cases it has been brought in.

One provision in the Act affects cases of people who by reason of the war have been unable to bring on their actions. But to bring in a general rule to enable courts to extend the periods would rob the statute of limitations of the main benefit it has, and that is certainty. I think you, gentlemen, should make up your minds as to what is a fair time to allow a man to bring a particular type of action. Having made up your minds, you should stick to that period and say, "If a person is outside that time, he cannot

bring the action." That is why the majority of the Committee think the period should not be unduly limited. You should fix what is a fair thing between the parties and stick to it. These seem to be the only points on which Mr. Garran and I have any difference. While we are in difference, I should say that Mr. Garran kindly came on to our Committee and gave his spare time to it so that we should prepare a draft Bill that would meet with the approval of the Parliamentary Draftsman. I should add that any difference of opinion in matters of principle is nothing but a friendly difference.

*Mr. Garran.*—I think Mr. Justice O'Bryan summed up the position well at the beginning when he said the difference really arose out of agreement. That is to say, to have an effective consolidated statute of limitation something satisfactory must be done about the period of limitation for public authorities. It was mainly to achieve something in that direction that the suggestion was made that the general period be reduced from six to three years. When it comes to the term of the period it is a matter of opinion. I do not claim any great strength of opinion in this matter, but I was faced with the question when the moment came to examine limitations for public authorities. The extreme case is this one. In the City of Melbourne a claimant must lodge his notice within ten days, or he loses his action. I was faced with the position that under the Bill the period of ten days might be extended to nearly 27 years. That I think is a swing of the pendulum that would not be approved by Parliament. Approaching the subject from that point of view, I thought it better to fix a period that was reasonable. The present period is admittedly liberal. I mean to say that the period is sufficiently long whatever happens. As Mr. Justice O'Bryan said, when one creates a new action, it is reasonable to say six months is long enough to bring the action. The period of three years referred to is one that has no exact significance, but it was an attempt to strike the mean between the existing period for statutory authorities and the existing period for the individual without in any way radically or seriously affecting the rights of individuals.

I shall temporarily skip paragraph (b) and pass to paragraph (c) of my recommendations—"all disability periods be abolished." They are a gradually dwindling race, and several have already disappeared—one is coverture in the case of a married woman. It is proposed to alter the position in regard to absence beyond the seas and to prisoners in gaol. In regard to the infant I do not fear the troubles that Mr. Justice O'Bryan does. I doubt whether in His Honour's experience a plaintiff has had to claim the extra period because he was injured during his infancy. In regard to fraud, the position is already covered, but in regard to other trustee cases, there are several equitable remedies including that of account which I think will meet the case. In regard to lunatics, the position is very anomalous in that a lunatic is only protected from wrongs that are done to him while he is in an institution. So a medical officer who wrongly certifies him is safeguarded—that is an act done before the man became a lunatic. But the warder who bashes the man in an institution is not safeguarded. As I have said in my report, I feel that there is sufficient protection through guardians, next of kin, public trustees, and so on.

*By Mr. Bailey.*—If a lunatic were bashed on the head, he could not go on with an action?

*Mr. Garran.*—If he were insane for six years, he could not bring an action; but it could be brought by the Public Trustee.

*By Mr. Bailey.*—If the Master in Lunacy sat down on his job, would the insane person have redress against him later?

*Mr. Garran.*—I doubt if he would.

*By Mr. Hollway.*—If the Public Trustee were negligent, surely the man would have the right of action?

*Mr. Garran.*—But the period would run. The trustee would be negligent while the man was an inmate of an institution. With regard to the specific rules of limitations under Lord Campbell's Act and the other cases mentioned in paragraph (b) of my recommendations, I agree that if a six-year period is prescribed the extension would be too long. At the same time, it must be remembered that action can be brought against an estate within the period of six years for breach of contract, even if most of that period runs after the death of a testator. This is not setting up a completely new situation.

*By the Chairman.*—It means an entirely different cause of action?

*Mr. Garran.*—Estates might have to be re-opened. I have put forward the basis of three years to enable the Act to be placed upon a comprehensive and uniform basis. The reduction from fifteen years to twelve years in property actions has been mainly put in as a test with the view of reconsidering the matter when, or if, the law of property can be simplified. The Bill is one of the greatest mirrors which can be held up to property law. If any one can understand the property sections, he will do better than I can. I think it could be simplified.

I am not strongly in favour of my recommendation in paragraph (e). It was put forward to try to obtain another method of approach to the question of having a uniform period of three years without any disability periods.

I think the Bill is a move in the right direction. It suffers, I fear, in that I have put forward a view which was only partly accepted. It would have been better to have disregarded it and so to have kept more uniform periods, such as those appearing in the English Act. We have dealt with the public authorities' protection problem by shortening some of the periods of tort, but without satisfying the public authorities by reason of the fact that the disability periods will now apply to them, thus lengthening the existing periods for those authorities unjustifiably.

*By the Chairman.*—What was the reason for the Chief Justice's Committee adhering to the period of fifteen years for specialty cases?

*Mr. Justice O'Bryan.*—I cannot answer the question offhand, because some time has elapsed since we dealt with the matter. I know that it was discussed.

*The Chairman.*—In the English Act, the period is twelve years.

*Mr. Justice O'Bryan.*—Most important of the specialty debts is the mortgage debt. There are not many specialty debts, as bonds are unusual in this community and the specialty debt most often encountered is a mortgage which is tied up with land. I think it was felt that as we were retaining the fifteen-year period for land we should retain the fifteen-year period for mortgages in respect of money secured by land.

*By Mr. Oldham.*—In the public authorities' protection legislation of England, is one uniform period fixed for actions against public authorities?

*Mr. Garran.*—Yes, of twelve months from when the right of action accrues. At one time it was six months from the time of an accident; in some cases that time would run out before the right of action accrued.

*By Mr. Oldham.*—Under this legislation, the proposal is three years?

*Mr. Garran.*—Yes, for all of them.

*Mr. Justice O'Bryan.*—Under this legislation for actions for personal injuries or property injuries due to tort, the period would be three years. Those are the common types of action with which public authorities are concerned.

*By Mr. Oldham.*—That period would be longer than the present period?

*Mr. Garran.*—Yes, plus a period of disability for an injured person.

*Mr. Oldham.*—It will be a radical change to make the period three years since the present period is six months for the tramways and railways. I feel that those authorities ought to be advised of the proposed change. If this Committee arrived at a unanimous decision on the matter, I feel that it would have great weight when the Bill is before Parliament. I suggest that we should hear opposing views instead of making a recommendation to both Houses and possibly having those views brought forward there.

*By Mr. Hollway.*—Is there any reason why a public authority should be placed in a better position than a private firm?

*By Mr. Oldham.*—A public authority has a large number of incidents and accidents; if three years is allowed in which to take action may not the witnesses be lost?

*Mr. Justice O'Bryan.*—Was it not thought that large undertakings like the tramways and railways might be considered to be fair game for what were not genuine actions? Was it not for that reason that the short period was introduced? I think that condition has passed.

*By Mr. Kennedy.*—I remember an occasion when a railway action was being fought a witness played football with my club under an assumed name. Could not something similar occur again?

*Mr. Justice O'Bryan.*—The same thing might happen to-day if a man had a motor accident in the street.

*Mr. Garran.*—May I quote from the report of the English Law Revision Committee on this subject—

We have carefully considered how far it is advisable to interfere with the policy of the Public Authorities Protection Act. That policy is quite clear, namely, to protect absolutely the acts of public officials, after a very short lapse of time, from challenge in the courts. It may well be that such a policy is justifiable in the case of important administrative acts, and that serious consequences might ensue if such acts could be impugned after a long lapse of time. But the vast majority of cases in which the Act has been relied upon are cases of negligence of municipal tram drivers or medical officers and the like, and there seems no very good reason why such cases should be given special treatment merely because the wrongdoer is paid from public funds.

*Mr. Oldham.*—At the moment the law is that public authorities have some protection. The railways have greater protection than the tramways. Is it the duty of this Committee, without proper inquiry at any rate, to recommend what are, in effect, major alterations of the law?

*Mr. Hollway.*—I think they should be pointed out to the Houses. I cannot see any reason why a public authority should be placed in a better position than an ordinary litigant.

*Mr. Field.*—I should like to hear the views of public authorities.

*The Chairman.*—If, after further discussion we reach an agreement, it could be pointed out in the House that much consideration had been given to the problem, and we could suggest that the views of public authorities should be obtained.

*Mr. McDonald.*—Would not the effect of that be to delay the passage of the Bill?

*The Chairman.*—There is something to be said for Mr. Oldham's point of view. I like the English provision of a year.

*Mr. Kennedy.*—When I was connected with the Railways Department a person was killed by a gate. Although the gate was considered to be in order the Railways Commissioners were prepared to construct a bridge to replace it, but they said they could not do anything, say anything, or promise anything until six months had elapsed.

*Mr. Hollway.*—A widow who wanted to take action against the Railways Department could not do so, because a trustee company was the executor, until after six months, and at the end of that time she could not take action because she had not given notice within a

month. Suppose a person has in his front lawn a death-trap; some one falls into it and is injured; he can take action in six years' time.

*Mr. Justice O'Bryan.*—Suppose some one has his eye injured by an over-hanging tree on my property. As the law stands at present he can bring an action in six years, but under the proposal now being made the period will be three years. I would have no better chance of meeting him than a public authority would.

*By Mr. Bailey.*—In the case of a company is not the notice of action to enable it to make inquiries before the writ is issued?

*The Chairman.*—I think so.

The Chairman expressed the thanks of the Committee to Mr. Justice O'Bryan and Mr. Garran for their attendance, and for the valuable advice and assistance they had offered the Committee on the Bill before the Committee.

Mr. Justice O'Bryan and Mr. Garran withdrew, and the Committee deliberated.

*The Committee adjourned.*



1949

VICTORIA.

## R E P O R T

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

WRONGS (TORT-FEASORS) BILL

TOGETHER WITH

APPENDICES AND MINUTES OF EVIDENCE.

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*Ordered by the Legislative Council to be printed, 5th April, 1949*

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS  
OF THE LEGISLATIVE COUNCIL.

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TUESDAY, 29TH MARCH, 1949.

9. STATUTE LAW REVISION COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the following Members of this House be appointed members of the Statute Law Revision Committee, viz.:—The Honorables A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

Question—put and resolved in the affirmative.

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EXTRACTED FROM THE VOTES AND PROCEEDINGS OF  
THE LEGISLATIVE ASSEMBLY.

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TUESDAY, 29TH MARCH, 1949.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That the following Members be appointed members of the Statute Law Revision Committee:—Mr. Bailey, Mr. Barry, Mr. Merrifield, Mr. Reid, Mr. Schilling, and the Mover (*Mr. Oldham*)—put and agreed to.

# REPORT

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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 Committee have considered a Bill to amend the Law relating to Proceedings against and Contribution between Tort-feasors, which the Honorable T. D. Oldham, M.L.A., Attorney-General, stated he proposed to submit to Parliament during the coming Session. The short title of the Bill is the “ Wrongs (Tort-feasors) Bill ” and the Bill, as presented to the Committee and which is set out in Appendix “ A ” to this Report, was identical with that which was introduced into the Legislative Assembly in the 1945-47 Session, and which was under consideration by the Joint Statute Law Revision Committee appointed for that Session when the close of the Session intervened.

2. The Bill embodied the recommendations of a special sub-committee set up by the Chief Justice’s Committee on Law Reform. That sub-committee consisted of Mr. Justice O’Bryan, who acted as Chairman, Mr. Fullagar, K.C. (now Mr. Justice Fullagar), Mr. Barry, K.C. (now Mr. Justice Barry), Professor Paton, and Messrs. A. D. G. Adam, E. H. Coghill, J. P. Adam, and R. F. Hall. Except for certain additions the provisions of the Bill are similar to those of an English Act, which was based on the recommendations of a report of a Committee of the Lord High Chancellor of England.

3. The Committee in their consideration of the Bill had before them copies of the second-reading speech made in 1946 by the then Attorney-General, the Honorable W. Slater, when he introduced the Bill into the Legislative Assembly, and copies of the evidence given by Mr. A. Garran, Assistant Parliamentary Draftsman, who appeared before the Joint Statute Law Revision Committee in 1947. Mr. Slater’s speech and Mr. Garran’s evidence on that occasion are set out in Appendices “ B ” and “ C ” to this Report.

The Committee were assisted by Mr. Justice O’Bryan, who appeared before them and presented fully the views of the Chief Justice’s sub-committee in regard both to certain controversial matters raised by Mr. Garran when giving his evidence in 1947, and to various draft amendments suggested by him. Assistance was also given by Mr. Garran, who again appeared before this Committee and gave further evidence in regard to some of the matters mentioned by him previously, and also in regard to draft amendments suggested by Mr. Justice O’Bryan.

4. In view of the difficulties stated by Mr. Garran and partly supported by Mr. Justice O’Bryan, the Committee are of the opinion that it would not be advisable to retain in the Bill the provision making it compulsory, subject to the Court having power to give an exemption, for tort-feasors to recover contribution from joint tort-feasors only by way of third party procedure in the original action, and the Committee recommend that such provision be omitted from paragraph (c) of sub-clause (1) of clause 2 of the original Bill.

5. Attention having been drawn to the drafting of sub-clause (3) of clause 2, the Committee consider that as a means of affording greater protection to the plaintiff the alteration suggested by Mr. Justice O’Bryan is a good one, and recommend its substitution for the existing sub-clause.

6. The Committee are also of the opinion that, in order to provide adequate safeguard and to meet the position should an amendment which has earlier this year been recommended by this Committee be made in the Limitation of Actions Bill, sub-clause (4) of clause 2 should be re-drafted. The Committee therefore recommend that this sub-clause be re-drafted as follows:—

“ (4) Notwithstanding any provision in any Statute requiring any notice to be given before action, or prescribing the time within which an action may be brought, proceedings for contribution under this section may although no such notice has been given be commenced at any time within twelve months after the writ in the original action was served on the party seeking to recover such contribution, but at the expiry of such twelve months such right to recover contribution shall be extinguished.”

7. The Minutes of the Evidence given by Mr. Justice O'Bryan and Mr. Garran on the 9th and 17th March, 1949, respectively are attached to this Report, and a letter dated the 22nd March, 1949, from Mr. Justice O'Bryan to the Attorney-General relative to the meaning of the words “ jury ” and “ court ” in sub-clause (2) of clause 2 is set out in Appendix “ D ” hereto.

8. Subject to the foregoing, the Committee approve of the proposals contained in the Bill as being a valuable measure of law reform, and recommend that the Bill amended as indicated above be submitted to Parliament and passed into law during the coming Session.

Committee Room,  
30th March, 1949.

# APPENDICES.

## APPENDIX A.

### WRONGS (TORT-FEASORS) BILL.

#### A BILL

To amend the Law relating to Proceedings against and Contribution between Tort-feasors.

Be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Wrongs (Tort-feasors) Act 1946* and shall be read and construed as one with the *Wrongs Act 1928* (hereinafter called the Principal Act) and any Act amending the same all of which Acts and this Act may be cited together as the *Wrongs Acts*.

Short title  
construction  
and citation.  
Nos. 3807,  
4070, 4380.

(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*.

Commencement.

2. (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

Proceedings  
against, and  
contribution  
between joint  
and several  
tort-feasors.

(a) judgment recovered against any tort-feasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage;

Comp. 25 & 26  
Geo. V. c. 30  
s. 6; (S.A.)  
No. 18 of 1939  
s. 6; (N.S.W.)  
No. 33 of 1946  
s. 5.

(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate or of the wife husband parent or child of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action separately;

(c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage (whether as a joint tort-feasor or otherwise) so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution

is sought. Any such contribution shall be recovered only by way of third party procedure in the original action:

Provided that the court in which the original action is pending or was determined may permit the tort-feasor to proceed to recover contribution by way of independent action upon such conditions as it thinks fit in any case where good cause is shown to its satisfaction why the tort-feasor did not proceed by way of third party procedure in the original action;

- (d) where (apart from the operation of this paragraph) any tort-feasor liable in respect of that damage is unable to recover contribution under this section from any other person because such other person is the husband or wife of the person by whom the damage was suffered, such tort-feasor may recover contribution from such other person under this section to the same extent as he could have recovered contribution thereunder if the person by whom the damage was suffered were not the wife or husband of such other person.

(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the jury or by the court if the trial is without a jury to be just and equitable having regard to the extent of that person's responsibility for the damage; and the jury or the court if the trial is without a jury shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) No execution for the recovery of contribution under this section shall issue without the consent of the court.

(4) Notwithstanding anything in any Statute of Limitation proceedings for contribution under this section may be commenced at any time within twelve months after the writ in the original action was served on the party seeking to recover such contribution, but at the expiry of such twelve months such right to recover contribution shall be extinguished.

(5) Nothing in this section shall—

- (a) apply with respect to any tort committed before the commencement of this Act;
- (b) affect any criminal proceedings against any person in respect of any wrongful act;
- (c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed; or
- (d) affect the operation of sections sixty-four to sixty-six of the *Supreme Court Act 1928*.

(6) In this section—

“Child” and “Parent” have respectively the same meaning as in Part III. of the Principal Act as amended by any Act.

“Judgment first given” means, in a case where that judgment is reversed on appeal, the judgment first given which is not so reversed and, in a case where that judgment is varied on appeal, that judgment as so varied.

Extent of contribution.

Execution to recover contribution.

When Statute of Limitation begins to run against right to contribution.

Exemptions.

No. 3783  
ss. 64-66.

Interpretation.

“Child.”

“Parent.”

No. 3807 s. 14  
as amended by  
No. 4380 s. 2.

“Judgment first given.”

## APPENDIX B.

SECOND-READING SPEECH MADE IN 1946 BY THE HONORABLE W. SLATER, ATTORNEY-GENERAL,  
ON THE WRONGS (TORT-FEASORS) BILL.

## WRONGS (TORT-FEASORS) BILL.

Mr. SLATER (Attorney-General).—I move—

That this Bill be now read a second time.

This is a Bill to amend the law relating to proceedings against and contribution between tort-feasors. I suppose at the beginning I ought in a word to define that rather intriguing term. It means simply civil wrong-doers. The Bill is a technical one, and is the first of a number of measures which I hope will, from time to time, be submitted to this House. They are the result of the work of the committee established by His Honour the Chief Justice to examine both the common law and the statute law and to make recommendations, embodied in legislative form, for consideration by the legislature. The common law of Victoria marches closely by the side of the common law of England. Traditionally, the common law has been inherent in the British community from time immemorial. The main authoritative statement of the common law is to be found in the reported cases of the courts of the land.

From successive cases involving the application of legal rules to similar, though varying, facts, the general rules of law have been hammered out through the years. The process of development is often slow and sporadic, depending upon the accidental circumstances which give rise to the cases around which the rules of law are stated. Changing conditions and changing ideas do not readily result in changes of the rules of law, which tend to become inflexible so far as the Courts are concerned unless the necessary corrective is provided from some other source. In past times the Courts of equity have provided such a corrective in a wide class of cases, but equity itself is not fused with the common law and has lost its initial liberalizing character. The common law now has to rely mainly on the supreme authority of Parliament to correct or vary any obsolete or unsatisfactory rules.

The Chief Justice of Victoria, Sir Edmund Herring, shortly after his appointment to office, established a committee to consider and advise upon reforms which appear necessary in the law—both common law and statute law—in the light of experience in the operation of the rules of law in the Courts of Victoria. The committee consists of representatives of the Supreme Court Bench, the Bar, the Law Institute, and the Faculty of Law of the University of Melbourne. The Chief Justice's committee has already reported on certain matters and, as opportunity offers, the committee's recommendations for legislation are being submitted to Parliament, sometimes, as in the case of the Evidence Bill recently introduced in the other House, as an integral part of legislation introduced at the instance of the Law Department, and sometimes, as in the case of this Bill, as measures complete in themselves.

The Bill is designed to abolish two long-established but much criticized rules of law. The English Law Revision Committee, appointed by the Lord High Chancellor of Great Britain in 1934, considered these two rules of law in its third report, which appears in Command Paper No. 4637 of 1934. The British Parliament gave effect to that report in the *Law Reform (Married Women and Joint Tort-feasors) Act 1935*, 25 and 26 Geo. V, Chap. 30. That Act has been adopted in South Australia by the *Wrongs Act*

Amendment Act of 1939, and in New South Wales by the *Law Reform (Miscellaneous Provisions) Act 1946*. The Victorian Chief Justice's committee has recommended the adoption of the English Act with certain additions which I shall refer to later. Of the two rules of law I have mentioned, one is called the rule in *Brinsmead v. Harrison*, a case reported in *L.R. 6 C.P. 584* and *7 C.P. 547*, and the other is known as the rule in *Merryweather v. Nixan*, reported in *1799 8 T.R. 186*.

It is interesting to look at the history of these rules, and to notice that they have remained in existence for such a long period of time, binding litigants. The rule in *Brinsmead v. Harrison* is to the effect that, where a plaintiff has received an injury at the hands of two or more wrong-doers, he can in his discretion sue any or all of such wrong-doers; but once he has obtained a judgment against one or more of them the tort is merged in the judgment and the plaintiff has no further right to proceed against any other of the wrong-doers, even though he himself has been unable to extract satisfaction from the wrong-doers against whom he has obtained judgment. The objects of this rule were stated by the Exchequer Chamber to be that it prevented multiplicity of actions and that a second jury might award different damages from the first. The English Law Committee recommended, and the English Act provides, that a judgment recovered against one or more persons in respect of an actionable wrong committed jointly shall not, while still unsatisfied, be a bar to an action against any others liable jointly in respect of the same wrong. Two safeguards are provided in the English Act on the advice of the English Committee, namely—

(a) That the plaintiff in all such actions together should not be able to recover a greater amount than the amount awarded to him in the first action; and

(b) that the plaintiff should not recover the costs of any subsequent action unless the Court before which it is tried is of opinion that there was reasonable ground for bringing that subsequent action separately from the original action.

The Victorian Chief Justice's committee has recommended that the English Act be adopted without variation on this matter. The Bill gives effect to this recommendation, the relevant provisions being those contained in paragraphs (a) and (b) of sub-clause (1) of clause 2, together with the interpretations in sub-clause (6) of clause 2. That is the first rule which this Bill proposes to alter, consistently with the method of alteration provided by the English Act, upon the recommendation of the English Committee. The other rule dealt with by this Bill, namely, that in *Merryweather v. Nixan*, is of obscure and uncertain origin, but first assumed definite shape in the judgment of Lord Kenyon in that case. The rule, in effect, provides that when two or more persons jointly commit a wrongful act, the person injured can, at his discretion, recover the full amount of his damage from any one of them. If he does so, the wrong-doer who has paid the whole damage has to bear the whole loss and the other wrong-doers escape liability by reason of a rule of the Common Law that there can be no contribution between joint tort-feasors. That is the most important feature of this Bill.

Why the Courts held that there could be no such contribution is not known. Possibly it was because the Courts wished to avoid helping one wrong-doer against the other. In actions for breach of contract the rule is different, for where one of several persons

jointly, or jointly and severally, liable under a contract is called upon to perform the contract in full or to discharge more than his proper share he has, as a general rule, a right to call upon any other persons jointly, or jointly and severally, liable with himself to contribute to the liability which he has incurred. That is a logical and proper rule and what is being done in this legislation is to bring into consistency the rules which determine contractual obligations, and apply it so far as the principles of tort are concerned.

Early in its history exceptions were grafted upon the rule in *Merryweather v. Nixan*, and that rule was held inapplicable in certain cases where one of the wrong-doers acted on the request or incitement or representation of the other. But where the act of the wrong-doers is manifestly tortious the rule in *Merryweather v. Nixan* defeats even an express contract of indemnity made by one of the wrong-doers with another. This was decided in *Smith v. Clinton*, 99 *Law Times Reports*, 840, where the owner of a newspaper agreed to indemnify newsagents against the liability for selling copies of a paper which might contain libels, but the Court held that such an indemnity could not be given effect. The rule in *Merryweather v. Nixan* has been repeatedly criticized. For example, Lord Herschell, Lord Chancellor, in *Palmer v. Wick and Pulteneytown Steam Shipping Company Ltd.*, 1894 *Appeals Cases*, page 318, at page 324, said of the rule that "It does not appear to me to be founded on any principle of justice or equity or even of public policy."

The strange yet true position is that that rule, criticized so strongly by the Lord Chancellor in 1894, which was laid down at the end of the 18th century and persistently criticized by the Bench, had to wait another 40 years before it was changed or abolished by legislation in Great Britain. It is now proposed by this Bill to abolish it in Victoria. The English Law Revision Committee recommended that the common law rule in *Merryweather v. Nixan* should be altered as speedily as possible and that the simplest way of altering the law would seem to be to follow the lines of the provision of the English Companies Act—contained in sub-section (3) of section 37 of the Victorian Companies Act 1938—which, except in cases of fraud, gives to a company director or promoter held liable for mis-statements in a prospectus a right of contribution "as in the case of contract" against any other person, who, if sued separately would also have been liable.

The English Act gives effect to this recommendation by providing that, where damage is suffered by any person as a result of a tort—whether a crime or not—any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is or would, if sued, have been liable in respect of the same damage, but so that no person shall be entitled to recover contribution from any person entitled to be indemnified by him in respect of the liability concerning which the contribution is sought. Similar provisions to the English Act are contained in paragraph (c) of sub-clause (1) and in sub-clauses (2) and (5) of clause 2 of the Bill which I am now submitting.

In addition to these provisions, the Victorian Chief Justice's committee has recommended the inclusion in the Bill of certain other provisions which have accordingly been included in the Bill now before the House and are as follows:—

1. The last sentence and proviso to paragraph (c) of sub-clause (1) of clause 2 provides that any tort-feasor seeking to recover contribution from another joint tort-feasor can proceed only by way of third party procedure in the original action, unless the Court in any particular case thinks there was good cause shown why he should not have proceeded by such procedure. The English Law

Revision Committee recommended that the right of contribution should be determined either by means of a third party procedure or in a separate action, but the Victorian committee considers that the third party procedure has been found so useful that its ambit has been considerably extended in most Courts which have adopted it and that the procedure should be made compulsory in cases of contribution between joint tort-feasors.

2. Paragraph (d) of sub-clause (1) of clause 2 reproduces a provision which appears in the South Australian Act to meet a peculiar case that arises as a result of wife and husband being unable to sue each other in tort. For example, a man is driving his wife in a car which becomes involved in an accident with another car through the joint negligence of the husband and the driver of the other car. The wife cannot sue her husband but can sue the driver of the other car. If nothing further were inserted in the Bill, the driver of the other car could not recover compensation from the husband, because the husband would not be liable in respect of the damage within the ambit of paragraph (c) of clause 2 (1). Paragraph (d) is designed to reverse this position by allowing the driver of the other car to recover contribution to the extent awarded from the husband.

That simple illustration indicates how extremely complex are the ramifications of what might appear to be a simple problem of law. In sub-clause (2) of clause 2 at the request of the Victorian Chief Justice's committee, further words have been inserted with the object of ensuring that the jury—where there is a jury—and not the Judge shall determine the extent of contributions between tort-feasors. The result of that would be that the jury would determine the respective degrees of negligence between the two wrong-doers, and the basis of contribution towards the sum of damages awarded to the plaintiff would be so determined by a jury in those cases.

Sub-clause (3) of clause 2 is inserted on the recommendation of the Victorian Chief Justice's committee with a view to ensuring that where one wrong-doer obtains an order for contribution from another, the payment of that contribution shall directly or indirectly be applied towards meeting the plaintiff's damages and not towards unjust enrichment of the first wrong-doer. To require the first wrong-doer to satisfy the whole of the plaintiff's claim before he can call on another wrong-doer to pay his share may cause undue hardship to both the plaintiff and the first wrong-doer. To provide for a relaxation of this rule in general terms might open a path for evasion in view of the multiplicity of circumstances that can arise. Accordingly, the committee has recommended that the compensation should be payable as directed by the court in each case.

Sub-clause (4) of clause 2 has been inserted on the committee's recommendation, with a view to overcoming cases such as that which arose in *Merlihan v. A. C. Pope Ltd.* 1946 1 *K.B.* 166, where a plaintiff was injured as the result of the act of two others, one of whom, being a public authority, could only be sued within a very limited period. The plaintiff sued the other wrong-doer who, in his turn, tried to recover contribution from the public authority, but his claim was held to be statute barred. The committee's recommendation will allow contribution between wrong-doers in such a case, even though the plaintiff has been statute barred as against the public authority. That position applies freely in Victoria because in relation to railways, tramways and, in certain circumstances, to municipalities and other bodies, the action has to be brought within the time prescribed by the statute.

Mr. HOLLWAY.—I submitted a case of that kind to the honorable gentleman some time ago.

Mr. SLATER.—That is so. If the action is not so brought, that is the end—the action is definitely barred. Provision is made in the present measure to overcome the possibility of the problem arising when there is combined negligence of two wrong-doers

resulting in an accident and when one of the wrongdoers may be an authority that is protected by the statute by reason of the limitation of time placed upon the institution of proceedings. That set of circumstances arose in the case to which I have already referred. Paragraph (d) of sub-clause (5) of clause 2 makes it clear that the Bill does not affect the operation of those provisions of the *Supreme Court Act 1928* relating to division of loss and damages in cases of collisions between ships.

I warmly commend this Bill to the House and am particularly grateful to the Chief Justice and his committee for their energy and deliberations in framing the recommendations that have been incorporated in the measure. This Bill, though its general principles can be clearly understood by laymen, involves many matters of legal technicalities and niceties, particularly in relation to some of the items to which I have referred and which are not included in the English Act. Accordingly, I propose to suggest that the debate on the Bill should be adjourned and that the measure should be referred to the Joint Statute Law Revision Committee to enable full and detailed consideration by the legal members of the two Houses.

Mr. FIELD.—It will be that committee's first task for a long time.

Mr. SLATER.—That is so. As one of the oldest Assembly members of the Statute Law Revision Committee, I think I am right in saying that that body has not met since 1928, when it considered the question of the consolidation of the statutes. At that time I was chairman of the committee, which was privileged to receive the recommendations of the late Mr. Justice (Sir Leo) Cussen regarding the consolidation. I hope that the reference of the present measure to the committee will represent a starting point from which the legal members of Parliament will proceed to give earnest consideration to certain legal problems with which they are familiar and which will come under their purview as the result of the deliberations of the very fine committee established through the energy and the vision of the present Chief Justice.

It is for those reasons that I have been obliged during my explanatory speech to resort to a large extent to the memorandum. As the subject is extremely technical in character, my action in that respect has been justified, though it may have transgressed the rules of the House.

## APPENDIX C.

EVIDENCE GIVEN IN 1947 BY MR. A. GARRAN, ASSISTANT PARLIAMENTARY DRAFTSMAN.

TUESDAY, 24TH JUNE, 1947.

### Members Present:

Mr. Slater in the Chair;

Council.	Assembly.
The Hon. W. H. Edgar,	Mr. Bailey,
The Hon. A. M. Fraser,	Mr. Field,
The Hon. Sir George Goudie,	Mr. Hollway,
The Hon. J. A. Kennedy,	Mr. Oldham.
The Hon. G. S. McArthur,	
The Hon. A. E. McDonald.	

Mr. Andrew Garran, Assistant Parliamentary Draftsman, was in attendance.

*The Chairman.*—The Wrongs (Tort-feasors) Bill is another of the Bills recommended by the Chief Justice's Law Reform Committee. It deals with tort-feasors or civil wrongs, requiring contribution in the event of two wrongs having contributed in varying degrees towards damage sustained by a third person. The state of the law at present does not enable a contribution to be made, and the committee has followed the work done by another committee appointed by the Lord Chancellor of England in 1934, when the law of England was changed and provision was made for contributions by joint tort-feasors. The Chief Justice's Committee presented a report which is now embodied in the Bill. However, as Mr. Garran has points of view which differ from those of the Chief Justice's Committee, and which are interesting and deserving of consideration, I felt it desirable that Mr. Justice O'Bryan and Mr. Garran should be invited to attend this meeting. Unfortunately, Mr. Justice O'Bryan cannot be present; but I hope that the committee will have an opportunity at a later date of inviting him to a meeting and hearing his views. The points of difference between Mr. Garran and the Chief Justice's Committee are not considerable. I understand that

the committee differs from the English Bill in one important respect, to which Mr. Garran will now address himself.

*Mr. Garran.*—My connection with this Bill is purely that of a draftsman; it is not, as in the case of the Limitation of Actions Bill, as a member of the committee of the Chief Justice. The Bill as here presented is in the form asked for by the committee. It follows an English Act which was based on the report of a committee of the Lord High Chancellor, except that in certain places to which I shall refer, it has additions to the English Act. The English Act has been accepted exactly in the same form in New South Wales and also, with one addition, in South Australia. There are really two main principles involved.

The first, which is covered by paragraphs (a) and (b), on page 2 of the Bill, is to do away with what is known as the rule in *Brinsmead v. Harrison*, which was a case decided in 1871. It was decided somewhat along the following lines: If "A" has a right of action against more than one person—possibly two, three, or four—and sues to judgment one or more of those persons, but not all of them, then his right of action against any persons he has not sued to judgment disappears because it is merged in the judgment against the people he has sued. If after getting his judgment he finds that he has sued a man or men of straw, he cannot turn around and get his damages from the other people he could have sued. The purpose of paragraphs (a) and (b) is to repeal this rule, and to provide that, with the safeguards there set out, the plaintiff can proceed to sue further people if his first judgment is not satisfied, but he cannot obtain, over all, more than he was awarded in his first judgment. In this respect the Bill now before the Committee is word for word with the English Act and the New South Wales and South Australian Acts, and I have no comments at all to make.



The rest of the Bill deals with repealing what is known as the rule in *Merryweather v. Nixan*—a case decided in 1799. The law, previously understood to exist in some form, was then stated to the effect that where "A" sues "B" and recovers damages from him, and "C" would also have been liable in the same action, "B" has to foot the whole of the bill, and cannot recover any contribution from "C." That is different from the law of contract, by which there is a contribution between joint contractors and such contribution can be enforced in the courts. That rule has met more criticism within and outside the legal profession than any other rule of law. I think there is no doubt that the vast majority, if not all the members of the legal profession and others who know it, are in favour of its abolition. To that extent I agree entirely, but where I disagree with this Bill is where it varies from the English Act.

Roughly speaking, it varies in two major respects. The English Act started on a policy of equating the law in tort with the law in contract and also with the law provided in the Companies Act where, if one promoter or director of a company is held liable in a court on the issue of a false prospectus, he can recover damages or contributions towards his damages from his co-promoters or co-directors. But the Victorian Bill, not satisfied with equating the law of tort with the law of contract wants, as it were, to leap-frog the law of contract and set up a new position altogether. The second point of difference is that the English Act went on a restricted basis with its eye probably on the rights of the plaintiff who, after all, is the person who is to be satisfied. The Victorian Bill looks rather too much to the rights of the wrong-doers as between each other and, to satisfy those rights, has often provided to the detriment of the plaintiff. Those are the two main points.

Having those and other points in view, I wish to advise the Committee of what I fear are the difficulties which arise from the variations of the Victorian Bill from the English Act. Down to the full stop in line 32, paragraph (c), on page 2, the Victorian Bill is exactly the same as the English Act. That relates to the main principle involved. It provides that any tort-feasor—that is, any wrong-doer—who is liable in respect of damage may recover contribution from any other tort-feasor who is liable in respect of the damage, but no person is entitled to recover contribution under this provision from any person entitled to be indemnified by him in respect of the liability.

The main point of this paragraph is that one tort-feasor can recover contributions from another tort-feasor. For example if "A" is held liable to pay the plaintiff £1,000, and "A" can prove to the Court that "B" was equally responsible for the damage, "A" can take "B" to the Court and obtain, say, half his damages from "B" by way of contribution. Just as in respect of contract, if "A" and "B" are liable to another person, and that other person sues "A," "A" can recover from "B" the share he ought to pay. The remaining words of paragraph (c), including the proviso, are inserted on the recommendation of the Chief Justice's committee. They provide that any such contribution shall be recovered only by way of third party procedure in the original action, with the proviso that in circumstances to be determined by the Court—how wide or how narrow I do not know—an exemption can be given, and contributions can be recovered otherwise than by third party procedure. Third party procedure exists under Rules of Court in all courts of the country, for example, the Supreme Court, the County Court, and the Court of Petty Sessions; but it is optional. If action were taken to make it compulsory, I would consider it natural that that would also be done under Rules of Court, not under an Act.

However, even assuming it is done under the Act, difficulties are experienced when one tries to apply it. As an example, "A" considers that he has a right of action against both "B" and "C"—two joint tort-feasors. He says, "I will sue 'B,' but if I miss against him, I can later sue 'C' under paragraph (b)." He sues "B," who, on reading the Act, decides that if he is going to be caught under this provision instead of "C," he will have to join "C" as a third party to the action. Although "B" might consider that he has a good defence and that he can get away with it, he then reasons in this way—"I cannot run the risk; I must join 'C' in the action." "C" is then brought along, but not as a defendant to "A," who is still only suing "B." "C" is brought in in case "B" loses, and then "B" can argue against "C" to what extent "C" should contribute. If "A" loses his action, the point to be then decided is, who should pay the costs of "C." Surely not "A," who is the plaintiff? He should not be loaded with the extra cost of bringing in "C." He would argue this way—"Why should 'B' bring 'C' into the action? I did not want it." "C" did not want to be brought in and only appeared because he was forced to by the Act. Should "C" have to pay the costs? He really did not have to open his mouth once during the whole action. I do not know the answer. After all, "A" may ultimately sue "C" because he thinks he can recover from "C," although he has lost his action against "B."

*By the Chairman.*—Not if the action is dismissed against both "B" and "C"?

*Mr. Garran.*—No, there is no action against "C" at the time. He only comes in as being liable under third party procedure.

*By Mr. Bailey.*—Why should the plaintiff be able to elect which defendant he will sue?

*Mr. Field.*—If they are both guilty, why not?

*Mr. Garran.*—The main thing is for the plaintiff to be reimbursed for his tort. That has been the position up to date, that he can sue any one. Now provision is being made to enable the tort-feasors to divide the damages between them.

*By Mr. Bailey.*—In the same action?

*Mr. Garran.*—Possibly in the same action, and possibly in a later action. My argument is, not necessarily in the same action, but to leave it for the tort-feasors to decide and not make it compulsory. I am strengthened in my view by the fact that the English Committee looked at this point and I have decided in the same way as did the English Committee. It definitely stated that the tort-feasors should have the right either to use the third party procedure or to proceed by an independent action.

*By Mr. Field.*—What argument does the Law Reform Committee set against yours?

*Mr. Garran.*—I do not know. I have been sending letters to the secretary to the Law Department, who has been sending them to the committee. The committee has agreed with half my suggestions, and on the other half it has said, "We thought of that," and that is all I know. I cannot get any reason. We do not know how wide or how narrow is the proviso and will not know until 20 or 30 plaintiffs or tort-feasors have spent their hard earned cash on trying it. Going back to my two original points, this sets up a position for tort which would still be different from that of contract, instead of adopting the procedure under the English Act. In practice, the plaintiff will often be put to greater expense in his action just to satisfy the rights of the wrong-doers.

*By the Chairman.*—Was any view put to you by the Law Reform Committee on the third party aspect?

*Mr. Garran.*—I have correspondence, which is as follows:—

(a) Third Party Procedure.

This matter has been considered by the Committee. Third party procedure has existed now in England, Victoria, and most common law countries for over 60 years and has been found a very useful procedure for claims for contribution and indemnity by a defendant against a co-defendant or against a person not a party to the original action. It has been found so useful that its ambit has been considerably extended in most courts which have adopted it. There is no good reason to suppose it won't work well in this Act. The Act does not mean that the plaintiff has to sue more than one defendant—or more defendants than he wishes to join.

The Assistant Parliamentary Draftsman apparently overlooks the fact that without anything being said about it in the English Statute the defendant can there claim contribution or indemnity by way of third party procedure. (See Annual Practice under Order 16A.) All the Bill does is to make the procedure compulsory, if a defendant wants to take advantage of the Act. The Court retains full control of the action and will prevent any inconveniences which might otherwise arise in particular cases.

In other words, they say it works well voluntarily, so it should work well compulsorily, and that is all I have received on it. Another point I should like to make is that the committee looks at the matter from the point of view of the Supreme Court, which retains full control of the action under its chamber procedure. In the County Court and the Court of Petty Sessions there is no chamber procedure, and, therefore, the problem would be very much greater. One cannot get directions from the Court as one goes along as to the procedure that should be adopted.

*Mr. Oldham.*—The rules could be amended.

*Mr. Garran.*—Yes; if anything is done, it should be done under the rules and not under the Act.

*By Mr. Bailey.*—What do you mean by “as the Court may direct”? Does the Supreme Court give directions as to who should be put in as an additional defendant?

*Mr. Garran.*—Almost daily a Judge of the Supreme Court sits in Chambers. It is possible to make application to him on matters of procedure by summons for directions and so on. But in the Court of Petty Sessions, where probably the defendant is appearing in person and does not know much about the law, he is probably “shot” before he starts.

The next point arises under paragraph (d). That is the item which has been included in the South Australian Act, beyond the provisions in the New South Wales and English Acts. The object of its insertion is this: At common law a man cannot sue his wife in tort, and a wife cannot sue her husband in tort, except to protect her own property. Suppose a husband, while driving his wife in his car runs into another car. Both the husband and the driver of the other car are partly to blame. The wife cannot sue her husband because the Common Law does not allow it, but she can sue the other driver. But it may be disadvantageous for her if she cannot sue her husband, because he is probably covered by a contract of insurance. This provision is inserted so that, where a wife has sued the other driver, the other driver may proceed against the husband—in other words, proceed against somebody whom the wife herself cannot sue. It gives the tort-feasor a right which the plaintiff has not got. My view is that if it is to be tackled at all, it should be tackled at the root, to extend the right of action in tort between a wife and husband rather than to tie a knot in one of the tentacles that extend from the principle.

It could be said that a wife and husband could sue each other in all cases of tort. That matter is not touched at all in England, but only in South Australia, and it covers only a very small gap. It leaves

the position in such a way that the plaintiff is not able to exercise a remedy that the wrong-doer can exercise.

*By Mr. Bailey.*—In that case the third party could sue the husband only on account of the action brought against him by his wife?

*Mr. Garran.*—That is so. It means that the wife is halfway down in the damages if the third party is looking to her husband for the money. No doubt the insurance companies may effect an alteration in their policies.

*By Mr. Hollway.*—Is there any reason why a wife should not sue her husband in tort? Suppose there was a slander action.

*Mr. Garran.*—I think this law should be the same as the law of contract, but I am not attempting to persuade the Committee to go that far. I suggest widening the basic provisions rather than tackling the matter in a back-handed method. I suggest that it should not be in the Bill.

I feel on sounder grounds in sub-clause (2) where there is a reference to the “jury.” That word does not appear in the English Act or the South Australian Act, but it has been put in at the request of the Chief Justice's committee. Its members felt that where the word “court” was used, it might include the powers of the Judge and exclude the powers of the jury. Generally in drafting, when we say “court,” we mean the Judge and the jury if there is a jury. I am not concerned that the word “court” might be construed more narrowly, but I am worried where these words have been put in—

and the jury or the court if the trial is without a jury shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

“Directions” go radically further than any power that juries have now. I think they are wrongly there and that the English, New South Wales, and South Australian Acts cover the situation perfectly by the use of the word “court.”

*By Mr. Bailey.*—Is not the word “court” construed as meaning “Judge”?

*Mr. Garran.*—No, I think it is Judge with jury, if any.

*Mr. Fraser.*—Under the Wrongs Act there is a specific provision under which the jury makes an apportionment as between the parties.

*Mr. Garran.*—The fourth point relates to sub-clause (3) on page 3 of the Bill, and it does not appear in the English or the other Acts. The sub-clause provides—

No execution for the recovery of contribution under this section shall issue without the consent of the court.

The problem is this: Suppose “A” sued “B” and got a judgment against “B,” and then “B” brought an action against “C” for the contribution and “B” is paid by “C” but “B” does not pay “A.” Under the law of contract there is no such provision as this, although usually it works out all right. The plaintiff usually manages to see that he gets the contribution. Even if he knows that “C” is a man of straw, he sees that the money comes to him. My problem is that it forces another application to the court, and it takes me away from the law of contract. I am not as strongly against that as I am against other points, but still it raises difficulties.

*By Mr. Bailey.*—It would be bad luck for the plaintiff if the man of straw succeeded?

*Mr. Garran.*—“A” could bring his action against “C” unless the court had directed that the contribution should be complete indemnity. No doubt if the

court were to direct that it should be complete indemnity, the court would make provision to see that the demand was properly met. However, I think it is a theoretic rather than a real problem, and I am not as strong on it as on the other points.

*By Sir George Goudie.*—Are you satisfied that this matter does not require any better words than those contained in the New South Wales and South Australian Acts?

*Mr. Garran.*—I cannot speak with a full knowledge of the practice in those States.

*The Chairman.*—The New South Wales law was altered in 1946.

*Mr. Garran.*—And the South Australian law was altered in 1939. As far as I know there has been no trouble in those States and there has been no call for such a provision. My last point deals with proposed sub-clause (4). This is an excellent example to show that the statute of limitation should not provide different periods for individuals and public authorities. I hope that I am not treading on any one's corns. In 1946 there was the case of *Merlihan v. A. C. Pope Ltd.* "A" sued "B" at the time when he could sue him under a period of the statute of limitation. "A" won. "B" turned round and sued "C," a public authority, for the contribution as he could under the English law, and he was held defeated because of the different period for individuals and for public authorities. Actually the matter has been dealt with in some way by a subsequent case, with exactly the same effect as this proposed sub-section. "A" was injured by "B" and "C." When the period had nearly, but not quite, run against "C"—the public authority—and no action had been brought, "B" who was a very careful gentleman, brought an action in the Court for a declaration that should "A" sue "B" after the period of limitation had run against "C," "B" should be granted the right to take action against "C" for a contribution. The Court said, "Yes." The matter is unsatisfactory and will remain so until the period of limitation for private individuals and authorities is equated.

*By Mr. Fraser.*—Under sub-clause (4) there would still be a loophole for the public authority?

*Mr. Garran.*—Sub-clause (4) itself is unsatisfactory from my point of view, and I think also from this Committee's point of view, because it provides that the individual in such a case may sue the public authority at any time within twelve months after the individual is sued. For example, "A," an infant, is injured by a railway accident in which the driver of a motor car was also to blame. "A" is five years of age, and at the age of 22—17 years later—he sues the driver of the car. Under this provision the driver of the car would have another year in which to come against the railways, but under the present Act he would be limited to six months from the accident. That, I

think, is against the views of the Committee, and it is definitely against my views. I think the difficulty should be tackled, as I have already explained, at the root.

*By Mr. Kennedy.*—Has any one ever waited for seventeen years before suing?

*Mr. Garran.*—Personally, I know of no such case. It could be six years instead of seventeen years.

*Mr. Bailey.*—"B" would not know that he had the right of action against "C" until "A" had obtained a judgment against him.

*Mr. Garran.*—Another question I have asked the Law Reform Committee is as to what is the nature of this action for contribution, and I have had no satisfactory answer as yet.

*By the Chairman.*—Does not the view expressed by Mr. Bailey give considerable support to the point that there should be automatic use of the third party procedure?

*Mr. Garran.*—The final result of the sub-clause is that the wrong-doer has the right of action after the plaintiff has lost his right of action. For these reasons my general view of the Bill is that, insofar as it is confined to the English Act it is an excellent Bill, but every time it has tried to improve the English Act it has failed in its purpose and has spoiled the effect. The total effect is to more than take away the advantage in the Bill as it stands.

*By the Chairman.*—Have you any information as to how the English Act operates?

*Mr. Garran.*—I have checked many of the cases.

*By the Chairman.*—Do any of the modern textbooks refer to it?

*Mr. Garran.*—They refer to it by way of explanation, but I have seen no criticisms of it. I cannot claim to have read all the legal literature.

*Mr. Fraser.*—In Volume 40 of the *Law Quarterly Review* I notice that there are some comments on this matter, and on third party law.

*The Chairman.*—Mr. Garran has put to us points of view that are of great interest and importance. It is obvious that we cannot carry the matter much further at this session. I do not know whether we can meet during the parliamentary recess. Mr. Garran's concluding views are very provoking, and it would be interesting to know the reasons that would justify this Committee in recommending a departure from the English Act. When a contrary view is expressed by an outstanding member of the profession, it is difficult for one to make up one's mind, and these essentially legal problems deeply affect the public. We are indebted to Mr. Garran for his contribution to the discussion, and his profound legal scholarship is respected by all members of the profession.

## APPENDIX D.

LETTER FROM THE HON. MR. JUSTICE O'BRYAN TO THE ATTORNEY-GENERAL  
(HON. T. D. OLDHAM, M.L.A.).

Judges' Chambers,  
Melbourne,

22nd March, 1949.

The Honorable  
The Attorney-General  
for the State of Victoria,  
Melbourne.

Dear Sir,

*Re* Sub-clause (2) of Clause 2, [Wrongs (Tort-Feasors) Bill].

The first thing to be decided is—do you want Juries to assess the amount of contribution payable under this Act, and to determine whether it be nil, of a complete indemnity, or something in between?

The Chief Justice's Sub-committee thought that there should be a right to trial by Jury of such an issue.

We thought it was a typical Jury question and in any event as the wronged plaintiff has a right to trial by Jury in practically all actions of tort, if the defendants or one of them are or is claiming contribution, all the issues are best tried (in most cases) by the same Jury as tries the plaintiff's action; e.g., *A* sues *B* and *C* for £5,000 damages for negligence. If *B* and *C* want contribution, the one from the other, why should not the same tribunal, be it Judge or Jury, who tries the plaintiff's action, also determine the matter of contribution, and if that tribunal thinks the responsibility of one of the defendants is relatively small (though enough to support a verdict for the plaintiff) "exempt him from liability to contribution" or "direct that the contribution to be recovered from the other defendant shall amount to a complete indemnity."

2. These last may be strange words to describe a Jury verdict, and we would probably have chosen a different expression, but they are the words of the English Act, and we thought it better to retain that verbiage than, without sufficient reason, depart from them.

3. We thought the English Section, when it says—"such (amount of contribution) as shall be found by the Court to be just" &c., and "the Court shall have the power to exempt" &c. "or to direct . . . . a complete indemnity"—means when the trial is by Jury, that the Jury will do these things.

4. Why then do we add the words "the Jury or the Court if the trial is without a Jury"? Because (a) it is not certain that "Court" does include a Jury; the very words "exempt from liability" and "direct a complete indemnity" raise that doubt—though if the Jury is to assess the amount of contribution, it must have these powers. We thought the parties should have the right to trial by Jury of these issues and that the right should not be left in doubt, but be clearly preserved. (b) Our Act may not be interpreted in the same way as the English Act. Section 1 of our Act says (and this is not in the English Act) "This Act . . . . shall be read and construed as one with the *Wrongs Act* 1928." If you look at the *Wrongs Act* 1928 you find, when it wants to make clear that a Jury is to assess damages, it doesn't simply say the Court shall do it. Section 16 says: ". . . . In every such action the Jury or the Court if the trial is without a Jury may give such damages &c. . . . (and such damages) shall be divided . . . . in such shares as the Jury or the Court by their or its verdict find and direct." If you adopt the English verbiage and put that into our *Wrongs Act* and say the Act is to be read and construed as one with the *Wrongs Act*, you may produce the result that "Court" is read as the presiding Judge, and not as the Jury, if there is a Jury. In other words you may inadvertently abolish trial by Jury for this class of case.

5. There is no general meaning for the word "Court" in Statutes. Stroud's *Judicial Dictionary* gives innumerable meanings which have been given to this word in a variety of Statutes.

Yours faithfully,

(Signed) NORMAN O'BRYAN.

# MINUTES OF EVIDENCE.

WEDNESDAY, 9TH MARCH, 1949.

*Members Present:*

Mr. Oldham in the Chair;

<i>Council.</i>	<i>Assembly.</i>
The Hon. A. M. Fraser,	Mr. Barry,
The Hon. A. E. McDonald.	Mr. Merrifield,
	Mr. Reid,
	Mr. Schilling.

The Honorable Mr. Justice O'Bryan, was in attendance.

*The Chairman.*—Copies of the Wrongs (Tort-feasors) Bill, together with copies of the second-reading speech made thereon in 1946 by the then Attorney-General (Mr. Slater) have been circulated among members. In addition, copies of the minutes of evidence given in 1947 to the then Statute Law Revision Committee by the Assistant Parliamentary Draftsman (Mr. Garran) have been made available. The Bill was introduced in October, 1946, but as the Statute Law Revision Committee was not then a statutory body under the Rules of the House it could meet only when Parliament was in Session. The Committee did not consider the Bill until June, 1947. The position has since been altered and this Committee is now empowered to meet when Parliament is not in session. I now ask Mr. Justice O'Bryan to explain what the Bill does and to offer any comments he so desires.

*Mr. Justice O'Bryan.*—Mr. Garran adequately explained what is the purpose of this Bill in the evidence he gave to the Statute Law Revision Committee in 1947.

*The Chairman.*—That is so, and Mr. Slater's speech also gave a full explanation.

*Mr. Justice O'Bryan.*—Mr. Garran raised certain controversial matters and I think it would be desirable for me to direct my remarks to them. My recollection is that I wrote to the Secretary of the Law Department setting forth the views of the Chief Justice's sub-committee in regard to these matters. I do not know if this Committee has received a copy of that document.

*Mr. Schilling.*—We would not have that document.

*Mr. Justice O'Bryan.*—The first controversial matter is the manner in which the rights given under the Bill shall be exercised. The Bill gives a right of contribution or indemnity to joint tort-feasors. The most common type of case of joint tort-feasor that comes before the courts is where two parties are concerned in a motor collision, and that is the type of case one should have in mind when dealing with this matter of contribution. It generally arises in a case in which two defendants are sued by a plaintiff. Our suggestion is that the right of contribution should normally be exercised by what is known as third party procedure in the original action. That means that while an action is going by "A" against "B", or against "B" and "C", if either "B" or "C" wishes to claim against the other for contribution arising out of the same act they give what is known as third party notice. Once the notice is given the Court then has to say how the matter will be decided, whether it will be decided in the one action, or separately. The Court has control of the procedure and decides what is the most appropriate manner to deal with it.

Third party procedure is well known in the courts with which we are concerned—the Supreme Court, the County Court, and Courts of Petty Sessions. Normally, the party who has a right of contribution or indemnity makes up his own mind whether he will try to get his relief in a separate action, or whether he will go by way of third party procedure in the action in which he is sued. What we have done in regard to this new right of contribution is to insist upon the defendant who wants to get contribution from some co-defendant, or someone else who he thinks was responsible for the injury, doing it in the plaintiff's action. When I say we "insist" that the contribution shall be recovered only by way of third party procedure, we reserve to the Court in which the action is being tried the right to say "That is not convenient for this particular case and we will allow you to go by way of independent action."

Why do we make this departure? What is behind our mind is this: We think it undesirable that there should be multiplicity of action in regard to the one event. In these cases of contribution between joint tort-feasors there is the one tort, one event that has given rise to the claim, and exactly the same facts have to be gone into in the matter of contribution as would have to be gone into in the main litigation. We think it is undesirable that there should possibly be two different verdicts by juries, or judges, in respect of exactly the same occurrence, and a multiplicity of legal procedure. We concede in certain cases that it might be inconvenient and we reserve the right for the Court to say to the party that comes along, either before, during, or after the action "This is not a convenient way to do it. In this case you may proceed by way of independent action."

It may be asked, "Why is not that done in contract cases?" Mr. Garran's comment was that this third party procedure has been in existence for years and has worked quite well in contract cases, without compelling people to proceed in that way. Our answer is this. The common case of third party procedure for contribution or indemnity in contract is the case of an action by one surety against his co-surety where both sureties are liable in respect of the same debt. One of the sureties is sued by the principal creditor and then he wants to make a claim against his co-surety. In those cases it frequently happens that different considerations arise in the rights as between co-sureties from those which arise between the creditor and one of the sureties.

Frequently third party procedure is not convenient in those circumstances. We think it would be wrong to make third party procedure compulsory for that sort of thing. In joint tort-feasor cases however we think it would be on the opposite footing, that it would be far more competent for both matters to be dealt with in the one action. That is the reason behind our suggestion that it be made compulsory.

I have read with interest what Mr. Garran had to say about difficulties that may arise. They are set out in the left hand column on page 2 of the Minutes of Evidence of Mr. Garran's evidence given on June 24th, 1947. I must confess that he presents there real difficulties which certainly were not present to my mind when I advocated the inclusion of this provision in the Bill. Having given full consideration to

the points which he has raised I am not now convinced that we were right in what we did. I have not had an opportunity since of consulting the fellow members of my sub-committee to ascertain their views on these difficulties, but Mr. Garran's evidence makes me less keen upon this matter. If this Committee thinks that it will be better to leave it out and retain the English form, I would not be averse to their doing so. If it is left in there is a small drafting correction in the Bill to which I should like to direct attention. I am referring to the proviso to paragraph (c) of sub-clause (1) of clause 2 of the Bill. Mr. Justice Fullagar and I looked at this matter again and we think the proviso to the sub-clause could be better drafted in this way:—

“ Provided that the court in which the original action is pending or was determined may—” and there insert the words “ in any case ”—

and then go on—

“ permit the tort-feasor to proceed to recover contribution by way of independent action upon such conditions as it thinks fit ”.

Then omit the following words:—

“ in any case where good cause is shown to its satisfaction why the tort-feasor did not proceed by way of third party procedure in the original action.”

We think that would be a better way to do it. I repeat however that Mr. Garran's criticisms have raised some doubt in my mind whether it is wise, as a matter of legislative provision, to make this a compulsory way in which contribution shall be obtained.

I suppose it is quite evident that in any matter of law reform—and I do not care how excellent the reform is—you will always find some lawyers or other people in the community who will say “ This is not good law reform ”. In the end, I think you must put yourselves in the hands of someone to advise you on these matters. But I do feel in regard to the difficulties raised by Mr. Garran to this particular part of the Bill that it may be desirable to drop that part of clause 2 (1) (c) which begins with the words “ any such contribution ” to the end of that paragraph of clause 2 (1).

The next matter Mr. Garran raised is in reference to paragraph (d) of sub-clause (1) of clause 2. This provision does not appear in the English legislation although it appears in some other State legislation with reference to similar matters. The reason for its inclusion in this Bill is that a husband cannot sue his wife and a wife cannot sue her husband in tort. I ask members of the Committee to imagine a case of this type: You are the driver of a motor car on a highway and you come into collision with another car driven by a man whose wife is injured in the collision; we shall assume that you and the woman's husband are equally negligent. The wife cannot sue her husband but she can sue you and presumably would do so, recovering, say, £2,000 as damages from you. Unless this clause appeared in the Bill, you would not be able to recover one penny from the other man—her husband—although he was equally responsible for the injury to his wife. The Bill gives you the right to sue a defendant or other person only if the plaintiff had a right to sue that person. We have introduced this provision to enable you, as in the case I have cited, to sue the husband or wife of the plaintiff, although the husband would not be able to sue his wife or the wife to sue her husband. We think this is a desirable reform; it has been so thought in other States. It does not appear in the English legislation for the reason that the English Married Woman's Property Act was amended many years ago and it is not required there. The only objection by Mr. Garran

that I can find to the provision is that our law in regard to husband and wife is in an archaic state and his contention is that it should be amended to render this provision unnecessary. I agree that it would be a good thing to amend the law respecting husband and wife but, in the meantime, let us put this part of the law right. Later, Parliament could amend the law in relation to husband and wife and then this particular provision would become unnecessary.

*By the Chairman.*—I presume that the majority of cases of this nature would lie in the realm of motor car accidents, with the third-party insurance provisions in the background?

*Mr. Justice O'Bryan.*—Yes. Mr. Justice Fullagar and I looked into the question of whether the third party insurance provisions of our Act required amendments having regard to this provision, and we came to the conclusion that they did not. So far as we can see, this sub-clause will not affect those provisions.

*By the Chairman.*—You feel that the clause should stand as it was drafted?

*Mr. Justice O'Bryan.*—I do. The third question which gave rise to criticism was sub-clause (3) of clause 2. I think Mr. Garran, in his criticism, entirely missed the point of the reason for that sub-clause. He is not to be blamed for that as it was never explained to him and without explanation the reason for it is not easy to see. In the first place, I should point out that Mr. Justice Fullagar and I have looked at the sub-clause and we considered that it would be better if it were re-drafted as follows:—

“ No execution for the recovery of contribution under this section shall issue without the leave of the Court or a Judge which may upon application for such consent direct the payment to the original plaintiff be sufficient satisfaction of the order for contribution.”

I shall explain the reason for the provision. Let us assume that “ A ” sues “ B ” for damages and recovers £2,000. Then, either by way of third party procedure or in an independent action, “ B ” sues “ C ” for contribution and obtains judgment for £1,000. “ B ” collects the £1,000 from “ C ” and he disappears. “ C ” has paid but “ A ” has received nothing. If the law were left without a provision such as that now proposed there would be nothing to prevent a person who had obtained contribution from disappearing and not paying one penny of the amount to the plaintiff. This provision says that no execution for contribution shall be had without leave of the Court or a Judge. Before he is allowed to levy execution, “ B ” will have to prove “ I have satisfied the plaintiff's claim. I paid the money and I want the contribution; ” or “ I am threatened with execution for the judgment against me and want to recover from “ C ” before my goods are seized in execution.”

I ask members to note the additional words that I have suggested—

“ The Court or a Judge which may upon application for such consent direct the payment to the original plaintiff be sufficient satisfaction of the order for contribution.”

The Court will say to “ C ” “ ‘ B ’ has satisfied the plaintiff's claim so you do not have to pay anything to ‘ A ’; you will pay the amount to ‘ B ’; ” or if “ B ” has not satisfied “ A ’s ” judgment—“ you can pay direct to ‘ A ’ and by so doing satisfy ‘ B ’s ’ judgment against you.” This is not a revolutionary reform; it is what happens between joint-contractors or co-sureties. An action between co-sureties is an action in equity in its origin, and equity would not allow execution to follow in an action between co-sureties except under its own control. The surety demanding execution of



a judgment for contribution from a co-surety would have to satisfy the Court either that he had paid the principal creditor or that execution was going to be levied against him. If he was threatened with execution and did not have the money to pay the claim, the Court could direct the co-surety to pay his amount direct to the principal creditor. We have merely introduced into this new type of contribution or indemnity a principle that operates in Equity in the matter of executions between co-sureties. In our opinion, it is a wise protection.

*By Mr. Barry.*—It will protect all parties?

*Mr. Justice O'Bryan.*—It will. It will prevent the original defendant from lining his own pocket and leaving the other parties with nothing.

*By the Chairman.*—Who were the members of the Chief Justice's sub-committee that considered this matter?

*Mr. Justice O'Bryan.*—I was chairman of a sub-committee on which there were Mr. Justice Barry and Mr. Justice Fullagar, who were then at the Bar; Professor Paton; Mr. E. H. Coghill, the Supreme Court Librarian; and one or two solicitors.

*By the Chairman.*—Your Honor suggests that the word "leave" should be substituted for the word "consent" appearing in the sub-clause?

*Mr. Justice O'Bryan.*—Yes. That was suggested by Mr. Justice Fullagar and myself after discussing the draft Bill.

*By the Chairman.*—The alteration will not affect the intention of the sub-clause?

*Mr. Justice O'Bryan.*—It will not. It will merely bring it more into line with what was intended. I felt slightly dissatisfied with the wording and I discussed the matter with Mr. Justice Fullagar. We came to the conclusion that I have mentioned.

*By Mr. Fraser.*—Mr. Garran did not regard his criticism of this sub-clause as a strong point?

*Mr. Justice O'Bryan.*—That is true. I do not think he appreciated our reason. He cannot be blamed for that, as he was not a member of the sub-committee.

The next matter to which I desire to refer is sub-clause (4) of clause 2, providing:—

"Notwithstanding anything in any Statute of Limitation proceedings for contribution under this section may be commenced at any time within twelve months after the writ in the original action was served on the party seeking to recover such contribution, but at the expiry of such twelve months such right to recover contribution shall be extinguished."

The reason for the inclusion of this sub-clause is the decision in the English case of *Merlihan v. A. C. Pope Ltd.*, which was referred to by Mr. Garran. In that case, the plaintiff delayed bringing his action for a period of about 12 months, which frequently occurs in a running down case, as very often the plaintiff is in hospital for a long time. In the case I have cited, the plaintiff brought action against a private individual only. The fact was that there were joint tort-feasors. The private individual's negligence had contributed to the injury which was also contributed to by the negligence of a servant of a public corporation. The private individual was mulct for damages. When he sought to obtain contribution from the corporation he was immediately met with the Statute of Limitation. He said "My right to contribution did not arise until judgment was given against me." However, the Court said "No, your right to contribution arose when the accident occurred", and so the plaintiff did not recover anything from the corporation.

I shall illustrate the position operating here in this way: Suppose you are driving a motor car on the road and by the joint negligence of yourself and a tram driver, an accident occurs to a third party. Let us assume that the tram driver was three-quarters to blame and you were only one quarter to blame, you might even think that you were not negligent. You do not receive a writ until twelve or fifteen months after the accident. That would be quite possible. In the meantime the plaintiff has given no notice to the Tramway Board, and the time has run out against the Board. The man sues you, and when you take action against the Board it says, "You are out of time." You did not think that you would be sued as you thought the Board was solely to blame, but because the plaintiff delayed bringing action against you, you have lost your right of protection against the Tramway Board. That seemed to us to be wrong. We thought that when a person was served with a writ he should be given twelve months from that date to bring in his co-defendant. For that reason we have introduced this rule. This right of contribution is a new right. Before the case I cited was decided, there was difficulty in ascertaining just what was the foundation of the right.

It had been suggested that the new right did not arise until you were sued or until judgment was given against you, but the Court held that it arose immediately the accident happened. The assumption seems to be that the defendant should know that he was in the wrong and that the other person was in the wrong, and that there was danger of an action being brought by the injured party. Since this decision England has not altered her own Act. Theoretically of course it is possible that as soon as an accident occurs you can commence an action for a declaration against, say the Tramway Board, that it will be liable to contribute towards damages if you are sued. But to follow that line of procedure might mean that you would be issuing a writ every time you are concerned in an accident because some one might fire a writ into you some day. We feel that this provision is required to give adequate protection. Mr. Garran says that it extends the period of limitation within which an action may be brought against certain public authorities. To an extent that is so but we still think that to do justice completely it is necessary to have some such provision. Is it better that individuals should be protected by some such provision or that the law should be allowed to stand as it is? The sub-committee thought it best to have a clause of this sort.

*By the Chairman.*—Forgetting for the moment the Limitation of Actions Bill, on which this Committee is about to report, most of the provisions requiring notice of action to be given against public authorities within a specified period are contained in individual Acts affecting those authorities. Does the Statute of Limitations apply to those Acts?

*Mr. Justice O'Bryan.*—I would think it does. That sort of question is properly raised, and it might be better to open the clause with the words "Notwithstanding any provision in any statute limiting the time within which an action may be brought."

*By Mr. Merrifield.*—Does that include the notice?

*Mr. Justice O'Bryan.*—I think it would.

*The Chairman.*—When I introduced the Limitation of Actions Bill I said that it would make no alteration to existing varying safeguards on a number of public authorities and other people. I said quite frankly when it was before the Committee, that it was felt impracticable to legislate in regard to those matters, but this Committee thought that there should be a modification of the provision. What we have done

now is to provide in regard to a number of public authorities which will be set out in the Schedule that in effect no action can be taken unless notice is given within six months of the action.

*By Mr. Fraser.*—It is not to be a strict notice on the lines of notices under the Railways Act? It is only a notice of the event? You are not bound down to give cause of action or details of it?

*The Chairman.*—The alteration which we have discussed will largely depend on whether Parliament accepts the new provision regarding statutory authorities referred to in the report on limitation of actions.

*Mr. Justice O'Bryan.*—I will sum up what I have had to say in this way. Four points have been raised. As to the first, which is third party procedure, I think the Committee might adopt Mr. Garran's view. As to the others I suggest they should be accepted with the amendments I have proposed.

*Mr. Fraser.*—I still have an open mind on the first one.

*By Mr. Reid.*—As regards the question of compulsory third party procedure, is there any precedent for that in the legislation of any other State?

*Mr. Justice O'Bryan.*—No.

*By the Chairman.*—Or in England?

*Mr. Justice O'Bryan.*—No, it is entirely new.

*By Mr. Reid.*—As to the second point regarding the suggested amendment of sub-clause (3) put forward by Mr. Justice Fullagar and Mr. Justice O'Bryan, does Your Honor think the amendment goes quite far enough in saying that no execution shall issue except by leave of the Court? What I had in mind was the possible satisfaction of the claim by somebody who was sought to be made a contributory party in the judgment obtained. I also had in mind a litigant defending in person.

*Mr. Justice O'Bryan.*—I think it is dangerous to interfere with what is done voluntarily by the parties between themselves. It may do more harm than good.

*By Mr. Reid.*—Referring to sub-clause (4), and assuming that we accede to Mr. Garran's view and do not limit the mode of procedure to third party procedure, but allow a party to take separate action, might we not have to consider a consequential amendment in the phrase "within twelve months after the writ in the original action was served"? What I have in mind is a greatly delayed action between plaintiff and defendant and the defendant seeking to bring an action for contribution separately.

*Mr. Justice O'Bryan.*—He has only twelve months after the writ is served.

*By Mr. Reid.*—Suppose he is limited to twelve months, the original action may be greatly delayed?

*Mr. Justice O'Bryan.*—If the delay is on the plaintiff's side, that is the more reason for giving the defendant some time after the writ is served in which to bring in the contributing party. The longer a plaintiff delays in bringing his writ against you the more you are lulled into a false sense of security that you will not be sued.

*Mr. Reid.*—What I had in mind was the possibility of a long delay between the issue of the writ and the judgment.

*Mr. Justice O'Bryan.*—The time begins to run immediately the writ is served. That is the stage at which the defendant must become diligent.

*Mr. Reid.*—It seemed to me that it might work to the hardship of the defendant.

*Mr. Justice O'Bryan.*—He has to do something within twelve months, and I think it is fair that he should.

*Mr. Reid.*—He is thrown back to third party procedure.

*Mr. Justice O'Bryan.*—That may be a good reason for not making it compulsory. This sub-clause will make him do something fairly rapidly.

*Mr. Reid.*—It practically prevents him bringing separate action.

*Mr. Justice O'Bryan.*—He could take action by asking, on his being made a defendant, for a declaration against the person contributing to his loss.

*Mr. Fraser.*—Paragraph (c) of sub-clause (1) will require some drafting amendment if Your Honor comes round to Mr. Garran's view.

*Mr. Justice O'Bryan.*—In that case everything after the word "sought" will have to come out.

*Mr. Merrifield.*—I am worried about cases in which one of the tort-feasors is a man of straw. I think the original proposition was that the plaintiff should be given first consideration. My doubt arises out of the words "The sums recoverable under the judgments" in paragraph (b) of sub-clause (1). Suppose the plaintiff brought the action against a man of straw first, obtained judgment, and afterwards found that the defendant did not have the means by which he could recover the judgment. He would then be entitled to take the second action. It seems to me that if the first defendant broke down the plaintiff ought to be entitled to the balance of the sum for which he received judgment.

*Mr. Justice O'Bryan.*—I am afraid that I do not follow Mr. Merrifield's difficulty. Paragraph (b) of sub-clause (1) of clause 2 states:—

"If more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate or of the wife husband parent or child of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given".

What that means is this: a plaintiff sues one defendant, and gets judgment for, let us say, £1,000. He sues a second defendant and gets damages. He cannot in the end obtain more than £1,000, but he can secure up to the £1,000. There is nothing to prevent his getting the whole £1,000 out of the two defendants, but he could not recover £700 from one defendant and then recover £500 from the other and so get £1,200. Does Mr. Merrifield follow that?

*By Mr. Merrifield.*—Yes. Is the term "sums recoverable" correct?

*Mr. Justice O'Bryan.*—That is what he can get by way of execution.

*Mr. Fraser.*—You may get nothing under the first judgment, and you go against the other man and gain a verdict up to £1,000.

*Mr. Justice O'Bryan.*—You may recover £1,000 against the two, but you may not recover more. This is English law. It has been followed in all the States and has worked out well in practice; it has been in operation for about fifteen years. Here is the reason for the provision: If a plaintiff sues two defendants he can get judgment for only one sum. There is the ordinary rule of law. Under the existing law he may recover under that judgment the whole sum from one defendant, or part from one and part from the other, but he cannot recover more. His judgment is for only £1,000, and if he receives £1,000 then his judgment is satisfied.



When we say you may bring more than one action then there may be two judgments. He may have one judgment for £1,000 against "A", and another judgment for £1,000 against "B." There would then be nothing to prevent a plaintiff from recovering £1,000 from both defendants, unless you have some such provision as the one we are discussing. We say that the "sum recoverable" shall not exceed what he got in the first judgment. It ensures that so far as both defendants can pay he will recover the complete amount of the first judgment but no more. The reason we choose the first judgment is that the man has the choice when he starts and that should fix the amount that he can recover.

*Mr. Merrifield.*—It is the word "recoverable" that I question.

*Mr. Justice O'Bryan.*—"Recoverable" means what he gets on execution of the judgment.

*The Chairman.*—The Committee is grateful for Your Honor's attendance and assistance. We shall decide after studying the transcript of to-day's evidence whether it will be necessary to call Mr. Garran to give evidence. The particular question on which Mr. Garran commented in his evidence in 1947 appears to have been met by the suggestion made by Mr. Justice O'Bryan after a talk with Mr. Justice Fullagar, and possibly Mr. Garran might say that he cannot further assist the Committee by giving evidence.

*The Committee adjourned.*

THURSDAY, 17TH MARCH, 1949.

*Members Present:*

Mr. Oldham in the Chair;

<i>Council.</i>	<i>Assembly.</i>
The Hon. G. S. McArthur,	Mr. Bailey,
The Hon. A. E. McDonald	Mr. Reid,
The Hon. D. J. Walters.	Mr. Schilling.

Mr. Andrew Garran, Assistant Parliamentary Draftsman, was in attendance.

*The Chairman.*—Since the last meeting of the Committee Mr. Justice O'Bryan has forwarded a letter to me, copies of which have been circulated among members. In that letter Mr. Justice O'Bryan wrote—

"Since the meeting of the Statute Law Revision Committee last Wednesday, the 9th instant, there are two matters which have occurred to me with reference to the Bill for Contribution between Tort-feasors, of which I think I should advise you:—

(a) Section 2 (3) would be better drafted as follows:—

'No execution for the recovery of contribution under this section shall issue without the leave of the Court or a Judge. Upon application for such consent the Court or Judge may direct that payment to the original Plaintiff be sufficient satisfaction of the Order for Contribution.'

The reason for the change which I suggest is that the pronoun 'which' in the section as previously drafted is inappropriate to represent the expression 'the Court or a Judge'. The change is not one of substance but of verbiage only.

(b) Section 2 (4). Delete the words 'anything in any Statute of Limitation', and in lieu thereof insert these words:—

'Any provision in any Statute requiring any notice to be given before action, or prescribing the time within which an action may be brought.'

The sub-section would then read—

'Notwithstanding any provision in any Statute requiring any notice to be given before action, or prescribing the time within which an action may be brought, proceedings for contribution under this section may although no such notice has been given be commenced at any time within twelve months after the writ in the original action was served on the party seeking to recover such contribution, but at the expiry of such twelve months such right to recover contribution shall be extinguished.'

At last Wednesday's meeting Mr. Merrifield asked whether sub-section (4) safeguarded a defendant who wanted to sue a public authority for contribution; a notice required under the authority's Statute had not been given by the Plaintiff.

He was told that it did cover such a case. On reflection I think that is wrong and, if this sub-section is to be effective for the purposes for which it is designed, an amendment, such as I have suggested, would be necessary.

I have spoken to Mr. Justice Fullagar about this matter and he agrees in substance with what I have said."

I now propose to ask Mr. Garran who gave evidence when this Bill was before a previous Statute Law Revision Committee to make any further comments he desires to submit in the light of the evidence given by Mr. Justice O'Bryan and his subsequent letter.

*Mr. Garran.*—I have little to add to what I said previously, as reported in the Minutes of Evidence of the meeting held on the 24th June, 1947. I feel that no useful purpose would be served by my simply reiterating that evidence. There have been certain decisions in other matters since I gave that evidence nearly two years ago, which might be of interest to this Committee. Some of those will be only of academic interest and some may affect your judgment on this Bill.

I shall refer now to the case of *Paul v. Fox*, 1947, reported in *No. 64 Weekly Notes, N.S.W.*, p. 223. That was a case where an action had been brought under the Motor Car (Third-party) legislation against a nominal defendant. Such an action can be brought when the real defendant is unknown. Later the person driving the car involved in the accident was discovered and the nominal defendant tried to get contribution against the other person. The Court decided that this Act would not apply in the case of a nominal defendant, but I think you can probably forget that. I think it is a good decision, but I have only mentioned it for the information of the Committee.

The next case to which I refer bears on the first point that Mr. Justice O'Bryan was discussing. It was the case of *Cameron v. McBain*, 1948, *V.L.R.*, p. 245. It was a complicated action relating to a man and his wife who were being driven in a bus that came into collision with a motor car driven by a person who was probably, but not at that stage proved to be, the servant of another person. The man was killed and his wife was injured. She brought three actions—one against the driver of the bus in which she was travelling, one against the person who was driving the other car involved in the accident, and one against a person who probably was the master of the driver of the car. Application was made to the Court to have the three actions consolidated.

The Chief Justice, Sir Edmund Herring, held that this was a case where it would be better to have one of the actions heard and to leave the others to be decided later, if necessary, in the light of the first decision. In other words, it was a case on all fours

with the discussion on compulsory third party procedure. If there had been compulsory consolidation of all those actions the Court felt that there would have been some difficulties and troubles that might not arise if the actions were heard independently. In other words, it was there considered that consolidated third party procedure might not be satisfactory.

*By the Chairman.*—Was that because of admissions made?

*Mr. Garran.*—No, it was because of all the factors that arose. For instance, the first question to be decided was.—Was there any liability? Then there were all kinds of subsidiary questions, such as—was the position of master and servant established?

*By Mr. McDonald.*—In the three actions were the points at issue the same or were they different?

*Mr. Garran.*—It was the one accident and many of the facts were the same in the three cases.

*By Mr. McDonald.*—In some actions the facts were different, were they not, such as deciding the master and servant question?

*Mr. Garran.*—Yes, those were additional facts that had to be proved.

*The Chairman.*—The main facts relating to the actual accident were probably the same in each case. The controversy would be on who was liable.

*Mr. Garran.*—Yes. That is a sample of a difficult case that might arise, when you find that compulsory consolidation of actions in third party procedure could be awkward.

*By Mr. McDonald.*—Perhaps the side issues would confuse the main issues?

*Mr. Garran.*—Yes. The next matter to which I refer is an English case of *Hordern-Richmond Pty. Ltd. v. Duncan*, 1947 *King's Bench*, p. 545. In discussing this case I should like the Committee to bring to mind the case of *Merlihan v. A. C. Pope Ltd.*, which Mr. Justice O'Bryan mentioned as being a case which gave rise to sub-clause (4) of clause 2 of the Bill. That English case was one where a man was injured in an accident in which there was contributory negligence of a private individual and a public corporation. After the action against the private individual had been decided it was held to be too late under the Statute of Limitations to obtain contribution from the public authority. In the case I am now mentioning the facts were exactly the same so far as we are concerned. In the *Hordern-Richmond Pty. Ltd. v. Duncan* case the decision in *Merlihan v. Pope* was discussed by the Judge and doubted. Actually, the case went off on another line because there was an alert solicitor, who had read his *Merlihan v. Pope* case, acting for the private individual. Before the time in which the action should have been brought against the public authority had expired, the solicitor brought an action on behalf of his client for a declaration that should he be sued by the plaintiff—no suit at that time had been started—he could maintain his right subsequently to sue the public corporation. A declaration on those lines was granted by the Court. Actually, that was a remedy, but it is not a perfect remedy because one has to be wide awake to get in first.

The second aspect relating to sub-clause (4) is this: It depends on what is in our Limitation of Actions Bill at the moment, and the periods within which suits can be brought. It is intended to include an amendment in the Limitation of Actions Bill to equate the periods of limitation as between private individuals and public authorities, but to require notice to be given within six months of the cause of action arising. If the Court is satisfied, however, that there was good reason why notice was not given, or satisfied as to

other matters, it can waive the notice. I would take it now that, in a case such as *Merlihan v. Pope*, the Court should be satisfied that there was good reason why notice had not been given.

*By the Chairman.*—If the amendments in the Limitation of Actions Bill are not agreed to, do you think the re-drafted sub-clause, as suggested by Mr. Justice O'Bryan, would cover the provisions in the various Acts?

*Mr. Garran.*—It would cover them, and assuming that the Committee wants to safeguard the position disclosed in the *Merlihan v. Pope* case, and it is not satisfied with the *Hordern-Richmond* case decision, then it might decide to include the provision suggested by Mr. Justice O'Bryan.

*By the Chairman.*—At least it would be a safeguard?

*Mr. Garran.*—Finally, I would like the amendment to be included in the Limitation of Actions Bill which is supposed to be a consolidation. I have been endeavouring to include all provisions regarding a Statute of Limitations in that consolidation measure, but if the Committee is going to recommend that we go outside it within a month it will get away from the true consolidation.

*By the Chairman.*—Would the amendment you now the two Bills that we would have the Wrongs (Tort-feasors) Bill passed just ahead of the Limitation of Actions Bill, so that you could put something into the latter Bill along these lines?

*Mr. Garran.*—That does not matter much. Assuming both Bills go through, the Limitation of Actions Bill is not to come into operation until the first of January, 1951, so as to give people time to clear up outstanding actions.

*By the Chairman.*—Then you would still have time to include the amendment?

*Mr. Garran.*—Yes.

*By Mr. McDonald.*—Could not the Wrongs (Tort-feasors) Bill be put through Parliament first and, the provision then included not as an amendment but as part of the original Bill—the Limitation of Actions Bill—leaving this clause out and then putting it into its proper place?

*Mr. Garran.*—I understood that it was proposed to submit the Limitation of Actions Bill in its past form and then to move the Committee's recommendations as amendments.

*By the Chairman.*—Would the amendment you now foreshadow come into the Bill itself, or would it be included in the amendments?

*Mr. Garran.*—In my view it would be added to the amendments.

*Mr. McDonald.*—The Wrongs (Tort-feasors) Bill would have to be guided through first.

*The Chairman.*—Yes, I think it could be worked in that way. I expect that we shall be able to present our report on this Bill simultaneously with the presentation of the report on the Limitation of Actions Bill. We could foreshadow the amendments. I take it that it would be treated on a non-party basis. We could make progress on the second reading of both Bills, put this Bill through the Committee stages and then deal with the other.

*Mr. Garran.*—It depends on the Limitation of Actions Bill how sub-clause (4) is drafted. It is worded correctly in accordance with the Limitation of Actions Bill as it stood when this Bill was drafted, but now, as the Committee proposes to amend the Limitation of Actions Bill, it would be necessary to alter sub-clause (4) of this Bill on the lines suggested by Mr. Justice O'Bryan.

*By the Chairman.*—Should the Limitation of Actions Bill be passed first? If that were done, the Wrongs (Tort-feasors) Bill could be amended if necessary.

*Mr. Garran.*—I do not think it matters. The Limitation of Actions Bill could provide that in any action for contribution between joint tort-feasors or joint contractors, the period of limitation should be so and so. There may be no actions for contribution between joint tort-feasors at that date.

*By the Chairman.*—Would there be any harm in including that provision now?

*Mr. McDonald.*—In that way, we could anticipate the passage of the other measure.

*By the Chairman.*—The Bill presented to the House last session will be submitted again in that fashion and, with the backing of this committee, it should pass through the second-reading stage. I think it will also pass the Committee stage. Then, as chairman of this committee, I shall move amendments, which may cause controversy. If the amendments are not agreed to, the Bill should be passed as originally submitted. Is the amendment suggested by Mr. Justice O'Bryan sufficient or do you propose to add to it?

*Mr. Garran.*—The amendment is sufficient, but the exact way in which it will be drafted will depend upon how the Limitations of Actions Bill is passed through Parliament.

*By the Chairman.*—Could you include something in this Bill to cover the existing position, and also the position that would arise if the Limitation of Actions Bill were passed with an amendment relating to public authorities?

*Mr. Garran.*—It might be passed with different amendments.

*By Mr. Walters.*—Could we not discuss that aspect at a further meeting of the Committee?

*The Chairman.*—For one moment, we shall postpone consideration of the point raised by Mr. Garran. I should like to have the report on the Bill prepared. The Government could then proceed to the second-reading stages of both Bills, and test the feeling of the House on the Statute of Limitations amendments. In the light of that, the Committee could be called together to consider necessary amendments.

*Mr. Garran.*—A further point is that Mr. Justice O'Bryan did not touch upon the comments I made in 1947 on the drafting of sub-clause (2) of clause 2, which provides, in effect, that "the jury shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity." I have never heard of a jury doing those things.

*The Chairman.*—Mr. Garran commented on sub-clause (2) as follows:—

"I feel on sounder grounds in sub-clause (2) where there is a reference to the 'jury.' That word does not appear in the English Act or the South Australian Act, but it has been put in at the request of the Chief Justice's Committee. Its members felt that where the word 'court' was used, it might include the powers of the Judge and the powers of the jury where it had power. Generally in drafting, when we say 'court' we mean the Judge and the jury if there is a jury. I am not concerned that the word 'court' might be construed more narrowly, but I am worried where these words have been put in—

'and the jury or the court if the trial is without a jury shall have power to exempt any person from liability to make contribution

or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.'

Directions go radically further than any power that juries have now. I think they are wrongly there and that the English, New South Wales, and South Australian Acts cover the situation perfectly by the use of the word 'court'.

*By Mr. Bailey.*—Is not the word 'court' construed as meaning 'Judge'?

*Mr. Garran.*—No, I think it is Judge with jury, if any.

*By Mr. Fraser.*—Under the Wrongs Act there is a specific provision under which the jury makes an apportionment as between the parties."

Do you think the way in which the sub-clause is worded will remove any doubt that the word "court" means merely a judge, or do you think that is dangerous and that the two aspects should be defined to provide that it applies to a judge sitting with or without a jury?

*Mr. Garran.*—I feel that the English Act as followed in New South Wales and South Australia is satisfactory. If the word "jury" is included, trouble may arise.

*The Chairman.*—Before the next meeting of the Committee, I shall ask Mr. Justice O'Bryan to comment on that point.

*By Mr. McDonald.*—You feel that the word "court" covers a judge sitting alone or a judge sitting with a jury?

*Mr. Garran.*—In the latter case, their duties would be in accordance with normal practice.

*Mr. McDonald.*—The Chief Justice's Law Reform Committee must have had some doubt about the matter to have worded the sub-clause as it appears.

*The Chairman.*—The Committee might have thought that, in the absence of those words, the judge alone would have power to exempt.

*Mr. McDonald.*—Yes; they must have been in doubt.

*The Chairman.*—The doubt would be as to whether it was a judicial function and not that of a jury.

*Mr. McDonald.*—Surely, a jury would not perform one function, and the judge another.

*The Chairman.*—They might have thought a judge sitting alone had power to non-suit.

*Mr. Garran.*—Can a jury direct that the contribution shall amount to a complete indemnity?

*Mr. Reid.*—I should think that the jury could not do so.

*Mr. McDonald.*—The jury finds as to the facts.

*The Chairman.*—And apportions the liability. The jury could say, "So-and-so is not liable for anything."

*Mr. Schilling.*—That could be the finding, and the judge would make the order.

*Mr. McDonald.*—Mr. Garran's difficulty lies in the jury directing that so-and-so be done. The jury cannot direct; it can only make a finding on the facts. The Court directs. I think it is a matter of altering the word "direct."

*Mr. Garran.*—Someone must "direct."

*The Chairman.*—The direction in sub-clause (2) would be made on the finding of the jury.

*By Mr. Walters.*—Should not the term "court" be defined?

*The Chairman.*—It is now clearly defined that in cases where the judge is sitting with a jury, the jury determines the facts, and the judge directs on these facts in the light of the law. There is a clear demarcation of duties.

*The Committee adjourned.*

1949

VICTORIA.

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# PROGRESS REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

TRANSFER OF LAND BILL

TOGETHER WITH

MINUTES OF EVIDENCE.

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*Ordered by the Legislative Council to be printed, 20th September, 1949.*

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE  
LEGISLATIVE COUNCIL.

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TUESDAY, 29TH MARCH, 1949.

9. STATUTE LAW REVISION COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the following Members of this House be appointed members of the Statute Law Revision Committee, viz. :—The Honorables A. M. Fraser, Sir George Goudie, G. S. McArthur, A. E. McDonald, F. M. Thomas, and D. J. Walters.

Question—put and resolved in the affirmative.

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TUESDAY, 2ND AUGUST, 1949.

9. STATUTE LAW REVISION COMMITTEE.—The Honorable J. A. Kennedy moved, by leave, That the Honorables P. T. Byrnes, G. S. McArthur, and F. M. Thomas be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

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EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE  
LEGISLATIVE ASSEMBLY.

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TUESDAY, 29TH MARCH, 1949.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That the following Members be appointed members of the Statute Law Revision Committee :—Mr. Bailey, Mr. Barry, Mr. Merrifield, Mr. Reid, Mr. Schilling, and the Mover (*Mr. Oldham*)—put and agreed to.

## PROGRESS REPORT

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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. Since the 18th May, 1949, the meetings of the Committee have been devoted to a consideration of the Transfer of Land Bill—a Bill to amend and consolidate the Law relating to the Simplification of the Title to and the Dealing with Estates in Land—which was initiated and read a first time in the Legislative Assembly on the 30th March, 1949, and which, together with an Explanatory Memorandum, was circulated to all Members of Parliament when the second reading was moved on the 18th May, 1949.

2. Mr. Hubert Dallas Wiseman, of Counsel, who was a member of the Chief Justice's Law Reform Committee's sub-committee on this Bill, attended the Committee's meetings and gave very full evidence with regard to the proposals contained in the Bill. A copy of Mr. Wiseman's evidence is appended to this Report.

3. The Committee have not yet completed their consideration of the Bill and propose to hear further evidence from interested persons and authorities.

4. In the meantime, the Committee submit this Report as a Progress Report in order that Mr. Wiseman's evidence may be made available for the information of Honorable Members.

Committee Room,  
13th September, 1949.



## MINUTES OF EVIDENCE.

WEDNESDAY, 29TH JUNE, 1949.

*Members Present:*

Mr. Oldham in the Chair;

<i>Council.</i>	<i>Assembly.</i>
The Hon. A. M. Fraser.	Mr. Bailey, Mr. Merrifield, Mr. Reid, Mr. Schilling.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*The Chairman.*—The Committee would be pleased to have your opinion on the Transfer of Land Bill which is now at the second-reading stage in the Legislative Assembly.

*Mr. Wiseman.*—I was not sure what I would be required to do this morning, or what course it would be proposed to follow.

*Mr. Fraser.*—On the last occasion the Committee met it was thought that as some difficult points would be raised, for the benefit of those members who are not lawyers, you would give some outline of the Act, how it operated, and the effect of this Bill.

*Mr. Wiseman.*—A good many years ago it was felt that the operation of the Transfer of Land Act was not satisfactory, and the present Bill was really initiated in this way—the council of the Law Institute of Victoria published a report in its *Journal* of the 1st of October, 1938, and that report was circulated. Mr. A. D. G. Adam, of Counsel, and I saw it, and we approved of the suggestions. As I understood the position then, those suggestions met with the general approval of members of the Law Institute and represented their views as to what would be considered to be appropriate amendments to the Act.

The matter was taken up by the sub-committee of the Chief Justice's Law Reform Committee. I was on the sub-committee. The procedure we followed was to take the report of the Law Institute, go through it and consider the matters in detail which that report had indicated. A number of other matters were also considered. As a result of that I drew up a report, but I do not think it got very far.

Eventually I drafted some amendments which were considered by the sub-committee, the members of which approved of them. There was a good deal of discussion on the proposed amendments, and they really embodied the result of some year and a half of meetings practically one a week of an hour or one and a half hours.

We finally agreed on what we thought were appropriate amendments in the draft Bill. Then it was suggested that it would be better to have the amendments incorporated in the consolidation of the Transfer of Land Acts. The result of that is shown in the Bill which has been drafted and printed and which is before this Committee.

I have also drafted what is described as an explanatory paper setting out the amendments incorporated in the consolidating Bill. That explanatory paper is divided into four parts. Part I. really deals with the general description of the amendments and what was aimed at by the proposed

alterations in the Act. Part II. deals with the amendments as they appear and gives explanations for the suggested changes. There is a good deal more detail in Part II. than in Part I. I think I can depart from that now and run through the amendments. There are various important matters which I can indicate as being the major principles of the amendments. There are others, and I can give details of those; in fact, I have made out a list of alterations which are contained in the Bill, and I have put them under some 26 headings. Without going into details at the moment, I think I can very shortly indicate to the Committee an outline of the proposed changes.

The first one is this: One or two changes have been made in regard to applications to bring land under the Act. Now we suggest that land may be brought under the Act by the first mortgagee in possession and also by a person holding a power of attorney.

*By Mr. Schilling.*—Without the consent of the registered proprietor or not?

*Mr. Wiseman.*—The mortgagee in possession. I was just outlining the proposal. I would like any questions to be asked because I am going through the amendments very shortly. Another amendment is this: Where there is a person holding a power of attorney it was thought convenient that he should be able to apply to bring the land under the Act and the section has been altered a little, but there are substantial changes in section 17 of the Act.

*[Mr. Oldham being called away, Mr. Fraser was appointed to the Chair.]*

*By the Chairman.*—That is a general power of attorney?

*Mr. Wiseman.*—The power would have to cover such an authority. I take it that the Commissioner would have to be satisfied that the power did contain that authority before he would act on it. Another provision deals with the title which is required to be accepted by the Commissioner. He is given a discretion as to the title he should accept, but it was thought convenient to put that provision in clause 18. That clause may appear to have a very extensive operation but I think you will find it looks more far reaching than it really is. It provides for the title that has to be accepted in the case of land which is being brought under the Act. In this particular provision the wording is "in any application to bring land under the Act." That is an expression which is now being used because under the previous provisions land could only be brought under the Act on the application of an owner, &c., Now, by reason of Part III., where the Commissioner will of his own volition bring land under the Act, another expression is being used to cover both cases. Clause 18 deals with an application by an owner, &c. and provides that the Commissioner shall accept any title which would be forced on a purchaser under open contract of sale. That amounts to this: Normally he will accept a 30 years' title but if, on investigation, the title appears to have a defect in it, he is entitled to go back beyond the 30 years. I think the sub-committee debated this point at some length and that every one was agreed that if you come across a title with a defect more than 30 years old in it, you are entitled to call for that to be rectified. In other words, under this provision the Commissioner is not



debarred from saying "Very well. This title has a defect in it more than 30 years old, and I require that to be amended."

*By the Chairman.*—If otherwise he is satisfied, does that mean that until the defect is remedied he can grant a limited title under this Act?

*Mr. Wiseman.*—I do not think so. At the moment I am referring to clause 18 which deals with an application by an owner. If the owner is wanting to have land brought under the Act in the ordinary manner and the Commissioner says "I think you have a defect in your title more than 30 years old and I should like that remedied," I think he is entitled to say "I will not continue with your application until I get that remedied." What I said about clause 18 was this—

The provision in section 18 is introduced for the purpose of limiting the title which an applicant to bring land under the Act may be required to produce. It corresponds with section 44 of the *Property Law Act 1928* which limits the title which a vendor is required to make to 30 years. Section 18 merely makes the 30 years' title *prima-facie* evidence of good title.

The same position obtains under this provision, as under section 44 of the *Property Law Act*, that a good root of title must be shown and also, as in the case of a purchaser, it is open to the Commissioner to object that there is a defect in title though more than 30 years old and to require such defect to be removed prior to the land being brought under the Act.

I think that is a general conveyancing rule under the general law and I do not know whether there is any criticism of that legal principle. The matter is rather important because the reading of the section may, on the face of it, be a little misleading.

*By Mr. Merrifield.*—Clause 18 will apply to Part III. also?

*Mr. Wiseman.*—I think there is a special clause in Part III. When we reach that Part it will be seen that it operates in the way indicated.

*By Mr. Merrifield.*—Do you refer to clause 72?

*Mr. Wiseman.*—That is so. It corresponds to clause 18.

*By the Chairman.*—That brings in the point I mentioned previously. In the meantime—under clause 52, for instance—the owner gets the ordinary certificate of title. Suppose that is over 30 years old and there is a defect, can the Commissioner issue a limited title?

*Mr. Wiseman.*—Yes, he can. Another provision that has been added is clause 26. That rather remedies an omission which had previously obtained but which, I think, in his discretion, the Commissioner has always filled in. If land is being brought under the Act and there is a lease, a mortgage, a charge or an easement, he usually noted those matters on the certificate which he issued; but there was no express authority for his doing what he had been doing for a long time. Clause 26 also includes *profit à prendre*, which is a right to go on to another person's land, and, while on it, to remove certain property therefrom—such as timber, gravel, sand and so on. It confers the right to remove property. Previously *profits à prendre* were not registered on the title, but the Bill gives authority for a profit to be registered. There is in clause 31 an amendment of some importance. The last few words in line one are an addition. Formerly the provision read "any person claiming any estate or interest in the land," but the words "of any kind whatsoever" have been inserted. The idea was rather to make it quite clear that when a person claimed any estate or interest in land, it would cover also a restrictive covenant and the lodgment of a caveat. There is a New Zealand case which queries the right of a person who has a restrictive covenant to lodge a caveat. I do not know whether that case

has ever been followed in Victoria. I think the Commissioner will always accept a caveat to support a claim by a person who has a restrictive covenant. The clause makes the position clear in relation to a profit *à prendre* and restrictive covenant. I do not think it can do any harm; it may, perhaps, clarify the matter.

*By Mr. Schilling.*—Would it cover the case of a person who claims, for example, the right of carriage-way over the property of another person by long user?

*Mr. Wiseman.*—Yes. That would be by prescription or by long user. We have provided for the continuation of all rules of common law with regard to the acquisition of easements either by long user or the doctrine of lost modern grant. Where an easement has been acquired by long user, there will be a right—whether it be equitable or legal may probably be capable of debate—to apply to have such an easement registered. Therefore, having the right, one would certainly have an interest in the land and the owner of that interest would have the right to lodge a caveat to support it. An easement acquired in that way is one of the exceptions made in the Bill to the type of interest which is not required to be registered. In other words, one can have that right, although it is not registered.

*By the Chairman.*—Clause 26 specifically enumerates the types of interest which the Registrar is entitled to endorse.

*Mr. Wiseman.*—That must be read subject to the preceding words "Without affecting any other provision of this Act; if land subject to any lease, mortgage," &c.

*By the Chairman.*—The old section 74 gave the right, although not noted on the title.

*Mr. Wiseman.*—That is so. Clause 26 provides for the position that where land is being brought under the Act and there is an interest, liability, mortgage, profit *à prendre* or restrictive covenant, those are noted on the certificate. If a person has any other interest in the land—whether he could have any other interest is debatable—he could lodge a caveat to protect it. Probably the interests enumerated in clause 26 would include all interests in land.

*By Mr. Schilling.*—There might arise the question of the right of adverse possession?

*Mr. Wiseman.*—On the point of adverse possession a person could have that right.

*By Mr. Schilling.*—Not necessarily going to ownership, but to the user?

*Mr. Wiseman.*—A person might have a possession adverse to the owner and that would give him the right to say "I am in possession and as against any one but the owner I am entitled to stay there." That would not be an interest in the land; it would merely be possession of the land, and one does not require to lodge a caveat to protect that. That is dealt with in the Bill where we deal with caveats to protect interests. If one says it is an interest in possession adverse to the owner one does not require to lodge a caveat under the provisions in the Bill, for the reason that if a person does so act he is immediately giving the owner notice of adverse possession, thus inviting the owner to turn him out. It was thought that if the owner were not sufficiently interested in his property to look after it better than that, and somebody was in possession, and the possession was ripening into an adverse title, he should not be obliged to lodge a caveat to support that possession. That point is dealt with later in the Bill.

*By Mr. Merrifield.*—Would that be covered in clause 126?

*Mr. Wiseman.*—That clause would enable a person claiming any estate or interest to take action to forbid the granting of a title to a person claiming by adverse possession. I think there is another provision dealing with caveats.

*By Mr. Merrifield.*—Is there not a provision that "Part of the application shall show the name and address of the occupant"?

*Mr. Wiseman.*—Yes, but that is when he is making his application.

*By the Chairman.*—Clause 126 deals with a case where possession is adverse to the owner and retains the right to a person in possession to a title adverse to the owner. If the owner seeks to bring it under the Act the person who has a vested right by adverse possession can then caveat to protect that right?

*Mr. Wiseman.*—That is so.

*By Mr. Bailey.*—The mere fact that the owner was bringing the land under the Act would not affect the right of a person holding by adverse possession?

*Mr. Wiseman.*—No, a person having a right by adverse possession has a title above the paper title.

*By Mr. Bailey.*—He need not enter a caveat to protect his rights?

*Mr. Wiseman.*—No.

*The Chairman.*—Arising out of Mr. Bailey's questions, an owner makes an application to bring the land under the Act, but of course the person in possession gets adverse possession by right of the possessory title.

*Mr. Reid.*—Clause 104 then comes into it. The title is held subject to a proviso to clause 104, and I think that is the answer. That proviso sets out, *inter alia*—

Provided always that the land which is included in any certificate of title or registered instrument shall be deemed to be subject to—

(b) any rights subsisting under any adverse possession of such land.

I think that covers it.

*Mr. Wiseman.*—Yes. I do not think there is any doubt that the position is whether the owner is owner by deed and is applying to bring the land under the Act, or whether he is the owner by certificate of title; in either case he will lose his rights as owner against any person who has a possessory title. I do not think it matters which way it operates.

On clause 32, it was thought that the old practice was very cumbersome, particularly in urgent cases, because under the Act, where there was any dispute, in most cases it required that the dispute be settled by the Full Court. Throughout the Act, where there was a provision that an application should be made to the Court it was required to go to the Full Court. Procedure for a summons in chambers has been substituted. In some cases the applicant can go to the Court, if he prefers, or he can go to a Judge in chambers.

*By Mr. Schilling.*—That would be by an originating summons; it would not be necessary to issue a writ?

*Mr. Wiseman.*—An originating summons, as defined in the Rules, is a summons initiating proceedings.

*By Mr. Schilling.*—It would still be cumbersome if it were necessary to issue a writ?

*Mr. Wiseman.*—It would be an ordinary summons in chambers, but as it originates proceedings I suppose it does come within the rule defining originating summonses.

*By Mr. Merrifield.*—In clause 31, is there any reason why the address for replies to a caveat should be limited to the City of Melbourne? I suppose that had some point in the early days when things were much different from what they are to-day?

*Mr. Wiseman.*—I have not heard any criticism of that provision. Generally speaking, it was inserted for the convenience of the legal profession and for people dealing with these matters.

*Mr. Schilling.*—Documents would probably have to be produced out of the Office of Titles and it would be inconvenient if those documents had to be carted around the country, to Mildura, Shepparton, or other country towns.

*Mr. Merrifield.*—They could possibly post them.

*Mr. Schilling.*—It would be dangerous to post valuable documents of that description.

*Mr. Reid.*—If some one lodges a caveat and the owner wishes to take out a summons to have it removed, one does not wish to go chasing around Swan Hill, or another country town, to serve a summons out of the Supreme Court, against a caveat order.

*Mr. Merrifield.*—An applicant at Portland would probably have to engage a local solicitor who, in turn, would have to act through an agent in Melbourne.

*Mr. Schilling.*—What is the alternative; to take a Judge to Portland? How otherwise could it be placed before a Judge?

*The Chairman.*—A similar provision to that in clause 31 applies in most Acts to-day, where a person must give an address within a certain distance of the General Post Office, Melbourne.

*Mr. Bailey.*—A person can lodge a caveat by post.

*Mr. Wiseman.*—Is it not being assumed that some one has lodged a caveat and is making a claim against either a registered proprietor, or some one claiming through him? You would want to be able to get in touch with him fairly promptly. I should think as a matter of business and administration the clause as drafted is satisfactory.

*By Mr. Bailey.*—All the parties might reside in the country?

*Mr. Wiseman.*—The difficulty will arise if proceedings have to be taken in country towns; it would mean subpoenaing an officer from the Office of Titles to produce the document from that office.

*The Chairman.*—It is a chambers matter and such proceedings would have to be taken in Melbourne. The Court only sits in chambers in Melbourne.

*Mr. Reid.*—The summons would have to issue in Melbourne.

*The Chairman.*—Formal notices outside of the proceedings could be forwarded to a person's ordinary address, but if it involves anything in the nature of proceedings the ordinary rule should apply.

*Mr. Merrifield.*—I was not referring to proceedings; I had notices in mind.

*By Mr. Reid.*—That is a matter on which the Registrar might have some views and possibly the point could be referred to an officer from the Office of Titles when he is being heard. Most likely there is some sound departmental reason for it?

*Mr. Wiseman.*—I think that in England there was some arrangement whereby a person could give three addresses for the giving of notice, but it was found too haphazard. Probably there is a sound reason for the provision.

*By Mr. Schilling.*—The volume of notices in regard to caveats in the country would be small?

*Mr. Wiseman.*—I should think so, and probably they would all have to come to Melbourne, for the simple reason that all the documents are in Melbourne.

*Mr. Merrifield.*—The expansive term "City of Melbourne" in old Acts possibly did not include Flemington; then in 1928 that district was included

in the City of Melbourne. Possibly at some future date Fitzroy will be included in the City. There is nothing definite in the term.

*By the Chairman.*—It seems to me to refer to the giving of an address for proceedings within the City of Melbourne. If it is too wide, should it not be limited to the ordinary procedure of three miles of the General Post Office?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—And perhaps notice should go back to a person's address. The Registrar may have some views on this aspect. It is a practical matter more than a legal matter?

*Mr. Wiseman.*—I think so. The amendment in clause 34 will enable the Commissioner, instead of a Judge, to require persons having documents to produce them. The relative provision in the old Act reads—

After an application has been made to have any land brought under the operation of this Act, a Judge may require all persons having in their possession or custody . . . . .

In future, the Commissioner will by virtue of the proposed amendment exercise that power. That appears to be a matter of convenience and saving in expense.

*By Mr. Merrifield.*—Will the amendment affect restrictive covenants?

*Mr. Wiseman.*—I do not think so. I think the answer is that a restrictive covenant will be noted on the title. I do not anticipate any difficulty about that. So far as restrictive covenants affecting land which is being brought under the Act are concerned, I suppose it will be necessary to have a document produced in the same way as any other document that is being lodged where land is brought under the operation of the Act.

*By the Chairman.*—What is the practice with regard to that? Suppose there is a provision in the master title to the effect, say, that no building of a value of less than £3,000 or a structure other than of brick shall be erected, would a similar provision be inserted in each of the titles that would come out of the subdivision of the master title?

*Mr. Wiseman.*—I think that would be so.

*Mr. Reid.*—I would say that that is the general practice regarding land that has already been dealt with under the Act. I think Mr. Fraser is directing his mind more to cases in which land was being brought under the Act and in which some restrictive covenants existed in the original deed. I have not had such a case in practice. I should think that if it related to a piece of land covered by a title carved out of an original title, there would probably be something in the deed, under which the land was held, referring to the restrictive covenant, and the Commissioner would then have power to call in the original deed containing those provisions for inspection. The title to be issued would then be noted accordingly.

*By Mr. Bailey.*—Would it be on the original deed? Would not the contract date from the time of the subdivision, which would not be shown in the original deed? Would it be shown on all subsequent subdivision deeds?

*Mr. Wiseman.*—Would not this be the position? If you were dealing with a title, which was not under the Act, it would be necessary to go back to the original Crown grant and start from there. If you started from that point, you would find that there would be no restrictive covenants shown, and then you would proceed with the dealings. At some stage in the subsequent dealings you would come to a covenant; at that stage you would pick it up.

*By the Chairman.*—Suppose it was a case coming under the old Act, and there was a subdivision, you would not find any restrictive covenant so far as the master title was concerned; it would not be a restrictive covenant but a beneficial covenant. It would become restrictive only when terms were embodied in the contract of sale, and when the purchaser under the contract of sale sought to get a title under the old law it would appear on his title?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—So it operates for the benefit of the original vendor?

*Mr. Wiseman.*—Yes. In those circumstances he would sell under a contract of sale which would include the restrictive covenant. Then, I think the Commissioner would call for an inspection of the instrument showing the creation of the restrictive covenant—which would be the contract. In other words, he would have to be in a position to inform himself of precisely the nature of the restriction.

*By Mr. Reid.*—Would you not find in practice that, in most conveyances, the conveyance would also embody the restrictive conditions contained in the contract?

*Mr. Wiseman.*—Certainly that would be so, once you had reached the stage of conveyance. I think the position is this: We are assuming that a person has got his title down from the Crown grant, and that it is the title to the whole parcel. If, later, a subdivision takes place, either the owner of the entire parcel would apply to have the whole of the land brought under the Act before he sold it—in which case there would not be a restrictive covenant at that stage—or he would sub-divide and sell the land before it came under the Act. We are rather assuming that two things are concurrent, but I am not sure that they would be. In all probability, these points will straighten out quite satisfactorily. I do not know any difficulties which could arise regarding that position.

I do not think much need be said regarding sub-clauses (2) and (3). Sub-clause (3) is in the nature of a penalty against a person who does not comply with the request to produce or surrender documents. It follows on the lines of section 225 of the 1928 Act.

Clause 49 merely provides machinery for keeping in order the titles to land under the proposed new Act in cases where a municipality acquires land under Part XIX. of the Local Government Act for the purpose of a street, road, highway, &c. The last two lines of the clause are explanatory of this provision. Where a municipality acquires land for this purpose, the Registrar is to be informed, and "the Registrar shall then make all necessary amendments to the relevant Crown grant or certificate of title to show the effect thereof." In other words, the purpose of the clause is to enable the Registrar to keep the register book up to date consequent on the construction of any new roads by municipalities.

*By the Chairman.*—Is clause 49 a new provision?

*Mr. Wiseman.*—Yes. Clause 48 is the same as section 46 of the existing Act. I think the new clause was introduced on the suggestion of the Commissioner.

*By Mr. Merrifield.*—Does the Bill embody the effects of the Local Government (Streets) Act which was recently passed creating power to make new street alignments?

*Mr. Wiseman.*—I am not quite sure, but it would be a good idea if it did. This is a general provision. Where a municipality has acquired land, it is required to inform the Registrar. The purpose of the clause is to enable the titles on the sides and abutting on roads to be kept in order. At present, if a new road is

run through land, there is no provision for informing the Registrar of the alterations in titles of the abutting owners. Sub-section (1) of section 581 of the *Local Government Act 1946* provides—

It shall be lawful for the Governor in Council at any time from time to time upon the request of the council of any municipality (including the City of Melbourne and the City of Geelong) by notice in the *Government Gazette* to proclaim any land reserved used or by purchase or exchange acquired for a street road highway thoroughfare bridge square alley or right-of-way to be a public highway.

Unless the Commissioner was notified when a council had built a street through the land of an owner, he would not know of the alteration made in the title in his office. In order that he would know the new abutments for that title, he would have to be informed by the council whenever a new road was constructed. Then he would be in a position to amend the title in his office to accord with that alteration.

*By Mr. Bailey.*—Do the last two lines of the clause mean that the Registrar shall amend the title in the Titles Office, or will he have power to call in all relevant titles?

*Mr. Wiseman.*—Yes, he will have power to call in the titles of the abutting owners. Clause 50 is drawn on lines similar to clause 49. At present, under the Drainage of Land Act, an owner of higher land can acquire the right to drain over the adjoining lower land of his neighbour. The provisions of the Drainage of Land Act set out the procedure to be followed, firstly, in a case where there is an agreement between the two adjoining owners and, secondly, where there is no agreement and the matter is settled by arbitration. I think the Drainage of Land Act in one case makes no particular direction as to what is to be done about notifying anybody about the alteration, and in the other case notification is required to be forwarded to the clerk of the peace.

Sub-clause (1) of clause 50 deals with a case where the adjoining owner assents to the drainage. Under the Drainage of Land Act, the agreement has to be sent to the clerk of the peace, and that is where it stops. Obviously the idea is to forward it to the Registrar so that he may then notify an easement, because that is what has been created.

*By Mr. Merrifield.*—The Registrar does not register it in favour of the dominant title?

*By the Chairman.*—The original is forwarded to the clerk of the peace and a duplicate is forwarded to the Registrar?

*Mr. Wiseman.*—Yes. The Registrar is then informed that an easement has been created.

*The Chairman.*—The other person would know, because he had given his assent. He would have signed the agreement.

*By Mr. Merrifield.*—It would be registered only on the inferior title—the one the easement was over. It would not be registered in favour of the other?

*Mr. Wiseman.*—As a matter of fact, the Commissioner suggested these provisions. The idea of registering the easement was that it was important to know which was the servient tenant subject to the easement. If a person is buying land which in fact is a servient tenement and subject to an easement he ought to be informed about it and should know the limitation of his right. If the easement is also registered on the dominant title, that is all to the good. The person buying the dominant title is probably told that there is an easement, or he has enquired about it.

*Mr. Bailey.*—The vendor would point that out, because it would be to his advantage.

*By Mr. Merrifield.*—Is it not to the benefit of all to have the easement registered on all titles?

*Mr. Wiseman.*—Yes, I think it is.

*By the Chairman.*—Is that contemplated, because an owner is also obliged to give notice to all persons whose land may be affected?

*Mr. Wiseman.*—I do not know whether that inclusion is thought to be worth while.

*Mr. Merrifield.*—In my opinion, that is the whole principle of the Bill.

*Mr. Wiseman.*—I think it is a good point.

*By Mr. Reid.*—Possibly the idea suggested by Mr. Merrifield would be in line with general practice—for example, in relation to the rights of carriage way.

*Mr. Wiseman.*—I would not have any criticism of that being included.

*By the Chairman.*—Would not a drainage easement be dealt with in another part of the Act—namely, where such matters as interests, profits, charges, mortgages and leases have to be inserted in the title?

*Mr. Merrifield.*—I do not think so.

*The Chairman.*—If it is not, Mr. Merrifield is raising a very important point, because the whole object of the Bill is to facilitate dealings in land and to show all the interests in the title so that there is nothing outstanding of which people are not aware.

*Mr. Wiseman.*—As a matter of fact, I had similar ideas. It was, I think, the Commissioner who said that the important thing was to get the easement registered on the servient title so that any person dealing with that title would be warned of the position. He stated that the holder of the dominant title would be all right in any case.

*By Mr. Schilling.*—Is not that so in effect?

*Mr. Wiseman.*—I think it is so in fact.

*By Mr. Schilling.*—The important thing is to have the easement shown on the servient title?

*Mr. Wiseman.*—Yes. I have no criticism of any suggested alteration.

*By Mr. Schilling.*—Do you know of any reason why these notices are sent to the clerk of the peace who is, in effect, the County Court registrar. That seems to be an anomalous position. Nobody would ever conceive that the County Court registrar would have anything to do with land. Normally it is the Supreme Court and not the County Court that has jurisdiction over land. Why is the notice sent to the County Court registrar?

*The Chairman.*—I suppose that goes back to 1860 or 1870 when the clerk of the peace was everything.

*By Mr. Schilling.*—I think this may be an appropriate opportunity to relieve him of something that does not concern him and in which he has no interest. Is it not very misleading to the public?

*Mr. Wiseman.*—That is so. Probably a number of people would agree with Mr. Schilling. I think the probable reason is that the sub-committee felt that it had no authority to suggest any alteration to the Drainage of Land Act.

*Mr. Schilling.*—I think that is something we might note and have altered.

*By the Chairman.*—One would think it would be sufficient to send the agreement to the Registrar of Titles. What would the clerk of the peace do with it—file it in the archives?

*Mr. Wiseman.*—Yes.

*Mr. Schilling.*—The agreements are never seen by anybody, and probably are not even looked at by the clerk of the peace. I do not suppose that .001 of the community know that agreements are sent to him.

*By Mr. Merrifield.*—Is there any provision later dealing with the Drainage Areas Act?

*Mr. Wiseman.*—The Drainage of Land Act is dealt with.

*By Mr. Merrifield.*—Is there not a similar provision in the Drainage Areas Act where one person can get an order for an easement or a drain against another, with no provision for it being registered?

*Mr. Wiseman.*—Is not that contained in section 12? The two provisions I have dealt with are sections 7 and 12 of the Drainage of Land Act.

*Mr. Merrifield.*—I thought there was some such provision in the Drainage Areas Act.

*Mr. Wiseman.*—The history of clause 50 is that the Commissioner stated that certain difficulties existed in the Drainage of Land Act, and he suggested some scheme such as this. He did not mention the Drainage Areas Act, so apparently he had not incurred any troubles with it.

*By Mr. Merrifield.*—Under the Drainage of Land Act a plan is submitted to the Court and usually on the basis of that plan the easement is subsequently granted by the Court?

*Mr. Wiseman.*—Yes. Where there is agreement it is dealt with under section 7, and where there is no agreement, under section 12 there is provision for the preparation of a map.

*By Mr. Merrifield.*—That is so. Under the Transfer of Land Act there is provision for a plan by a licensed surveyor, but that is not the case with the Drainage of Land Act. If an easement is to be subsequently registered in the title, should not the map on which the easement is based be prepared by a licensed surveyor?

*Mr. Wiseman.*—The point was raised as to what could be placed on the piece of paper that constitutes the certificate? The easement would have to be described in some way or other—it would be so wide at the top, perhaps sloping down at an angle, so wide at the base, and so deep. I think the Commissioner was content to accept the position and then work it out. That is why it was left like that.

*The Chairman.*—In the one case the easement is with the assent of both parties, and in the other it is the conclusion of a police magistrate or arbitrators based on a map. Under the clause it is not contemplated that either of those will go any further than being registered in the Office of Titles.

*By Mr. Bailey.*—A copy of the map is forwarded to all interested parties?

*The Chairman.*—Yes. Clause 50 does not suggest that there will be any notation on the titles of either the map or the consented agreement.

*Mr. Wiseman.*—Is that so? Sub-clause 2 of clause 50 reads *inter alia*—

who shall register an easement on the Crown grant or certificate of title.

*By Mr. Schilling.*—That would be available to any person for inspection?

*Mr. Wiseman.*—The idea is that when any one searches he will find that there is one of these encumbrances.

*By Mr. Schilling.*—He could copy the agreement, whatever it might be?

*Mr. Wiseman.*—He could search the agreement.

*Mr. Schilling.*—That would give a person ample protection.

*The Chairman.*—That is the answer to it. The easement will be registered and the map will be there for inspection.

*By Mr. Merrifield.*—The preparation of the map produced to the Court may involve engineering problems that have no relationship whatever to the title. The map may show diverse ways of draining the land or that the easement will have to proceed in a certain direction to secure the necessary grade. It might even be on vacant land, and the engineer might not have either the time or the necessity to define the boundary. It might not be possible to define distances from the corners of titles, and the easement might be defined by angles?

*The Chairman.*—That raises the point of what the magistrate, in the case of arbitration, should define as being the easement by reference to the map. So far as the Act is concerned, I suppose the Commissioner could register it in simple language on the dominant title and the servient title. On the other hand, one would have to go to the instrument in the one case or the map in the other to obtain the details. Mr. Merrifield's point is that it should properly be done by a licensed surveyor or an engineer to see that the map before the magistrate is correct.

*Mr. Merrifield.*—It can certainly be indefinite in many cases.

*The Chairman.*—When the Commissioner appears before the Committee that question can be put to him.

*Mr. Reid.*—It would mean an amendment of the Drainage of Land Act.

*Mr. Wiseman.*—That might be the simpler method.

*By Mr. Merrifield.*—Definitions are given in clause 4. I notice that the Public Trustee replaces the Master in Equity. Is that so?

*Mr. Wiseman.*—Yes.

*By Mr. Merrifield.*—There used to be a Curator. Has the office been deleted?

*Mr. Wiseman.*—The Public Trustee is to take his place. The definition of "Commissioner" has been added, and that of "Committee" was amended by clause 13 (a) of the First Schedule to the *Public Trustee Act 1939*, which also repealed the definition of "Curator." There is another alteration in the definition of "Instrument" and "Land" has been re-defined.

*Mr. Schilling.*—The new definition of instrument includes "discharge of mortgage" which was not formerly included.

*Mr. Wiseman.*—The definition goes further. The new words in the definition are—

"surrender of lease or sub-lease," "discharge of mortgage or charge," "profit à prendre or restrictive covenant or release or surrender of an easement, profit à prendre or restrictive covenant."

*By Mr. Schilling.*—I wonder whether you could give a definition of "Agent." A caveat could be signed by a person claiming an interest in land or as an agent. For example, could he be an estate agent?

*Mr. Wiseman.*—Yes.

*By Mr. Schilling.*—I wonder whether it is advisable to leave the position so that a sort of representative of an owner could act. He could be a divorce agent or an inquiry agent. It might be desirable to tighten the definition.

*Mr. Wiseman.*—I think what was in mind was the agent, who would say, "I am the agent." Mr. Schilling's suggestion might be desirable.

*By Mr. Merrifield.*—"Land" is re-defined in the Bill to cover "mines and materials." Would it not be wise to include those words in the new Mines Bill? I do not think there is a reciprocal provision in the Mines Act to affect this matter.

*The Chairman.*—The Mines (Amendment) Bill has gone through the Legislative Council.



*Mr. Wiseman.*—The old definition was not very satisfactory for a variety of reasons, one being that land included an appurtenant easement although the easement might not be registered. That was in conflict with the rest of the Bill in regard to registered interests. I thought it would be better to have the same definition of "Land" as there is in the Property Law Act. That definition was altered when the Property Law Act of 1928 was brought in. I think the definition is similar to but not identical with that contained in the English Act. The new definition, as will be seen from page 5 of the explanatory paper, conforms to the definition of "Land" in the Property Law Act. As probably all land in Victoria will be brought under the Act it was considered that that definition would be more suitable.

*By Mr. Merrifield.*—Clause 7 refers to the Examiners of Titles and the Registrar, but it does not seem to provide any power to appoint any other Registrar of Titles. Suppose the present occupant of the post died how would a new Registrar be appointed?

*Mr. Wiseman.*—He is a public servant.

*Mr. Merrifield.*—The position is an official one, as set out in the clause. It is an appointment—a position under the Act.

*The Chairman.*—The Public Service Board appoints officials under other Acts.

*Mr. Merrifield.*—He has to carry out certain duties, and he should be named in the Bill to carry them out.

*The Chairman.*—That is a matter for the Commissioner to answer.

*Mr. Merrifield.*—The same thing would help in respect of the Commissioner of Titles.

*The Chairman.*—Clause 8 of the Bill covers the position—

The Governor in Council may from time to time appoint one or more Assistant Registrar or Registrars of Titles.

*By Mr. Merrifield.*—I took clause 8 to refer to the Assistant Registrars and not to the Registrar. Why refer to Assistant Registrars and not to the others?

*Mr. Reid.*—Clause 8 also states—  
and may remove any Commissioner Examiner Registrar or any other officer . . . . . and fill any vacancy thereby or otherwise occurring.

*The Chairman.*—There is to be a Chief Examiner of Titles and he is to be appointed by the Governor in Council. Other persons have already been appointed and they will continue in office by virtue of clause 7. Clauses 7 and 8 must be read together.

*The Chairman.*—The Committee proposes to adjourn at this stage. We shall be glad if Mr. Wiseman will continue his evidence at the next sitting.

*The Committee adjourned.*

TUESDAY, 5TH JULY, 1949.

*Members Present:*

Mr. Oldham in the Chair;

<i>Council.</i>	<i>Assembly.</i>
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. A. E. McDonald.	Mr. Merrifield.
	Mr. Reid,
	Mr. Schilling.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*Mr. Wiseman.*—Having concluded at the last meeting my comments on Parts I. and II. of the Bill, I shall now explain Part III., which is new. There may be some misconception about the meaning of the word "compulsory" used in the heading to that Part.

It has been suggested to me that it is the owner who would be "compelled" to have his land brought under the Act, but it would seem clear that the "compulsion" will really rest upon the Commissioner to bring the land under the Act. I should not like there to be any suggestion of coercion being brought upon the ordinary land-owner, even if it was something for his benefit.

*By Mr. Bailey.*—It was my intention to raise that question. Part III. provides that all such land shall be brought under the Act within five years after the commencement of the Act. If every land owner is to be compelled to act within that period will not costly procedure be involved?

*Mr. Wiseman.*—Clause 71 refers to certain fees and they are the only fees mentioned in this Part.

*Mr. Fraser.*—That clause deals with Commissioner's fees, not solicitors' fees.

*Mr. Wiseman.*—Sub-clause (2) of clause 71 provides that a fee of £1 10s. shall be payable for the first certificate of title for land brought under the provisions of the Act and I think that is the whole amount envisaged. Where a limited certificate is limited as to description, before the ordinary certificate is issued, a survey will be required. As it is left at present, if a person applies for a certificate he must be prepared to pay for the survey.

*By Mr. Merrifield.*—Actually the person would become liable to all other assurance fees under clause 56 whenever the title, or interim title, changes to ordinary?

*Mr. Wiseman.*—Are there other fees for which a person is liable at that stage? As far as I know, under Part III. there are no fees payable by an owner except the fee of £1 10s., but I may be wrong about that.

*The Chairman.*—I am under the impression that there is no extra cost to the owner other than the contribution to the assurance fund, the survey fee, and whatever the Titles Office decides to charge for the new title.

*Mr. Bailey.*—There will be legal expenses involved.

*The Chairman.*—It might cost between £50 and £100 to bring a piece of land under the present Act because the solicitor does all the work, but under the new Act the Commissioner will do the work.

*By Mr. Bailey.*—What I am driving at is whether an owner will be relieved of all present costs?

*By Mr. Reid.*—It is easy for us to say that it will only cost 30s., but in the first place I want it made clear who is to take the initiative—the Commissioner or the Registrar?

*Mr. Wiseman.*—I should say the Commissioner.

*By Mr. Reid.*—He will desire to get in as many deeds as possible. In my office at present I have a number of deeds which I inherited from my predecessors. I do not know who are the actual owners of the land referred to. Probably a similar condition obtains in most country solicitors' offices. Those deeds will have to be called in?

*Mr. Wiseman.*—Yes.

*Mr. Reid.*—If the Commissioner decides to issue a provisional title, he will then have to call on various people to bring in their deeds. Would not that involve private citizens in expense and trouble? A person may have to fossick around looking for his grandfather's solicitors to see if there is in existence a title to some country property held under the old law. There will be production, search, and other fees to be paid.

*Mr. McDonald.*—Where old law deeds are held subject to a mortgage they will have to be obtained from mortgagees. There will be legal expenses in addition to the fees now payable, but they will be considerably less than they are now.

*Mr. Reid.*—That is so, but it is no good saying that the cost will be only 30s.

*Mr. McDonald.*—No. We cannot say what those legal expenses will be.

*Mr. Bailey.*—That will be the difficulty when the Bill is debated in Parliament. A number of people owning small areas in the country hold titles under the old law, and they are quite satisfied with their titles. They have no desire to make a change. If it is made compulsory to bring land under the Act no one will know what expenses will be entailed for production fees and so forth. I thought this was an opportune time to raise the question of the expenses people will have to meet.

*Mr. Schilling.*—I would suggest the end justifies the means. This is a long overdue reform in Victoria.

*Mr. McDonald.*—There is another aspect. The legal expenses under the Transfer of Land Act will be less than if the land were dealt with in the general law.

*Mr. Bailey.*—The owner does not pay those costs if it is in the general law.

*Mr. McDonald.*—He still has certain vendor's expenses.

*The Chairman.*—My experience is that if there is a block of land under the old law and another block of exactly the same value next door under the Transfer of Land Act, a person will receive less for that old law land than for the land under the Transfer of Land Act. The difference will be the cost of bringing the old law land under the Act.

*Mr. McDonald.*—I would not agree with that view altogether. I practise in an area where there are probably more old law titles than in any other part of Victoria. In practice that is not how it works out; exactly the same value is obtained.

*The Chairman.*—That may be so in Mr. McDonald's area, but in Melbourne it is different because the land has to be brought under the Transfer of Land Act. Of course that is in the free market.

*Mr. McDonald.*—With the utmost respect, I submit that the large majority of Melbourne solicitors do not understand old law titles, and run away from them.

*The Chairman.*—We will admit that.

*Mr. Fraser.*—I suppose that when land is being bought under the Act at the Commissioner's request, the person complying with that request will be paid.

*Mr. Bailey.*—I take it that the person whose land is affected will bring his land under the Transfer of Land Act.

*Mr. McDonald.*—If the Commissioner brings forward in the new scheme his present practice of requisitioning, a person will not save very much; he will have to alter his outlook.

*The Chairman.*—Will not the Commissioner take steps to bring perhaps a whole county under the Act?

*Mr. McDonald.*—I should imagine that he would go back to the original Crown grant and the old Crown allotment. By working forward he will probably be able to bring the whole allotment under the Act without any difficulty. At present there is the same difficulty in bringing one small piece of land under the Act as there is in proving the ownership and origin of the whole Crown allotment.

*Mr. Merrifield.*—From a surveying point of view, it was hoped that the Commissioner would proclaim certain areas—perhaps the greater part of a parish—bounded by roads, and that one survey would satisfy the whole area at a fraction of the cost.

*By the Chairman.*—Is not that what is proposed?

*Mr. Wiseman.*—I think it is envisaged that the Commissioner will select an area to bring under the Act. He will not attempt to bring the whole of the land in Victoria under the Act at once.

*Mr. McDonald.*—I take it that he will not require the strict proof that he did previously and that he will issue his interim title, which will in time become the title?

*Mr. Merrifield.*—It is likely that a great part of the land will be lacking only as to description and not as to possessory right, and that to obtain the ordinary title it will be mainly a matter of survey.

*Mr. McDonald.*—I do not agree with that. There will be many places where a side fence is down or where there has never been a back fence, and if the possessory position is relied on there will be a great deal of trouble.

*Mr. Fraser.*—This Bill will involve the rectification of a number of titles.

*Mr. McDonald.*—Yes. In other words, it will involve almost a re-survey of Victoria.

*The Chairman.*—Nearly every time a piece of land is brought under the Act some rectification of title is involved.

*Mr. Reid.*—If an area is involved where some land is under the Act and some land is not, the rectification of a number of titles will be necessary. The Bill proposes a worth while objective but I think we shall have to face the position that it will mean a lot of trouble for individual citizens.

*The Chairman.*—I think it is realized that although the objective is desirable it will not be automatic. If we are satisfied that it is a meritorious proposal but that alterations are required in the system we will consider them.

*Mr. Bailey.*—In the interests of the State?

*The Chairman.*—Yes, and in the interests of the citizens.

*Mr. Bailey.*—Should not the State make some financial contribution?

*The Chairman.*—That may be one of the recommendations of this Committee. If the whole of the land can be brought under the Act within a reasonable period I think the State might bear a considerable portion of the cost, because when the scheme is completed it will be of great value to Victoria.

*Mr. McDonald.*—The long view is that it must be done, and the longer these old titles are left the more complicated they will become.

*By Mr. Merrifield.*—Those areas that were brought under the Act in the early days without any survey being carried out will be affected, and they will have to be dealt with at the same time?

*Mr. Wiseman.*—That might be so.

*By Mr. Fraser.*—Will not a fair period of time be required to educate the people dealing in land in regard to the different types of titles. If people desire to take up land they may be frightened when they find out that it has a limited title and not an ordinary title?

*Mr. McDonald.*—There are in Ballarat what are termed "miners' rights", and people buy and sell them as if they were freehold.

*Mr. Wiseman.*—I do not think there has been any great difficulty with them in South Australia.

*Mr. Fraser.*—The system has been operating there for four years now.

*Mr. Reid.*—It shows the importance of investigating the position obtaining in South Australia.

*Mr. Wiseman.*—The sub-committee that brought forward this proposal was very concerned in case an obligation would be imposed on the finances of the State. The sub-committee endeavoured to avoid any such thing as that.

*The Chairman.*—When it is clear in our minds we will try to get some estimate from the Titles Office of what expense could be borne by that office. It will be difficult to decide.

*Mr. McDonald.*—There is the large assurance fund that could be used.

*The Chairman.*—The experience in South Australia and New Zealand can be obtained. It may be possible to use the assurance fund.

*Mr. Bailey.*—Has it not been dipped into once or twice already?

*The Chairman.*—Not for the purpose of the Transfer of Land Act.

*Mr. Bailey.*—It has been used for other purposes.

*The Chairman.*—Yes. I think the procedure will mean that there will not be the same amount of pernickity requisitioning that is going on all the time for the sole object of proving any claim against the assurance fund.

*Mr. Wiseman.*—There have been many alterations with regard to the bringing of actions against the assurance fund. It will be seen that the fund is now a good deal more vulnerable than it used to be.

*By the Chairman.*—Was there some hesitation about the use of the word "compulsory" in Part III.?

*Mr. Wiseman.*—Somebody mentioned to me that he did not like the word "compulsory".

*By the Chairman.*—Could it not be called "Registration of Land", and the word "compulsory" omitted?

*Mr. Wiseman.*—Yes. In New Zealand it is called "Compulsory Registration", and that is where the word came from. In South Australia it is the "Property Registration Act 1945." I used the word "compulsory" merely to distinguish it from the Part II. application. It is merely a mark, nothing else.

*By Mr. Schilling.*—The word "statutory" might serve as a substitute?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—If the owner takes the initiative under Part II. he is excluded from Part III.?

*Mr. Wiseman.*—Yes.

*By Mr. McDonald.*—It will still be possible for the owner to take the initiative. Many people may prefer to do that rather than have an interim or a limited title?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—Or to wait until their area is dealt with?

*Mr. Wiseman.*—Yes. Part III. has been taken very completely from the South Australian Act, but there have been some alterations. For instance, there is a provision in the South Australian Act dealing with the surrender of documents of title. That has been dealt with in Part I. of the Bill.

*By Mr. Fraser.*—Is that clause 54?

*Mr. Wiseman.*—Clause 54, which is taken from sub-section (3) of section 6 of the South Australian Act, deals with documents that are to be surrendered. Sub-sections (1) and (2) were not incorporated in Part III. because they had been dealt with in Part II.

*By Mr. Fraser.*—In clause 34?

*Mr. Wiseman.*—Yes. An alteration has been made in what was section 2 of the South Australian Act, and it is to be found in clause 59. That deals with a limited certificate. In Adelaide they can apply for a plan of survey at that stage, but we have cut that provision out. It does not seem necessary to have a survey at the stage of the limited certificate.

*By Mr. Merrifield.*—Will there not be cases where no description of the land will be possible?

*Mr. Wiseman.*—In that case it is limited to the description; there must be some description.

*Mr. Merrifield.*—I suggest that there would be a number of cases of which there would be no description.

*Mr. Schilling.*—There would have to be some description of the land although it might not be a surveyor's description. Under the old Act we describe land by reference to the registration number of the prior dealing and the number of the volume.

*Mr. Reid.*—You mean in the actual conveyance?

*Mr. Schilling.*—Yes.

*Mr. Reid.*—No.

*Mr. Merrifield.*—Sometimes the conveyances are such a hotch-potch that they do not fit actual conditions.

*Mr. Schilling.*—The description is limited. In my office I have a conveyance in which the allotment is referred to as lot so and so.

*Mr. Wiseman.*—If there is a Crown allotment there is a definite description.

*Mr. McDonald.*—It would be all right so long as you can identify the land intended to be conveyed. The practice is to repeat the previous description. I have not seen such a conveyance as that mentioned by Mr. Schilling.

*Mr. Schilling.*—I have seen a number of conveyances in which the Crown land allotment and the book number are referred to.

*The Chairman.*—I have not seen one.

*Mr. McDonald.*—Nor have I. When you come to the stage when the land parts company and is subdivided you have to start a new description, and you lose possession of a document which was one of the chains of the titles.

*The Chairman.*—If you start subdividing land you must put in a full description.

*Mr. Fraser.*—Some one has to lose one of the titles—an earlier chain.

*Mr. McDonald.*—If you hold the original number you have a ready reference to it in that it is one of the bundle.

*The Chairman.*—Is it not because of this type of difficulty that we are proposing this legislation? Probably many of these things will iron themselves out in the block surveys.

*Mr. Merrifield.*—There is the position when the nominal holder of the title can be called upon for the production of his documents. He may wake up that he is the nominal owner of land and he may dispossess an adverse owner.

*Mr. Wiseman.*—If the paper owner wakes up in time before the possession becomes completely adverse he can re-assert his rights.



*By Mr. McDonald.*—Assuming that the 30 years' possession had expired?

*Mr. Wiseman.*—The paper owner is out. Once the possessory title is established the position is the same under the general law and under the Transfer of Land Act.

*By Mr. McDonald.*—Take, for example, a piece of land, the paper owner of which disappeared 35 years ago and some one has been in adverse possession. What provision is made in the Bill to protect the real owner—the man in adverse possession?

*Mr. Wiseman.*—The Commissioner would make inquiries.

*By Mr. McDonald.*—How?

*Mr. Wiseman.*—By requisition. See clauses 53 (2) and 55 (2) (b).

*By Mr. McDonald.*—Would he initiate that inquiry in the name of the paper owner or in the name of the man in adverse possession?

*Mr. Wiseman.*—In the name of the paper owner. The Commissioner would make a requisition in regard to all the people concerned.

*By Mr. McDonald.*—If the man in adverse possession had slept on his right and did not answer inquiries, would he be defeated in his ownership?

*Mr. Wiseman.*—No.

*By Mr. Bailey.*—Would not an inquiry be made to find out the owner?

*The Chairman.*—We could make arrangements to get the South Australian officer in charge of such matters to come to Melbourne to give evidence.

*By Mr. Merrifield.*—The Commissioner could issue interim titles and they would prove to be no good. Would it not be wiser for the Commissioner to inquire into the position and determine whether he should issue an interim title to the possessor so as not to have too many titles?

*Mr. Schilling.*—In practice is there any real difficulty? The Commissioner would have access to the rating authorities' books, and he would be able to obtain information as to who was in possession of the land.

*The Chairman.*—When a block of land is decided on, an officer of the Titles Office could go to the local authorities and get the information.

*Mr. Wiseman.*—The Commissioner could inspect an area in a block, call in the local authorities and say, "We propose to bring this land under the Act. What do you know about it?" A person would not get a title by adverse possession unless he had paid the rates.

*Mr. Merrifield.*—I draw attention to paragraph (b) of sub-clause (2) of clause 55. That provision would safeguard anybody who had a legal right of adverse possession.

*By Mr. Bailey.*—When an application for a survey has been made of land held under an old title and it has been found that there is a considerable excess of land, I understand that has been included in the title. Will that operate under the Bill?

*Mr. Wiseman.*—Sub-clause (2) of clause 53 will apply.

*Mr. Bailey.*—Should not consideration be given to the provision in sub-clause (1) of clause 53 that the Commissioner shall direct the posting of the notice or intention "in a part of his office to which the public has access and in such other places as he deems proper?"

*Mr. Merrifield.*—I think that the sub-clause should provide for the advertising of the notice in a daily newspaper.

*The Chairman.*—That is one of the suggestions which will be considered by the Committee.

*Mr. Wiseman.*—One point that might be borne in mind is this: There is now dealt with under the Bill a provision for making rules similar to those provided under the English Act. If members examine the English legislation they will find a complete set of rules.

A new departure of some importance is contained in clause 60, which has relation to section 12 of the South Australian Act. Clause 60 reads—

- (1) The Commissioner's minutes shall not form part of the register book.
- (2) A person shall be entitled on payment of the prescribed fee to inspect the Commissioner's minutes relating to any land.

The provision in the South Australian Act reads—

A person shall be entitled to be informed of the contents of the Registrar-General's minutes relating to any land in the following cases but no others—

- (a) If he is the registered proprietor of the land or of an estate or interest therein; or
- (b) If he is authorized in writing by any such registered proprietor to obtain the information; or
- (c) If he is authorized by an order of the Supreme Court to obtain the information.

Those are the only three cases under the South Australian Act in which a person can inspect the minutes. It was suggested by a solicitor on the Chief Justice's sub-committee that if inspection were limited to these three cases this position might arise. A person might want to buy land and wish to know something about the title, but he might still not wish the owner to know he was inspecting the title. If we inserted a prohibition with only the three exceptions I have quoted from the South Australian Act the person proposing to buy would have to go, in effect, to the owner and ask him for his title. The solicitor on the sub-committee suggested that that course would not be convenient.

*By Mr. Fraser.*—There will then be another fee for inspection apart from the ordinary search fee?

*By Mr. McDonald.*—Why should not the inspection be included in the ordinary search fee?

*Mr. Wiseman.*—My comment will be technical. The Commissioner's minutes will not form part of the register book.

*By Mr. Merrifield.*—Seeing that the minutes will be separate from the register book, will that provide any limitation in a court of law?

*Mr. Wiseman.*—I do not think so.

*By Mr. Fraser.*—Sub-clause (2) has not been inserted merely to warrant payment of a special fee for inspection of the minutes?

*Mr. Wiseman.*—No. I think the reason for not making the minutes part of the register book was that it was desired that the register book should not be tied up with the minutes.

*By Mr. Fraser.*—One member of the Committee has suggested that no special fee shall be charged—in other words that the words "on payment of the prescribed fee" be deleted—but the person searching will still have to pay the ordinary search fee.

*By Mr. Schilling.*—Should not he have to pay a fee for the production of the Commissioner's minutes? He will have paid the ordinary search fee, but should he not have to pay a special fee for inspecting the minutes?

*By Mr. Bailey.*—Would the minutes affect the title at that particular stage? Must the solicitor searching the title take notice of the minutes?

*Mr. Wiseman.*—Yes, because it is compliance with the minutes that will give him a good title. It has

been suggested that there has been no fee prescribed under the 26th Schedule. Members will see throughout the Bill provision for prescribed forms and fees. The idea is that they may be prescribed under the Rules.

There is a slight alteration in clause 63, which is the old section 15. Sub-clauses (2) and (3) have been deleted. I do not think any alteration has been made in the effect of the section.

I have now explained the main alterations taken from the South Australian Act.

*By the Chairman.*—You have completed your explanation of Part III. of the Bill?

*Mr. Wiseman.*—Yes.

*The Committee adjourned.*

THURSDAY, 14TH JULY, 1949.

*Members Present:*

The Hon. A. M. Fraser in the Chair;

*Assembly.*

Mr. Bailey,

Mr. Merrifield.

Mr. Reid,

Mr. Schilling.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*The Chairman.*—Do you, Mr. Wiseman, wish to make any further comments on Part III. of the Bill?

*Mr. Wiseman.*—We had actually finished dealing with Part III. of the Bill, but before leaving it I should like to refer the Committee to a case which is reported in the 1925 Victorian *Law Reports*, at p. 283. The case was Jenner and Keighran's contract. In 1909 three trustees were the owners of farm land at Monegeetta. There was a sale of the farm in 1909, in which year one of the trustees went to England. Prior to his going he gave attention to the price that should be obtained and also to the question whether the land should be sold by private contract or public auction. The remaining two trustees carried out a sale in 1909. Then there were dealings by way of mortgage and discharge of mortgage on two occasions, a sale by the then owner to Jenner, and a further sale in 1925 from Jenner to Keighran. Between 1909 and 1925 part of the farm was under the Transfer of Land Act and part was not. The part under the Act had come into the Titles Office, and a requisition was made on this particular transaction by Mr. Examiner Chalmers, who was satisfied with the 1909 transaction and that the absent trustee had exercised his discretion, and on his approval a good certificate of title issued. That part of the land, therefore, had a good title from that time on.

In 1925 a requisition was made as to the land not under the Act by the solicitor for the purchaser. Then it was stated on behalf of the purchaser that the absent trustee had not sufficiently exercised his discretion in 1909 and that the title was therefore defective, and it was objected to. A vendor and purchaser summons was taken out, and it came before the Chief Justice, Sir William Irvine, who held that the absent trustee had not sufficiently exercised his discretion, that the sale in 1909 was bad, and that in effect all the dealings with the property from that date on under the general law were defective. It was said that after the trustee had returned to Victoria from overseas he had ratified the transaction because he had considered and approved of it. His Honour said that was not sufficient; he had had no option but to approve as the transaction had been put through, and he could not do anything else. His Honour said the vendor could not make a good title and that is where the matter ended. In that case in

land constituting one farm there was a good title as to part and a bad title as to part, both arising out of the same transaction.

*By the Chairman.*—There was a difference of views in the Titles Office?

*Mr. Wiseman.*—No, the examiner exercised a discretion and said "I am satisfied." Later the Chief Justice said that the trustee had not sufficiently exercised his discretion as a trustee as to the land under the general law. It was a difference between the Chief Justice and the examiner.

*By Mr. Schilling.*—The examiner was dealing with the portion of the farm under the Transfer of Land Act?

*Mr. Wiseman.*—Yes. That is an illustration of the advantage of having land under the Act.

I now come to Part IV. of the Bill. In clause 81 there are some words which have been deleted from the Act, and sub-clauses (2) to (8) have been added. The position about clause 81 is this: the Transfer of Land Act has not formerly dealt very much with the protection of trusts. It left trusts to be dealt with largely by the discretion of the Commissioner, and no doubt that worked out fairly satisfactorily, but it was thought greater detail should be provided in regard to the protection of rights created by trusts. In sub-clause (1) of clause 81 there are certain words that have been omitted from section 55. Those words are in line 4, and are—

and the Commissioner should it appear to him expedient so to do may protect in any way he deems advisable the rights of the persons for the time being beneficially interested thereunder or thereby required to give any consent.

The words are put in sub-clause (3) which sets out the persons who may lodge caveats. There are four categories mentioned. Sub-clause (2) gives any person interested in a trust the right to lodge a caveat. As I have said, sub-clause (3) expressly specifies the persons who may lodge a caveat. It was thought to be desirable to enable a solicitor personally to lodge a caveat when he was acting for any of the persons referred to in paragraphs (a), (b) and (c) of sub-clause (3) rather than to wait until he had secured the signature of the person concerned.

*Mr. Schilling.*—As solicitors we have been doing that in our practice for years.

*Mr. Wiseman.*—I think it is desirable to have that expressed in the Act.

*By the Chairman.*—What is the effect of clause 81?

*Mr. Wiseman.*—Under the caveat sections any person claiming any interest in land may lodge a caveat. Sub-clauses (2) to (8) of clause 81 specify the circumstances in which persons who have an interest in land may lodge a caveat. Those sub-clauses draw attention to the persons who may lodge a caveat. In one instance there is a difference, and it imposes a duty on a trustee as set out in sub-clause (7) of clause 81.

*By the Chairman.*—There is a specific obligation on a trustee?

*Mr. Wiseman.*—Up to the present time there has been no obligation on a trustee to lodge a caveat; he has merely power to do so. It was thought desirable that a sub-clause like (7) should be inserted to provide that the proprietor or the person representing the deceased proprietor should lodge a caveat, but if the proprietor failed to do so, it should be the duty of the trustee to do so. Sub-clause (7) provides that the proprietor should lodge a caveat. If he does not do so, and the proprietor is alive, a duty is imposed on the trustee to protect the beneficiaries' interests.

*By the Chairman.*—If he did not lodge a caveat he would be guilty of a breach of trust?

*Mr. Wiseman.*—Yes.

*By Mr. Bailey.*—Does a caveat stand until steps are taken to have it removed, or must the person lodging the caveat take action within a certain time?

*Mr. Wiseman.*—I think the caveats will stand until some action is taken.

*By Mr. Bailey.*—But no time is laid down?

*Mr. Wiseman.*—No. The caveats stand and then with the later clause (240) caveats will rank in order of the time that they are lodged, protecting beneficiaries' interests in order of priority of lodging a caveat or of obtaining registration.

*By the Chairman.*—What Mr. Bailey is getting at is that the general provisions in the Act apply to clause 81.

*Mr. Wiseman.*—Yes.

*Mr. Schilling.*—Sub-clause (4) is the provision involved.

*By Mr. Reid.*—Is there any point in inserting in clause 81 provisions about caveats? Would it not be better to stop at clause 81 after the first sub-clause and incorporate the other provisions in Part VIII. of the Bill? Is it not rather confusing to have references to caveats in the early portion of the Bill?

*Mr. Wiseman.*—It might be more convenient to do as Mr. Reid mentioned. We put those provisions in clause 81 because we were dealing with trusts and thought it was better to include the provisions there.

*By the Chairman.*—So far as clause 81 is concerned, solicitors already act more or less under this procedure, under the general caveat powers?

*Mr. Wiseman.*—I think they do, but it was considered desirable, while going through the Act, to fill in gaps in what has been described as a skeleton Act.

*By Mr. Schilling.*—Before we leave the question of caveats, is not sub-clause (3) of clause 81, which is restricting the right to lodge a caveat, unduly unreal? I have in mind cases which frequently occur in practice where husbands and wives have an agreement when a property is bought that it shall be purchased in the name of either party. Later there is a dispute, and the wife says, "Yes, the property is in my husband's name, but I paid the initial deposit of £40 and I want to lodge a caveat." At present the only way such a caveat can be lodged is by submitting proof to the Registrar, by way of a statutory declaration, that the claimant has some valid claim.

*Mr. Wiseman.*—In other words, it would be a declaration that the claimant has an interest.

*By Mr. Schilling.*—In practice, before a caveat can be registered, it is always insisted on that the claimant must submit declarations supporting his interest. It seems to me that there should be an absolute right in a woman or a man to lodge a caveat, to say "I have an interest in this property." If a caveat is lodged capriciously, no doubt costs will be allowed.

*Mr. Wiseman.*—What are your ideas on disputes between a husband and a wife? Do you think the clause would impose an undue obligation on one party?

*Mr. Schilling.*—Very often a spouse will slip in and sell the property before the other knows what has happened.

*Mr. Wiseman.*—So far as sub-clause (5) is concerned it provides that nothing in the section shall in any way restrict the right of any person to lodge a caveat under the provisions of clause 231 of the Bill. If a person claims an interest that person can file

a declaration and lodge a caveat under clause 231. Is your objection to a person being required to submit proof by declaration?

*Mr. Schilling.*—I feel that it is not quite just to make a person submit his proof in writing beforehand.

*Mr. Wiseman.*—I appreciate that.

*The Chairman.*—The clause appears to be going beyond the terms of clause 231.

*Mr. Schilling.*—It does. A person must satisfy the Registrar, otherwise he will not register the caveat.

*Mr. Wiseman.*—That is a matter that goes generally to the caveat provisions in clause 231.

*Mr. Reid.*—I think the principle enunciated by Mr. Schilling would apply in relationships other than husband and wife, where some other persons might have purchased under some strange sort of document which might or might not be a contract.

*Mr. Wiseman.*—That is so.

*Mr. Schilling.*—Perhaps we could deal more appropriately with it under Part VIII. It should be made easier.

*By the Chairman.*—Does not clause 81 apply only in cases where the Registrar has received notice, either expressed or implied?

*Mr. Wiseman.*—That is so. There have been some changes incorporated in clause 94. In clauses 94 to 102 inclusive, an attempt has been made to bring together the provisions dealing with easements. Those provisions bring together all clauses dealing with easements in this Part. Formerly section 68 made certificates of title conclusive evidence as to easements shown on them. Then section 102 dealt with the removing of abandoned easements, while section 271 dealt with a similar subject. Sections 102 and 271 are being repealed and those provisions have been incorporated, in the main, in clause 94. Sub-clause (1) of clause 94 has been amended to include profit à prendre as well as easements. It was thought that a person who had a profit à prendre should be in a position to say that that is a valuable right and that he wanted it noted on the title. A distinction has been drawn between the evidentiary effect of a statement as to a profit à prendre and as to an easement. It has always been the case that, where there is a notification of easement, that shall be conclusive evidence that the person is so entitled, and those words remain. In a case of profit à prendre, that being of a different nature, it was thought desirable that if it is to be noted on the title it should be made prima facie evidence, because a profit à prendre could be worked out. A person might have a right to remove timber; in fact, the timber might have been actually removed, and it was thought for that reason that it was desirable to draw a distinction between the evidentiary effect.

*By the Chairman.*—A profit à prendre could be limited as to time, could it not, whereas the easement runs with the land?

*Mr. Wiseman.*—Yes. With regard to sub-clause (2) a person affected by any such statement as is referred to in sub-clause (1) may apply to the Commissioner for the removal from the register book of the reference to any easement or profit à prendre in whole or in part, where the same has been abandoned or extinguished, and whether such abandonment or extinguishment be occasioned by the release, non-user, expiration of time, or in any other manner whatsoever.

*By the Chairman.*—Are these entirely new provisions?

*Mr. Wiseman.*—No, they are not entirely new. It comes back to section 102, which provides, in effect, that a proprietor of land may apply to the Commissioner for the removal from the certificate of title of

any easement of way notified thereon as an encumbrance. The section was limited to easements of way. This could mean any easement; for instance, an easement for drainage.

*By Mr. Bailey.*—Would there be any limitation of time? Would that be the same limitation as is given a person with the right of user?

*Mr. Wiseman.*—Yes, I think it is the same.

*By Mr. Reid.*—What was the actual provision in section 102 as to the removal of the right-of-way?

*Mr. Wiseman.*—I shall read the section (section read).

*Mr. Reid.*—The Bill goes a little further and says that this proof shall constitute prima facie evidence that he is so entitled.

*The Chairman.*—Not as to an easement but only as to a profit *à prendre*.

*Mr. Reid.*—Yes, it also applies to easements.

*By Mr. Merrifield.*—This provision does not affect any ancient light rights under property law? They are not interfered with?

*Mr. Wiseman.*—If a person has an easement of light by express grant he would have to register that as an easement.

*Mr. Merrifield.*—I do not think so. It only exists by virtue of the age of the building itself and it is subject to the person proving it.

*Mr. Reid.*—I have seen an easement to light and air registered in connection with a building in Camberwell, in which case I had to search the title some time ago.

*Mr. Merrifield.*—That is if the two parties have agreed, but there is also a right under ancient lights.

*Mr. Wiseman.*—There can be no easement of light acquired by user since 7th October, 1907 (*Property Law Act 1928*, s. 195). Any right to light acquired by user must have been acquired by that date. Such a right is protected by paragraph (d) of the proviso to clause 104. Since 7th October, 1907, all easements of light must be created by express grant. All easements of light created by express grant, whether before 1907 or thereafter, will now require to be registered or to be protected by caveat.

*Mr. Reid.*—I think the case I referred to was an actual creation.

*Mr. Wiseman.*—Talking of easements, generally the Act contemplates that they may be acquired by user. If an easement is acquired by user it will not be necessary to register it (clause 104 (d)). The Bill also contemplates that easements that are created by grant should be registered. If a person creates an easement by grant and does not register it, and a prospective purchaser searches the title at the Titles Office and finds a clear title, if the prospective purchaser then lodges a caveat or gets registered, I think the present Act contemplates his getting a title superior to the unregistered easement. In other words, the objective of the Act is to compel people, who have rights created by some document, to apply to have it placed on the title in some way or another so that it is possible to search the title and discover it. So far as ancient light rights are concerned, if a person has obtained such a right by user I cannot see why it should be registered. If he has obtained it by grant he should have it registered.

*By Mr. Schilling.*—If a person has an ancient light right by user it would be hard to show that it had not been used or enjoyed for 30 years, in connection with light and air?

*Mr. Wiseman.*—Yes, and I think he would be very much in the same position as he is in now. This clause 94 gives the Commissioner power to remove easements from the register book. There is power also given in clause 101 for the proprietor to apply to the court for the modification or removal in whole or in part of any easement or profit *à prendre* noted on the title as an encumbrance.

*By Mr. Merrifield.*—Sub-clause (3) refers to the Commissioner directing that appropriate entries be made in the certificate of title to the dominant tenement, and, in the certificate of title, if any, to the servient tenement. I think the point was raised that not all easements are registered on the dominant title?

*Mr. Wiseman.*—In the earlier sections no reference was made to the dominant tenements. I think that all easements or profits *à prendre* should be registered on both the dominant and servient tenements. They should be registered on the servient tenement so that a person buying will have knowledge of all the obligations.

*By Mr. Merrifield.*—In some cases there would not be a servient tenement?

*Mr. Wiseman.*—Suppose there is a piece of land and a person has the right to take timber off it. It would be in the position of a servient tenement. There would not be a dominant tenement.

In clause 96 the words “profits *à prendre*” have been added in consequence of the inclusion of the term in clause 94. Clause 97 is new. It provides expressly that the proprietor of any land may grant any easement or profit *à prendre* by instrument in prescribed form. By sub-clause (2), any easement or profit *à prendre* may be surrendered by instrument. Under sub-clause (3) when any instrument is presented for registration the Registrar shall endorse it on the certificate to the dominant tenement. That is merely expressing a power which has always been deemed to exist.

*By Mr. Reid.*—Is there any particular point in providing in sub-clause (1) that no such easement or profit *à prendre* shall be registered if such land is subject to a mortgage or charge unless the mortgagee or annuitant has consented in writing thereto?

*Mr. Wiseman.*—If there is a mortgagee or annuitant in respect of any land it means that the mortgagor cannot impose an obligation on the mortgaged or charged land which will be superior to the rights of the mortgagee.

*By Mr. Reid.*—That follows, of course, but one cannot register an easement or profit *à prendre* unless the certificate of title is produced. That cannot be done now. Is it necessary then to prescribe this specifically?

*Mr. Wiseman.*—Does it not conform with the leasing provisions under section 131 of the old Act?

*Mr. Reid.*—Perhaps I had in mind capricious refusals by mortgagees.

*By Mr. Merrifield.*—Would it cover cases where, say, a widow was granted an interest for life?

*Mr. Wiseman.*—In that case there would be an owner for life. What is being referred to is this position: A person has a charge of, say, £3 a week on the property for life, and the amount has to be raised somehow.

Clause 98 has been included to remove doubts. Where a person has been in possession of land for 30 years it can be assumed that he is in possession rightly and there is a grant. If he is in possession rightly there must have been a grant originally. If the grant cannot be found it is assumed that it has been lost.

*By the Chairman.*—Take the term “lost modern grant” in the clause. Is the word “modern” a new expression?

*Mr. Schilling.*—It has always been used. I remember hearing it used in lectures.

*Mr. Reid.*—I have an idea that the expression is used to draw a distinction between the doctrine of prescription and our practice in Victoria.

*Mr. Wiseman.*—Mr. Reid’s theory is this. If you traced your title beyond the memory of man you were deemed to have got a good title. In England the practice was to trace the title back to the first year of the reign of Richard I. (1189). Obviously that practice could not be followed in Australia. Indeed, the doctrine of prescription was never actually applicable in Australia. When we had to justify the right to an easement we could not go back so far as they could in England and the term “modern grant” had to be put in our Act to distinguish it from prescription.

*Mr. Reid.*—I think the term is used in the Property Law Act.

*Mr. Wiseman.*—The use of the word “modern” did not appear to be an anachronism to any member of the Chief Justice’s sub-committee.

Sub-clause (2) of clause 98 refers to easements created otherwise than by grant. It merely expresses a power which I think had not been expressed before but had been acted upon. Clause 99 speaks for itself. Clause 100 provides that where an application is made to register an easement or profit à prendre the Registrar may require a survey to be made. It was included for two reasons, the first being to enable a check to be made on persons owning small rights who might make a nuisance of themselves to get them registered, and the other to have the easement set out correctly on the title. Clause 101 gives a complementary power to the court and is related to the provisions of clause 94. It was thought that the Commissioner should have power to remove easements where he was satisfied they no longer existed and it was considered advisable to give the court similar power. There was the general impression that the court had the power, but it was not expressed in the Act. Clause 102 expresses the powers of the court when an application is made to it. Sub-clause (2) is not unimportant. It relates to orders made under the provisions of clause 101, and it means, in effect, that if the court makes an order it will clear the title.

*The Committee adjourned.*

TUESDAY, 2ND AUGUST, 1949.

*Members Present:*

The Hon. A. M. Fraser in the Chair;

*Council.*

The Hon. A. E. McDonald,  
The Hon. D. J. Walters.

*Assembly.*

Mr. Bailey,  
Mr. Merrifield,  
Mr. Reid,  
Mr. Schilling.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*The Chairman.*—At the previous sitting we had dealt with clause 102 of the Transfer of Land Bill.

*Mr. Wiseman.*—I had dealt with that clause. At the last meeting a question was raised with regard to easements of light. Any easement acquired by user is protected by the clause which still remains—clause 104, and paragraph (d) of the proviso to that clause. Since the 7th of October, 1907, all easements of light

must be created by an express grant. All easements of light created by express grant, whether before 1907, or thereafter, will now be required to be registered or protected by caveat. I incorporated that statement in my answer in the previous minutes of evidence.

*By the Chairman.*—Does that satisfy you, Mr. Merrifield?

*Mr. Merrifield.*—Yes.

*Mr. Wiseman.*—Dealing with clause 104, that has been altered rather substantially. I have dealt with that subject at some length in the explanatory paper, commencing on page 17. As it originally stood it was a most confused section, but it has been re-arranged and it does not now even look like the old section. It has been split up into paragraphs (a) and (b), and the proviso has been paragraphed, giving it a different appearance. It has not been altered except in the way that I shall indicate. The form is taken from old section 72, and I think it reads straight on, but there have been amendments which I shall now indicate. In section 72 the following words were used:—

“or subsisting over or upon or affecting such land”.

That is taken out from line 15 on page 24 of the old Act, which previously read—

“provided always that the land which is included in any certificate of title or registered instrument shall be deemed to be subject to”

and then you go down to—

“to any easements acquired by enjoyment or user.”

The section then reads on—

“or subsisting over or upon or affecting such land . . . so that the words “acquired by enjoyment or user” referred to easements acquired in that manner which are still protected by clause 104. The words which are now deleted are—

“or subsisting over or upon or affecting such land”

Easements, other than “easements acquired by enjoyment or user,” were protected by what is now clause 104, but now are required to be protected by caveat, or to be registered. The section then proceeds—

“and to any unpaid rates”

and the words “and taxes” are added because it was thought that if there were unpaid taxes on the land, such as the Land tax, that would not be difficult to discover. Rates and taxes seem to be of a similar nature, therefore those words were added. The next words in the section are—

“and other moneys which without reference to registration under this Act are by or under the express provision 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 and to any leases, licences, or other authorities granted by the Governor in Council or any responsible Minister or any Government department or officer or any public corporate body and in respect of which no provision for registration is made and also where the possession is not adverse to the interests of any tenant of the land.”

All those words are deleted. I have dealt with that matter on page 18 of the explanatory paper in this way;

The interests in addition to the above which were formerly protected by section 72 of the *Transfer of Land Act 1928*, but which are no longer protected are:—

1. Charges for moneys which are declared to be a charge upon land in favour of a Minister or Government department under the provisions of an Act of Parliament.

That is a matter which has been given a good deal of thought by the sub-committee. There was a strong feeling that charges upon the land should be discoverable on the search of the certificate. I think that is dealt with more fully in a later part, relating to the registration of charges by Government departments, under Division 8. It was thought that could be deleted,

and that these charges should be as far as possible discoverable by search at the Office of Titles. The explanatory paper continues:—

2. Leases, licences, or other authorities granted by the Governor in Council or a Minister or a Government department or public corporate body and in respect of which no provision for registration is made.

I think that refers to leases for less than three years which, under the *Transfer of Land Act 1928*, were not registerable, but which under the present Act will be registerable, and licences which never have been registerable and are not now registerable. The position now is that any lease can be registered, and if there is to be a licence the same reasoning should apply, and that is now to be notified by caveat. The next paragraph in the explanatory paper reads:—

3. Where the possession is not adverse, the interests of any tenant of the land.

That is a debatable matter, and raises this position. Where a person is in possession of land anybody dealing with the land is deemed to have notice of the rights of the person in possession. I stated the position "without reference to any tenant" because I think that is the position as laid down in the case of *The National Bank v. Joseph* (1922) S.A.L.R. 578 at p. 584, which went to the Privy Council. The section has always referred to the interests of a tenant in possession. The interest of the tenant in possession might be anything from a tenancy at will, or a tenancy from week to week, to a tenancy for any duration, with or without the option of renewal, or the option of purchase. It was strongly felt, certainly by some members of the sub-committee, that there was difficulty first of all in discovering whether anybody was in possession of the land.

*By Mr. Schilling.*—Does that refer to on sale by the purchaser?

*Mr. Wiseman.*—Yes.

*By Mr. Schilling.*—One can always requisition on title.

*Mr. Wiseman.*—That is so, but one member of the sub-committee who had had considerable experience in conveyancing had acted for a client and purchased land. There was some timber on the land and he apparently got no notice of possession. This person had a very large interest in the land and it cost the solicitor a considerable amount of money. So far as the interest of the tenant goes, he could make his requisitions and if he received his answers to them I suppose he would get the information sought, but by that stage he would have entered into his contract and committed himself to that extent. It was felt that if a tenant had an interest in the land, which he desired to protect, it was not asking a great deal to provide that he should lodge a caveat.

*By Mr. Schilling.*—Would that mean every tenant, including one who was on a tenancy from week to week?

*Mr. Wiseman.*—On that basis that is so.

*The Chairman.*—That is a radical change from old section 72. One always took over subject to the rights of the tenant in possession.

*Mr. McDonald.*—Section 72 was the bugbear, and was always a problem. There was a permit under section 72 and the purchaser never knew where he was.

*Mr. Wiseman.*—If I might deal with Mr. Schilling's remarks in detail I should like to make some comments. If there is a tenant from week to week under section 72, apart from the 1928 *Landlord and Tenant Act*, and all the regulations that we now know, if an owner sold a property in which there was a weekly tenant the new owner, if he wished, could either give notice terminating the tenancy and get the tenant out in

seven days plus ten days; or if he bought for investment he could allow the tenant to remain. That was the real position under section 72. That was the only protection that the weekly tenant then had. Under section 40 of the *Landlord and Tenant Act 1948*, it is provided that a person who becomes the lessor of prescribed premises, being a dwelling house or part, by purchase shall not within a period of six months after the date of the agreement for the purchase give notice to quit on the grounds specified in paragraph (g) to any person who was the lessee of the prescribed premises at the date of the agreement for the purchase.

*By the Chairman.*—Is not that Act of limited duration?

*Mr. Wiseman.*—I do not think so.

*The Chairman.*—I will look at that later; I wish to be sure about it.

*Mr. Wiseman.*—Under the 1948 Act the weekly tenant is still protected.

*By Mr. McDonald.*—Except by leave of the Court. Under the Act he can, I think, apply to the Court?

*Mr. Wiseman.*—No.

*By Mr. Schilling.*—There is no question of any application to the Court to abridge the period of six months?

*Mr. Wiseman.*—No. I think that is rather an important consideration when looking at the real position of the weekly tenant. If all small tenancies are to be registered or caveats lodged in regard to them it may be considered that some new obligation will be imposed on a tenant or on the Registrar of Titles; but it was thought desirable that that should be done.

*By Mr. Schilling.*—There is no obligation imposed on the owner?

*Mr. Wiseman.*—No, it merely means that if the tenant wishes to protect his interest he may lodge the caveat.

*By Mr. Schilling.*—I cannot see the purpose of it. If a tenant is lawfully in possession as a weekly tenant and can be put out only according to the law, what necessity is there for a weekly tenant to lodge a caveat to protect his interest?

*Mr. Wiseman.*—That is precisely the position. I do not think there is any necessity, but the situation may arise that a person may have a weekly tenancy of some part of a valuable city property and he may desire to protect his interest. I do not think he would, because his right has always been of a very slender duration.

*Mr. Schilling.*—I suppose it does no harm, if a tenant desires to protect his interests.

*Mr. Wiseman.*—That is so. As this clause was originally drafted a slightly complicated provision was inserted, the effect of which was to limit the duration of a protected interest under section 104 to a three years tenant right, excluding the rights of renewal or the rights of option to purchase. However, it was felt by the majority of the sub-committee that it should not be inserted. That is how that came about.

*Mr. Schilling.*—It seems to me that the real value, if any, is not to the tenant but to put on guard the prospective purchaser who makes a search. If a tenant lodged a caveat the purchaser who searched would require to know the reason why it had been lodged.

*Mr. Wiseman.*—Yes. I think a difference from section 72 of the 1928 Act should be made because a person may have difficulty in ascertaining:

- (1) whether anybody is in possession; (2) who is the person in possession; (3) what are the rights of the person so in possession.



If the clause as drawn is adopted I think the rights of tenants with short tenancies will not be interfered with to any material extent. If they value their tenancies they can lodge a caveat and then notice to any prospective purchaser will be given.

*By Mr. Schilling.*—Do you think it would be wise to compel the person lodging the caveat to give notice to the owner or registered proprietor? The present procedure seems to be that anybody can lodge a caveat, but unless some dealing is entered into the owner has no knowledge of it. If the owner was notified that a caveat had been lodged and in his opinion it had been wrongfully lodged he could take steps to have it set aside immediately.

*By Mr. Reid.*—Does not the Registrar give notice of all caveats lodged?

*Mr. McDonald.*—I do not think there is any statutory requirement, but as a matter of practice he does.

*Mr. Schilling.*—I am not sure that the Registrar does in all cases, and it seems desirable that it should be a statutory requirement.

*The Chairman.*—There is a provision somewhere that unless proceedings are taken within a certain period the caveat lapses.

*Mr. Schilling.*—Very often the owner has no notice of the caveat until a dealing is entered into, and then it is found that some one has had a caveat in for two or three years. It may be very difficult to obtain proof of certain things.

*The Chairman.*—The registered proprietor would assume that he would receive notice.

*Mr. Wiseman.*—There is a provision for notice, and I agree that it should be included. Sub-clause 1 of clause 232 states:

Upon the receipt of such caveat the Registrar shall notify the same to the person against whose application to be registered as proprietor or (as the case may be) to the proprietor against whose title to deal with the estate or interest such caveat has been lodged.

*By Mr. Schilling.*—Does that refer to every caveat, or has it limited application?

*Mr. Wiseman.*—I think it refers to every one. I agree that on the lodging of a caveat the registered proprietor should be notified. After receiving the notice he would have to decide whether or not to take steps to remove the caveat.

*Mr. Schilling.*—That would be for him to decide. If he received notice and wished to take steps to remove the caveat he could do so, but at present he has no opportunity.

*Mr. Wiseman.*—Yes. I think that might be developed.

*By Mr. Bailey.*—On the expiration of the weekly tenancy and the tenant going out does the caveat have to be removed, or does it carry on when another tenant comes in, or does the new tenant have to lodge a fresh caveat?

*Mr. Wiseman.*—On the tenant going out and notice being given to the Registrar he would remove that tenant's caveat.

*By Mr. Bailey.*—Otherwise there could be an accumulation of caveats?

*Mr. Wiseman.*—Yes. The caveat would have to be removed. There is a provision that on the Registrar being satisfied he may remove a caveat.

*By the Chairman.*—Clause 232 is the old section 184?

*Mr. McDonald.*—It is not.

*Mr. Wiseman.*—The portion that I quoted is part of the old section. Certain words have been deleted from it.

*Mr. McDonald.*—Section 184 is complicated.

*By the Chairman.*—I was following up the point raised by Mr. Schilling on the question of notice. Is there any provision in clause 232 to notify an owner of the lodging of a caveat except when there is a dealing?

*Mr. Wiseman.*—I think clause 232 (1) covers it but the matter might be clarified.

*Mr. McDonald.*—Clause 231 gives power to lodge a caveat.

*The Chairman.*—Mr. Schilling can keep that in mind and refer to it when we come to that part.

*Mr. Wiseman.*—I do not desire to refer to any other matters in clause 104, unless any questions are raised in regard to it. There has been some alteration to the title in Part V. Some reference to easements has been omitted because they have been dealt with elsewhere.

*Mr. Merrifield.*—There is a letter from the Law Institute in regard to clause 104.

*Mr. Wiseman.*—I have seen that letter. I have dealt with what I understand to be their objections—that is, they say that there will be difficulties with regard to the lodging of a caveat by every tenant of a small tenancy, and they also, I think, prefer the old protection given to the tenant in possession.

*The Chairman.*—The statement in the letter from the Law Institute is—

Section 72 of the *Transfer of Land Act 1928* makes a Certificate of Title subject, *inter alia*, to the interests of any tenant where the possession is not adverse. This exception has been omitted from section 104 of the Bill (which is the corresponding section) and the Institute strongly recommends that the exception be restored.

*Mr. Wiseman.*—That is so.

*By the Chairman.*—I suppose the Law Institute has reasons why it desires the old position to be maintained?

*Mr. Wiseman.*—At all material times the Law Institute had a representative on the sub-committee, and he concurred, I think, in clause 104 as it now appears in the Bill. It may be that since then there has been further enlightenment on the matter. I think I have now dealt with all the material considerations. It seems to me that previously, the tenant's rights were very extensively protected, and, furthermore, that the rights which were protected under section 72 of the *Transfer of Land Act* were far greater than those which were contemplated when that section was passed, because they include options to renew and options to purchase. I would not think that those were matters which should necessarily be protected. Suppose a tenant, in reply to an inquiry, said that he had a tenancy for three years; it would not be a very truthful answer if he also had an option to purchase. His tenant right would be for three years, but his other right would be an option to purchase which would terminate the title altogether. In New South Wales, Queensland, Tasmania, and New Zealand tenants' rights are not protected.

*By the Chairman.*—There are also some observations in the Explanatory Paper regarding charges by statutory bodies; what is your view of that?

*Mr. Wiseman.*—As to those I heartily concur with the views of the Law Institute. The provisions of clauses 224 (1) and 240 (3), which I drafted, providing a limitation in regard to unregistered interests, were so drawn because I was informed—on what I had reason to believe was good authority—that there would be great difficulty in having the new sections passed unless those modifications were included. It was rather as a result of force that I put those limitations in the clause. I entirely concur in the suggestions.

*By Mr. Merrifield.*—Section 73 of the existing Act has been deleted altogether?

*Mr. Wiseman.*—Yes. Section 73 provided that any easements created by any deed or writing were to be specified as encumbrances in a certificate of title. The repeal of that section is consequential on the repeal in clause 104 of the words “or subsisting over or upon or affecting such land” and in consequence of the enactment of clauses 97 and 240. That is the effect of the new Bill. Easements created by express grant now require to be either protected by caveat or registered, and those which are acquired by user are protected under clause 104. It seemed to be no longer necessary to have the old section 73 in force.

*By Mr. Reid.*—Concerning the provision in clause 104 in regard to “the reservations exceptions conditions and powers (if any) contained in the grant”, has any consideration been given to a modification of that proviso? In practice, the position as I see it is that, strictly, a solicitor is obliged when searching a title to go right back to the original Crown grant. Some solicitors take that view. I know of one conservative firm of solicitors who always search to the original Crown grant, but the practice is honoured more often in the breach than in the observance by the majority of solicitors. At times purchasers of land have complained because a special condition in the original Crown grant had not been shown on a subsequently issued certificate of title. I do not know whether the Law Institute has expressed any views on that point, but it is a matter which should be given some consideration. A solicitor, whose client subsequently discovered that there was a condition in the Crown grant, which had not been found in the course of the ordinary search of the title, might well be held liable for negligence.

*Mr. Wiseman.*—I would think so. It could be provided, either in the Act or in the rules contemplated under the Act, that on the certificate of title there should be a notification of any special conditions in the Crown grant, whatever they may be. There could be some reference back to the Crown grant.

*By Mr. McDonald.*—Why cannot those conditions be carried forward on the existing certificate?

*Mr. Reid.*—It is done in some cases, but not always.

*Mr. McDonald.*—I have often wondered on what authority the Registrar omits them. A title may be issued showing no reference to the conditions, reservations, &c.

*Mr. Wiseman.*—An amendment could be made to cover the point.

*By Mr. McDonald.*—If those conditions are not shown on the title, the question arises as to what extent the owner of the land is bound by them?

*Mr. Wiseman.*—The reason for their omission might be that, as against the Crown, the owner would have very limited rights if the Crown made exceptions and conditions and said it granted only so much. But I think the difficulty could be overcome.

*By Mr. Schilling.*—That gives rise to another point. It will be noticed in many cases that the title is restricted to the surface of the land and down to a depth of 50 feet below the surface. That seems to be a futile provision. The point is perhaps of more importance where mining is involved. The restriction may be shown on the title to one block of land and not on the title to an adjoining allotment. Is there any real purpose in that? Has it been discussed?

*Mr. Wiseman.*—It has not been discussed.

*By Mr. Schilling.*—Is there any reason why the provision should be retained?

*Mr. Wiseman.*—If there are minerals under a person's land, he can always exercise his rights.

*By the Chairman.*—What other conditions or exceptions would there be in a Crown grant other than the limitation as to the surface and depth?

*Mr. Reid.*—There is sometimes a condition in regard to the acquisition of the land for the purpose of a railway.

*Mr. McDonald.*—And in regard to mineral reservations.

*By the Chairman.*—Would it not be sufficient to have those specified on the title?

*By Mr. McDonald.*—Whatever the conditions or reservations on the Crown grant they should be brought forward on the title and then there would be no doubt. Do you agree with that view?

*Mr. Wiseman.*—Yes.

*Mr. Reid.*—That has been done probably in 90 per cent. of titles, but I heard of a case in which a prospective purchaser would have suffered considerable loss because in the original Crown grant there was a restriction in regard to placing a building a certain distance from a street—a restriction similar to one that could be specified in a regulation under the Local Government Act. That condition was shown on the Crown grant but not on the subsequent certificate of title. The purchaser, who desired to build on the land, was embarrassed because of that restriction.

*Mr. Wiseman.*—Mr. McDonald's suggestion might well be incorporated and clause 104 amended appropriately.

*Mr. Merrifield.*—In clause 106 (line 46) the word “regulations” appears. In Part XVIII. of the Bill, I notice that the term “rules” is used, and clause 330 provides for the making of “regulations” prescribing penalties.

*Mr. Wiseman.*—Yes. Penalties cannot be prescribed under the rules but that can be done under the regulations made by the Governor in Council.

*By Mr. Merrifield.*—Then, according to clause 329, the rest of the provisions are “rules”?

*Mr. Wiseman.*—The word “regulations” in clause 106 should be “rules.” Clause 149 contains some alterations, but they are consequential. In the principal Act after the words “Any person sustaining loss” the words “or damage” followed, but they have been deleted.

*By the Chairman.*—You have taken out the words “or damage” in several places, but the words “or damage” have not been deleted entirely?

*Mr. Wiseman.*—I notice that, and I think the words can go out entirely. The word “loss” is defined in clause 301 (13) and I think it would be sufficient. The words “or damage” should be taken out in the clause and in the marginal note.

*By Mr. Merrifield.*—Going back to the heading, Part V. of the Bill deletes the words “removal of abandoned easements” from the heading to Part IV. of the Act. Do you deem the use of those words to be no longer necessary?

*Mr. Wiseman.*—They are no longer necessary in the heading because they are dealt with in Part IV., in clauses 94 to 101.

*By Mr. Merrifield.*—In paragraph (e) of clause 119 you refer to the *Land Surveyors Act 1928*. Should not that be amended to read “1942”, which was a consolidating Act?

*Mr. Wiseman.*—Possibly that should be “1942”, but I will consider the matter further.

*The Chairman.*—The Committee proposes to adjourn at this stage and we shall continue Mr. Wiseman's evidence at the next sitting at clause 150.

*The Committee adjourned.*



TUESDAY, 9TH AUGUST, 1949.

*Members Present:*

The Hon. A. M. Fraser in the Chair;

*Council.*

The Hon. P. T. Byrnes,  
The Hon. G. S. McArthur,  
The Hon. A. E. McDonald,  
The Hon. F. M. Thomas,  
The Hon. D. J. Walters.

*Assembly.*

Mr. Bailey,  
Mr. Barry,  
Mr. Merrifield,  
Mr. Oldham,  
Mr. Reid,  
Mr. Schilling.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*Mr. Oldham.*—I have asked Mr. Fraser to act as chairman to-day for the reason that I have been absent from recent meetings, and do not know what has transpired.

*The Chairman.*—Mr. Wiseman has already explained to the Committee the salient features of the Bill up to Part VI. He will now deal with Part VII., which relates to dealings with land.

*Mr. Wiseman.*—In the drafting of clause 150, certain words have been omitted from section 121 of the 1928 Act, and new sub-clause (1) provides—

The proprietor of land or of a lease mortgage or charge or of any estate right or interest therein respectively may transfer the same by a transfer in one of the forms in the Eighth Schedule.

It is there that words appearing in section 121 have been omitted. They dealt with the question of consideration. The Act provided that where the consideration for a transfer does not consist of money, the words “‘the sum of’ in the forms of transfer contained in the Eighth Schedule shall not be used to describe the consideration but the true consideration shall be concisely stated.”

It was very largely those last words which were the cause of difficulty to members of the profession and in the working of the Act. It appears that where the consideration did not consist of money, difficulty was experienced in stating the true consideration. I understand that what happened in practice, to a substantial degree, was that solicitors would find difficulty in setting out exactly what was the true consideration. A former Registrar of Titles supplied me with a dossier in which were set out various forms of consideration that had been evolved in the office. Some of them were of a most complicated nature, and would require reference to a great number of parties. This complicated system seems to be entirely unnecessary; it does not achieve any purpose so far as dealings in land are concerned, or so far as the Titles Office or the profession are concerned.

I have not been able to ascertain precisely the origin of the requirements, but it appears to have had two sources. The first suggestion is that when stamps were adhesive, it was considered desirable to have a consideration stated in case some of the stamps were lost. The other suggestion is perhaps a little more realistic: If the true consideration were set out when it was not a sum of money, it would necessitate also setting out the entire history of the transaction from the former proprietor to the proposed transferee, so that if any trusts were disclosed during that course of dealing, the Titles Office would know of them, and the Registrar or the Commissioner could investigate those trusts to find out whether the proposed dealing was in breach of any trust. I think the general feeling of the profession was that it was not the concern of the Titles Office to worry about those matters, and that no useful purpose would be served by continuing the practice.

*By the Chairman.*—What you are saying is that, so far as the consideration is concerned from the aspect of duty, it should be a matter for the Stamps Office, and not for the Titles Office?

*Mr. Wiseman.*—Yes. Sub-section (5) of section 70 of the Stamps Act of 1946 was not a new section; it followed from the 1928 Act. It requires the consideration to be fully and truly set forth in precise terms. It provides that in every conveyance the consideration shall be truly set forth in precise terms, and “conveyance” is defined to include a transfer. If the amendment in clause 150 is agreed to, it will be necessary to make a consequential amendment to sub-section (5) of section 70, or the definition section, to exclude a transfer. It would then work out in this way: A transfer would be lodged with the Titles Office, and I should think in any circumstances in which the consideration was a sum of money, it would be set out in the transfer, which could be submitted to the Comptroller of Stamps for his assessment. If necessary, it would be verified by any proof that he required, but there would be a basic document in the transfer. If it were not a sum of money, it would be shown by the transfer that it was for valuable consideration, and the transfer would be submitted to the Comptroller of Stamps with any proof that he might require, such as a statutory declaration setting forth a short history of the dealing. Then he would be informed of the exact transaction, and would be able to assess the duty on a plain statement of fact. It would only be in cases where the consideration was of a complicated nature that any difficulty would arise.

The difficulty would arise in a more acute form if it had to be stated in such a way as to satisfy the Titles Office as well as the Comptroller of Stamps. The document that was provided for me by Mr. Vance, after quoting the provision in the section, starts off with this statement:

It is not to be thought that so long as the consideration stated is a true one the transfer will be registrable.

The true consideration is that arrived at after the parties have considered the matter in the light of the well settled principles of conveyancing.

So it was not sufficient to set out the facts truly, but they had to be in a particular form. It is to avoid that type of complexity that the omission of the words from the section is suggested.

*By the Chairman.*—Conveyancers may be able to answer this question. Might it not be necessary for the Titles Office to ascertain the true consideration in order to determine whether there was a right to transfer? Would not the consideration then become material?

*Mr. Wiseman.*—Not at all. The only way in which it could become material would be in relation to the question whether the transfer was for a consideration or whether it was voluntary—that is, without consideration. For the purpose of determining whether there was or was not a resultant trust that question could arise, but beyond that there appears to be no purpose in it. Further, the question whether there is a consideration would be ascertainable at first glance from the stamping on the transfer, and in any event it would appear from the documents which had been lodged in the Comptroller’s office. There would be no difficulty so far as that is concerned. It might be desirable perhaps to go a little further in amending this section. This was suggested by Mr. Vance: That you should provide that notice is not deemed to be had by reason of the collector’s assessment of stamp duty appearing on the transfer. I do not know that it is necessary to go so far. In other words, so far as the Titles Office is concerned consideration is a matter which really does not affect them.

*By Mr. Bailey.*—So long as the transfer has been lodged and marked by the Comptroller of Stamps "Duty Paid," that should be sufficient.

*Mr. Wiseman.*—That is so. All you do is to consult the certificate of title, and you find that X.Y. is registered as the proprietor on the certificate. When you get a transfer from X.Y. to somebody the important thing is to make sure you have X.Y.'s signature. As soon as you have that, saying "Transfer to A," you do not need any more, because that is the authority of the registered proprietor to the transfer of his estate to the new proprietor.

*Mr. Schilling.*—I think the Chairman is rather seeking to make the Registrar into a solicitor for the purchaser, to examine the title.

*By Mr. Bailey.*—Are not those things requisitioned for? Suppose the signature was that of an administrator, he would previously have had to be registered?

*Mr. Schilling.*—The onus is on the purchaser to investigate the title and see that it is a good one.

*Mr. Wiseman.*—That is one point. One strong point so far as the profession was concerned was that it was regarded as the business of the solicitor acting for the purchaser to see that he had a good title, and not so much the duty of the Registrar. Actually I think it works out in a perfectly simple manner. You simply say, "I, A.B., being registered proprietor, for valuable consideration transfer all my estate and interest in the land to X.Y." What more do you want for any purpose so far as the Titles Office is concerned?

*By Mr. Schilling.*—When the title of ownership of a motor car is transferred by the Motor Registration Branch, the Chief Commissioner of Police recognizes the signature of the transferor to transfer to the transferee. He does not attempt to go into the question whether the transferor has a good title, but simply recognizes his signature. Why should the Registrar be in any different position? It should not be his responsibility at all.

*The Chairman.*—Once a transfer is registered the transferee would have an indefeasible title. Irregularities might be disclosed later.

*Mr. Schilling.*—If there were fraud it would vitiate the whole contract.

*Mr. Bailey.*—Before a person can become a registered proprietor his right to be registered would be investigated.

*Mr. Wiseman.*—He gets the indefeasible title conferred by the Act when he becomes registered, and then he can deal with the legal estate himself. We are not particularly worried about that at this stage because it is quite well provided for by caveat. I should like to mention an amendment which I think it would be desirable to make. In the Eighth Schedule there are two forms, one for transfer of land and the other for transfer of lease, mortgage, or charge. In the first form I suggest that the words "subject to the encumbrances notified hereunder in consideration of . . . do hereby transfer to" should be amended to read "subject to the encumbrances notified hereunder do for valuable consideration hereby transfer." That would be all that would be required to comply with sub-clause (1) of clause 150.

*By Mr. Bailey.*—Would it not be valuable when it is a cash consideration to be able to ascertain that the property was sold in 1924 for £5,600?

*Mr. Schilling.*—I do not think those particulars are available on search.

*Mr. Oldham.*—There are many dealings which are regarded as confidential in the office of the Comptroller of Stamps. One that occurs to me is family settlements, which are not regarded as matters of public interest.

*The Chairman.*—I think it is important to search, for the purpose of ascertaining the consideration.

*By Mr. Oldham.*—On the other hand, is it a matter of public interest? If a man settled £20,000 on a mistress, is that a matter into which one should be able to search?

*Mr. Schilling.*—I take it that the Chairman is suggesting that when a person is proposing to buy a property, it is very important that he should know what amount was paid for it by the vendor.

*By Mr. Oldham.*—A cash transaction should be shown in the transfer, because that is a matter of public importance. In other cases, would not the records in the Comptroller's office be regarded as confidential?

*Mr. Thomas.*—Practically every day prices paid for various properties are given in the columns of the press.

*Mr. Wiseman.*—I think it would be a convenience to the legal profession to set out the monetary consideration, because that would be an easy and simple way to have the duty assessed. But give the vendor the right to use the expression "for valuable consideration," if he does not want to disclose the actual figure.

*Mr. Oldham.*—That again would not be really effective, because the transfer would bear stamps upon its face, and the consideration would only be a matter of calculation.

*Mr. Wiseman.*—It would.

*By the Chairman.*—Paragraph 22 of the Twenty-sixth Schedule relates to cash transactions. What would be wrong in stating "a consideration, the amount thereof to be set out"?

*By Mr. McDonald.*—Is there not often a difference between the consideration in the Titles Office and that in the Stamps Office?

*Mr. Wiseman.*—That is one of the very difficulties it is desired to avoid. From time to time there is a conflict between the Titles Office and the Stamps Office in regard to the consideration.

*By Mr. Schilling.*—What is wrong with showing a cash consideration?

*Mr. Wiseman.*—As far as I can see, nothing at all.

*By Mr. McDonald.*—Although quite often it is not the real consideration?

*By the Chairman.*—Why not? Paragraph 22 uses the expression "any transfer on sale . . ." If there is a sale of property for consideration of a monetary character, what is wrong with showing the amount?

*Mr. McDonald.*—There is nothing wrong when it is a real consideration; for example, £500 paid by A. to B., but I am thinking of other instances in which one is compelled to put in a cash consideration that is not the real consideration for the transaction involved.

*The Chairman.*—That is for the assessment of duty.

*Mr. McDonald.*—Assuming that duty has been assessed, when the document itself comes to the Titles Office it cannot be reconciled with the consideration indicated by the stamps affixed, and an unreal valuation is compulsorily specified. Many transfers are preceded by an agreement between the parties setting out the real basis of the transaction.

*Mr. Reid.*—The compulsion would occur in only a small proportion of cases.

*Mr. McDonald.*—But in a sufficient number to warrant a cessation of the practice in the Titles Office.

*Mr. Oldham.*—If a parent transfers to his son property worth £10,000 and the son actually pays £5,000, the consideration there expressed could be "In consideration of £5,000 paid to me by . . . and

in further consideration of the love and affection I bear towards my son." That is acceptable to the Titles Office. The valuation is stated and the duty is assessed on the sum of £10,000. Possibly I am wrong, but I thought a consideration could be stated as "in accordance with the provisions of a settlement dated . . . ."

*Mr. McDonald.*—No. The Titles Office will not embody that in an instrument, because it relates to a document not in the Titles Office. A glaring example may be cited. Suppose there are two parties of the same surname—Oldham—but not related to one another, the first being the vendor and the second the purchaser. With the transfer is lodged a declaration as to valuation—a full, true and proper valuation of the land which is the subject of the transfer—and an estimate of the annual municipal valuation. There immediately arises a position in which the Titles Office holds that the amount which the vendor and purchaser had agreed upon as being the full and proper value is not the consideration for departmental purposes. Because it does not measure up to the ideas of the Titles Office, duty is charged on what that office thinks is the value and an amendment of the transfer is insisted on, so that it shall set out the amounts of the consideration paid and of the gift. That situation is absurd. If the same transfer was between Oldham as vendor and Fraser as purchaser the question would not arise but, in the result, there is placed on record a transfer having a perfectly unreal and untrue consideration.

*By the Chairman.*—Is it not a matter turning more on common sense administration than on law?

*Mr. Wiseman.*—There is a statutory enactment that the true consideration must be stated.

*The Chairman.*—But that is being omitted.

*Mr. Wiseman.*—I am aware of that.

*Mr. Oldham.*—I think some check should be made in the Titles Office on the question of the procedure to which Mr. McDonald has referred and in relation to cases in which proof is established that the transaction is not one between relatives but an ordinary bona fide transaction between unrelated persons.

*Mr. Wiseman.*—Mr. Vance did say that cases of the kind outlined by Mr. McDonald occurred.

*By Mr. Schilling.*—Is it not a matter of administration?

*Mr. Wiseman.*—No, not while the old section 121 remains.

*Mr. Schilling.*—That section provides that the true consideration should be stated. It is, but the Titles Office compels an untrue consideration to be shown.

*Mr. McDonald.*—The contention appears to be that the true consideration is that which accords with the duty paid.

*Mr. Schilling.*—Surely that is an administrative matter.

*By Mr. Oldham.*—If "Mr. Allan McDonald" decided to transfer a property to "Mr. J. G. B. McDonald" for an amount mutually agreed upon, the transaction being of an ordinary voluntary character, surely the Titles Office—in the course of its administration and without any extra safeguards—would fix the true valuation. Would the appropriate officials not say, "It is not for us to decide whether the vendor is wringing the last penny out of the purchaser"? If, in point of fact, the amount stated was all that was paid, that is the true consideration. If some other consideration is compelled, I think the practice should be stopped, because it is wrong.

*Mr. McDonald.*—A large parcel of files on the point could be produced.

*By Mr. McArthur.*—What is the position when there is a transfer from one relative to another?

*Mr. Oldham.*—In such a case there is true consideration.

*By Mr. McDonald.*—Could not a property worth £10,000 be sold cheaply—for, say, £5,000—to a daughter or a friend?

*The Chairman.*—I suggest that further consideration of this question be postponed for a while. In the meantime, Mr. Vance and Mr. Wiseman can give it further thought. It strikes me that there is nothing difficult in specifying the consideration when a sale is a straight-out one for £2,000 or £3,000. The word "true" is being deleted. In a case of difficulty, the expression "for valuable consideration" can be employed. The Stamps Office is able to assess the duty.

*Mr. Wiseman.*—There is a slip in the second form in the Eighth Schedule which should be made to accord with what is stated in the first form.

*By the Chairman.*—You mean by deleting the words "the sum of"?

*Mr. Wiseman.*—Yes. Clause 155 is the next for comment. There was a letter from the Law Institute asking that the words "except when a tenancy in common is thereby created or cancelled" should be deleted from clause 155 which is the comparable provision in the present Act to the old section 126.

*The Chairman.*—That request does not appear to be in the documents I have.

*Mr. Wiseman.*—The letter was sent forward. However, the matter develops in this way: Clause 89 provides that tenants in common may receive one certificate for the entirety or separate certificates for the undivided shares. In relation to what is now sub-clause (1) of clause 155 of the Bill, a difficulty arose from the procedure outlined in section 126. That procedure excluded the case of tenants in common. What was aimed at by the amendment was this: Where there is one certificate of title covering all the interests of the tenants in common, there is no difficulty in making an endorsement, but where there are two or more separate certificates, one for each interest, there could not be a transfer of one for an undivided interest, and the other certificate going off in another direction. The words I have quoted do not appear in clause 155, but sub-clause (2) has been inserted to meet the position. It provides—

This section shall not apply in the case of a transfer of the entirety by tenants in common in respect of whose undivided shares separate certificates of title have been registered.

Clause 160 relates to leases. The words "exceeding three years" have been omitted from section 131 of the Act, so that now the proprietor may lease for any term, whether for three years, or more or less. It was felt that there might be many cases where there was a lease for less than three years of valuable property which it might be desirable to register.

*By Mr. Byrnes.*—Registration would not be compulsory?

*Mr. Wiseman.*—No, it would be optional.

*By Mr. Byrnes.*—Would share-farming agreements be included?

*Mr. Wiseman.*—I should not think so.

*By the Chairman.*—A share-farming agreement would not be a lease?

*Mr. Wiseman.*—No. There would not be exclusive occupation.

*By the Chairman.*—A weekly tenancy could be registered?

*Mr. Wiseman.*—Yes. To clause 160 the words “except as provided by section one hundred and sixty-one of this Act” have been added. Clause 161 is new, and it provides—

The provisions of sections 99 and 100 of the Property Law Act 1928 with such modifications as may be necessary shall apply to mortgages of land under this Act.

Section 99 of the Property Law Act enables a lease to be made by a mortgagor or a mortgagee while in possession, and there are certain qualifications and provisos relating to such leases. They are not to be for more than seven years, and they may be made unless there is a contrary intention. It was thought that, under this Act, a mortgagee or a mortgagor should have the same powers of leasing while in possession as a mortgagor or mortgagee of land under the general law, bringing the two matters into conformity.

*By Mr. Thomas.*—Will that apply to ordinary possession or actual possession?

*Mr. Wiseman.*—I do not think it matters whether the mortgagee is in possession by himself, or by receipt of rents and profits. So long as the mortgagor was in possession, he would be in actual possession.

*By Mr. Bailey.*—In other words, the owner of the property will be subject to the law?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—Does the reference to sections 99 and 100 of the Property Law Act mean more than providing for the registration of a lease?

*Mr. Wiseman.*—I think so. The exception in clause 160 is—

Except as provided by section 161 of this Act no lease subject to a mortgage or charge shall be valid or binding against the mortgagee or annuitant, unless he has consented in writing to such lease prior to the same being registered.

Clause 161 provides that a mortgagor can lease up to seven years without the consent of the mortgagee in the same way as under the general law. I think the position has been modified to that extent.

*By Mr. McDonald.*—Is it to be taken to mean that a mortgagor cannot lease without the consent of the mortgagee?

*Mr. Wiseman.*—That was the old position. It has been varied so that the mortgagor can lease for seven years, provided that he is in possession, in the same way as a mortgagor in possession can lease for seven years under the general law, pursuant to section 99 of the Property Law Act.

*By Mr. McDonald.*—Is a mortgagor now prevented from leasing unless the mortgagee consents?

*Mr. Wiseman.*—Yes. I refer Mr. McDonald to section 131 of the 1928 Act. Consent must be obtained.

*By Mr. McDonald.*—To make it binding against the mortgagee, but the mortgagor could still lease and the mortgagee would not be bound?

*Mr. Wiseman.*—Yes, and that position is not being interfered with.

*By Mr. Schilling.*—Is there any virtue in the term of seven years?

*Mr. Wiseman.*—I do not know of any.

*By Mr. Merrifield.*—Clauses 162 and 163 relate to matters that should be dealt with under the Property Law Act rather than this Bill.

*Mr. Wiseman.*—Those clauses come from sections 132 and 133 of the old Act. They have appeared in the legislation for a long time, and it was thought that they should remain.

*By Mr. Merrifield.*—They appear to relate not to registrations but to dealings between parties.

*Mr. Wiseman.*—We tried to incorporate in the Bill as many powers as we could so that it would be in the nature of a code. It was recognized that it could not be a complete code as a number of matters would be more appropriately dealt with under the Property Law Act. It appeared to be convenient to leave some of those matters in the Bill.

*By the Chairman.*—As to clauses 160 and 161, now a mortgagor cannot make a lease for any period except with the consent of the mortgagee?

*Mr. Wiseman.*—Not against the mortgagee.

*The Chairman.*—Under the provisions of the Property Law Act, he can make a lease of up to seven years, if he is in possession of the land.

*By Mr. McDonald.*—The Property Law Act would bind the mortgagee, if he did not consent?

*By the Chairman.*—Yes. Will the effect of the Bill be to so change section 99 of the Property Law Act as to provide that the mortgagor will have to obtain the consent of the mortgagee to make the lease binding on the mortgagee?

*Mr. Wiseman.*—No. We are bringing land under the Act into line with land not under the Act. If there was a mortgage on land under the Act, and if the mortgagor was left in possession, he could grant a lease for a period up to seven years, and that lease would be binding on the mortgagee, whether he had consented or not. Under the 1928 Act, the position was the reverse, and the mortgagor of land could not grant any lease which would be binding on the mortgagee unless he had obtained the consent of the mortgagee. That applied to a lease for any term.

*By Mr. McDonald.*—In most mortgages, there is a provision that the mortgagor shall not enter into a lease without the consent of the mortgagee?

*Mr. Wiseman.*—That is to avoid the provisions of section 99 of the Property Law Act.

*By Mr. Reid.*—In clause 160, would it not be better to say, “No lease of land subject to a mortgage or charge”? I think the expression “No lease subject to a mortgage or charge” is somewhat obscure.

*Mr. Wiseman.*—I agree with the suggestion. I thought an alteration might be misleading.

Section 100 of the Property Law Act is on the same footing as section 99. That provides that a mortgagor and mortgagee in possession can accept a surrender of lease. In clause 169 certain words are omitted.

*By Mr. McDonald.*—In clause 168 I see a practical difficulty. If a lease is registered the way to get it off the register is for each party to sign. With the registration of weekly tenancies there may be difficulty in getting the lease off the register because the tenant may have disappeared.

*Mr. Wiseman.*—There are provisions for the making of rules in the Bill, and I would think a rule would be made to the effect that the Registrar would communicate with the tenant by registered mail asking him if he still claimed to be the tenant, and if no reply were received that could be acted on.

*By Mr. Bailey.*—What would be the advantage of registering weekly leases?

*Mr. Schilling.*—The weekly tenancy of a big building in the city might be a valuable asset.

*Mr. McDonald.*—A week would elapse before anything could be done against the tenant or landlord.

*Mr. Wiseman.*—It is not exactly so. A weekly tenancy is not merely for one week, but is of indefinite duration. While there is the 1948 Landlord and Tenant Act it is of substantial importance.

*Mr. McDonald.*—At the present time there are many weekly tenancies because of the restrictions arising out of the war. Under this provision Housing Commission tenants will have to register their leases, but they could pack up and go overnight.

*Mr. Wiseman.*—Under the rule-making provisions extensive rules would be made similar to those under the English Land Registration Act.

*The Chairman.*—And those rules will have to synchronize with the Act and come into operation at the same time.

*Mr. Wiseman.*—Clause 169 contains a consequential amendment made in accordance with the alteration to clause 160. There is a verbal amendment in clause 171 because a section was wrongly cited in the 1928 Act. The other provisions in this Part are clauses 175 and 176. It is thought that a trustee should have the same powers of leasing land under the Act as he has under the general law. The tenant for life is dealt with in clause 176.

*The Committee adjourned.*

WEDNESDAY, 10TH AUGUST, 1949.

*Members Present:*

Mr. Oldham in the Chair;

*Council.*

The Hon. P. T. Byrnes,  
The Hon. A. M. Fraser,  
The Hon. G. S. McArthur,  
The Hon. A. E. McDonald,  
The Hon. F. M. Thomas,  
The Hon. D. J. Walters.

*Assembly.*

Mr. Bailey,  
Mr. Barry,  
Mr. Merrifield,  
Mr. Reid.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*The Chairman.*—At the conclusion of the last meeting we had completed consideration of clause 176.

*Mr. Wiseman.*—Clause 177 is equivalent to old section 145. No comment is necessary on that clause. Clause 178 gives statutory effect and form to a practice which previously existed in cases where an executor or a trustee desired to mortgage land. If he wished to exclude his personal liability, leaving the mortgage the sole security, he could do so, and there was no personal covenant by the mortgagor to repay. That practice was admitted by the Titles Office, but there was no particular authority respecting mortgages of that kind and it was considered desirable that provision should be made to enable mortgages to be registered where it was agreed by the mortgagor and the mortgagee that the mortgagor need not give a personal covenant.

*By Mr. Bailey.*—In a case of that kind, the mortgagee would have recourse only to the security?

*Mr. Wiseman.*—Yes.

*The Chairman.*—That position still obtains in New South Wales. Under the 1932 moratorium, the personal covenant was excluded by statute.

*Mr. Wiseman.*—I think it was. This clause will carry that position into effect. It provides that personal liability may be excluded, and that the liability under the mortgage may be limited to the value of the asset which the mortgagee holds or may hold.

*Mr. Fraser.*—That seems to be reasonable, if the mortgagee is prepared to look to the security alone, irrespective of the personal liability.

*Mr. Wiseman.*—It does. The next alteration is in clause 179 where the words "and such other persons as appear by the register book to be affected" are added. The amendment provides for notice to be

given to subsequent mortgagees. Formerly, notice did not require to be given to subsequent mortgagees, and they might have had some interest in being given notice. This clause will bring the procedure into line with provisions under the general law which require notice to be given to subsequent mortgagees.

The next alteration is in clause 181—lines 47 and 48—where the words "and with power to grant and reserve such party wall easements" are added. Clause 181 deals with sales by mortgagees. That addition was decided on at the suggestion of the Commissioner of Titles. It has happened that terraced houses have been mortgaged and subsequently sold by the mortgagee. It was desirable in such a case to have a power to reserve party wall easements. That is the reason for the adding of those words.

*By Mr. Thomas.*—Would that apply to any one property in a terrace of houses?

*Mr. Wiseman.*—If there was a mortgage on a particular house in a terrace and if that house was sold by the mortgagee it might be desirable to reserve a party wall easement between the two places. That could happen.

*By Mr. Thomas.*—I have in mind properties at Nos. 77, 79, and 81 Perry-street, Collingwood. One of the houses, No. 79, was sold recently. There is no party wall in connexion with the property at No. 79. The original owner permitted the walls to be plugged and then to have studs affixed to those walls. Is it necessary to make provision for a case of that kind?

*Mr. Wiseman.*—No. That is another situation altogether. Party wall easements arise where there is one dividing wall partly on the land of each adjoining owner, and it is necessary for the owner of each property to have the right to the support of that wall.

*Mr. Thomas.*—In some terraces the wall might be only 9 inches thick.

*Mr. Fraser.*—The thickness of the wall would not affect the principle involved.

*Mr. Wiseman.*—In the case cited by Mr. Thomas the title to one property would end at the edge of the wall of that property and the title to the other property would be similar. There would be an agreement between the two owners of the adjoining properties that one would be allowed to tie his wall to the wall of the other house.

*By Mr. Thomas.*—That might apply to property at the end of a terrace, but what is the position in regard to a property in the middle of a row of houses?

*Mr. Merrifield.*—I think Mr. Thomas' point assumes that a wall remains completely as part of a property, say No. 79, and that No. 81 should have the right to the support of the wall of No. 79. Probably the expression "party wall easement" would not cover a case of that kind.

*Mr. Wiseman.*—I would not think so; it would apply only where the wall served both properties.

*The Chairman.*—In the other case, it becomes a matter of agreement between the two owners.

*Mr. Fraser.*—The clause relates only to sales of properties by mortgagees.

*Mr. Wiseman.*—The point has arisen in the past and it was suggested by the Commissioner of Titles that it would be desirable to add to the clause the words I have quoted.

The next alteration is in clause 182. There is a slip in the side note which should read "section 149"—not "section 140." The following words have been added at the end of the paragraph (a) "or other



person appearing by the register book to be entitled thereto." This clause deals with the application of the purchase money, and it is provided that the surplus of the purchase money, after payment of expenses, should be paid to the mortgagor. It was thought that the mortgagor might in some way have dealt with the reversion of the money and those words would authorize a mortgagor, who had a surplus on his hands, to pay it to any other person appearing by the register book as being entitled thereto.

*Mr. Merrifield.*—The letter from the Law Institute refers to a proposed amendment in clause 182.

*Mr. Wiseman.*—I think that might require further consideration. It would appear desirable on its face, but is it desirable to pay the balance of the mortgage money into the court and then require the mortgagor to go to the trouble and expense of getting it out, without the mortgagee first making some effort to pay the balance to the mortgagor?

*Mr. Bailey.*—The provision in the clause seems a simpler one.

*Mr. Wiseman.*—That would appear to cover practically every case. I should not like a mortgagor, who might be away, to be left out altogether.

*By Mr. Fraser.*—Is it placing an obligation on the mortgagee? Why should an obligation be placed on the mortgagee to see to the application of the money, that he should have the burden first of satisfying himself and then seeing what other people are entitled to under charges, or some form of encumbrance?

*Mr. Wiseman.*—I think it would operate in this way. If we stop at the word "mortgagor" at the end of line 29, that is how it stood before in the principal Act. The mortgagee always had the obligation of paying the surplus, if any, to the mortgagor. He knows who that is, as he has dealt with him; also, he appears on the register book as the owner. All that is being done is to add the words "or other person appearing by the register book to be entitled thereto."

*By Mr. McDonald.*—If there were a disputed claim as to who was entitled to the money he would have his ordinary rights there?

*Mr. Wiseman.*—That is so.

*By Mr. Fraser.*—It puts an obligation on the mortgagor. If some one entered a caveat claiming to have a good or bad claim under the alleged dealing or document which is the subject matter of the caveat, then has not the mortgagee the duty to pay that money to the person designated in the caveat?

*Mr. Wiseman.*—No, as he is not a person appearing in the register book to be entitled thereto, A person who has lodged a caveat is merely one asserting some right. Unless he proves his right in the ordinary way he would not have any claim.

*By Mr. Fraser.*—In the explanatory paper there appears—"This amendment makes provision for such a contingency. 'The person appearing by the register book to be entitled' would probably be a person shown by the caveat to be so entitled." The mortgagee's attention is directed to it by caveat. Is the burden then on the mortgagee to ascertain the facts on which the caveat is lodged and, if so, having satisfied himself, must he pay the money to that person?

*Mr. Wiseman.*—No, because the words "person appearing by the register book to be entitled thereto" covers it. If it is a perfectly clear title it goes to the mortgagor; if there is some caveat on it, the mortgagee says "One of you two is entitled to it, fight it out between yourselves." It would be an inter-pleader proceeding so far as he is concerned.

*By Mr. Reid.*—Is it desirable to have that situation arising for a mortgagee?

*Mr. McDonald.*—That is probably the point raised by the Law Institute.

*Mr. Fraser.*—If that is so it ought to be paid into the court, as under the Local Government Act. I am not suggesting at the moment that it is meritorious or otherwise.

*By Mr. McDonald.*—The mortgagee could be relieved of the burden by providing further that if there was a disputed claim he had to pay into court?

*Mr. Wiseman.*—I think that would be desirable. It would meet my criticism of a payment into court.

*By Mr. Fraser.*—It would appear that in paragraph (a) of clause 182 there is an obligation on the mortgagee, who has to account for the proceeds of the sale, of saying that the surplus shall be paid to the mortgagor or other person appearing by the register book to be entitled thereto. If he goes to the register book has he to make an official examination to see who is entitled to it? If he does, he may pay the wrong person.

*Mr. Wiseman.*—I should think the register book would show it. Mr. McDonald's suggestion is probably the simple solution.

*By Mr. McDonald.*—If there appear to be more than one person entitled, he could pay into court, drop out of it, and let the others fight it out between themselves.

*Mr. Wiseman.*—I think that is a good idea.

*The Chairman.*—The fact that a mortgagee can pay the money into court will probably hasten the settlement of any argument between a caveator and mortgagor.

*Mr. McDonald.*—It would enable the mortgagee to get rid of the money.

*Mr. Fraser.*—This point should be discussed with the Law Institute representative when he appears.

*Mr. Wiseman.*—I shall now deal with clause 184. In section 151 of the Transfer of Land Act 1928, these words appear—"and may distrain upon the occupier or tenant of the land under the power to distrain hereinafter contained." Clause 184 is merely a consequential amendment by reason of the abolition of distraint. That has been altered to conform with the amendment of the law.

Coming now to clause 186, section 155 of the Transfer of Land Act provided a short form of covenant by mortgagor to insure. That left it optional whether or not there should be a covenant for insurance. Clause 186 implies a covenant on the mortgagor to insure. There is a consequential amendment to the Fourteenth Schedule to comply with that alteration. The slight alteration of the Fourteenth Schedule is to add the words "fixtures or other improvements." Otherwise that covenant is the covenant that applied to the short form of words so used.

Clause 193 as originally printed was right, but I altered it and it is now wrong. There have been amendments to paragraphs (b) and (c), sub-clause (2). There is a misprint in paragraph (b) where the words "herein below" appear. That should read "hereinbefore." That refers back to "notice in writing to pay" in clause 179. That has been altered because in section 161 of the *Transfer of Land Act* 1928 there was a reference to "Notice of sale" and there was no notice of sale which had been referred to—it was "notice to pay." It was a slip in the section 161 and it should now read:—

(b) That notice to pay has been served as hereinbefore provided.

Paragraph (c) is added for this reason. There we are dealing with the question of foreclosure and the property must previously have been offered for sale before one can foreclose. Naturally, that sale must have been ineffective because if it had been effective the mortgagee would have received his money and there would be no need for his foreclosure. It appeared that the offer for sale could have been made at any time, no matter how long before, and the value of the property could have increased considerably in the meantime. It was thought that that was not quite fair to the mortgagor. The property might have been offered for sale during the depression and at present the mortgagee could foreclose and rely upon that sale which had been ineffective at that stage, and to-day get a valuable property into his own hands, at the expense of the mortgagor. The term of two years was fixed as an arbitrary period, as one which was thought to be reasonable.

*By Mr. McDonald.*—Might it not have this effect, that it will mean that mortgagees, once having submitted a property for sale, will realize that if they do not foreclose within two years, to comply with the law, they must again submit it for sale? It might result in more foreclosures, cutting out the mortgagor from selling on a rising market, paying off the mortgage and having the balance left. Might it not work in that way?

*Mr. Wiseman.*—It might. It is a matter for the consideration of members. There are two sides to it.

*By Mr. Fraser.*—Was there much debate on this proposal? Were reasons given for and against it, or how did the period of two years come to be fixed?

*Mr. Wiseman.*—I have a definite recollection of it. The argument proceeded along these lines:—As section 161 stood, it had to be shown that the land mortgaged had been offered for sale. We started on that point. Then the point was raised whether that was not giving an advantage to the mortgagee. Mr. Voumard suggested the period of two years. I know that he and Mr. Adam entered into the discussion. I think we all did really. It seemed that the mortgagee might have, say, in the depression days offered a property for sale and received an insufficient offer and simply sat back and waited until the day when the property was valuable.

*By Mr. McDonald.*—He went into possession in the meantime?

*Mr. Wiseman.*—Yes.

*Mr. Fraser.*—Probably that is the reason. When there was a rising market the mortgagor would be in difficulty about selling the property.

*By Mr. McDonald.*—Yes. There are two sides to it, and they are both important.

*Mr. Wiseman.*—That is so.

*By Mr. McDonald.*—I think the Committee would be assisted if the actual number of foreclosures could be ascertained.

*Mr. Wiseman.*—Mr. McDonald has raised another incidental point. At present mortgagees who have been in possession of land for a period of fifteen years may make an application to be granted a title by adverse possession. I do not think that position will continue.

*By Mr. McDonald.*—The personal covenants are extinguished after fifteen years.

*Mr. Wiseman.*—That is so. I think it will be found that those applications, which were formerly granted by the Commissioner, will no longer be granted because of certain matters which have cropped up, articles that have been written and so on. It is rather a live question at the moment. I think it will be found that mortgagees are to some extent now endeavouring to get ownership of the properties.

*By Mr. McArthur.*—They may not get adverse possession in the future?

*Mr. Wiseman.*—If a mortgagee now comes along and says, "I have been in possession for fifteen years, therefore give me a clear title to this land as owner by adverse possession," I think he will receive a refusal.

*Mr. Fraser.*—So he ought.

*Mr. Wiseman.*—Titles have been granted until the last week.

*By Mr. McDonald.*—I am not sure of the practice, but when an application to foreclose is made does the Titles Office notify the mortgagor and give him a last opportunity?

*Mr. Wiseman.*—I think that would be done.

*Mr. Fraser.*—That would have to be done because it is akin to forfeiture.

*Mr. Wiseman.*—It corresponds to some extent with the action of foreclosure under general law, and the mortgagor would have to be given some notice.

*Mr. McDonald.*—I should like to know the actual number of applications for foreclosure. Having regard to the number of mortgages I do not think there would be very many.

*Mr. Fraser.*—It all depends on the period taken. If the period from 1930 to 1935 were taken a number would be found.

*Mr. McDonald.*—I would not think so having regard to the number of mortgages. I think it would be found that the percentage would remain much the same.

*Mr. Barry.*—There was a number around 1930.

*Mr. McDonald.*—In those days the mortgagees were prepared to nurse properties rather than have them on their hands.

*Mr. Wiseman.*—Yes.

*Mr. Fraser.*—I think the views of the Law Institute should be obtained on this matter.

*Mr. McDonald.*—I should like to ascertain the number of yearly foreclosures since 1930.

*By the Chairman.*—Will you obtain that information?

*Mr. Wiseman.*—Yes. The next amendment is in paragraph (b) of sub-clause 1 of clause 201, and it relates to the same words—"within a period of two years prior to the date of such application." It is consequential on the amendment in clause 193.

*By Mr. Merrifield.*—The Law Institute raised objection where mortgage money was to be paid into court. Clause 197 provides that the money may be paid to the Treasurer.

*Mr. Wiseman.*—That is in the case of absence.

*By Mr. Merrifield.*—That is a contradiction?

*Mr. McDonald.*—One is in the case of a dispute and the other is where the mortgagee is absent, but there is no dispute as to the title.

*Mr. Fraser.*—The mortgagor has the money to pay, but cannot locate the mortgagee and the money is paid to the Treasurer.

*Mr. Bailey.*—The Treasurer invests that money.

*Mr. McDonald.*—Yes, and in due course accounts for it to the mortgagee.

*Mr. Wiseman.*—Clauses 206, 207, 208, and 209 have been added. Under the *Transfer of Land Act 1928* there was no right given to a subsequent mortgagee to transfer to himself the estate and interest of a prior mortgagee who is entitled to and requires payment of his mortgage debt. Clause 206, which has been taken from the *South Australian Act of*

1886, gives the subsequent mortgagee the right to pay off the earlier mortgagee, if he desires repayment, and to step into his shoes. It seems a reasonable provision to make.

*By Mr. McDonald.*—I agree with it, but there are two factors concerned. First, the mortgage shall have fallen due and, secondly, the mortgagee shall require payment. Why should not the subsequent mortgagee be given the right to pay off the first mortgage when it falls due without the mortgagee requiring payment?

*Mr. Wiseman.*—I am not quite sure about that for this reason: Suppose a first mortgage falls due to-day. The mortgagee might not require his money and the mortgagor might be content to let it stay there. If the mortgagee did not want his money such a provision would force him to accept on the due date.

*By Mr. McDonald.*—Yes, but it may be that the first mortgagee has sufficient security, but a subsequent mortgagee is in a precarious position and cannot get any co-operation from either the first mortgagee or the mortgagor?

*By Mr. Bailey.*—There are prior mortgages where the people receive advances from the Government?

*Mr. McDonald.*—That is so. Because of the non-co-operation of the prior mortgagee the subsequent mortgagee might be excluded altogether. The object of this clause is that when the first mortgage falls due the first mortgagee cannot say that he does not want his money because the mortgagor can come along and say "Here it is." If the mortgagor can do that why cannot a subsequent mortgagee do it and thereby put himself in a better position so far as the subsequent mortgage is concerned?

*Mr. McArthur.*—In other words, it gives him the first mortgage.

*Mr. McDonald.*—That is so, and a greater contact with the mortgagor.

*Mr. Bailey.*—He can do it with the concurrence of the mortgagor.

*Mr. McDonald.*—He cannot. It can be done only if the mortgagee requires payment. That is the point I am making.

*Mr. Wiseman.*—Are there not two forms of mortgages? One is where the due date is three months or six months ahead and it is anticipated that the mortgage will continue indefinitely; the other is where there is a fixed mortgage for three years, or some such period. In the former case the subsequent mortgagee can come along at any time and say "Here is the money." Is that what is desired?

*By Mr. McDonald.*—Yes. I think it may be preferable to give him that right. However, let us return to the position of foreclosures. A first mortgagee, by waiting long enough, may hope to be in a position of foreclosing at some time, thereby completely excluding subsequent encumbrances and mortgagees. The subsequent mortgagee would be left with no rights.

*Mr. Wiseman.*—Yes, he would be excluded altogether.

*By Mr. McDonald.*—If on the due date of a first mortgage a subsequent mortgagee could pay the first mortgagee and have the mortgage transferred to himself, I cannot see anything wrong. The mortgagor would not suffer?

*Mr. Wiseman.*—He would not suffer in the slightest degree.

*Mr. McDonald.*—The subsequent mortgagee, the man who has taken the real risk, is then placed in a better position.

*By Mr. Fraser.*—The mortgagor does not suffer legally?

*Mr. Wiseman.*—No. He may suffer in another way. The first mortgagee might have been sympathetic but an unsympathetic mortgagee might take over.

*Mr. McDonald.*—That is so, but the unsympathetic mortgagee has taken the risk in getting behind the first mortgage and financing the mortgagor.

*Mr. Bailey.*—If the mortgagor agrees that the second mortgagee should lend money at a reduced rate of interest he would be placed in a position to pay off the first mortgage.

*Mr. McDonald.*—That could be worked out by a practical method whereby the subsequent mortgagee would advance the mortgagor the money to pay the first mortgagee. The subsequent mortgagee would then take out a fresh mortgage.

*Mr. McArthur.*—He can do that in any case.

*Mr. McDonald.*—Yes.

*By Mr. Reid.*—Has it been found that this provision is required?

*Mr. Wiseman.*—I think I can answer that. When I was perusing various Acts to ascertain the best possible improvements to the existing legislation I came across this section in the South Australian Act. It seemed a desirable provision because it gave some help to the puisne incumbrancer.

*Mr. Reid.*—To my knowledge there has been nothing to prevent first and second mortgagees from getting their heads together and one transferring the other's mortgage to himself. It seems to me that this clause is unnecessary.

*Mr. McDonald.*—It is not unnecessary, because when a first mortgagee presses for his money the second mortgagee, more often than not to save himself has to find the money and more or less bargain with the first mortgagee by saying, "Do not sell the property, transfer your mortgage to me. Here is the money."

*Mr. Reid.*—Yes. This provision does no more than to make it lawful for him to do so. It gives him no right to compel.

*Mr. Wiseman.*—I think it does give him that right.

*Mr. McDonald.*—It gives him the right, first, when the mortgage falls due, and, secondly, when the mortgagee requires a payment. I cannot see the necessity of the words "And the mortgagee shall require payment."

*Mr. Fraser.*—I agree with Mr. Reid that it is rather strange language to use.

*Mr. Wiseman.*—I think the only interpretation that can be placed on it is that it gives him a right in those circumstances.

*Mr. McDonald.*—Even if the money falls due and the first mortgagee requires payment he can say that he will not transfer the mortgage to the second mortgagee, but that he will proceed with the ordinary remedy. That forces the second mortgagee to buy the property and pay for all advertising. It saves the first mortgagee expenses, commission, and all that sort of thing.

*By Mr. Fraser.*—Could not a mortgagee adopt that attitude under clause 206?

*Mr. Wiseman.*—I do not think so because the second mortgagee could come along and say, "Here is your money, transfer your mortgage to me."

*Mr. Fraser.*—All this provision does is to make it a lawful transaction.



*Mr. Walters.*—Only if the mortgagee requires the money.

*Mr. Wiseman.*—Yes.

*By Mr. Walters.*—That does not make it lawful. What is the position if the mortgagee does not require the money?

*Mr. Wiseman.*—The point does not arise in that case.

*Mr. Fraser.*—I should like to hear the Law Institute and Mr. Vance on clause 206.

*By the Chairman.*—Is there any objection to my supplying the Law Institute with a copy of the transcript so that when its representatives come before us they can deal with these matters? I do not see any objection, but I do not wish to do so without asking for the permission of the Committee.

*Mr. McDonald.*—I think it would be worth while to do so.

*Mr. Fraser.*—I do not see any objection.

*By Mr. Bailey.*—Then further consideration of clause 206 is to be deferred?

*The Chairman.*—Yes.

*By Mr. McDonald.*—In regard to clause 206 have we made a note to make it "mandatory" rather than "lawful"?

*The Chairman.*—Yes.

*By Mr. Thomas.*—Have the notices of which you speak any existence or are they supposititious?

*Mr. McDonald.*—I have seen a first mortgagee make it more expensive for a second mortgagee to get into a better position by putting a property up for sale, and the second mortgagee has not only to pay all the money owing to the first mortgagee, but the additional expense occasioned by the sale, including the agent's commission. One hesitates to say it, but agents arrange liens or mortgages. That adds a debt on a property that need not have been added.

*Mr. Bailey.*—Getting back to clause 206, I think the following words in the second line should be omitted:—"and the mortgagee shall require payment of the same," as well as the following words in the fourth line:—"requiring such payment". I also wish to insert after the word "tender" the words "with the consent of the mortgagor".

*By Mr. McDonald.*—Why should the mortgagor consent?

*Mr. Bailey.*—He arranges with the second mortgagee to find the money.

*Mr. McDonald.*—He need not necessarily arrange that. The mortgagor's position would not be jeopardized by the suggestion, but it does to some extent protect the second mortgagee who has been the man to take any risk.

*By Mr. Walters.*—Could not the man pay off the first mortgage, and he would get a higher rate of interest on the second mortgage?

*Mr. McDonald.*—The mortgagor would be in no worse position in any way.

*Mr. Walters.*—He may have a more unsympathetic man to deal with.

*Mr. McDonald.*—He takes over the first mortgage and he can act only within the sections of the Act or within the special provisions in the document.

*Mr. Fraser.*—I do not suppose we have to deal with the matter on a sympathetic basis?

*By Mr. Bailey.*—Let us say that the first mortgage is overdue. Why should not the owner of the land enter into an agreement to pay off the first mortgage?

*Mr. McDonald.*—The second mortgagee may prefer to put himself in a safer legal position to pay the money that he advanced.

*Mr. Fraser.*—If the mortgagor is willing the matter can be easily arranged. If the first mortgagee is recalcitrant the second mortgagee is left out.

*Mr. Wiseman.*—There is a point that has occurred to me, but it is a matter of policy. If the suggestion was adopted what would be the attitude of the first mortgagee who would know there was a fixed date and might be looking for a long-term investment?

*By Mr. McDonald.*—The money is lent and the usual form prescribes for repayment within six months, and it provides further that if the interest is paid the money will not be called up for three or five years. The question is, what is the date when the money is due?

*Mr. Wiseman.*—The question needs to be looked into.

*Mr. McDonald.*—It could be easily got over.

*Mr. Fraser.*—It seems that clause 206 needs further consideration.

*Mr. Wiseman.*—Clause 207 is new and was introduced because it was thought that it would provide a short and inexpensive way of dealing with certain interests. In the 1915 Acts and earlier measures a form of "Transfer of Land or of a Lease, Mortgage or Charge by Endorsement" was provided. That was omitted from the 1928 Act. I think difficulties were felt or were created in regard to the use of that form; it was not used in Victoria to any extent. I made inquiries from the Registrar in New South Wales and he informed me that during the year 1947 in that State there were 1306 instruments of the nature referred to in clause 207. It appeared to be a convenient clause, and it was considered desirable to include it in the Victorian legislation.

*Mr. McDonald.*—It merely shortens the forms being used.

*Mr. Fraser.*—Instead of having a discharge of a mortgage there is an endorsement?

*Mr. McDonald.*—I think in South Australia a discharge is receipted and both parties sign it. We surrender a lease by putting the word "surrendered" at the bottom of the document.

*Mr. Bailey.*—I think a receipt is accepted at the Titles Office as a discharge of a mortgage so long as the officers are satisfied that it was signed by the mortgagee.

*Mr. McDonald.*—If I were a mortgagee I would prefer Mr. Wiseman's form.

*Mr. Bailey.*—Clause 207 varies the form. A copy of the mortgage is lodged at the Titles Office.

*Mr. Wiseman.*—Yes.

*Mr. Bailey.*—How is it endorsed?

*The Chairman.*—The Registrar cancels it on the back.

*Mr. Fraser.*—That memorandum containing the variation will be endorsed on the document lodged in the Titles Office.

*Mr. McDonald.*—I think the memorandum will be the same as the mortgage in duplicate.

*Mr. Wiseman.*—That is what is envisaged.

*Mr. McDonald.*—One copy will be retained by the Titles Office.

*Mr. Bailey.*—And the Titles Office will attach it.

*Mr. McDonald.*—Yes. That is why there is provision for rules in one of the forms prescribed.

*Mr. Wiseman.*—I should add that this provision differs from the New South Wales legislation in that the words in brackets, just before sub-clause (2), "(including any puisne incumbrancer adversely affected)" have been added, because there has been some dispute as to whether or not those persons are bound. To overcome the doubt, those words have been added.

*By Mr. McDonald.*—If the memorandum is not signed by the subsequent puisne incumbrancer, it cannot be registered?

*Mr. Wiseman.*—That is so. If the words are left out, the same difficulty as existed in the past will continue, and there will be doubt whether a puisne incumbrancer is bound or not.

*By Mr. McDonald.*—Why should it not be registered even although the puisne incumbrancer is not bound by it?

*Mr. Wiseman.*—I think uncertainty might be created as to what the exact effect of the registration would be. In the circumstances, I think the provision is necessary. A document would be registered which apparently cleared the title, but possibly there would still be something outstanding.

*By Mr. Fraser.*—What do you regard as a "puisne incumbrancer"?

*Mr. Wiseman.*—A second, third, or fourth mortgagee.

*By Mr. Fraser.*—Why should they be considered? Suppose the first mortgagee wished to reduce the rate of interest.

*Mr. McDonald.*—He would not consent in that case.

*Mr. Wiseman.*—He would not be adversely affected.

*Mr. McDonald.*—Where it was proposed to increase the rate of interest from, say, 5 per cent. to 8 per cent., the puisne incumbrancer might say, "I will not sign." Then, the first mortgagee could not register the memorandum. I cannot see why he should not register the memorandum, leaving any legal rights as they existed before registration. However, there may be some reason for it which I cannot see at the moment.

*The Chairman.*—I think we had better look into it further.

*The Committee adjourned.*

FRIDAY, 12TH AUGUST, 1949.

*Members Present:*

Mr. Oldham in the Chair;

<i>Council.</i>	<i>Assembly.</i>
The Hon. P. T. Byrnes,	Mr. Bailey,
The Hon. A. M. Fraser,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Merrifield,
	Mr. Reid.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*Mr. Wiseman.*—A request was made at the last meeting of the Committee for the production of a list of foreclosures on an annual basis since 1930. I applied to the Commissioner for the information, which he supplied. This is it:—

1930— 63	1940—41
1931—191	1941—30
1932—220	1942—10
1933—147	1943—16
1934—120	1944— 7
1935—117	1945— 8
1936—106	1946— 4
1937— 80	1947—Nil
1938— 62	1948— 6
1939— 41	1949— 3 (seven months)

The Committee will notice that in 1932, which was the highest year since 1930, the foreclosures were 220, and that in 1947 they were nil.

*By Mr. Reid.*—Do the figures represent actual orders made by the Commissioner, or do they refer to applications some of which might not have been proceeded with?

*Mr. Wiseman.*—I cannot answer that question definitely. I understood they were applications, and I understood they were completed, but that was only an inference I drew. I do not know whether the Committee wishes to have details of sales by mortgagees.

*The Chairman.*—I do not think we need that for our purposes.

*Mr. Wiseman.*—Another matter raised at the last meeting was a letter dated the 8th of August of this year from the secretary of the Municipal Association of Victoria. It referred to the portion which was deleted from the old section 72, which is the present clause 104, and it states that it deprived them of protection given to charges with respect to street construction and other matters for which a certificate may be obtained under section 385 of the Local Government Act 1946. The words deleted from the old section 72, which I think are referred to, are: "A charge in favour of any public corporate body." I think the deletion of those words has excluded the protection formerly afforded to charges for street construction under the Local Government Act, and I quite agree with the suggestion in the letter. Some provision should be made to protect charges on land in favour of municipal bodies. I think it is in accord with the general scheme of the Bill, under which the practice is to go to a municipal authority for the information. No particular difficulty is occasioned. An amendment should be made to include the suggestion.

*By Mr. Merrifield.*—Would that apply to sewerage authorities?

*Mr. Wiseman.*—I do not think so, but only to municipal charges.

*Mr. Reid.*—The point Mr. Merrifield has made is very important. When you are making inquiries about these charges you may find that there is a sewerage authority, perhaps the Melbourne and Metropolitan Board of Works or a local sewerage authority in the country, which has a charge against the land. We have to give some consideration to the point.

*Mr. Wiseman.*—What is the practice when making an inquiry to find out whether there are sewerage charges due on land?

*Mr. Reid.*—Usually when titles in the Melbourne metropolitan area are being searched it is necessary to get a certificate from the Board of Works with respect to the Board's charges for water rates and construction work. The same would apply to any country sewerage authorities. It would be standard practice to make those inquiries.

*The Chairman.*—Investigations are made regarding a number of matters where there is a charge on the land. If I remember rightly those inquiries are made of the Board of Land and Works, the Farmers' Debts Adjustment Board, the Land Tax Commissioner—both State and Federal—and other bodies. I think it will be necessary before we have finished to have a central registry.

*Mr. Wiseman.*—It was felt that if there were a charge under any of those Acts—I think the Fruit and Vegetables Act was one and the Fences Act was another—a caveat should be lodged and the information should be available at the Titles Office instead

of the purchaser having to find out by inquiries at different places. That was a question of policy which was considered, and it was thought very desirable to have all charges noted in the register. That is the reason why the provision in section 72 was omitted. So far as municipal charges are concerned they would be included in the ordinary letter regarding rates. Sewerage authorities may be in a similar position. It was desired to eliminate the necessity for inquiring of different bodies about all the other charges that were floating around and the existence of which it was difficult even to guess.

*By Mr. Fraser.*—What would be embraced in “corporate body” in section 72?

*Mr. Wiseman.*—I think it would include a municipal body. That would cover a municipality.

*By Mr. Fraser.*—Unless that is the case, a municipality would not be covered under section 72.

*Mr. Wiseman.*—I quite agree with that.

*Mr. Fraser.*—The change is in favour of a responsible Minister, or any Government department, or any public corporate body, and unless a public corporate body includes municipal or sewerage authorities, they were not covered under section 72.

*Mr. Wiseman.*—That is so. It may be desirable to consider this matter more fully.

*By the Chairman.*—With what end in view?

*Mr. Wiseman.*—Mr. Merrifield suggested that sewerage charges should be included. The view of the sub-committee was that it was desirable to leave the provision as it stands.

*By the Chairman.*—Is a sewerage charge not a charge on the land at present?

*Mr. Wiseman.*—I think so.

*Mr. Reid.*—Without referring to the Act, I would say that it is.

*By the Chairman.*—What is in Mr. Merrifield's mind? I do not think it is our duty to give to public authorities rights which they do not now possess.

*Mr. Reid.*—I quite agree with that contention, but the point Mr. Merrifield raises is bound to be brought forward during the discussion of this Bill in the House. Probably, a good deal of pressure will be brought on behalf of some public sewerage authorities to ensure that they are not put into any worse position.

*Mr. Fraser.*—When labour and materials become available, many municipalities will be proceeding with extensive schemes of reconstruction, involving the lodgment of a caveat against almost every block of land.

*Mr. Merrifield.*—There is another situation that can arise as between individuals, in regard to orders by the Melbourne and Metropolitan Board of Works for the installation of joint branch sewers. There may be an interval of many years between the erection of one building and that on the adjoining land. In the meantime, one owner has had to pay the whole of the cost and is not able to recover half of it until the other building has been erected.

*By Mr. Fraser.*—Is there not a statutory provision in the Melbourne and Metropolitan Board of Works Act?

*Mr. Merrifield.*—The Board forces the one builder to install a complete joint branch sewer. There is no provision protecting him or to assist him in recovering half the cost from the adjacent owner. If transactions occur in relation to the other block, a difficult situation can arise. Apparently, no right is given to the owner for whom the work was carried out in the first place to lodge a caveat in order to protect himself.

*Mr. Wiseman.*—I do not think the provision that we have been discussing affects such a position.

*Mr. Fraser.*—Provided that the case cited by Mr. Merrifield came under the Melbourne and Metropolitan Board of Works Act, the owner would have the right to recover from the second builder.

*Mr. Merrifield.*—I thought that it did.

*Mr. Fraser.*—If the owner cannot recover by action there does not seem to be any reason why he should have a secured debt.

*Mr. Merrifield.*—It seems altogether wrong that when a condition is enforced by a sewerage authority for an installation that will serve a second party in the circumstances I have described, there should be no means by which the first party could be protected.

*Mr. Fraser.*—If the position is that under the existing legislation he has not the right to recover, he could not be made a secured creditor under this new consolidating measure.

*Mr. Merrifield.*—No. This is the point at which caveats and the like could be lodged to support a claim. The first owner in the case I suggested should be entitled to lodge a caveat in order to have the matter considered at the appropriate time.

*Mr. Fraser.*—He would be able to lodge a caveat only in connection with the charge in relation to the land. A caveat cannot be lodged by a person simply because some one else is indebted to him. The action must arise out of a charge on the land itself.

*Mr. Merrifield.*—The point is that the individual would be forced into the same position as an authority; that is to say, he would have undertaken on his own land work that served some one else, and might have no protection in respect of recovering the proper proportion of the cost. The suggestion is that possibly there has been put into the present measure a provision protecting public authorities, but not private parties.

*By Mr. Fraser.*—What about contacting the Melbourne and Metropolitan Board of Works to ascertain whether it can refer to a section in the relevant Act which gives a man the right to recover?

*Mr. Wiseman.*—Is there not a distinction? Protection ought to be given in relation to municipal charges on land, whether they are for rates, street construction, or for sewerage works and undertakings of that kind. All other charges should be notified by caveat.

*By Mr. Byrnes.*—Are not sewerage rates a charge on the land?

*The Chairman.*—Yes.

*By Mr. Fraser.*—And they are protected under clause 104 of the Bill?

*Mr. Wiseman.*—Rates are protected, but the present discussion has centred on a capital charge for constructional works. Some definition as to municipal charges may be desirable.

*The Chairman.*—That is so.

*Mr. Reid.*—It would meet the point raised by Mr. Merrifield.

(*Mr. Oldham being called away, Mr. Fraser was appointed to the Chair.*)

*Mr. Wiseman.*—At this stage, I shall refer to a letter, dated the 4th of August, from the secretary of the Law Institute, in which certain additional representations are made. For example—

(a) Having regard to the difficulties and expense of obtaining surveys in the country, the Registrar of Titles should be required on an application to bring land under the Act or to rectify a certificate to accept survey information concerning the relevant land which is already in the Titles Office as a result of applications in respect of

other land in the vicinity, without putting the applicant to the expense of a survey which may subsequently prove to be unnecessary. It is suggested that the Bill be amended.

The principle therein stated may be desirable, but what follows in the letter is rather a *non sequitur*, because the first proposed amendment refers to paragraph (a) of sub-clause (1) of clause 68 of the Bill and the second to clause 72. Clauses 68 and 72 come within Part III. of the Bill which deals with statutory registration of land as distinct from applications to bring land under the Act. Those do not appear to be the appropriate clauses in which to incorporate the amendments outlined in the letter. I am not criticizing the desirability of the amendments, but I am suggesting that some other place and form may be determined for them.

*By the Chairman.*—Are not both voluntary and compulsory applications covered?

*Mr. Wiseman.*—The compulsory applications are under the control of the Commissioner. If he has the information in the Titles Office, I should not think he would be wasting his time applying for other surveys. If desired, it could be made clear that both positions are covered. If the amendment in question is made, it will probably affect only land brought under Part III., which is not what is aimed at by the Law Institute.

*By Mr. Merrifield.*—If it is applicable to the particular Part, is it not equally justifiable in every Part of the Act that requires the lodgment of plans of survey?

*Mr. Wiseman.*—It is applicable to applications coming under Part II., but I do not think it arises in relation to the Commissioner's action under Part III., though that may be possible.

*By Mr. Merrifield.*—Is it not equally justified in Part III.?

*Mr. Wiseman.*—Yes.

*By Mr. Reid.*—Is not this a matter of administration through the regulations we have in mind?

*Mr. Wiseman.*—I think it is. It appears to be a matter for the rules.

*Mr. Merrifield.*—Experience goes to suggest that there would be a number of practical objections to the amendment and that it would cause considerable difficulty.

*Mr. Wiseman.*—That may be so.

*By Mr. Bailey.*—Could not the question be discussed when Titles Office officials are present?

*Mr. Merrifield.*—I think the Institute of Surveyors will make certain representations on the matter. When survey information is submitted to the Titles Office, in normal circumstances it is valid for two years, after which period it is presumed to be stale and unreliable. If the owner of an adjacent property considers that the information is of value to him, he can make application accordingly. Information lodged may have been regarded as applicable for several years, but no one can say what changes have occurred in the meantime in the conditions of the grant. The original declarations and so forth may be a dead letter.

*Mr. Wiseman.*—That is a technical matter.

*By the Chairman.*—Is it not open to the Titles Office, under sub-clause (1) of clause 68, to dispense with the lodging of a plan survey and field notes or to use others that may already be available? Paragraph (a) of sub-clause (1) reads—

Until he is satisfied by the deposit of a survey plan, together with such other evidence as he may deem necessary, or by some other means. . . .

Is the expression "or by some other means" the alternative to the expression, "with such other evidence," making the deposit of the survey plan a condition precedent?

*Mr. Wiseman.*—I should think the Registrar would need a survey plan, if one was not already available.

*By the Chairman.*—If the construction I have mentioned is correct, the point will be covered?

*Mr. Wiseman.*—Yes. Clause 72 of the Bill deals with the title, whereas sub-paragraph (2) of the letter from the Law Institute relates to the description, a different matter, and it should be given further consideration. I have no criticism to offer of sub-paragraph (3) of the letter.

*By Mr. Merrifield.*—Is not that the machinery part of sub-paragraph (1)?

*Mr. Wiseman.*—It is. If the point is not already covered, I can see no objection to the suggestion. These will be transmission applications, and caveators should not be called upon to support their caveats.

*Mr. Reid.*—I agree with that comment.

*By the Chairman.*—Is it suggested that an amendment should be made?

*Mr. Wiseman.*—Yes.

*The Chairman.*—I think the Committee should wait until it is informed of suggested amendments.

*Mr. Wiseman.*—Possibly the request in paragraph (c) of the letter could be left over until the Committee is discussing stay orders.

*The Chairman.*—That will be done. I do not think it is within the province of this Committee to prepare amendments for interested parties. Amendments should be submitted for our consideration.

*Mr. Wiseman.*—I shall now return to a discussion of the Bill. Clause 208 is meant to express the principle which has been acted upon generally without legislative sanction, and it is to cover the position of further advances by a mortgagee. Sub-clause (1) deals with what might be termed voluntary advances, and sub-clause (2) deals with advances made where there is an obligation under the mortgage to make a further advance. The clause carries out the general law of Victoria and is based upon the provisions of the English Act. Sub-clause (1) provides for the position where the mortgage may cover further advances which may be made, and they are to have priority over a subsequent mortgage of which the person making the further advance did not have notice.

*By Mr. Thomas.*—Is that the case now?

*Mr. Wiseman.*—It is the law, but it does not appear in the Act.

*The Chairman.*—The mortgage must provide the right of further advances and a subsequent encumbrant can ascertain his position by looking at the mortgage.

*Mr. Bailey.*—It would be difficult for a man to obtain an advance by way of a second mortgage.

*Mr. Wiseman.*—There are two types of mortgage under which further advances can be made, and sub-clause (1) provides that later advances on the first mortgage are to receive priority if made without notice of a later mortgage.

*By Mr. Bailey.*—Is it assumed that the advance is part of the original loan?

*Mr. Wiseman.*—Yes. A further voluntary advance under the first mortgage by sub-clause (1) is given priority over any subsequent unknown mortgage. The last two lines of the sub-clause read—

of which such mortgagee or his agent at the time of the making of such further advances has not actual notice.

If he does not know of the second mortgage at the time when he makes the further advance, he obtains his security. That is a question of fact. Sub-clause (2) deals with a different form of mortgage, where the mortgagee is bound by the terms of the mortgage to make further advances. The sub-clause states, *inter alia*—

a subsequent mortgage shall take effect subject to any further advance made pursuant to the obligation.

*By Mr. Merrifield.*—I assume that there are two types of mortgages—registered and unregistered?

*Mr. Wiseman.*—Both mortgages are registered, and the sub-clause refers to the obligation. Under sub-clause (1) a mortgagee can advance further money if he sees fit to do so. For instance, with a bank mortgage, the bank may say, "We will not advance any further amounts."

*By Mr. Merrifield.*—That is not my point. The last two lines of the sub-clause refer to the mortgagee's right over some subsequent encumbrances, which I assume could be of two classes—a further registered mortgage or an unregistered mortgage?

*Mr. Wiseman.*—For the purposes of clause 208, it does not matter whether the second mortgage is registered and is, therefore, a legal mortgage, or whether it is not registered, and so is not a legal mortgage.

*By Mr. Merrifield.*—Therefore, this clause applies to any other encumbrance which might be registered?

*Mr. Wiseman.*—Yes.

*Mr. Merrifield.*—The effect is that if the first mortgagee makes a further advance, that takes priority over a second mortgage registered prior to the making of the further advance. In my opinion, that is not right.

*The Chairman.*—I think that is the reason for the distinction that is being made between sub-clause (1) and sub-clause (2) of clause 208. In one case, there is a mortgage for a loan of £500 to secure the sum of £500 and further advances. In the other case, the mortgagee is to obtain £500 and such other sums as the mortgagor requests or demands up to £2,000. In the first case, the mortgagee can say, "I shall not make any further advances." In the second case, the mortgagee is bound under the terms of the mortgage to make an advance when called upon by the mortgagor, up to a stated amount.

*By Mr. Thomas.*—Then, the second mortgagee has a claim over the first mortgagee?

*The Chairman.*—That would be so in one case, but not in the other.

*By Mr. Bailey.*—Under sub-clause (1), the first mortgagee is to receive notice of further mortgages?

*Mr. Wiseman.*—Yes.

*By Mr. Merrifield.*—When the second mortgagee was registering his mortgage, he would become aware of the terms of the first mortgage?

*Mr. Wiseman.*—Yes.

*By Mr. Barry.*—His risk would be increased?

*Mr. Wiseman.*—The second mortgagee has to assume that he can look only to the balance of the security. He can say, "The mortgage in the first instance is for £500, and if I do not give notice to the first mortgagee, or if I do not find out from him what is the state of the mortgage, I shall have to assume that the maximum has been advanced." He can secure himself by obtaining that information. That is the present position with mortgages of this type.

*By Mr. Byrnes.*—These are mortgages for further advances. A bank may advance a man £500, and some one else may take out a second mortgage. Subse-

quently the bank might increase its advance by £1,000, which would completely destroy the value of the second mortgage?

*Mr. Wiseman.*—It could do so.

*By Mr. Byrnes.*—Would the bank have priority over the second mortgagee?

*Mr. Wiseman.*—The bank would have a first mortgage for the amount advanced.

*By Mr. Bailey.*—Do I understand this to be the position: An advance is made by a man on first mortgage, and under sub-clause (1) a further advance can be made by him if he does not receive notice from the second mortgagee. If the second mortgagee advises the first mortgagee that he is making an advance, the first mortgagee will make his further advance subject to the second mortgage. The second party lends the money, but takes a risk under sub-clause (2)?

*Mr. Wiseman.*—It is the terms of the first mortgage which determines whether it falls under sub-clause (1) or sub-clause (2). If the mortgage only empowers the mortgagee to advance a further sum, it falls under sub-clause (1) and notice by the first mortgagee at the time of making the further advance of the existence of the second mortgage determines the priority between the first mortgagee (as to the amount of the further advance) and the second mortgagee.

If, on the other hand, under the terms of the mortgage the mortgagee is obliged to lend a further sum, the mortgage falls under sub-clause (2), and the first mortgagee making the further advance is not concerned with notice of the subsequent mortgage. He is secured up to the full amount of the further advance stipulated in the mortgage.

*The Chairman.*—Under sub-clause (2) the mortgagor could go to the mortgagee and say, "I want additional money," instead of borrowing from a second mortgagee.

*Mr. Wiseman.*—Clause 209 incorporates sections 91 and 95 of the Property Law Act of 1928. It was considered that sections 91 to 95 of the Property Law Act gave to a mortgagor certain rights under the general law which he did not have under the Transfer of Land Act. The idea was to put mortgagors under the Transfer of Land Act in the same position as mortgagors under the general law. Mortgagees may derive certain benefits from these sections but it was considered that mortgages under the Transfer of Land Act in this regard should be on the same footing as mortgages under the general law. This is going to raise some rather technical matters. Sub-section (1) of section 91 of the Property Law Act refers to an action for redemption. Under the Transfer of Land Act it seems that the mortgagor can bring an action for redemption where he is entitled to redeem the mortgage, and if the mortgagor is entitled to redeem the mortgage it may be that he does not want to pay the mortgage off and it may be desirable for him to say "I want the property sold and you can be paid out of the proceeds and I will get the balance." I think that is how sub-section (1) of section 91 works under the general law.

*By Mr. Bailey.*—That is when the mortgage is overdue?

*Mr. Wiseman.*—Yes, when he has the right to redeem. Sub-section (2) of section 91 refers to an action for foreclosure or redemption or sale. Under the Transfer of Land Act you cannot have an action for foreclosure because a method of foreclosure under that Act is provided by clauses 193 and 194 of the Bill. Therefore the rights which are given by clause 209, applying section 91, would have to be worked out on the basis of an application for foreclosure under clauses 193 and 194. Assuming that to be the position,

in those circumstances where there is something in the nature of an action for foreclosure or for redemption or for sale, the Court may direct a sale of the mortgaged property. That is the intended effect of this provision. It may be said to be rather telescoped. Mr. Adams suggested this form. The purpose is to place mortgages under the Transfer of Land Act in this regard in a similar position to mortgages under the general law. Section 95 of the Property Law Act provides that where a mortgagor is entitled to redeem, subject to certain provisions that are referred to, he shall be entitled to require the mortgagee instead of re-conveying or surrendering the security to assign the mortgaged debt and convey the mortgaged property to any third person the mortgagor directs. That means that where the mortgagor is entitled to pay off, instead of being obliged himself to find the money and to take the security back, he can direct the mortgagee to, in effect, transfer the mortgage, which is a substantial advantage to the mortgagor.

Clause 210 deals with transmissions. Under the 1928 Act there were six sections that dealt with transmissions. Some of those sections went back to wills which were proved before the 1st of January, 1873, and dealt with a condition of affairs which existed before the Administration and Probate Act came into effect; and they were considered to be obsolete. Those sections have been omitted which dealt with the state of affairs up to 1873 when the will was deemed to convey the land directly to the devisee. That left two sections in the *Transfer of Land Act 1928*. One was section 177 and the other was section 232. Those sections have had a fairly long history. Section 177 dealt with the transmission of personal property such as leases, mortgages, and charges. Section 232 dealt with the transmission of land-real estate. Since the Administration and Probate Act has assimilated the position of land to that of personality it seemed unnecessary to keep those two sections on foot, which had almost identical effect. Clause 210 is based on section 117. One distinction between section 117 and section 232 was that under 117, dealing with personality, the title of the executor referred back to the death, and under section 232 it did not refer back to the death. Quite obviously it is desirable that it should refer back to the death, and in effect clause 210 incorporates section 177, and section 232 is based very largely on section 177. It deals with transmissions to be registered in the name of an executor or administrator.

The next two clauses deal with bankruptcies. In clause 211 there is only one amendment, and that is the addition of the words "hereinafter described" in line 4, on page 62. The words "hereinafter described" refer to equities. Those equities are limited to the equities "hereinafter described" for these reasons. They are referred to in clause 212, and the trustee in sub-clause (2) of that clause takes only subject to the equities protected by caveat in the register book. If I explain clause 212 it will be seen what is meant by "hereinafter described."

Section 276 of the *Transfer of Land Act 1928* concerns the right of the bankrupt proprietor to deal with land until the trustee in bankruptcy intervenes. That section was considered to be somewhat ambiguous and to leave certain matters rather open to doubt; for instance, as to the time up to which the bankrupt could deal with property and what titles he could transfer, also what rights the trustee in bankruptcy took. To endeavour to clarify the position of the bankrupt dealing with property and that of the trustee in bankruptcy, it is proposed that section 276 be substituted by clause 212, sub-clause (1) of which provides—

Unless prior to a bankrupt registered proprietor dealing with any land lease, mortgage or charge under the

operation of this Act the trustee in his bankruptcy has either applied to be registered as proprietor of such land, lease, mortgage or charge, or has lodged a caveat against dealings by the registered proprietor with the same, the dealings by the bankrupt registered proprietor, if for value or without fraud shall, subject to the provisions of sub-section (2) hereof, not be affected by the order of sequestration either at law or in equity.

In other words, a bankrupt can deal with land up to the time of intervention by the trustee and the purchaser will take a good title subject only to any notification on the register book. Sub-clause (2) is aimed at the protection of the trustee in bankruptcy by providing that he shall be bound only by the rights and equities which appear on the register book, and so forth, at the time when he applies to be registered or lodges a caveat. This sub-clause also protects a purchaser from the trustee in bankruptcy by placing such a transfer on the same footing as a transfer for value from an ordinary proprietor. In other words, a purchaser from the trustee in bankruptcy takes as good a title as would have been obtained from an ordinary proprietor who was not bankrupt; the title is protected.

*By Mr. Thomas.*—The clause does not prescribe the period in which the trustee shall apply to be registered.

*Mr. Wiseman.*—That is so.

*By Mr. Bailey.*—He is still protected!

*The Chairman.*—But not if there is a transaction in the meantime.

*Mr. Wiseman.*—It leaves the bankrupt open to deal with land as does section 276 of the *Transfer of Land Act*.

*By Mr. Byrnes.*—A man who is bankrupt may dispose of his property unless a trustee is appointed?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—How does that fit in with the old doctrine that all the assets of the bankrupt vest in the trustee as from the date of the sequestration order?

*Mr. Wiseman.*—I think it fits in all right. The assets may include land and ordinary personal property.

*Mr. Bailey.*—It seems extraordinary that a bankrupt can dispose of his property.

*Mr. Wiseman.*—I shall quote from section 276—

Until such application is made as aforesaid and subject to the operation of any caveat which is lodged by such trustee dealings by a bankrupt proprietor with land under the operation of this Act may be registered, and thereupon shall not by the order of sequestration be affected either at law or in equity.

*The Committee adjourned.*

FRIDAY, 19TH AUGUST, 1949.

*Members Present:*

Mr. Oldham in the Chair;

<i>Council.</i>	<i>Assembly.</i>
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. F. M. Thomas.	Mr. Barry,
	Mr. Merrifield,
	Mr. Reid.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*Mr. Wiseman.*—When the Committee last adjourned we were discussing the effect of clause 212. Some questions were asked as to the validity of the clause, insofar as it was suggested that it might conflict with the Bankruptcy Act. With regard to its validity, I



think there are two answers. One is that clause 212 really does no more than clarify section 276 of the Transfer of Land Act, which provides—

Until such application is made as aforesaid and subject to the operation of any caveat which is lodged by such trustee dealings by a bankrupt proprietor with land under the operation of this Act may be registered, and thereupon shall not by the order of sequestration be affected either at law or in equity.

The other answer is section 103 of the Commonwealth Bankruptcy Act which by sub-section (1) states—

On the appointment of a trustee by the creditors, the property of the bankrupt shall forthwith pass to and vest in the trustee appointed by them.

Sub-section (4) of the same section reads—

Notwithstanding anything contained in this Act, where any Act or State Act requires the transmission of property to be registered, and makes provision for the registration of the official receiver or trustee as the owner of property vested in him under this Act, the vesting of the property of the bankrupt in the official receiver or trustee upon sequestration shall be subject to compliance with the requirements of the Act or State Act.

Therefore when there is a State Act requiring property to be registered, the vesting of the property of the bankrupt in the trustee will be subject to compliance with the State Transfer of Land Act. That is the answer to the query.

*By Mr. Fraser.*—I think I raised this question. I have thought over it since. A clause like this is necessary because there may be bona fide dealings prior to the bankruptcy. I assume that the words "without fraud" would cover without fraud in the nature of a fraudulent preference? Clause 212 would not then avail the bankrupt.

*Mr. Wiseman.*—I think that would be so.

*Mr. Bailey.*—If an estate is sequestrated some time may elapse before the creditors meet and appoint a trustee, and in the interim transactions may take place. I always thought with the sequestration of an estate all dealings in the property were barred, but apparently that is not so.

*Mr. Fraser.*—Suppose a man has no knowledge of the bankrupt or the bankruptcy, and for a valuable consideration pays money to buy a property. What are you going to do about that? If he paid the money for the property knowing of the bankruptcy and with a view to obtaining a preference, I have no doubt the transaction could be set aside.

*Mr. Bailey.*—If automatically after sequestration a caveat was lodged the man would not hand over his money.

*Mr. Fraser.*—The lodging of a caveat might take some time.

*Mr. Bailey.*—When a man's estate is sequestrated his assets are divulged.

*Mr. Fraser.*—That would all depend. If he were made bankrupt by *order nisi* he would have to make a statement of assets and liabilities afterwards, but when he files a petition he makes the statement at the same time.

*Mr. Bailey.*—In that case the official of the Insolvency Court could lodge the caveat.

*Mr. Fraser.*—In one case the man would know the bankrupt had an estate but in the other case he would not.

*Mr. Reid.*—It occurs to me that this is a matter on which we ought to take the evidence of the Registrar or Commissioner of Titles regarding the practice. I recall that in the old days of the Insolvency Act there was a system of registration of insolvencies at the Titles Office. Whether that is so now under the Federal Bankruptcy Act I am not sure, but it seems to me that any one can always search and inquire whether

the person he is dealing with is bankrupt. It is rare when that is done as a matter of routine. I have heard of people doing it in the past.

*The Chairman.*—I think Mr. Reid's suggestion could well be referred to the Commissioner. What I am about to say may be entirely irrelevant or it may not be. The Government is contemplating placing before Parliament a small Bill to wind up the Victorian insolvency jurisdiction, including of course the old proceedings, which are still a matter of record under that Act. In other words, we shall discharge the State from all interest in insolvency proceedings. The State Act is still valid. I think it is entirely over-ruled by the Federal bankruptcy legislation, but it may not be so in every particular. The matter has been discussed with Mr. Justice Clyne, and I understand legislation has been enacted in one or more of the other States to give effect to what we desire to do in Victoria. If the proposals are approved by Parliament, records which are still availed of for various purposes, such as those we are discussing, which are in the custody of the State, will be handed to the Clerk of Records of the Federal Bankruptcy Court. When this matter is being investigated with the view of drafting the legislation this portion of the evidence can be put forward to see whether any provision has to be made, and at the same time it will clear up what is the present practice in the Federal Bankruptcy Court in relation to the Victorian Titles Office.

*By Mr. Merrifield.*—Does that mean to say that the State Act may validate anything the Federal Act has in mind?

*The Chairman.*—Not altogether. For a long time insolvency was a State matter. When the Federal Bankruptcy Act was passed it placed the whole of that jurisdiction in the hands of the Federal Bankruptcy Court to the extent that the Federal Act over-ruled State legislation. It was a matter on which the powers were concurrent under the Commonwealth Constitution. We shall have to make certain that the Federal Act does entirely over-ride all provisions of the State Act, because any provision of the State Act not over-ruled would still be valid. My own feeling is that the Federal Act does not entirely over-ride the State Act. That will have to be gone into.

*By Mr. Merrifield.*—Do you propose to withdraw those provisions of the State Act?

*The Chairman.*—In effect. I should not like at this stage to be tied down to a definite statement but the aim will be to divest the State of any remaining power in regard to insolvency. It will obviate the necessity of doing what we do when we appoint a new County Court Judge and appoint him also a Judge in insolvency. I think the records of the State Insolvency Court are still resorted to regarding various matters.

*Mr. Reid.*—That is so. There is a register.

*The Chairman.*—That register would presumably be transferred to the Federal Court and to the extent that any search was required in relation to matters of the kind mentioned, or to the extent that arrangements might be made to communicate—from the Federal Bankruptcy Court to the Titles Office or any other appropriate State office—information concerning the old matters and the new matters coming under the Federal Bankruptcy Acts, the necessary arrangements would be subjects for consideration.

*Mr. Merrifield.*—Reverting to the effect of transferring all these dealings in bankruptcy to the Federal Court, there would be no power under clause 212 to provide for the lodgment of any caveats by Commonwealth officers.

*The Chairman.*—We could not force the Commonwealth authorities in that respect but I have little doubt that, if it were desirable to do so, satisfactory

arrangements could be concluded with the Federal authorities. If we decided, as a matter of practice, to get some record in the State Titles Office of these matters, and the Federal Court was not prepared to act directly, there would be nothing to prevent us from instituting an official system of searches in the Federal Court. I merely mention that point but I should like to place on record the fact that I do not personally contemplate any necessity arising. I think these matters can easily be adjusted between the two authorities.

*Mr. Wiseman.*—Answering Mr. Reid's remarks, I think the position is that the Transfer of Land Act deals with the registration of title to land. Sub-clause (1) of clause 212 provides that the bankrupt proprietor may deal with the land unless and until the trustee either applies to be registered or lodges a caveat. As soon as the trustee takes either of those courses the right of the bankrupt to deal with the land ceases.

*By Mr. Fraser.*—Although the bankrupt has dealt with the property before a caveat is lodged or before the trustee is registered, that dealing is still attackable in the Bankruptcy Court?

*Mr. Wiseman.*—Yes.

*By Mr. Bailey.*—But only on the ground of fraud?

*Mr. Fraser.*—That is so.

*Mr. Wiseman.*—Fraud in a very wide sense. According to sub-clause (1) of clause 212 the dealings by the bankrupt must be "for value or without fraud" but the question of fraud is the important one. We have already dealt with sub-clause (2) which provides that the trustee in bankruptcy is only to be bound by interests which are registered or which are protected by caveats, i.e., appear in the register book, or are preserved by clause 104 (the old section 72), or are capable of being ascertained upon search at the Office of Titles. That defines the right of the trustee. In the last four lines of sub-clause (2) the following words are employed:—

the protection afforded to a purchaser for value from a registered proprietor shall be extended to a purchaser from a trustee in bankruptcy . . . . .

That defines the position of the purchaser from a trustee in bankruptcy; he is not bound by any unregistered dealing, &c.

*By Mr. Bailey.*—What does sub-clause (3) mean?

*Mr. Wiseman.*—It will be recalled that Part III. deals with statutory and compulsory registration of land. Under that part, when there is a limited certificate of title the Commissioner is to prepare certain minutes which set out the limitations of the certificate either as to title or description. It has been provided that any one may make a search of those minutes. It was suggested that if sub-clause (3) were not included, the clause might impose some obligation on a person dealing with a trustee in bankruptcy to search the Commissioner's minutes—an obligation by implication because it was suggested, he might have notice of any rights disclosed in such minutes. Sub-clause (3) was inserted in order to remove any such implication.

*Mr. Bailey.*—I understand the position.

*By Mr. Fraser.*—Would you not think that a purchaser proposing to buy from a trustee would, in his own interests, search the Commissioner's minutes to ascertain what was required to be done in order to obtain an absolute title, as it were?

*Mr. Wiseman.*—I think Mr. Fraser is probably right; the provision was not my suggestion.

*Mr. Fraser.*—I cannot appreciate that it would serve any purpose at all.

*Mr. Wiseman.*—It simply says that you shall not be required to search. If one is buying a limited certificate, the provision in question will not get rid of the limitations in the Commissioner's minutes.

*Mr. Fraser.*—If a purchaser from a trustee were wise and thought of obtaining an absolute title, he would search the Commissioner's minutes to determine what he had to do before he was able to get out of the category of a person with a limited certificate.

*Mr. Wiseman.*—That is so. I do not think the provision can do any harm. I have now completed my remarks regarding clause 212. Division 6 relates to sales by the sheriff. Clause 213 does not substantially amend the existing relevant provision, save that from sub-clause (7) the words "writs of *feri facias* issued out of the Court of Insolvency and to officers thereof and also to" have been omitted. Under the Victorian Insolvency Act the Insolvency Court could cause a writ of *feri facias* to be issued to obtain money which was owed to the insolvent. There were rules and forms providing for that. In view of the Federal Bankruptcy Act, which does not adopt that procedure, it seemed unnecessary to use words which were inapplicable. Clause 214 raises a substantial question namely, that the purchaser from the sheriff is to obtain a good title. The former position can be described in this way: When the sheriff sold land or an interest in land under the Transfer of Land Act, he offered for sale all the right title and interest, if any, which the judgment debtor had. This followed the terms of the *Property Law Act 1928* as set out in sub-section (4) of section 208. I think the words "if any" were inserted at the instigation of the sheriff for his own protection and they do not appear in that section of the *Property Law Act*. That is reasonable under the general law when extensive investigations into title are involved, but there seems to be no reason why it should be perpetuated under the Transfer of Land system where the title is or should be easily ascertainable. It was considered desirable, therefore, to effect an alteration and to place any transfers from the sheriff in the same position as transfers from a proprietor.

It was considered that the position of transfers from a sheriff was anomalous under the Act—that when the sheriff was dealing with the certificate of title and when a transfer from the sheriff was registered it would appear as a good certificate of title and yet would not convey any better title than the judgment debtor had. Various views had been expressed about the effect of the old section in earlier cases and, in one instance, two Judges differed as to the effect of that section. The one which I have explained is the one adopted up to the present.

Another effect of clause 214 is that if the purchaser from the sheriff is to obtain as good a title as a purchaser from a registered proprietor, it was thought persons dealing with the sheriff would tend to give higher prices for a secured title than for a title limited under the conditions of the *Property Law Act*, and that this would be of benefit to the judgment debtor by preventing his land being sold at an under value.

*By Mr. Bailey.*—In order to obtain the best price for the land at the auction sale, should not the sheriff say, "This land is free from all encumbrances"? Unless he had made a search, he would not have that information.

*Mr. Wiseman.*—I do not think the sheriff would give an undertaking. He would say, "I am going to sell the title of so-and-so", and an intending purchaser could search the register.

*Mr. Fraser.*—It would be of no use a person searching the register after he had bought the land on the fall of the hammer. Doubtless he would make his search before the sale was held.



*Mr. Wiseman.*—The sheriff always advertises sales and interested persons can make searches.

*Mr. Bailey.*—Some people may attend the sale merely out of curiosity, and the low price offering may tempt them to bid.

*The Chairman.*—I have proved the truth of that comment from personal experience. When many sales of this type were being held, people bought at fantastically low figures.

*Mr. Merrifield.*—Competition would be restricted to those who had made a search of the register.

*Mr. Fraser.*—I presume that Mr. Bailey has this in mind: The Sheriff should obtain the best price available for the judgment debtor, and if he is able to say, "This property is so-and-so", he is more likely to sell at a high price. On the other hand, he may offer a property as to which there is a restrictive covenant, of which no one is aware. A purchaser might buy the land intending to build blocks of flats or to erect a factory, but a search of the title would disclose a covenant precluding him from doing so.

*Mr. Wiseman.*—We cannot provide against all contingencies. We can lay down only a general principle to guide the public.

*By Mr. Merrifield.*—Could we not provide that the conditions of sale should refer to title difficulties? Then all intending purchasers would be aware of the facts.

*Mr. Wiseman.*—I think the sheriff would have to decide the extent to which he would be prepared to make representations at the sale.

*Mr. Bailey.*—It should be the duty of the sheriff to secure the highest possible price for the property. He would be in a position to have a search made to ascertain if there were detrimental encumbrances or covenants. If there were no such difficulties, he could mention that fact at the sale.

*Mr. Reid.*—Normally, particulars of title are advertised by the sheriff, and are known to persons attending a sale.

*Mr. Wiseman.*—If the Bill is enacted as a whole, everything that a purchaser will want to know about the title will be disclosed by search, except as to rates and taxes.

*By Mr. Fraser.*—A sheriff may auction a property worth £1,000 but subject to a mortgage of £700. Will the sheriff say, "This is all the land comprised in certificate of title so-and-so", and then announce that it is subject to a mortgage of £700?

*Mr. Reid.*—Usually he sells the interest of "John Brown" in a property.

*By Mr. Fraser.*—But does the sheriff announce that there is a mortgage of £700 on the property?

*Mr. Reid.*—Normally, he advertises the particulars.

*The Chairman.*—I think he merely advertises particulars of a property, without mentioning encumbrances. Doubtless he has been advised that it would be dangerous to mention encumbrances in case he should miss one. I would feel apprehensive if a client desired to set out encumbrances.

*By Mr. Bailey.*—I thought the purpose of the amendment was to do away with the bald declaration of "right, title, and interest" in the land?

*Mr. Wiseman.*—It will do so. It could not be said that a property was subject to a mortgage of £1,000, because £500 of the mortgage might have been repaid.

*By Mr. Fraser.*—How would an intending purchaser know that a property worth £1,000 had a mortgage of £700 on it? Is he to buy a pig in a poke?

*Mr. Wiseman.*—Yes, unless he searches.

*Mr. Fraser.*—That appears to be unfair.

*The Chairman.*—How could we overcome a reducing mortgage or amounts owed for rates and taxes?

*Mr. Reid.*—It is open to the purchaser to make preliminary inquiries. Sheriff sales are advertised with particulars of title, and a search can be made. An intending purchaser can make inquiries as to mortgages.

*Mr. Bailey.*—A man intending to buy a property might take that action, but I visualize people attending sales without any intention of bidding but they are tempted to do so when they find that a low price is being offered. The field of prospective buyers will be restricted.

*Mr. Fraser.*—A prospective buyer might ask the mortgagee's solicitors, "What is owing on this mortgage?" He would be told, "I am not going to disclose that information to you". Then he would not know if the mortgage was overdue, or if interest payments were outstanding.

*Mr. Thomas.*—Does not the sheriff have to obtain that information when he is instructed to sell a property?

*The Chairman.*—No. I have never known a sheriff to obtain particulars as to rates owing to a local council. Mention was made of a mortgage with a face value of a certain amount, which had been reduced. On the other hand, there could be a mortgage with a face value of £700 on which interest payments of £200 were outstanding. This discussion must lead us to say, "Beware when you attend a sheriff's sale!"

*Mr. Wiseman.*—That is the point. Only small bids are made at these sales.

*Mr. Fraser.*—That means sacrificing the property of the judgment debtor. It is taken out of his hands for sale by the sheriff. The property may be worth £1,500, but by reason of intending purchasers thinking that they will be buying a pig in a poke, they will offer only £500 for it. A surplus should be realized but, instead, insufficient is obtained to satisfy the judgment.

*The Chairman.*—These sales are similar to bargain sales at the end of the shopping season.

*Mr. Bailey.*—The sheriff could announce information supplied to him by the judgment creditor, who could make a search for that purpose.

*Mr. Fraser.*—The judgment creditor would say that at a certain date so much was owing for rates and so much for principal and interest payments under the mortgage.

*The Chairman.*—Even if the judgment creditor inquired as to how much was owing under the mortgage, and was correctly informed, the mortgagee would not be bound.

*Mr. Fraser.*—No, but he might have an action against the judgment creditor. I am putting the duty on the judgment creditor to supply true and accurate particulars to the sheriff.

*The Chairman.*—What will happen if he supplies wrong particulars?

*Mr. Fraser.*—As he is having the property sold compulsorily, I think he should be made to pay for that.

*Mr. Wiseman.*—The judgment debtor is the registered proprietor of the property, and I presume that he can obtain permission to sell it, provided that the purchase money is paid to the sheriff.

*Mr. Fraser.*—That could not be done after the issue of the writ of execution, as the matter would be taken out of the hands of the judgment debtor.

*Mr. Wiseman.*—Up to that stage, he would have the right to say, "I have this judgment against me and I wish to pay it. I shall sell the property for the best price I can obtain".

*By Mr. Thomas.*—Does the fact that there is a sheriff's sale prove that something is outstanding?

*Mr. Wiseman.*—I do not think that follows.

*Mr. Bailey.*—Provision should be made for the sheriff to announce particulars furnished by the judgment creditor. That would lead to a better price being obtained for a property.

*By Mr. Fraser.*—Is a similar method followed in England and the other States with sales of this description?

*Mr. Wiseman.*—I think the old way of selling was the general custom—that is to say, to sell the right, title, and interest, if any. The amendment is suggested as an improvement.

*Mr. Fraser.*—I suppose it is no different from a man selling a motor car. He says, "There is the car, with all its faults". In that case, however, the car can be inspected by an engineer, and the intending purchaser has that advantage.

*The Chairman.*—We do not want to try to make these things too watertight. Some of them must be in the nature of a gamble.

*Mr. Reid.*—A suggestion was made in the *Law Institute Journal* by the firm of Godfrey and Godfrey that a section should be added to meet a case where it is impossible for the sheriff to place his hands on the duplicate certificate of title because the judgment debtor may be somewhat recalcitrant. Messrs. Godfrey and Godfrey wrote:—

"With reference to section 213 of this Bill relating to transfers on sale by the sheriff, we would suggest that a further clause should be inserted empowering the Registrar to dispense with production of the duplicate certificate of title and to issue a new certificate of title in lieu thereof. See *Curry—Manual of Titles Office Practice*, page 137.

"The duplicate certificate of title is not often available to the sheriff.

"A provision similar to that suggested above is contained in the *Local Government Act 1946*, section 375, relating to sales by municipalities for recovery of rates."

That is the suggestion of a firm of Melbourne solicitors, and I think it has some practical value. I put it forward for, perhaps, consideration.

*By Mr. Merrifield.*—Does that put sales by the sheriff more or less in the same category as the acquiring of land by statutory authorities who are not able to get titles?

*Mr. Wiseman.*—There is provision for the Registrar to call up certificates of titles which are outstanding.

*The Chairman.*—The next division consists only of three clauses.

*By Mr. Fraser.*—Is there anything more in them than providing for the removal of covenants by agreement without application to the Court?

*Mr. Wiseman.*—Clause 215 deals with the registration of covenants.

*By Mr. Fraser.*—At the moment if you want to apply for the removal of a restrictive covenant you have to obtain an order of the Court. Under this provision you could apply to the Court or, if you had the consent of all the persons interested, that would be sufficient?

*Mr. Wiseman.*—I think that summarizes the provision. Clause 216 will bring land under the Act into line with land not under the Act.

*By Mr. Thomas.*—Are there any periods during which a covenant shall last?

*Mr. Wiseman.*—It lasts indefinitely.

*Mr. Fraser.*—Unless the parties themselves limit it to a term of years.

*Mr. Wiseman.*—A restrictive covenant is frequently referred to as something in the nature of a negative easement. You might be restricted for instance in building a factory on certain land. That would last in the same way as an easement would last. You can get rid of it by infringement for a statutory period.

*Mr. Merrifield.*—I think a lot of the covenants imposed on land should never be permitted.

*Mr. Fraser.*—The principle of the law is that you can do what you like with your own property.

*Mr. Merrifield.*—When a man has disposed of a property, to all intents and purposes he has lost interest in it.

*Mr. Fraser.*—Suppose in selling a subdivision a man received a high price for land on the basis that it would be a brick area. People would buy on that basis.

*Mr. Merrifield.*—That raises the issue, what right should that person have to place that restriction on the title? There are by-laws under the Local Government Act and it is proposed to carry out plans under the Town Planning Act. Why should one individual have the right to over-ride both those laws?

*The Chairman.*—Within the limitation of legislation a man can do what he likes with his land, but I do not think that in the exercise of his free rights he can over-ride legislation or municipal enactments.

*Mr. Merrifield.*—Take a limitation such as is imposed on the old temperance township in Ascot Vale, between Epsom-road, Maribyrnong-road, and Union-road. The land was sold in 1882 subject to the limitation that no premises for the manufacture, disposal, or sale of spiritous liquors should be erected there.

*The Chairman.*—Subject to Parliament bringing in an Act saying that in that area liquor can be sold the restriction will hold.

*Mr. Fraser.*—If a majority of the people affected feel that the covenant is unduly restrictive they have the right to apply to the Court to have it removed.

*Mr. Merrifield.*—The vendor puts on a restriction which cannot be sustained for ever.

*The Chairman.*—He can sustain it indefinitely subject to the law. If there is agreement by the people concerned that it should be removed they can go to the Court and have it removed. Another way to remove it is by legislation.

*Mr. Bailey.*—It could do a great injustice. All the people who bought land there might have been Rechabites and might have bought for that reason.

*Mr. Merrifield.*—Although there are no hotels within the area there is one on each of the three corners of the triangle for the purpose of serving the area.

*The Chairman.*—I represented for twelve and a half years one of the driest areas in Victoria, but it was surrounded by hotels. What Mr. Merrifield has in mind could not as a counsel of perfection be attained. The multitude of covenants is unlistable. It is only when they operate against public interest and public interest is aroused that the over-riding powers come in. If the burden becomes too onerous it is always possible for Parliament to decide whether the covenant should be over-ridden.

*Mr. Merrifield.*—It is true that there is under the law power to remove such covenants, but to my mind they place an unfair limitation on the title and an unfair financial burden on the title holders in removing them.

*Mr. Fraser.*—Suppose a covenant prohibited dog racing and night trotting within a certain distance and suppose on that basis you bought a block of land. Two years later if a man came to construct a dog-racing track you would naturally want your covenant upheld.

*Mr. Merrifield.*—That is the personal point of view, but from the point of view of the community why should one person have the right to say that something should not be done with land here or somewhere else?

*The Chairman.*—Provided you comply with municipal by-laws and statutory enactments you can build a house which is the worst possible eyesore in the district. In the absence of legislation a man is entitled to do what he likes with his land.

*Mr. Merrifield.*—I do not think he has the right to tie it up indefinitely.

*The Chairman.*—The only way to meet that would be to schedule all the things he must not do.

*Mr. Fraser.*—It would be interesting to obtain a list of the types of covenants that have been imposed.

*The Chairman.*—Even if you tried to list only the common ones you would not achieve your purpose. Those which have impinged on the public interest have been dealt with. There are many titles subject to the right of the Railways Commissioners to put railways through the land.

*Mr. Bailey.*—In an application to remove a restriction on a title does it require the support of all the land owners whose land is affected or would a majority suffice?

*The Chairman.*—It is not a question of a majority or the whole of them; it is a matter of what the Court would think. The Court would be more easily swayed if all of them agreed. If one man objected the Court might hesitate to interfere with his rights.

*Mr. Merrifield.*—On the Buckley Park estate, Essendon, there was a covenant that no houses should be constructed of a value less than £650. That, of course, is no real limitation, but it has the effect of not permitting the area to be used for business. My people had a block there in joint ownership with an uncle. The purchaser asked the vendor if there were any encumbrances and he said "No". When the title was searched it was discovered that there was a general restrictive covenant stating that no house worth less than £650 could be erected on the land. For some reason that was used to back out of the transaction—a childish action.

*The Chairman.*—Mr. Merrifield's remarks constitute a complete answer to any attempt by this Committee to speculate as to the effect of covenants in the future. Take a series of auction sales held just prior to the outbreak of the second world war. With the idea of maintaining the values of lots in various areas, there was a provision designed to prohibit the erection of a house costing less than a specified amount. For example, the minimum cost of a house proposed to be built in a so-called better-class area would have been, say, £2,000 and that in another type of suburb, £650. In a period of ten years those prohibitions have gone hay-wire. The present cost of a house which, in 1939, would have cost £650, would be £1,000.

*Mr. Merrifield.*—Mr. Bailey referred earlier to the question of agreement between all parties interested in an area of land. Who is to define all the parties? I think that under the present Transfer of Land Act, when a plan of subdivision has been lodged all easements, rights-of-way, encumbrances, and benefits are made applicable to all the block holders. My view is that when a person subdivides land and places encumbrances on that subdivision generally, all those holding blocks within the area would be affected. In

some cases, there may be only two or three blocks contained in a subdivision and, if the interpretation is right, it would only be necessary to obtain the consent of the two or three owners concerned. But it would mean a different interpretation if the consent of all owners and all neighbours had to be obtained.

*The Chairman.*—Do you mean that the agreement of all parties interested would have to be obtained?

*Mr. Merrifield.*—Considering the restricted interpretation as applying only to all block holders in a subdivision, there would be 2,000 in the Buckley Park estate. The practical difficulty of obtaining the consent of all those would arise.

*The Chairman.*—Nevertheless, rights cannot be over-ridden; the individual block holders are contractually obligated to the person who makes the subdivision. If some blocks are built on when a certain restriction operates, all those subsequently constructed are affected by the same restriction. I think we are now discussing a question of public policy in respect of which there will be party differences.

*Mr. Wiseman.*—The present discussion would affect land which was under the Act and land which was not under it.

*The Chairman.*—That is so. As in the case of town and country planning the question is one of policy. However, Mr. Merrifield would be quite within his rights to raise the matter again at a later date.

*Mr. Wiseman.*—As regards a large block there would still be the right to take the matter to the Court.

*(The Committee adjourned.)*

TUESDAY, 23RD AUGUST, 1949.

*Members Present:*

<i>Council.</i>	<i>Assembly.</i>
The Hon. P. T. Byrnes,	Mr. Bailey,
The Hon. A. M. Fraser,	Mr. Barry,
The Hon. A. E. McDonald,	Mr. Merrifield,
The Hon. F. M. Thomas.	Mr. Oldham,
	Mr. Reid.

*(In the absence of the Chairman, Mr. McDonald was called to the Chair.)*

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*Mr. Wiseman.*—Division 8 contains the *Transfer of Land (Acquisition) Act 1948*; that is comprised in clauses numbers 218 to 223. Section 6 of the *Transfer of Land (Acquisition) Act* relates to the making of regulations. Clause 222, which re-states section 6, adds the words "rules and regulations." The reason for that is that Part XVIII. of this Bill refers to rules and also to regulations, but more particularly to rules which are proposed to be made by the Rules Committee. It was thought the provisions of this part of the Act—that is, Division 8—should refer to the rules and to the regulations, and not to the regulations only. I do not think there is anything contentious about that.

*By the Chairman.*—The purpose of the clause is to bring it into line with the rest of the provisions?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—That is, as to the rule-making committee?

*Mr. Wiseman.*—Yes.

*Mr. Merrifield.*—In the letter dated the 30th of June, from the Law Institute, there was a reference in paragraph (a) to clause 104, with some effect on clause 218. The letter read—

Division 8 of Part VII. of the Bill establishes the principle that any statutory authority which acquires land or a charge over land shall be required to protect its interest by the lodging of a caveat.

*Mr. Wiseman.*—I think the reference is to clause 224. I am in entire accord with what the Law Institute suggests. Clause 224 is new and its purpose is this: Where any land is resumed or acquired by the Crown, or in pursuance of a statute, or where a charge is imposed on land in pursuance of a statute, the officer in charge of the administration of the Act shall lodge a caveat.

*By the Chairman.*—It is mandatory that he do so?

*Mr. Wiseman.*—Yes. Up to that point it was considered by the sub-committee that some such provision as this was necessary to make the Act have an efficient effect. The sub-committee had in mind that there were a number of Acts which made provision for charges over land, but no provision whatever for the registering of those charges. In that way great difficulties were imposed on the legal profession in ascertaining what charges there were on land; it also made for uncertainty of title. It was thought that, in view of the complexity caused by the failure of those interested to lodge caveats to support charges, something should be done to try to correct that position. It was considered that a provision such as the one now proposed would meet the case. Clause 224 has been taken from the Real Property Act of New South Wales, which was introduced in New South Wales in 1900. It was considered that this clause was desirable to meet the difficulties which have arisen.

It was stated more or less indefinitely to the sub-committee—although it was pointed out to me quite definitely by a responsible officer in a Government Department—that it would not be possible to get Parliament to agree to this provision in the form suggested for the reason, mainly, that the earlier clauses in Division 8 deal with an acquiring authority obtaining a title to land. In legislation such as the Housing Acts there could be something in the nature of a blanket order which could be applied to land, and the Department administering such an Act would take exception to any part of the land it was acquiring being taken out of the acquisition. It was felt that, for a reason of that kind, there would be difficulty in getting Parliament to agree to a clause in this form. Perhaps I should say that clause 224 is connected with clause 240 which is a new provision dealing with priority of unregistered interests.

*The Hon. A. E. McDonald vacated the Chair.*

*The Hon. A. M. Fraser was called to the Chair.*

I have pointed out that clauses 218 to 223 comprise the Transfer of Land (Acquisition) Act; the only difference is that the words "rules and regulations" are added. Clause 224 requires an authority, that is, the Crown, or an officer administering an Act, to lodge a caveat. That clause is connected with clause 240, which is new and relates to the priority of unregistered interests. The effect of this clause is that if a person has an unregistered interest, the priority of that unregistered interest will be determined by the date of the lodging of a caveat to protect it. In other words, if there is an unregistered interest, it may be postponed to a later unregistered interest, if such later unregistered interest gets protection by a caveat lodged first.

*By Mr. McDonald.*—In other words, only those persons who have lodged a caveat will get protection, and they will receive protection according to the lodgment of their caveats?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—That is an altogether new provision?

*Mr. Wiseman.*—Yes, completely new.

*By Mr. McDonald.*—At present there may be many caveats but nobody would have a definite priority?

*Mr. Wiseman.*—At present priority normally depends on the date of the creation of the equitable interest or the unregistered interest.

*By the Chairman.*—This provision will overcome all questions, even those relating to notice?

*Mr. Wiseman.*—Yes. The effect of clause 240 on clause 224 would be that if there is a blanket order, such as may be applied under the housing legislation, and if one of the proprietors whose land was within the area acquired sold the land, the purchaser would get a clear title, if no caveat were lodged under clause 224.

*By Mr. McDonald.*—If there are several proprietors and the Housing Commission puts a blanket order over them all and one of the proprietors, subsequent to the blanket order, sells his land, the purchaser would not get a clear title from him?

*Mr. Wiseman.*—It seems that he would, or he might; probably would, apart from the words commencing in line 11 "and any person, &c." to the end of the paragraph.

*Mr. Merrifield.*—That is if the Titles Office knew nothing of it.

*By the Chairman.*—The blanket order does not affect individuals; it affects the land. If there are eight dealings, the blanket is on that land?

*Mr. Wiseman.*—That is so.

*By the Chairman.*—The purchaser's right to possession would be converted into a claim for compensation?

*Mr. Wiseman.*—Yes.

*Mr. Merrifield.*—Not until the vesting.

*By the Chairman.*—The vesting takes place at the time of the publication in the *Government Gazette*?

*Mr. Wiseman.*—That is so.

*Mr. Merrifield.*—An area may be proclaimed and it need not be vested. The claim for compensation is not payable until the land is vested.

*Mr. Wiseman.*—I think it can be suspended.

*By Mr. McDonald.*—Although a purchaser can obtain a title, it is not, as the Chairman has pointed out, one which gives him the right of possession. It is one which gives him the right to claim compensation to which the former owner would have been entitled.

*Mr. Wiseman.*—That is so, yes.

*By Mr. Barry.*—With whom do they have to treat?

*Mr. McDonald.*—The registered proprietor as at the date they begin to treat.

*Mr. Wiseman.*—That is so.

*By Mr. Thomas.*—Have you any knowledge of the operations of the New South Wales Act? The Government in New South Wales has blanketed certain areas for the purpose of housing.

*Mr. Barry.*—That has been done in Victoria.

*By Mr. Thomas.*—That is so, but the New South Wales Act has been in operation since 1900. Have you any idea how it has been working?

*Mr. Wiseman.*—No.

*By Mr. McDonald.*—What does the new clause do?

*Mr. Wiseman.*—Section 46A of the New South Wales Act is the same as sub-clause (1) of clause 224 up to the words "may be." That is where I think the clause should finish. The reason I included the additional words "and any person . . . *Crown Remedies and Liabilities Act 1928*" is that they are linked with sub-clause (3) of clause 240 which reads:—

Nothing in this section shall affect any right acquired by an "acquiring authority" under Part VII., Division 8, of this Act.

I should like to see those words in clause 224 and also sub-clause (3) of clause 240 struck out.

*By Mr. McDonald.*—Would not that defeat the whole object of the registration of the caveat?

*Mr. Wiseman.*—No.

*By Mr. McDonald.*—That would completely let an officer out. Despite the fact that a caveat had been lodged, a person would have no claim although he had suffered loss. On the one hand it would be said "the authorities must lodge a caveat" and on the other "It will not matter if a caveat is not lodged. You will not be liable although a person sustains a loss." Would not that be the effect of it?

*By the Chairman.*—Before you answer that question, do I understand the object of clause 224 to be this: supposing the Commonwealth Government comes in—

*Mr. Wiseman.*—We cannot control the Commonwealth.

*By the Chairman.*—It is an acquiring authority within the meaning of this Act?

*Mr. Wiseman.*—That is so.

*By Mr. Reid.*—Are you purporting to bind the Commonwealth?

*Mr. Wiseman.*—May I answer the point raised by the Chairman? In clause 218 the definition of "acquiring authority" is given, and the Commonwealth is included. Clauses 218 to 223 provide for the registration of the acquiring authority, and impose an obligation on the Registrar of Titles to register the acquiring authority. That is all in favour of the acquiring authority getting a title. I do not think there is any difficulty about that, because the Transfer of Land (Acquisition) Act is already passed.

*By the Chairman.*—I was using the Commonwealth as the acquiring authority to give a particular illustration. Under the Commonwealth Land Acquisition Act the date of valuation of a property is at the 1st of January preceding the date of acquisition. If a man sold a block of land, which was the subject of an order for acquisition by the Commonwealth, under contract of sale for £3,000, and the Arbitrator found that the value of the land at the 1st of January—that being the date preceding the acquisition—was £2,000, if a caveat had been lodged he might under this clause recover the difference?

*Mr. Wiseman.*—I do not think this clause will affect the quantum of compensation. It is where a person sustains loss by reason of the officer failing to lodge a caveat that he is entitled to compensation under this clause.

*By Mr. McDonald.*—When is the sale, prior to the Commonwealth acquisition?

*Mr. Wiseman.*—It is between the 1st of January and the date of acquisition.

*Mr. Merrifield.*—That has happened in thousands of cases where people have been buying under long contracts of sale and the Commonwealth has acquired the land at a fraction of the purchase price. For instance, twenty years ago in Essendon blocks of land were sold for £180 under contracts of sale. In some cases they were still being paid off when the land was acquired by the Commonwealth for the Essendon aerodrome. The owners received an average of about £40 a block. They have already lost that difference.

*Mr. Wiseman.*—I do not think this provision will affect that position.

*The Chairman.*—The loss will be sustained by reason of a failure to lodge a caveat.

*Mr. McDonald.*—That the purchaser has not received notice.

*By the Chairman.*—What would be his loss?

*Mr. Wiseman.*—I think I can reply to that, but I should like to complete my first answer. Clause 218

gives a definition of the acquiring authority, and includes the Commonwealth. However, in clause 224 the words "by the Crown" are used. That can mean only the Victorian Crown, because a liability cannot be imposed on the Commonwealth Crown. Clause 224 imposes an obligation on the Crown or on any person, body or corporation acquiring land under or in pursuance of the provisions of any Statute to lodge a caveat.

*By the Chairman.*—Is that so? Paragraph (c) of sub-clause (2) of clause 224 makes reference to the *Government Gazette* of the Commonwealth of Australia.

*Mr. Wiseman.*—Yes. Sub-clause (1) imposes an obligation to lodge a caveat. Sub-clause (2) sets out the duties of the Registrar on the notification of the resumption of land by the Crown or a Government Department. I think it will be found that sub-clause (2) is very much the same as clause 219, which is the old section 3 of the Transfer of Land (Acquisition) Act, which provides for the registration of these authorities. No obligation is imposed on the Commonwealth, but the right to registration is conferred. If clause 224 finishes at the words "may be" an obligation is imposed on the persons mentioned in paragraphs (a) and (b) of sub-clause (1) to lodge a caveat. If a caveat is not lodged any person searching the register book will find that the person registered as proprietor of the land is still the apparent owner, and he may deal with him and pay him money. If a blanket order is over the land, the Titles Office may have no information about it. So far as this Act is concerned, the Titles Office may or may not have notice because no caveat has been lodged. What is the position of the purchaser? He has bought land over which there is a blanket order under one Act, and he is a person who has dealt with the registered proprietor under the Transfer of Land Act. Is that dealing going to take him out of the jurisdiction of the Housing Commission legislation or is he merely going to get his right to claim compensation?

*By Mr. Byrnes.*—In practice would a blanket order be taken out without the Titles Office having knowledge of it?

*Mr. Wiseman.*—They are required to forward the *Government Gazette*.

*By Mr. McDonald.*—That is so, but there is nothing on any title to indicate a blanket order.

*Mr. Wiseman.*—That is so.

*By the Chairman.*—What you are putting comes back to the first point I made. If the amount paid to the vendor was equivalent to that received from the acquiring authority, a person would have no loss; but if the amount received from the acquiring authority was less than the sum paid to the vendor, there would be a direct loss arising from a breach of duty to lodge a caveat?

*Mr. McDonald.*—Yes. That is why the words after "may be" are required.

*Mr. Wiseman.*—I think you have converted me.

*Mr. Byrnes.*—I can see the force of the Chairman's argument. I think what he has set out is a definite fact.

*Mr. Wiseman.*—I think that is the correct analysis of it.

*Mr. McDonald.*—I think that is the reason why those further words should remain.

*Mr. Wiseman.*—Perhaps they could be drafted a little more widely.

*By Mr. Merrifield.*—The Lands Compensation Act provides for the process of notifying people of intention to acquire. Section 49 permits the vesting of the land in the Authority. We have the housing

question in mind. The Housing Authority proclaims a blanket order, but it is not necessary for it to proceed with the vesting subsequently; in fact, it sometimes releases a large area of the land. There is a distinction between the blanket order and the actual vesting, or resumption, or acquisition of the land. In clause 224 reference is made to any resumption or acquisition of land, but it seems to me that a blanket order might not actually fulfil the intention of those words.

*Mr. Wiseman.*—No, it does not, and it might be wise to add something further.

*By Mr. Reid.*—Is it clear what is meant when reference is made to the resumption or acquisition of land?

*Mr. Wiseman.*—I think we are clear as to what we understand by the use of the words "resumption or acquisition". That means resuming or acquiring a title to land.

*By Mr. Reid.*—That is hardly the point. At what point of time do you say resumption has taken place? Supposing there is a dispute about compensation and the matter has to go before some tribunal to decide the amount of compensation, at what time do you say that the resumption or acquisition has taken place? Is it when all the negotiations on fixing the price or the amount of compensation have been completed, or is it at the time when notice of resumption or acquisition is served on the owner?

*By Mr. McDonald.*—Would it not be the date at which it was vested in the authority?

*The Chairman.*—The Commonwealth clearly fixes it as the 1st of January, but with the Housing Commission I think it dates from the date of publication in the *Government Gazette*.

*By Mr. Merrifield.*—A blanket order could be maintained indefinitely over a piece of land without resumption taking place?

*Mr. McDonald.*—Yes, and not only under the Lands Compensation Act but also under the Town and Country Planning Act.

*By Mr. Byrnes.*—At Robinvale the Housing Commission took out a blanket order over the township and an interim order over a much larger area. That interim order would then bring certain transactions of land in that area under its provisions.

*Mr. Wiseman.*—That is one of the difficulties.

*By Mr. Byrnes.*—How would this clause apply in such a case?

*Mr. Wiseman.*—That is the point raised by Mr. Merrifield.

*By Mr. Byrnes.*—In that case there was a square mile of vineyards included, not in the township, and the man will not sell his vineyards.

*Mr. Wiseman.*—No one will buy them from him because of the existence of the interim order; that is the difficulty.

*By Mr. Byrnes.*—Would the Titles Office have any knowledge of that interim order?

*Mr. Wiseman.*—It should have, but that is what we are trying to effect by sub-clause (1)—to compel them to lodge a caveat.

*By Mr. McDonald.*—The Titles Office receives notice, but there is nothing on the title to indicate that the interim order is there. They can search the title, but it does not indicate the presence of a blanket or interim order. I think the words "any resumption or acquisition" must be widened.

*Mr. Wiseman.*—Yes.

*By Mr. Barry.*—Many acquisitions or resumptions of land are taking place, but the land is still standing as it was years ago when action was taken. People are

in this position, that they are paying rent to the acquiring authority, and that rent continues for years, but the acquiring authority has no hope of ever doing anything with the land.

*Mr. Wiseman.*—They are prevented from dealing with the land.

*Mr. Barry.*—It seems grossly unfair that an Authority can acquire something that it will not be able to do anything with for 50 years. Some authority might decide that a site should be acquired for a hospital; the Government's policy could change and the hospital would not go on to that site. The acquiring authority, however, is still collecting rent from the original owners and they would pay more in rent than they originally paid for the property. There should be a time limit.

*Mr. Wiseman.*—I think that is generally agreed.

*The Chairman.*—The Commonwealth has attempted to make provision for such an eventuality, in the first place for a claimant to make his claim in a certain time and, if he does not, the Minister is given the right to apply it.

*Mr. Barry.*—We do not know what the Commonwealth Government proposes to do with the land it has acquired in the city of Melbourne. A future Commonwealth Government might decide not to build Commonwealth offices on that site. That property has been taken from the owners and they are paying rent all the time.

*Mr. Merrifield.*—Insofar as any body uses section 49 of the Lands Compensation Act, there is no shadow of doubt that a caveat lodged straight away, accompanied by a proclamation in the *Government Gazette*, would clear that case right up and there would be no doubt about it. Doubt exists where blanket orders are maintained for some time prior to valuing and it is a question whether it is worth protecting their properties. The Housing Commission has blanketed areas with a view to acquiring, has subsequently built on wrong blocks, and has not discovered the error until later. That land is then resumed as if it has been included in the blanket order. It is possible that the land could have been sold under a contract of sale at a date between the period when the blanket order came into effect and the acquisition took place.

*Mr. Wiseman.*—So far as clause 224 is concerned it seems to me that the words "resumption or acquisition" should be widened to include cases of a blanket or interim order by any body.

*The Chairman.*—We had better make sure of the powers of the Housing Commission. The acquisition might date back to the blanket order.

*By Mr. McDonald.*—I think it does. The owner is tied from the date of the blanket order.

*Mr. Wiseman.*—That is so but it might never ultimately be resumed or acquired because the blanket order might be released.

*Mr. Bailey.*—That seems to do a great injustice.

*Mr. Merrifield.*—There should be an obligation on the authority to remove its caveat against areas which it does not eventually require.

*Mr. McDonald.*—That would be a matter to be dealt with in another Act.

*Mr. Wiseman.*—The Commissioner could remove the caveat if it no longer applied after notice.

*By Mr. McDonald.*—Would it be possible to get rid of the blanket order by getting rid of the caveat?

*Mr. Wiseman.*—If the blanket order were removed, then the Commissioner could remove the caveat.



*By Mr. McDonald.*—In the event of removing the blanket order, would you make it mandatory to remove the caveat?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—Does the Housing Commission incorporate the procedure of the Lands Compensation Act with regard to compensation?

*Mr. McDonald.*—Yes.

*The Chairman.*—I suggest that we should pass this clause and have a further look at it later.

*Mr. Wiseman.*—It is a fairly contentious clause.

*By Mr. Merrifield.*—The Housing Act was amended last year dealing with the powers of the Commission to re-number lots on a subdivision or, alternatively, to re-define the description on a particular title. The reason was that sometimes the Commission acquired a property and found one or two blocks had been built on in a particular subdivision. Possibly it was necessary to re-plan the whole subdivision. The description on the titles of the properties built was ante-dated and possibly required a new description order. The Commissioner would require power to call in those titles and issue new titles with new descriptions. Would it be necessary to bring that power into this Part?

*Mr. Wiseman.*—I shall make a note of it and investigate the matter further.

*By the Chairman.*—If this is to be a consolidation of all dealings in land it might be as well to include that provision in the consolidated Act?

*Mr. Wiseman.*—I think so, but the Commissioner did not mention it to me. Before leaving the clause, in sub-clause (1) the concluding words of the clause are “and any person sustaining loss . . . . . *Crown Remedies and Liabilities Act 1928.*” It is not intended that such claims for compensation shall be made against the assurance fund. I think that is reasonably clear.

*Mr. McDonald.*—I do not think it should be a claim against the assurance fund.

*Mr. Wiseman.*—The other position is that it may be said that the claim to compensation or damages would be in the nature of a claim for tort by reason of the failure or negligence to lodge a caveat. If that were so, there would be a difficulty in making a claim in tort against the Crown. For that reason those words were added. I do not know whether they commend themselves.

*By Mr. McDonald.*—What is the period of limitation under the Act?

*Mr. Wiseman.*—I think there is a limitation.

*By Mr. Merrifield.*—I thought it was assumed that either in this clause or in the clause dealing with housing, if losses were sustained in any way, apart from normal compensation losses resulting from the acquisition of land, there was power to make any claim for losses so sustained against the acquiring authority. I thought that was in the Act.

*Mr. Wiseman.*—Are you referring to the definition of “loss” which is referred to in sub-clause (13) of clause 301 (sub-clause read)? That is for a claim against the Registrar or against the assurance fund.

*By Mr. Merrifield.*—I thought there was a provision in the Bill making such losses a claim against the Authority and not against the assurance fund.

*Mr. Wiseman.*—Not under the Transfer of Land (Acquisition) Act, because I have repeated sections 2 to 7 of the Transfer of Land (Acquisition) Act.

*By Mr. Merrifield.*—There is a saving provision in clause 220 (3).

*Mr. Wiseman.*—Yes.

*Mr. Merrifield.*—Sub-clause (3) of clause 220 was apparently intended to apply to those cases.

*By Mr. McDonald.*—Clause 224 is all right if these words are used—“You shall be entitled to compensation or damages in respect of such land.”

*Mr. Wiseman.*—Yes. I think sub-clause (3) of clause 220 merely protects the right of a person on an alteration of the register book. In other words, if an alteration is made in the title, the person concerned is still entitled to his right to compensation. I think that is all right.

*Mr. McDonald.*—Before leaving sub-clause (1), I think we had better look into the question relating to limitation of actions.

*The Chairman.*—I do not recall that the Bill recently discussed made any provision relating to the Crown.

*Mr. Wiseman.*—Normally speaking, the Statute of Limitations does not run against the Crown.

*The Chairman.*—There does not appear to be any time limit so far as the Crown is concerned.

*Mr. Wiseman.*—It is in the nature of a petition that may be brought forward at any time.

*The Chairman.*—That is what I thought.

*By Mr. McDonald.*—The acquiring authority could be a municipality, for instance?

*Mr. Wiseman.*—Yes.

*By Mr. McDonald.*—If a statute is applicable to a municipality it may be said that a claim was lodged outside the statute?

*Mr. Wiseman.*—Perhaps this could be done, which would be a reasonable provision. Suppose it were provided in the Statute of Limitations, “at the time when a proprietor lodged a dealing,” or something of that sort to get a starting point?

*Mr. McDonald.*—Yes, otherwise a municipality might say that it had advertised the matter in the *Government Gazette* two years previously and it was required that five or seven days’ notice be given. In that case, a person would be left out in the cold.

*The Chairman.*—Seven days’ notice of what?

*Mr. McDonald.*—I am speaking as the law now stands. In the case of some municipalities, it is necessary to give notice within seven days.

*The Chairman.*—It would be possible to sit behind all sorts of things. A question might arise in regard to the railways, for instance.

*Mr. Barry.*—And the Hospitals Commission.

*The Chairman.*—I think we had better look into this further.

*Mr. Byrnes.*—It would be advisable, otherwise much trouble could arise.

*Mr. Wiseman.*—It would be desirable to make provision at some stage in this Bill to have these things noted on the title.

*Mr. McDonald.*—Yes. Under the Bill it will be mandatory for the Registrar to give notice of any one who attempts to lodge a caveat, but that was not the position formerly.

*Mr. Wiseman.*—Clause 232 is derived from section 184. Clause 232 is as follows:—

Upon the receipt of such caveat the Registrar shall notify the same to the person against whose application to be registered as proprietor or (as the case may be) to the proprietor against whose title to deal with the estate or interest such caveat has been lodged.

That would seem to imply an obligation to notify the person against whose application the caveat is lodged.

*Mr. Reid.*—There was some previous discussion on this point. I think some one said that it was not mandatory under the present law to give notice.

*Mr. McDonald.*—The length of time will run for a reasonable period after the giving of notice; that brings us back to the other section. Any one whose name appears on the register should receive that notice—not only the registered proprietor but also a mortgagee. There may be a claim back to clause 224, which was ousted. A mortgagee might say, “I did not receive notice; if I had been given notice, I would have taken action.”

*Mr. Wiseman.*—That is so. That might be a worthwhile amendment.

*Mr. McDonald.*—And any time that it has to run should run only from the time of the receipt of the notice, which would be a reasonable time after the Registrar had posted it.

*Mr. Wiseman.*—Yes.

*The Chairman.*—I think we had better postpone clause 224 until we look further into four points—the question of notice, limitation of action, the extent of the meaning of resumption or acquisition, and to whom and in what nature notices of caveats, if any, should be sent.

*Mr. Wiseman.*—I will ascertain what is the practice in the Titles Office concerning the giving of notices.

*The Chairman.*—It would be as well to do so. One method of simplifying it and of giving us a bird's eye view would be to ascertain what practice is followed by the Housing Commission.

*Mr. Barry.*—The legal officer dealing with that aspect of the Housing Commission's activities could explain the practice followed. Hospital authorities have done much in this respect. Much of the land is just lying, and probably will never be touched. The hospital authorities have given notice regarding an area of land in Carlton which it was proposed to use in connection with the Women's Hospital. I am afraid that some of the land will never be used.

*Mr. McDonald.*—The hospital authorities have no power to apply a blanket order, but only to acquire a specific property, whereas in other instances, the authority concerned would have power to impose a blanket order.

*Mr. Reid.*—The point to be considered from the point of view of this Bill is the intending purchaser who may not be aware of the notices.

*Mr. Wiseman.*—That is so; he is the person to be protected. Apart from that, the only alteration in Division 9 is the elimination of a former section—181—which is a very strange survival. It provided that—

Nothing contained in this Act shall enable any lessee of land under any grant to transfer or otherwise deal with such land contrary to the provisions of *The Amending Land Act 1865* or any subsequent Land Act affecting such grant.

That amending Land Act of 1865 was repealed by the Land Act of 1869. I think the only lease which could have been given under the Land Act of 1865 was a lease for seven years, or possibly 21 years. However, the legislation was long obsolete, and no interests have survived under the Act of 1865. For that reason it was thought desirable that it should be deleted. Inquiries were made from the Commissioner of Titles and he inquired from the Lands Department. In sub-clause (1) of clause 231 the words “of any kind whatsoever in land” have been added. There seems to have been some substitution.

*By the Chairman.*—The provision has been widened?

*Mr. Wiseman.*—That is so. Under the 1928 Act the only persons who could lodge a caveat were any beneficiaries or other persons claiming any estate or

interest in land or any lease, mortgage or charge. This provision has been widened to include any person claiming any estate or interest of any kind whatsoever.

*By the Chairman.*—Previously it was held that a person claiming under a restrictive covenant had no right. The additional words will cover that?

*Mr. Wiseman.*—In Victoria it was regarded that a person claiming under a restrictive covenant had an interest in land. In New Zealand it was decided that he did not have such an interest. There have been various alterations in clause 232. Under section 184 of the *Transfer of Land Act 1928*, there was a very cumbersome procedure for getting rid of caveats. It was necessary to issue a summons which was returnable before the Full Court. The Full Court would direct an issue to be tried; that issue would be tried, and then the case would go back to the Full Court for an order to be made. That procedure has been eliminated and a simple provision in clause 233 has been provided for the removal of caveats by action in Court or by proceedings in Chambers.

*The Chairman.*—That seems desirable.

*Mr. Wiseman.*—The words “or by a caveator pursuant to an agreement between the proprietor and the caveator in that behalf assented to in writing by the proprietor on such caveat” have been added in sub-clause (2) of clause 232. There are three classes of protected caveators; first, in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement; secondly, by the Registrar pursuant to the direction of the Commissioner; and, thirdly, by a caveator pursuant to an agreement between the proprietor and the caveator. That class has been added. The sub-clause provides that except in those three cases every caveat lodged shall be deemed to have lapsed upon the expiration of fourteen days of notice given unless in the meantime such application has been withdrawn or unless the caveator takes action under sub-clause (3).

*Mr. McDonald.*—The time of fourteen days is too short. It is perhaps all right for a Melbourne practitioner, but fourteen days is not sufficient for the country practitioner. If notice is posted in Melbourne on Monday it is Tuesday morning at the earliest—and in many parts of the country Wednesday—before it is received by the country practitioner, who then has to see his client and receive instructions. Before a barrister who can give his immediate attention to the matter is obtained, the period of fourteen days has elapsed. I cannot see any objection to that time being extended to 30 days. It is only to give reasonable time to handle it.

*The Chairman.*—There may be undue delay so far as the metropolis is concerned if the period were made 30 days.

*Mr. McDonald.*—I would not think so. I think a Melbourne practitioner would be glad to have time to get those things together. I would not think a time of 30 days would be unacceptable.

*By the Chairman.*—How often would such a case occur?

*Mr. McDonald.*—Very seldom, but when it does one is in difficulty. I do not think any hardship would be suffered by persons in Melbourne because of an extension of time.

*The Chairman.*—Perhaps the members of the Law Institute and also the representative of the Titles Office can be asked whether the time should be extended from fourteen to 30 days. It is more a matter of machinery than anything else.

*Mr. McDonald.*—Yes, that is so. Perhaps the Law Institute will seek the views of its country associations on the matter.



*Mr. Wiseman.*—I have already mentioned that clause 233 has been added. It is to provide a simplified procedure for the removal of caveats. In clause 234 I would like the phrase "or before a Judge" to be added after the words "to commence proceedings in court". The reason is that the normal procedure under the Bill is to enable these matters to be dealt with in Chambers.

*By Mr. McDonald.*—In regard to clause 232, you have made a note of the extension of the class of person to whom notice shall be given?

*Mr. Wiseman.*—Yes. Clause 235 is new, and it is considered to be necessary by reason of clause 240. Formerly, where a caveat lapsed it could not be renewed with respect to the same interest. Under this proposal, a caveat can be renewed, but the renewal will take effect only from the date of renewal. Now that a prior interest can be excluded if a caveat is not lodged to protect it, by reason of clause 240, it becomes desirable to enable a person who has an equitable interest which has been protected by caveat, which caveat has lapsed, to renew the caveat. The provision made is that the caveat may be renewed, but will be subject to the rights protected by any caveat lodged in the meantime. In other words, if a person has allowed his caveat to lapse, and somebody else comes in and lodges a caveat to protect his later interest, that interest will take priority over the interest protected by the lapsed and relodged caveat.

*By the Chairman.*—It will operate from the date of lodging?

*Mr. Wiseman.*—Yes.

*By Mr. McDonald.*—If there are three caveats and the first caveator allows his caveat to lapse and then subsequently renews it, what is the position? It obtains priority over any caveats lodged after his has lapsed, but does it obtain priority over the two already there?

*Mr. Wiseman.*—Yes. His has gone; it is off the register book.

*Mr. Merrifield.*—It does not date until the renewal.

*By Mr. McDonald.*—Why renew the caveat, why not lodge a new one?

*Mr. Oldham.*—Perhaps it would be simpler to renew it than to draw up a completely new document.

*Mr. McDonald.*—It has the effect of a new caveat, because on renewal it does not get any priority anywhere.

*Mr. Wiseman.*—No.

*By Mr. Reid.*—I am not clear as to what is meant by renewing a caveat. By "renewing" do you mean a caveat lodged on the same equitable interest as previously?

*Mr. Wiseman.*—Yes.

*The Chairman.*—That could not be done formerly. Once a caveat lapsed you could not then lodge a caveat to claim on the same interest.

*Mr. Reid.*—It is not exactly a question of the renewal of a caveat. What is wanted is another form for the lodging of a caveat claiming on the former estate or interest.

*Mr. Wiseman.*—I do not think it matters what you call it.

*By Mr. McDonald.*—In the case of an ordinary purchaser, where a caveat lapses is there anything to stop the caveator lodging another caveat as an ordinary purchaser the day after it lapses?

*Mr. Wiseman.*—Yes, now they will not accept it if it has lapsed and is by the same person to protect the same interest.

*By Mr. Reid.*—Is that so? I think I know of cases where that has been done.

*The Chairman.*—That is contained in section 184 of the 1928 Act.

*Mr. Wiseman.*—Section 184 provides that a caveat shall not be renewed by or on behalf of the same person in respect of the same interest. That is where the word "renewal" came from. That provision has been deleted and clause 235 has been substituted. I do not think it matters how it is described.

*By the Chairman.*—I suppose the legislature had in mind the fact that a person was given the opportunity of lodging a caveat to protect his interests, and if the caveat was spent they treated that matter as being determined. If that person desired to put in another caveat, he had to show that he was protecting a different interest.

*Mr. Wiseman.*—Yes, that was the position.

*By Mr. Thomas.*—If a caveat expired on the 31st of January, 1949, and on the 1st of January, 1950, I wished to renew it, and added certain words, that would not be an actual renewal because of those additional words?

*Mr. Wiseman.*—The question would be whether it was by the same person and to protect the same interest. Those are the conditions.

*By Mr. Thomas.*—It is not permitted so long as the new conditions protect the same interest?

*Mr. Wiseman.*—Yes, and lodged by the same person. Under those conditions the renewal of a caveat is not permitted.

*Mr. Thomas.*—Is there any penalty attached to the expiration of a caveat?

*Mr. Wiseman.*—No, there is no penalty at all. At present a caveat is a mere notification to the Registrar not to register a dealing without notice to the caveator, so that he may assert his right. Under the Bill it goes further, and is notice to everybody of the rights held by the caveator, and whether you search or do not search you are deemed to have notice of it if the caveat is lodged.

*(The Committee adjourned.)*

WEDNESDAY, 24TH AUGUST, 1949.

*Members Present:*

The Hon. A. M. Fraser in the Chair;

<i>Council.</i>	<i>Assembly.</i>
The Hon. P. T. Byrnes,	Mr. Bailey,
The Hon. A. E. McDonald,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Merrifield,
	Mr. Oldham.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*Mr. Wiseman.*—Clause 236 is the next for consideration. The following words have been added—"provided always that no instrument presented for registration shall be in any way affected by any caveat lodged at a time later than the presentation of such instrument." There is a rather curious history regarding this provision. It was always considered that a caveat would not affect a dealing which had been lodged prior to the lodging of the caveat. In other words, it was considered that you had to get the caveat in before the dealing in order to prevent the dealing from being registered. That was the view of the legal profession and of the Titles Office I think from time immemorial. An application was recently made to the Court and the point was raised that a caveat which was lodged ten minutes

after a dealing should have stopped the dealing from being registered. The applicant appealed to the Full Court and the Full Court said it had always understood that that was the effect of the Act but it had never been able to understand how that conclusion was reached. The Court's opinion was so strong, though it gave no decision on the point, that it was considered desirable to add the proviso in order to define the position which had always been acted upon and considered to exist.

*By Mr. Thomas.*—To what extent can the dealings take place, in addition to the caveat?

*Mr. Wiseman.*—Dealings can take place at any time, but if a caveat has been lodged to protect an interest the dealing will be subject to the interest protected by the caveat.

*The Chairman.*—The time of lodgment is the important consideration, not the time of registration. If this position were not adopted I think we would have a chaotic condition in the caveat room in the Titles Office. They would be chasing around to find the dealings.

*Mr. Merrifield.*—Suppose a transfer was lodged. I heard of a case in Oakleigh. A woman was supposed to have paid for a property over the years with her own money but it was in her husband's name. He left her to go with another woman. She remained in the house, and he sold the house over her head. She is supposed to be lodging a caveat to stop the transfer, but it would be of no value.

*Mr. Wiseman.*—The caveat would have to be lodged ahead of the transfer in order to protect that interest. The remedy in that case is simple. You would have to issue a writ and go *ex parte* to the Judge in the Practice Court for an interim injunction to stop the registration, and you would have to serve that on the Commissioner. That would stay the registration of the dealing until the rights of the parties were decided. Those are comparatively rare occurrences. Up to the present time they have been dealt with satisfactorily in that manner. It was considered desirable to define the effectiveness of a caveat. There is a provision earlier in the Bill (clause 79) which says that registration shall date back to the time of lodgment.

*The Chairman.*—Otherwise when lodging the caveat you would have to search to see if the dealing was lodged, what Department it was in, and how far it had progressed towards registration.

*Mr. Wiseman.*—The next clause, No. 240, is perhaps the most important of the new clauses in this Bill. The effect is to create a definite change in the administration and operation of the Act. It deals with the priority of unregistered interests. Formerly an equity, that is an unregistered interest, would normally obtain priority in accordance with the date of its creation, so that the first equity gets the priority and the second and third in their order of creation. There was a qualification to that in this way, that if after the owner of a prior equity had acted, or had omitted to act, in such a way as to mislead the person who obtained the later equity the earlier equity might be lost by reason of such action or omission. A good deal of uncertainty was left, therefore, with regard to the extent of equities and also as to their priorities; and it was thought those difficulties, which were considerable, could be overcome by the enactment of clause 240. The effect of that clause is that equities will in future be determined in accordance with the times in which a caveat is lodged to protect them. Formerly, when there have been two equities created, the first one in time would prevail over the second. Under clause 240, their priority will depend upon the time in which the caveat is lodged to protect the

equity, so that it would be possible for the second equity to obtain precedence over the earlier equity by reason of the second being protected by a caveat lodged before a caveat is lodged to protect the first equity, with the exception of the four matters mentioned in clause 240.

*The Chairman.*—It is consonant with the general idea of the legislation. If a person has some interest and desires to protect it, he takes the caveat to the Titles Office and, save those blots which may appear on the title as disclosed by the search, he is then first in time. That is to say, subject to the four matters to which the provision relates, he is first in time and obtains priority over everything else.

*Mr. McDonald.*—In other words, the person knows where he is, owing to the search of the title. I am rather concerned about sub-clause (3).

*Mr. Wiseman.*—I was about to refer to sub-clause (3). Yesterday I described it as being the complement to the latter part of sub-clause (1) of clause 224. Members of the Committee will recall a discussion on the question of a person sustaining loss by reason of the failure of the officer in charge of the Department to lodge a caveat to protect an interest or charge. Sub-clause (3) of clause 240 was included because it was said "You will not get clause 224 through as it stands." My own view is that sub-clause (3) of clause 240 should be omitted, and I know that the Law Institute is strongly of that opinion. Although I was informed that there would be no hope of having clause 224 agreed to as it stands, I thought that rather than sacrifice the whole thing it would be better to suggest a compromise of the description indicated, although one might heartily disapprove of it in principle.

*By Mr. McDonald.*—Is not the objective of clause 240 defeated by sub-clause (3)?

*Mr. Wiseman.*—Yes. If I could recommend that sub-clause (3) be deleted, I would desire to do so.

*The Chairman.*—I do not know about that.

*Mr. McDonald.*—The effect of clause 224—caveat to be lodged on resumption of land by Crown or Government Departments—is to make it mandatory to lodge caveats.

*The Chairman.*—If any loss is occasioned by the failure of the statutory authority to lodge a caveat, a certain right is given.

*Mr. McDonald.*—That is so.

*Mr. Wiseman.*—The point arising from sub-clause (3) is that the "right" is affected by it. The effect of sub-clause (3) and clause 224 is that one loses the right but obtains a right to compensation.

*By Mr. McDonald.*—May not the effect of sub-clause (3) be that one loses one's right to compensation?

*The Chairman.*—No. Loss or damage would still be provided for.

*Mr. McDonald.*—The clause affects any right. The circumstances may be that a caveat has not been lodged and liability to loss or damage arises. That position may be affected by sub-clause (3).

*Mr. Merrifield.*—The main discussion yesterday was on the question of caveats protecting land.

*Mr. Wiseman.*—Although I drafted the sub-clause in question and inserted it in the Bill, it is entirely against the opinion of the profession as a whole.

*By Mr. McDonald.*—And against the spirit of the legislation?

*Mr. Wiseman.*—Yes. I included the sub-clause because of a feeling of compulsion, to save what might be an attack upon the general principle of the Bill. As I have already said, my recommendation is for deletion.

*By Mr. Bailey.*—This means that if the officer neglects to put in a caveat he is nevertheless protected?

*Mr. Wiseman.*—A right over the land is obtained—either a title to the freehold or, it may be, a charge.

*By The Chairman.*—May not sub-clause (3) be necessary from one point of view? It is true that under clause 224 an acquiring authority has the obligation to lodge a caveat. On the failure of the officer of the acquiring authority to lodge that caveat, thus occasioning loss or damage to a third party, that loss or damage can be recovered from the Crown or the statutory authority. The basis of clause 240 is that unless a caveat is lodged, one's interests have disappeared—except in a case of fraud. An acquiring authority may forget to lodge a caveat and not desire to be caught under clause 240 by saying that its interests have disappeared, except that under that clause the title is made paramount subject to the lodging of a caveat.

*By Mr. McDonald.*—Do the interests of an acquiring authority disappear under clause 240?

*The Chairman.*—Yes.

*Mr. Wiseman.*—The person who acquires the land without notice of a charge would, because no caveat was registered, take the land free from the charge.

*The Chairman.*—I think that is the idea.

*Mr. Wiseman.*—That was the idea in including sub-clause (3).

*The Chairman.*—As there is a difference of opinion on the matter, perhaps Mr. Wiseman will take a note of the views expressed.

*Mr. Wiseman.*—It is subject to further consideration.

*By Mr. Merrifield.*—At what period would the determination of the loss be assessed—at the lodging of the caveat or the proclamation under the Act?

*Mr. Wiseman.*—At neither. It would be the time when a person acted on the faith of the register. When a dealing is in progress the person concerned searches the register and sees a clear title. Suppose there is a charge under the Fences Act, and no caveat has been lodged to protect that charge. When the person pays over his money he has paid for a clear title and—depending on the passage of the clause into law—the loss will arise at the time when the purchaser actually pays his money.

*Mr. McDonald.*—Although he thinks he gets a clear title he will not in fact get one if sub-clause (3) remains.

*The Chairman.*—He may still have an action not only against the Crown or a statutory authority but against the vendor—if he requisitions.

*Mr. Wiseman.*—Yes, if he requisitions. There may be requisitions for all charges by statutory authorities under the Act.

*Mr. McDonald.*—It is the practice but, personally, I disagree with it. If notice is given, there is not a requisition.

*Mr. Wiseman.*—We see the real picture, I think, when we take clause 224 and sub-clause (3) of clause 240 together. The position now is that if no caveat is lodged, a public authority has its rights preserved under sub-clause (3) of clause 240, and will have to pay compensation under sub-clause (1) of clause 224.

*By The Chairman.*—Sub-clause (3) of clause 240 could hold up a planning scheme through the failure of the clerk of an authority to lodge a caveat; some other person might have an over-riding interest under sub-clause (1) of clause 224. Should we not further consider this matter?

*Mr. Wiseman.*—There are two positions to be considered—the position of an acquiring authority and the position of an authority acquiring a charge. They are different. If an authority acquires freehold land, the right to the land is translated into a right to a sum of money. The person entitled to the land has the right to a sum of money. I do not think that position is as difficult as that of a charge, as a charge cannot be got rid of in the same way, being something subtracted from the freehold. I suggest that those two matters require separate consideration.

*By The Chairman.*—Sub-clause (3) is to protect the charge?

*Mr. Wiseman.*—That is the reason for its inclusion.

*By Mr. McDonald.*—Why should not public authorities with a right to charge register their charges? At present there may not be a land tax charge on land—although a considerable amount may be owing for tax—unless the taxing authority registers a charge. Is not this the simple answer—all persons with charging powers should register a charge?

*Mr. Wiseman.*—I appreciate that suggestion. The difficulty I felt was that charges are imposed by separate statutes. When money is owing for a certain public purpose, the statute imposes what is sometimes called a first charge; there may be different first charges on land.

*By Mr. McDonald.*—Is not this an opportune time to consider the matter of statutory charges generally?

*Mr. Wiseman.*—That was beyond my scope.

*Mr. McDonald.*—This Committee has certain powers, and possibly we could consider this point with a view to making recommendations to the Attorney-General.

*The Chairman.*—Doubtless, charges under the Closer Settlement Act and the Cultivation Advances Acts are made by the Lands Department. I presume that charges under the Fences Act would be matters between individuals.

*Mr. McDonald.*—Those charges are made on orders of the Court of Petty Sessions.

*The Chairman.*—Charges under the Fruit and Vegetables Act would be made by the Department of Agriculture, and under the Unemployed Occupiers and Farmers Relief Act, by the Premier's Department. What about the Wire Netting Act?

*Mr. Byrnes.*—Those charges are made by the Lands Department.

*The Chairman.*—Do public authorities know about this proposal?

*Mr. Oldham.*—They have not been notified.

*Mr. Barry.*—What have charges to do with this particular Act?

*The Chairman.*—They have a lot to do with it. If a caveat is not lodged, one may find on paying money for a purchase, that there is a liability outstanding under the Wire Netting Act, or some other statute.

*Mr. Bailey.*—The notification of the proposed amendment would not mean that Departments would waive their rights.

*Mr. Oldham.*—This matter raises an important question from the point of view of public convenience. Possibly authorities ought to register claims with the Titles Office so that no-one can be caught. At the present time, solicitors have to search many places to protect all interests. Public authorities complain that they may lose some of their rights, but, for example, if a clerk in the Lands Department failed to lodge notice of a departmental claim, that would be too bad from the point of view of the Department. It is onerous to continue the need for searches to be made

in half a dozen different places. The notice would not need to specify the amount but if the position were known, further inquiries could be made.

*Mr. Bailey.*—If it is to be mandatory for an authority to lodge a caveat, it should also be mandatory for it to release the caveat when the charge has been met.

*Mr. Oldham.*—I agree with the suggestion.

*Mr. McDonald.*—If one wishes to enforce a statutory charge, it should appear on the title.

*Mr. Bailey.*—I agree, so long as it is deleted later on.

*Mr. Oldham.*—This question was previously discussed, and the attitude then adopted was, "We must ensure that public revenue is not adversely affected". Personally, I do not consider the public authorities should be placed in a position different from the State Savings Bank or anyone else dealing with mortgages.

*By the Chairman.*—When a charge is made under the Fences Act, has the order of the Court of Petty Sessions to be registered? This matter should be submitted to the Law Institute and to interested public authorities. The latter may have arguments that outweigh the views of the legal profession. My attention has been directed to sub-section (2) of section 25 of the Fences Act. A person served with notice requiring him to contribute towards the cost of a vermin-proof fence remains liable upon the construction of the work. The amount becomes a charge upon the land, and the owner of the land is chargeable with interest at the rate of 6 per cent. until the amount is paid. The sub-section provides that it shall become and shall remain a charge upon the land.

*Mr. Wiseman.*—In clause 243, which deals with attestation of instruments and powers of attorney, certain words have been added in two places. Those added words are "not being a party to the instrument" in sub-clause (1) and the same words in sub-clause (2).

*By Mr. Oldham.*—Have you taken into consideration the *Evidence Act* 1941 in which we greatly widened the number of people who can attest and take declarations in respect of any document required by a Victorian State authority? That Act applies to the Transfer of Land Act.

*Mr. Wiseman.*—The Bill copies the old Act.

*By Mr. McDonald.*—Why do we want to limit the classes of people who can witness certain documents? Why say A. B. and C. may witness this document but not D. E. or F., when actually D. E. or F. might be a more competent person?

*Mr. Oldham.*—The *Evidence Act* 1941 is "An Act relating to the taking and receiving of certain declarations in public offices and departments." It may be that it includes all the persons mentioned in the clause.

*Mr. McDonald.*—Let us assume that I have a transfer document which needs signing by Mrs. Byrnes of Swan Hill. Assume that her husband is not a Justice of the Peace, as in fact he is, then she would have to run around Swan Hill district to find a person within this qualification before she could sign the document. Her husband is a more responsible person than a justice of the peace.

*Mr. Oldham.*—I have often witnessed documents for my own family.

*By Mr. McDonald.*—That is all right in your case because you are a qualified witness. Why cannot any person witness a land transfer? Any person can witness a Will or any document under the old law.

*Mr. Wiseman.*—The only reason I can assume is that the people in the Titles Office require some further assurance as to signature.

*The Chairman.*—In the case of a Will there must be two witnesses who must be present at the same time.

*Mr. Wiseman.*—In the case of a Will the testator is dead when the Will comes into operation, and the witnesses may be dead also.

*Mr. Bailey.*—I think a witness ought to be a person of some standing. Suppose some one forged a signature to a transfer and got a derelict to witness it.

*Mr. Barry.*—I am in favour of being a little more democratic about it but I realize that some people might witness their own signatures by signing some other person's signature.

*Mr. McDonald.*—They could do that now by signing themselves "A. B." and the witness "C. D., J.P." A town clerk or a shire secretary is a qualified witness, but why not a shire engineer or an assistant town clerk?

*The Chairman.*—I was going to suggest that under paragraph (k) the Governor in Council could extend the provision.

*Mr. McDonald.*—That could only be for an individual.

*Mr. Oldham.*—Various people are in the list while others who would appear to be as suitable are not there. I think the Bill should go at least as far as the Evidence Act plus provision to cover any person authorized by the Governor in Council.

*The Chairman.*—I think we should take steps to ascertain the views of the Titles Office regarding requirements in Victoria.

*By Mr. Oldham.*—What about outside Victoria?

*Mr. McDonald.*—I agree that some further safeguard is needed outside Victoria.

*The Chairman.*—The clause deals with powers of attorney also, and there the witness must be a person of standing.

*Mr. McDonald.*—Powers of attorney outside Victoria and witnessed in Victoria can be witnessed only by a notary.

*By Mr. Oldham.*—Is not that required under the Instruments Act?

*Mr. Wiseman.*—I think it is.

*Mr. Barry.*—Sub-clause (4) provides that certain witnesses cannot charge a fee. The assumption from that would be that all other witnesses can do so.

*The Chairman.*—I would not say that a town clerk could charge a fee but I would think that a solicitor or notary could do so. I would not think any one else could.

*By Mr. Oldham.*—Does not the statement that a justice of the peace must not charge mean that any one else may charge?

*Mr. Wiseman.*—By implication it may mean that.

*Mr. Oldham.*—As far as I can see a Commissioner for taking affidavits and a Commissioner of the Supreme Court can charge. I am a Commissioner of the Supreme Court and I have an idea that I must not witness a document for nothing and must not charge more than once.

*The Chairman.*—I do not see why the secretary of a building society should obtain a fee.

*Mr. Wiseman.*—I agree. The provision ought to be re-drafted. The next clause for consideration is clause 265.

*By the Chairman.*—I presume that there is no point arising from Part X—Registration Abstracts, Search Certificates and Stay Orders?

*Mr. Wiseman.*—That is so. Clause 265 is a new provision suggested by the Commissioner. In connection with amendments of plans of sub-divisions certain technical difficulties were discovered in the Titles Office.

*By Mr. Merrifield.*—May I refer to clause 251? That provides that an instrument effecting a proposed dealing shall be entitled to priority if lodged within 48 hours. I think the Law Institute suggested a period of seven days.

*Mr. Wiseman.*—That matter, which relates to stay orders, is one for consideration by the Committee. It is suggested that the period of 48 hours, during which the stay order operates, is too short; that may very well be so. Under clause 250 a person proposing to deal with a proprietor may obtain stay of registration for 48 hours if the title is clear. Under sub-clause (1) of clause 250 a stay of registration may be asked for and sub-clause (2) sets out that if the result of the search shows that the proprietor is free to deal, the registrar shall on payment of the fee on that behalf provided, sign an order in the form mentioned in the twenty-first schedule, staying registration of any instrument affecting the land to be comprised in the proposed dealing for 48 hours from the time mentioned in the search certificate. It has been suggested that the period of 48 hours is too short.

*By the Chairman.*—Suppose I ask another person, "Will you, in effect, give an option—the right to a period of 48 hours during which a stay of registration will be operative?" What is the position?

*Mr. Wiseman.*—An application is made for a search certificate and a stay of registration; that is to say, the Titles Office is asked for information as to the state of a title. At the same time, an application is made for a stay order—in other words, the Titles Office is asked to stay the registration of any other dealing until the expiration of 48 hours from the time mentioned in the search certificate.

*By the Chairman.*—Is not this the point: I am proposing to purchase a property and I say to the vendor, "Will you give me consent for 48 hours?"

*Mr. Wiseman.*—No.

*By the Chairman.*—Do you suggest that I can ask for an abstract of a title and can be given 48 hours for the purpose?

*Mr. Wiseman.*—I think that is the position.

*The Chairman.*—Sub-clause (1) of clause 250 provides, *inter alia*—

Any person proposing to deal for value with a proprietor may, with the consent in writing of such proprietor or his agent authorized in writing . . . lodge with the application for search certificate an application for stay of registration. . . .

I think it would be revolutionary if I could attend at the Titles Office and say "I am proposing to buy land from Mr. Barry. Please give me particulars"; and the Titles Office to intimate, "You have 48 hours. This is a stay order and Mr. Barry cannot do anything with his property in the meantime." If the period of 48 hours were not long enough a similar application could be made for a second and possibly a third time.

*Mr. Wiseman.*—The question is whether the period of 48 hours is sufficient. Apparently the Law Institute holds certain views on the matter.

*The Chairman.*—I would have no objection if the provision referred to "any period not exceeding" a specified time. Then a proprietor could consent to 48 hours, 96 hours, or a longer period, as the case might be.

*Mr. Thomas.*—The question seems to turn on when the request is made to the Titles Office in respect of a period of 48 hours.

*The Chairman.*—It operates from the time mentioned in the document obtained from the Titles Office.

*By Mr. Bailey.*—Is it not from the time an abstract of title is taken?

*Mr. Wiseman.*—The period of 48 hours would begin from the time named in the search certificate. See Schedule twenty-one.

*By Mr. Bailey.*—That means a search certificate of the dealings on the title?

*Mr. Wiseman.*—That is so, but it includes matters known to the Registrar but not appearing on the certificates.

*By Mr. Bailey.*—The period would be short. When requiring a search for an abstract of title, country solicitors employ an agent in Melbourne who makes the abstract and has to forward it to the solicitors. In the meantime, some other dealings may have arisen?

*Mr. Wiseman.*—That could happen. I should think that the period is rather short.

*Mr. Barry.*—I do not think that seven days, with the consent of the proprietor, would be excessive.

*Mr. Wiseman.*—If the words "not exceeding" are used, the Registrar could fix the period.

*By Mr. Bailey.*—Mr. Wiseman will appreciate that dealings in the country may take longer than dealings in Melbourne?

*Mr. Wiseman.*—I thought the period of 48 hours was too short.

*By Mr. Thomas.*—Does not the consent become effective from the time of the payment of the fee?

*Mr. Wiseman.*—No; from the time named in the search certificate.

*The Chairman.*—If the document is lodged within the 48 hours it has priority over every other document. In a letter dated the 4th of August, the Law Institute recommends that a period of seven days be substituted for the period of 48 hours. In that case, there is no difficulty in effecting the desired alteration.

*By Mr. Merrifield.*—With reference to clause 243, I notice that "Ireland" has been altered to "Northern Ireland," owing to the changed status of Eire. What about India, in respect of which there has been a change of status recently?

*Mr. Wiseman.*—I do not think that India was mentioned.

*By Mr. Merrifield.*—I suggest that India could not now be considered a British possession. The provision in question is intended to apply to all other parties in the British Commonwealth of nations, and the expression "British possession" is used.

*The Chairman.*—Mr. Wiseman discussed that point with me in chambers.

*Mr. Wiseman.*—That is so. Northern Ireland was settled satisfactorily but I do not think India came into the picture at that stage. There is nothing new in clause 255, which provides that the Commissioner may disregard errors of dimensions which do not exceed those mentioned in Part VII. of the Property Law Act.

*Mr. Merrifield.*—As far as I can see, that clause relates to old standards of accuracy. I think the provision is for two inches in 132 feet and afterwards one part in 500. Those margins of errors can be based only on certificate.

*Mr. Wiseman.*—I have no comments to make regarding the clause in question.

*The Committee adjourned.*

FRIDAY, 26TH AUGUST, 1949.

*Members Present:*

Mr. Oldham in the Chair;

<i>Council.</i>	<i>Assembly.</i>
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. A. E. McDonald,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Merrifield,
	Mr. Reid,
	Mr. Schilling.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*Mr. Wiseman.*—The Committee has now reached the consideration of Part XI., regarding which I have nothing to say up to clause 265. That clause was suggested by the Commissioner for the purpose of enabling him to adopt alterations in a plan of subdivision when they had been approved by the council of a municipality.

*By Mr. Merrifield.*—Does this clause mean that a plan of sub-division may be amended after having been finally approved previously, or amended during the process of dealing?

*Mr. Wiseman.*—I think it means that when a plan has been finally approved and it has been found that alterations can advantageously be made in it, they should be permitted. The clause is intended to facilitate proof in those circumstances. I think I can express the proposition in this way: On application to amend a deposited plan by excising a road or drain, the Titles Office practice requires the consent of lot-holders and the surrender of any express easement. It is difficult for the Office to say what is necessary for reasonable enjoyment of the lot, and it is considered that if the local municipal authority consents to the amendment it should suffice in regard to implied easements, provided that the Commissioner approves. Consequently, the purpose of the clause is to facilitate proof in the Titles Office in cases in which municipalities have said in effect, "The alterations will not interfere with such matters as drainage."

*By Mr. Bailey.*—Has not the application first to be made by the person lodging the plan?

*Mr. Wiseman.*—The application would be made by the person lodging the plan. As I have already indicated, the alteration in question was suggested by the Commissioner.

*By Mr. Merrifield.*—The position does not seem to be altogether clear. Suppose a plan of sub-division has been lodged and approved and that contracts of sale have been entered into and even transfers affected out of that plan of sub-division, is it still possible to amend the plan?

*Mr. Wiseman.*—I understand so.

*Mr. Merrifield.*—In that event a wider sphere is opened for consideration.

*Mr. Bailey.*—Surely a plan could not be amended any time after acceptance.

*Mr. Wiseman.*—It may be well to consider clause 263, sub-clause (1) of which refers to the lodgment of a plan; sub-clause (2) prescribes what is to be set out in the plan and sub-clause (3) lays it down that the plan shall be made and certified by a licensed surveyor. Sub-clause (4) provides that the Registrar is not to accept a plan unless he is satisfied that section 568 of the *Local Government Act 1946* has been complied with. I understood that the Commissioner desired requisite power to be given in the legislation, and I did not concern myself much about the effect of it. I rather relied on what I gathered his view was. Perhaps it will save the time of this Committee if the Commissioner were consulted on the matter.

*Mr. Merrifield.*—Further consideration of the clause as a whole can be postponed.

*Mr. Wiseman.*—It is possible that greater definition is required. As to Part XII., clause 268 represents an addition. It was considered that the powers of rectification of certificates of title were not satisfactory, and it was thought by adding clause 268 rectification would be facilitated as well as clarification of the position as to rectification of certificates. I emphasize that the provision is not by way of a substitution for any other clause. Formerly, clauses 269 and 270 constituted the main provision dealing with rectification. Clause 269 provides that the proprietor may apply for an amendment of a certificate to make the boundaries of his land coincide with land occupied under the certificate, and clause 270 enables a proprietor to apply for amendment of certificates of adjoining land. Clause 268 sets out six cases in which a certificate may be rectified. Formerly the Court was not given any express power to rectify certificates; it appears that the Registrar was the only person given that power, as will be shown by reference to the form of application in the 23rd Schedule—the application is addressed to the Registrar of Titles. Paragraph (a) of sub-clause (1) of clause 268 provides that the register book may be rectified on an order of the Court, or by the Registrar, or on the direction of the Commissioner—

(a) Where the Court has decided that any person is entitled to any estate, right or interest in or to any land, lease, mortgage or charge, and as a consequence of such decision such court is of opinion that a rectification of the register book is required, and makes an order to that effect.

The second case is described in paragraph (b) as follows—

(b) Where the Court, on the application in the prescribed manner of any person who is aggrieved by any entry made in, or by the omission of any entry from, the register book, makes an order for the rectification of the register book.

Those are the two cases in which the Court may make an order.

*By Mr. Merrifield.*—Does that mean that the person applying to the Court would have had to lodge a caveat previously or could come in subsequently and make an application?

*Mr. Wiseman.*—He can make an application to the Court based on the certificate as it stands at the time of that application. If a caveat is lodged, that would protect the interest referred to therein.

*By Mr. Merrifield.*—That is up to the stage at which the Commissioner issues a direction one way or the other, but could not the Court follow on and, in effect, order a re-trial on appeal?

*Mr. Wiseman.*—I do not think a caveat would come into the question of rectification; the rectification is of the register book. Possibly a right protected by the caveat might be considered under paragraph (a) but the Court would take the title as presented to it and



make an order on that. The two paragraphs I have read merely empower the Court to make an order on the facts brought before it. Paragraph (c) enables a rectification to be made by the consent of all persons interested. Paragraph (d) relates to a case in which the Court or the Commissioner is satisfied that any entry in the register book has been obtained by fraud; and paragraph (e), to cases in which two or more persons are, by mistake, registered as proprietors of the same estate or interest. The sixth ground is outlined in paragraph (f) as follows—

In any other case where, by reason of any error or omission in the register book, or by reason of any entry made under a mistake, it may be deemed just to rectify the register book.

I think the Commissioner and the Registrar would have to be satisfied on the question whether it was just to rectify the register book. Sub-clause (2) sets out that the Registrar shall make appropriate entries in the register book on being served with the order or an official copy thereof. Sub-clause (3) is consequential.

*Mr. Merrifield.*—It is conceivable that a description may become the subject of dispute.

*Mr. Wiseman.*—The parties interested might agree that the description is inaccurate. Does Mr. Merrifield desire clause 271 to apply in that event?

*By Mr. Merrifield.*—Should not clause 271 apply to clause 268 so far as definition of title is the subject of dispute, as it does already to clauses 269 and 270?

*Mr. Wiseman.*—I think it will be found that there is sufficient power under clause 268. Under sub-clause (2) the Registrar has to make appropriate entries.

*By Mr. Merrifield.*—Suppose there is an appeal to the Court, on what basis will it determine the matter if it has not a plan of survey?

*Mr. Wiseman.*—If the Court requires a plan of survey it will direct accordingly and would not make an order unless such a plan were provided.

*By Mr. Merrifield.*—Suppose that under clause 268 there arose a case regarding a question of description, paragraph (e) of clause 271 ought to apply as much to clause 268 as to clauses 269 and 270?

*By Mr. Schilling.*—Would not the Court or the Registrar call for a certificate if one was needed?

*Mr. Wiseman.*—Yes. The suggestion does not seem to me to be necessary in the circumstances contemplated in paragraphs (a) to (f).

*By Mr. Fraser.*—Is not clause 268 directed to rectification as to *quantum* of interests whereas clause 271 deals with procedure by the Commissioner where there may be some discrepancy as to boundaries?

*Mr. Wiseman.*—I do not think that necessarily follows. It may be that the description of the land is not accurate and there may be a rectification. If the Committee desires to include reference to clause 268, I do not think it will matter.

*By Mr. Fraser.*—But how will that square up with an application to the Court?

*By Mr. Merrifield.*—Clauses 269 and 270 are procedural where the Titles Office determines a matter. Clause 268 brings in the Court, with an appeal against a direction of the Commissioner, or for any other reason. If plans and surveys are required for an alteration of the description under clauses 269 and 270, why should not plans and surveys be required under clause 268?

*Mr. Fraser.*—The Court may require plans of subdivision and that will depend upon the evidence. Surveys are not excluded.

*Mr. Merrifield.*—We should provide that the survey shall be carried out by a licensed surveyor.

*Mr. Fraser.*—Under clause 269 there could be a case in which the parties had surveys made.

*Mr. Schilling.*—But why insist upon a survey? The matter will be in the hands of the Court or of the Commissioner.

*Mr. McDonald.*—If the Court wanted a survey made, it would ask for that to be done.

*By Mr. Schilling.*—I am wondering whether the word “shall” should apply to paragraph (e) of clause 271? We should try to cut out expense. Why should a person making an application necessarily have to submit a survey? I suggest that the words “if required” be added.

*Mr. Wiseman.*—You suggest the addition of the words “if required” to paragraph (d)?

*Mr. Schilling.*—Yes.

*Mr. McDonald.*—I think that is a necessary addition.

*Mr. Merrifield.*—I think we should hear the comments of the Commissioner on this matter. In the letter from the Law Institute of the 4th of August, there appears the following reference to clause 272 in paragraph (3)—

by inserting after section 272 the following new section 272A: “The Registrar shall on the application in writing of any proprietor or his solicitor or agent and upon payment of the prescribed fee (such fee not to exceed the sum of £1) give written notice to such proprietor as to whether the boundaries area and position of the land being the subject of the application have been accurately delineated on any plan of survey already lodged or deposited at the Office of Titles.”

That relates to the previous application of the Institute about surveys already in existence and plans being based on them. The Committee agreed to adjourn the discussion of that matter.

*Mr. Wiseman.*—The question was whether the matters referred to by the Law Institute would not be more appropriately dealt with under the rules and that question will be considered.

Clause 279 relates to the powers of the Commissioner to compel the production of documents. Formerly, sub-clause (4) provided—

If the information or document withheld appears to the Commissioner to be material the Registrar shall not be bound to proceed with the transaction.

The following words have been added—

but, if the Commissioner see fit, he may direct the Registrar to register the dealing, notwithstanding the non-production of such instrument or dealing.

That is to meet a case in which there is a tenancy in common between two people—it may be husband and wife—and one of the tenants disposes of his land and the other tenant in common holds the certificate and will not produce it. Such refusal to produce the certificate would hold up the transaction. For such a case it was deemed desirable to enable the Commissioner to proceed, if he saw fit, with the completion of the transaction although the duplicate certificate was not produced. Recently there was a case in the office of the Commissioner of a dispute between a husband and wife, and the certificate of title was held between them as tenants in common. It was difficult to get the wife to produce the certificate, and the transaction was held up. Therefore, the Commissioner thought it would be desirable to have in the Bill a clause on these lines.

*By Mr. Schilling.*—There could be frequent cases of that kind?

*Mr. Wiseman.*—Yes.

*Mr. McDonald.*—There is no provision for marking in the Titles Office a subsequent dealing for which a new title would probably issue. The duplicate title

that is outstanding will show A and B as tenants in common, so there should be some notification on the original title notifying a subsequent dealing affecting the land.

*By Mr. Bailey.*—I take it that the procedure would be the same as if the title had been produced, except that there would be no endorsement on the duplicate title?

*Mr. Wiseman.*—If a new title were issued for the undivided share, the Titles Office would have to make sure that they received the duplicate or that they notified on the new certificate that the duplicate was outstanding.

*By Mr. McDonald.*—Do you mean on the original certificate?

*Mr. Wiseman.*—You suggest that in the Titles Office, on the original certificate for the two tenancies in common, there should be an endorsement that as to one undivided share there had been a transfer from A to X. X would apply for a separate certificate for his undivided share, and on that there should be notification also that there was an outstanding duplicate.

*Mr. Bailey.*—The Registrar has power to call in a title.

*By Mr. McDonald.*—Sometimes he does not obtain the title. He would have to make sure that the transfer was noted all the way through?

*Mr. Wiseman.*—Yes, that would be done.

*Mr. McDonald.*—That can be covered by the rules.

*Mr. Wiseman.*—I think clause 280 should be deleted. It deals with the power of the Commissioner to make regulations in respect of certain matters, which can be dealt with more appropriately under the rules. The only item which I think requires consideration is paragraph (e) of sub-clause (1), which relates to the licensing of persons to sell the prescribed forms. However, I have made inquiries of law stationers, and they have not heard of any person being so licensed. The matters referred to in clause 280 can be covered by the rules.

*By Mr. Fraser.*—Earlier in the Act two situations were contemplated. The first was that there would be legal rules which would be prepared by a committee comprising persons appointed by the Chief Justice and including the Commissioner, to fill in gaps to make the legislation workable. Then, from the purely administrative side, there would be regulations made by the Commissioner. Is it proposed to delete clause 280 to include its provisions in a set of rules? There may be administrative regulations which cannot be subject to rules?

*Mr. Wiseman.*—The idea of the rules is to fill in gaps that may be left in the Act, and the rules will be general directions to the profession as to the procedure to be adopted. At the present time the practice appears to be for the Commissioner or the Registrar to issue directions to persons in the Titles Office. Sometimes these are handed to the public as rulings of the Titles Office. It is to get away from that situation that it is suggested that there should be a set of rules which can be promulgated to the public.

*By Mr. Fraser.*—As a matter of law?

*Mr. Wiseman.*—Yes.

*By Mr. Fraser.*—Clause 327 gives regulation-making power for administration purposes.

*Mr. Wiseman.*—Yes.

*By Mr. Fraser.*—It is limited to (a) and (b). Strange to say, clause 330 comes in again with regulation-making power.

*Mr. Wiseman.*—That would have to be so. The Rules Committee cannot impose penalties, and the Governor in Council is the appropriate body to do that.

*Mr. Schilling.*—There are a lot of administrative matters which should not be the subject of rules, such as where to stick a stamp, how to post a notice on a board, how to fold a document, and the like.

*Mr. Wiseman.*—Why not leave the clause in? It may have some effect. Clause 291 is an important one. It has not been altered, but it might very well be amended along certain lines. First, I think the words "or of the judge" should be inserted after the word "Court." The clause would then read—

It shall be lawful for the Commissioner, whenever any question arises with regard to the performance of any duty or the exercise of any of the functions by this Act conferred or imposed either on him or on the Registrar, to state a case for the opinion of the Supreme Court or of the judge; and thereupon it shall be lawful for the said court or judge to give its judgment thereon; and such judgment shall be binding upon the Commissioner and Registrar respectively.

That gives power for the Commissioner to state a case for the opinion of the Court.

*By Mr. Fraser.*—Does the word "Supreme" need to be there?

*Mr. Wiseman.*—No. A question of policy has been raised with regard to this matter. I am informed that in the organization of the Titles Office a large amount of work relating to the interpretation of wills is done in the office of the Registrar, and that work relating to the interpretation of wills is done by an officer who is not legally qualified, and it does not go through the legally qualified members of the Commissioner's Department. It does not go through the Commissioner's examiners, and does not go to the Commissioner. I understand that a good deal of time is taken up by this interpretation work in the office. The suggestion is this, and it is twofold. One suggestion is that where questions of interpretation of documents including wills arise, the Commissioner, where the land is up to a certain value, should have power to make an order which would be binding. The other suggestion is that a clause similar to the provision in section 63 of the *Public Trustee Act 1939* should be inserted. That section gives the Court jurisdiction to approve or disapprove of any acts done or proposed to be done by the Public Trustee and gives the Public Trustee power to apply for an order of advice of the Court regarding any matter arising out of the control or management of any estate or property. The Court may require notice of any such application to be served on any person. If the Court makes an order the Public Trustee is indemnified. That, I am told, has worked satisfactorily, and the Court has not required parties to be added, thus in effect turning the application into an originating summons. Those are two suggestions regarding clause 291 which I thought this Committee might like to consider.

*By Mr. Fraser.*—I thought clause 291 dealt more with the type of case where it was desired to obtain a mandamus against the Registrar because he had refused to do a certain thing. Was it intended that he should interpret documents and so forth?

*Mr. Wiseman.*—I do not think clause 291 contemplates that. What I am suggesting is further powers which may facilitate dealings in the Titles Office. The clause relates to any question that arises with regard to the performance of any duty or the exercise of any of the functions of the Commissioner or Registrar.



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*By Mr. Schilling.*—Should not the parties be heard?

*Mr. Wiseman.*—They would be in the circumstances.

*Mr. Schilling.*—The clause does not say so. Action might be taken behind the backs of the parties.

*Mr. Wiseman.*—I do not think clause 291 contemplates that. The section of the Public Trustee Act to which I have referred is in the nature of novel legislation only recently introduced. I make the suggestion only for consideration. It was not brought before the sub-committee but it occurred to me afterwards.

*Mr. Reid.*—I think we might obtain the opinion of the officers of the Titles Office on the point.

*Mr. Schilling.*—I should like to know how far it goes. If it relates only to administration within the Titles Office it is all right, but if it would bind the parties they should be heard.

*Mr. Wiseman.*—If that is so it will not save any expense.

*Mr. Fraser.*—If a decision is made by the Commissioner on the application of a party and the other party is not given an opportunity to be represented or to have his view stated, the Court might say when it heard that view, "We disagree entirely with the Commissioner."

*Mr. Wiseman.*—That could happen. These matters of interpretation are now dealt with by a non-legal officer. He has been supplied by the Registrar with two and a half pages of explanations on the construction of wills. That document has been supplied to me by Mr. Vance, who furnished it to the officer.

*By the Chairman.*—Is the fault within the Titles Office? Ought there to be a qualified man doing this type of work?

*Mr. Reid.*—It goes further than that.

*Mr. McDonald.*—On the one side there is the Commissioner and on the other the Registrar.

*By the Chairman.*—Should not there be only one head? I think the question of the final administrative decision in any matter in regard to which there may be conflict of opinion between the Commissioner and the Registrar is one upon which this Committee would like the views of the Master of the Supreme Court, Mr. Vance. Accordingly, the Committee desires to re-consider clause 291. In passing, it seems to me that the Commissioner, who must be a qualified lawyer under the Act, should have the final say.

*By Mr. Reid.*—Does the legislation in other States preserve the two offices of Commissioner and Registrar?

*Mr. Wiseman.*—I think the answer to that question is "No."

*By Mr. Reid.*—Might there not be better administration if there were only one officer—either the Commissioner or the Registrar—instead of preserving the two? I think in South Australia there is only one.

*Mr. Wiseman.*—And I think in New South Wales there is only one. That question can be determined by glancing at the relevant statutes.

*Mr. McDonald.*—It seems that the stage has been reached at which consideration should be given to the question of having only one officer in Victoria.

*Mr. Reid.*—Instead of two separate Departments.

*Mr. McDonald.*—And an officer who is Commissioner and Registrar.

*Mr. Barry.*—Or who makes the final decision for both.

*The Committee adjourned.*

*Members Present:*

<i>Council.</i>	<i>Assembly.</i>
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. F. M. Thomas,	Mr. Barry,
The Hon. D. J. Walters.	Mr. Merrifield,
	Mr. Reid,
	Mr. Schilling.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*In the absence of Mr. Oldham, Mr. Bailey was appointed to the Chair.*

*Mr. Wiseman.*—The first amendment in Part XIV. is in clause 295 where the words "one hundred and ninety-six" have been added, the reason being that this clause enables the Commissioner to charge certain fees for an indemnity where he thinks it desirable or necessary. Clause 196 permits the Commissioner to direct that an entry be made of the satisfaction of an annuity in cases in which proof is most probably sound but not completely satisfactory to the Commissioner. This amendment will enable an entry to be made upon payment of a contribution in those circumstances, and it fits in with the other relevant provisions. The amendment was suggested by the Commissioner. The alteration is rather formal and there is not a great deal in it. Part XV. relates to "Actions and Other Remedies."

*By Mr. Thomas.*—Clause 296 provides that officers administering the Act shall not be liable to any action, suit, or proceeding in respect of any act done bona fide in the exercise of powers under the Act. That provision has always been in the legislation?

*Mr. Wiseman.*—It used to be section 243; the provision dates back a long time.

*By Mr. Bailey.*—Would it cover cases of negligence?

*Mr. Thomas.*—It would, if the officer acted bona fide.

*The Chairman.*—It provides protection in respect of any act done bona fide "or omitted to be done."

*Mr. Schilling.*—It is a necessary protection, because if officers did not have it, they might be afraid to do anything. My experience is that it is a wise provision.

*By the Chairman.*—But what would happen in cases of carelessness?

*Mr. Thomas.*—An officer guilty of carelessness could be dismissed.

*Mr. Wiseman.*—Section 243 of the 1928 Act is from section 137 of Act No. 301 which came into force on the 1st August, 1866.

*The Chairman.*—It has stood the test of time.

*By Mr. Merrifield.*—Has section 244, which is to be repealed, been covered to some degree by the new Landlord and Tenant Act?

*Mr. Wiseman.*—I do not think so; it is covered by the other sections giving an indefeasible title to the registered proprietor, making it conclusive evidence of ownership. It has always been considered that section 244 does not add anything or assist in any way.

*Mr. Bailey vacated the Chair.*

*The Hon. A. M. Fraser was called to the Chair.*

Clause 299 provides that if a proprietor is dissatisfied with any ruling of the Registrar he may summon the Registrar to show cause. As the law stands, the only persons who can summon the Registrar are an owner applying to have land brought under the Act and a proprietor seeking to have any dealing or transmission registered. The addition of the words "of any person claiming under a dealing lodged for registration" will enable a proposed transferee to summon

the Registrar. It seems to be a reasonable extension of the section. In sub-clause (2) some words have been omitted. The provision used to read—

Such owner or proprietor may if he thinks fit at his own cost summon the Registrar.

The words "at his own cost" have been omitted. After the words "Supreme Court," the words "or a judge thereof" should be added. The same words should be added twice in sub-clause (3) after the word "court." At the end of sub-clause (3) there used to be these words—

and all expenses attendant upon any such proceedings shall be borne and paid by the applicant or other person preferring such complaint unless the court certifies that there was no probable ground for such refusal or direction as aforesaid.

Those words have been omitted because clause 300, which was formerly section 249, puts the question of costs in the discretion of the court; in other words, those words in section 248 of the 1928 Act are overruled by clause 300.

Clause 300 corresponds with section 249 of the existing Act, with the exception that in the latter the words "notwithstanding anything in the said section to the contrary" have been deleted. Those words "to the contrary" referred to the taking of proceedings at a person's own cost, &c. It really straightens out those provisions concerning costs.

*By the Chairman.*—What virtue is there in having the words "court or a judge thereof?" I was wondering why the definition of "court" could not be amended to read "Supreme Court or a judge thereof." Most of these matters would be chamber matters.

*Mr. Wiseman.*—The explanation is that there has been a departure from the old procedure which made caveat proceedings full court business, and these matters have been brought into chambers or into the court. As there are no other matters to be dealt with under this legislation, which are exclusively matters for the court, it is suggested that they can be brought first into chambers and later, if necessary, referred to the court. I was going to suggest exactly what you have in mind.

*By the Chairman.*—If the definition of "court" meant "Supreme Court or a judge thereof," it would not be necessary to alter these sub-clauses?

*Mr. Wiseman.*—That is so.

*By Mr. Thomas.*—Why is "Supreme Court" mentioned in sub-clause (2)?

*Mr. Wiseman.*—I think it should be set out in the way in which the Chairman suggests.

*By Mr. Schilling.*—The expression at the end of sub-clause (3), "and the Registrar shall obey such orders" is rather curious. The sub-clause states, *inter alia*—

the said Court shall make such order in the premises as the circumstances of the case require.

Normally, that would be a self-sufficient statement. I suggest the expression at the end of the sub-clause might be omitted.

*Mr. Wiseman.*—It was probably put in as a matter of caution, but it could be omitted. Following clause 297, which was formerly section 245, section 246 dealt with compensation that could be claimed by a party deprived of land against the person upon whose application such land was brought under the Act or such erroneous registration was made as is referred to in the section. That section has been repealed, and also the former section 250 which dealt with actions for recovery of damages against the Registrar's nominal defendant. Section 251 dealt with persons sustaining loss through inaccuracy in the Crown survey, and it provided for the recovery of damages against the assurance fund. Former section 252 provided that

persons sustaining loss might recover damages against the assurance fund. All those provisions have been repealed and replaced by clauses 301 and 305. I should add that section 2 of the *Transfer of Land (Forgeries) Act 1939* (No. 4689) also has been repealed. That Act was passed in consequence of a decision of the High Court in *Clements v. Ellis*, reported in 51 C.L.R., page 217. That provision has been incorporated in a somewhat different form in clause 301.

The re-organization of these provisions is rather substantial. It was thought the law as it stood did not give sufficient protection to persons who had sustained loss or damage, or who had been deprived of land or of an interest in land by reason of proceedings taken under the *Transfer of Land Act*. Furthermore, it was felt that the assurance fund was in too invulnerable a position, and that it should be made a little more accessible to persons who had sustained loss.

I think the general idea in the former Act was that it was only the person who had been deprived of an interest in land who was entitled to look to the assurance fund for his remedy. In the Bill we provide that a person who has sustained loss may get his remedy against the assurance fund. "Loss" has been defined in paragraph 13 of sub-clause (4) of clause 301 (paragraph read). The words "or otherwise" carry the matter a good deal further than was the case under the 1928 Act. It was thought that that would be sufficient to enable a person in the position of Mr. Clements, who had paid over money for a clear title and who was held still to have a mortgage on his land, to sustain a claim against the assurance fund. Clause 301 has been taken substantially from the *English Land Registration Act 1925*, section 83, sub-section (2), and also includes parts of sections 250, 252, and 253 of the 1928 Act. Clauses 303 and 304 have been taken direct from the 1928 Act. Clause 305 is a substitution for section 256 and deals with the limitation of time within which actions may be brought against the assurance fund. That is made six years.

*By Mr. Merrifield.*—In paragraph (a) of sub-clause (3) of clause 301 there appear the following words—" (otherwise than under a disposition for valuable consideration which is registered in the register book)." Does that bring in the point we debated at length earlier?

*Mr. Wiseman.*—No, that merely deals with a person who has been registered as proprietor for valuable consideration and excludes such person. If a person gets a transfer for valuable consideration which is registered, the Act gives that person protection. If he is bona fide dealing with the registered proprietor he gets protection. Sub-clause (3) incorporates the effect of the *Transfer of Land (Forgeries) Act 1939* and provides—

No indemnity shall be payable under this Act in any of the following cases:—

(a) Where the applicant, his solicitor or agent caused or substantially contributed to the loss by fraud, neglect or wilful default or derives . . . . . from a person who or whose solicitor or agent has been guilty of such fraud, neglect or wilful default and the onus shall rest upon the applicant of negating any such fraud, neglect or wilful default.

(b) On account of costs incurred . . . . .

Then there is the explanation in the bracket "(otherwise than under a disposition for valuable consideration which is registered in the register book.)" That involves the provision that a person who gets registered for value can, if he has "sustained loss," claim indemnity in spite of some other person's fraud or default. The onus is placed upon the applicant of negating any fraud, neglect or wilful default. Sub-clause (3) is taken substantially from section 2, sub-section

(4) of the *Transfer of Land (Forgeries) Act 1939*. The words in brackets in paragraph (a) have been added to protect a bona fide purchaser for value from a person who has been registered by fraud, &c. Clause 301 was fully considered and it was thought that the clause as drafted would meet generally all cases which should be compensated, but that it only gave compensation in those cases in which it was thought compensation should properly be allowed.

*By the Chairman.*—There is a provision for the Registrar to indemnify against the person who causes the loss?

*Mr. Wiseman.*—Yes. That is provided for in sub-clause (7) of clause 301. That is confined to fraud. Under sub-clause (11) the Registrar is given the right to require the plaintiff to join any person who he thinks should be joined, and who has contributed to the loss.

*By Mr. Schilling.*—Would it not have been quicker to make provision for the Registrar to join the party himself instead of calling on the applicant to make the necessary move?

*Mr. Wiseman.*—It was thought that was not the Registrar's concern. If the Registrar were being sued and he said "There is somebody else who should be joined as a party" it would be more in conformity with the repealed section 146 of the 1928 Act for the Registrar to insist on the proper defendant being joined. It was thought that the clause would throw the onus of joining the party on the person who started the litigation.

*By Mr. Thomas.*—What would happen if the Registrar refused to serve notice?

*Mr. Wiseman.*—If he does not serve the notice he has to fight the action himself. It is only for the protection of the Registrar and the assurance fund. If the Committee thinks that the onus should be put on the Registrar to join the necessary defendant, that is a matter of procedure, and is for the Committee to decide what is desirable.

*Mr. Schilling.*—I see great force in what you say, that the onus should be on the person starting the litigation to see that it is done properly. It seemed to me to be holding up the matter.

*Mr. Wiseman.*—Another point that just occurs to me is if the Registrar joins another person as a third party, the Registrar may then become responsible for that person's costs.

*By the Chairman.*—The claimant makes the Registrar a defendant, and the defendant says that somebody else might be liable. He might call on the claimant to join that third party, whereas if the Registrar is relying on some relief from the third person it ought to be his job to join that person in the proceedings.

*Mr. Wiseman.*—It can be decided in accordance with the Committee's wishes.

*Mr. Schilling.*—It is a matter that we should consider. I should not like to be dictatorial about it, but it should be considered.

*By the Chairman.*—Would it meet the position if it were provided that the Registrar may apply to join a person as a defendant at third party proceedings?

*Mr. Wiseman.*—Yes. Clause 305 limits the time within which action may be brought under clause 301 to six years, with the proviso that infancy and unsoundness of mind or absence from Victoria may be a cause for extending the time.

*The Chairman.*—Under the Statute of Limitations Act I think a slight change was made in the period of not running during disability. I think the view was

taken that, having regard to present day speedy communication, and so forth, absence overseas should not be a bar to the time running. That could be brought into consonance with the other Act.

*Mr. Wiseman.*—Infancy and unsoundness of mind still stand.

*The Chairman.*—The Parliamentary Draftsman, Mr. Garran, has definite views on infancy being a bar, having regard to the fact that there are so many authorities caring for infants. He could see no sound reason for infancy holding up the matter for a long time, but I think he was in the minority.

*By Mr. Merrifield.*—There is a reference in Mr. Vance's letter to the control of the assurance fund; do you know what he means?

*Mr. Wiseman.*—I do not know what is in Mr. Vance's letter and I do not know if you want me to anticipate what he will say. Clause 308 has been taken from section 259, but it has been cast into various sub-clauses. In two places the word "and" should be changed to "or," and a little alteration is required to improve the English but without affecting the meaning.

*By Mr. Reid.*—Clause 320 adopts the Twenty-fifth Schedule of general conditions of sale under the Transfer of Land Act. Have they been amended in any way?

*Mr. Wiseman.*—No. It was suggested that the Twenty-fifth Schedule should be recast, but it was decided not to do so.

*Mr. Reid.*—The Commissioner may be a little out of touch with developments outside his own office. In any present contract for the purchase of land the Twenty-fifth Schedule is departed from in some way or other. Usually Table "A" of the Twenty-fifth Schedule is adopted with modifications, the most outstanding being either those contained in the Law Institute form or in the form of contract used by the Real Estate Institute. That is confusing to the average purchaser of land, and it seems to me that something embodying the modifications in those two standard forms should be adopted so that a person buying land and signing a contract containing those provisions will know what he is signing. Since the consolidation of the statutes in 1928 there has been a number of decisions relating to rescissions. This subject was discussed fully in the Law Institute's publication containing articles by Mr. Harry Walker who has made a special study of it. I think a standard form of conditions should be provided to have regard to some of the developments that have occurred since the date of the last consolidation. What I have said is to some extent borne out by an article in the last number of the *Law Institute Journal*, which also suggests that certain modifications should be made in the Table "A" form.

*The Chairman.*—That is a matter that we should put to the Law Institute.

*Mr. Wiseman.*—The next clause I wish to mention is clause 322. It has been the practice in the Office of Titles to refuse to allow to be lodged for registration instruments which refer to other documents. This practice has been contested over a long period, particularly by bodies such as building societies which desire to incorporate in mortgages references to their rules. To some extent this has led to those societies giving mortgages not in the form provided by the Transfer of Land Act but by taking a transfer of the land and entering into a deed of defeasance. It is obvious that there cannot be registered in the Titles Office documents that are not available for reference and checking. It was thought that clause 322 as set out would meet the requirements both of the Titles Office and

of the public. It provides for the lodging of an instrument which may refer to the whole or to specified parts of any document required by statute to be lodged with the Registrar-General, the Registrar of Friendly Societies or the Registrar of Building Societies and which is open for public inspection.

*By the Chairman.*—What is the effect of that?

*Mr. Wiseman.*—It means that an instrument may be lodged for registration and that instrument may by reference incorporate the whole or any specified part or parts of any document desired to be made part of the instrument being registered. For instance, the rules of a building society relating to repayments of the money advanced may be incorporated in the instrument by reference instead of their being set out in the instrument, which may be fairly extensive.

*By Mr. Schilling.*—There would be the right to search to find out what the rules were.

*Mr. Wiseman.*—This clause refers only to a document which some statute requires to be lodged with one of the public registrars mentioned.

*By the Chairman.*—Would that apply only to building societies?

*Mr. Wiseman.*—No, it would apply to any document.

*By Mr. Schilling.*—Lodges, trades unions and so on?

*Mr. Wiseman.*—No, the persons are limited under the clause.

*By Mr. Schilling.*—It could apply to lodges?

*Mr. Wiseman.*—To a friendly society required by statute to lodge a document which is open for public inspection. Some documents may be required to be lodged but they may not be open for public inspection.

*By Mr. Schilling.*—A number will not be registered with the Registrar-General, but with the Registrar of Friendly Societies and a search would have to be made at that office.

*Mr. Wiseman.*—Yes.

*By Mr. Schilling.*—What rights have we to search there?

*Mr. Wiseman.*—If there was no right of search the documents would not be open for public inspection. That is covered by the last words of the clause.

*By Mr. Reid.*—The inference is that if particular rules of an organization are not registered the Registrar will refuse to register an instrument that refers to those rules?

*Mr. Wiseman.*—Yes. It is limited to the Registrars named, to documents required by statute to be lodged, and to documents which are open for public inspection.

*By the Chairman.*—What is the position if a society alters its rules in the meantime?

*Mr. Wiseman.*—That does not matter. If the rules which are referred to have been lodged with the Registrar they must remain under Government control.

*By the Chairman.*—The rules which operate under the instrument would be those existing at the time?

*Mr. Wiseman.*—Yes. By altering the society's rules the rights under the instrument could not be changed.

*By Mr. Merrifield.*—Clause 316 refers to the erection of a building of a permanent character prior to the passing of Act No. 945 and so on. Will not that clause be subject to the provisions of the Local Government (Streets) Act?

*Mr. Wiseman.*—Does not sub-clause (1) of clause 316 merely mean that if somebody has encroached on the roadway for fifteen years the Commissioner may issue a certificate for the land covered by the building? In other words, if he has encroached and has had adverse possession across the road for fifteen years, then the Commissioner may issue a certificate.

*Mr. Merrifield.*—That is true up to that point. Under the *Local Government (Streets) Act 1948* machinery was provided whereby the local council could proclaim an alignment, and superimposed on that was that the Registrar shall amend titles and descriptions to accord with that alignment.

*By the Chairman.*—Would not the man get a title by adverse possession?

*Mr. Merrifield.*—That is all right where no street alignment has been fixed, but where the street alignment has been fixed that application would be subject to the provisions of the street alignment legislation.

*By the Chairman.*—Would the position be that he would be entitled to it but that he would receive compensation and could not build?

*Mr. Merrifield.*—He becomes entitled to compensation under the legislation I have mentioned.

*By Mr. Wiseman.*—Does he receive compensation under that?

*Mr. Merrifield.*—Yes, compensation is payable in certain directions. The effect of a small alteration has not been dealt with, and I think that point should be looked at. I mentioned it to Mr. Wiseman previously. It was considered that the *Local Government (Streets) Act* would have an effect in connection with clause 49 which refers to local government matters.

*Mr. Wiseman.*—It may be that some provision should be put in relating to the *Local Government (Streets) Act*. There are one or two more matters to which I wish to refer. Part XVIII. has been taken substantially from the *English Land Registration Act 1925*. It was thought it would be convenient to have provision for rules to cover matters of detail not included in the Act, and matters which could be more conveniently provided for by rules rather than by legislative provision. The English Act covers the creation of a Rules Committee of three persons, but it was considered that here the committee should consist of five persons—the Commissioner of Titles, and four other members, to be appointed by the Chief Justice, of whom two should be practising barristers and two practising solicitors. It was felt it would be possible in that way to keep the rules under the control of those persons who would be intimately connected with the various aspects of the working of the Act, and that the functioning of such a committee would be an improvement on the present system under which rulings are made by the Titles Office from time to time as occasion may require. The English Act enumerates the purposes for which rules may be made and concludes with a general drag-net clause. It was thought that the form provided would cover all requirements.

I draw attention to sub-clause (2) of clause 329 providing that rules are to be laid before both Houses of Parliament within a specified time. I also mention sub-clause (3) which has been taken from the English Act. It provides—

Any rules made in pursuance of this section shall be of the same force and effect as if enacted in this Act.

*By Mr. Schilling.*—Is it suggested that the Rules Committee be paid, or that it act in an honorary capacity?

*Mr. Wiseman.*—We were too modest to say anything about that matter. There has been no suggestion of payment.

*By the Chairman.*—There is no provision in sub-clause (2) for the disallowance of rules by Parliament?

*Mr. Wiseman.*—Not expressly.

*Mr. Schilling.*—Unless it is covered by the Acts Interpretation Act.

*The Chairman.*—Provision should be made to enable Parliament to disallow the rules if it is considered necessary to do so.

*Mr. Wiseman.*—Certainly. The whole intention is that these things should be under the control of Parliament, otherwise there would be no purpose in having sub-clause (3).

*The Chairman.*—In Acts passed recently provision has been made for the disallowance, if necessary, of regulations required to be laid before Parliament.

*Mr. Reid.*—We may have to watch the point mentioned by the Chairman because, I understand, there is a difference in the procedures of the House of Commons and of the Victorian Parliament in disallowing rules.

*Mr. Wiseman.*—The point could be expressed.

*Mr. Schilling.*—I think the matter of the disallowance of rules is covered in the Acts Interpretation Act, but the point could be further considered. Clause 328 could be worded differently. Having regard to the manner in which the legal profession operates in this State, there are no independent barristers, or independent solicitors; they are all barristers and solicitors.

*Mr. Wiseman.*—Yes.

*By Mr. Merrifield.*—Clause 324 deals with properties used exclusively in connection with a Department of the Public Service being transferred to the Commonwealth. How will that become effective where power is transferred to the Commonwealth with a limitation of time; what effect will that limitation of time have in regard to the acquisition of a particular property for the purpose of public business and the registration of title?

*Mr. Wiseman.*—That is a matter very appropriate for the High Court.

*By Mr. Merrifield.*—If the transfer were intended to be permanent the point would not arise, but it has become a matter of political propaganda to transfer powers to the Commonwealth, or to seek to do so, with some limitation of time. What effect would that limitation of time have on the powers of the Commonwealth compulsorily to acquire a property from a State, and then what effect would that have in the registering of a title?

*The Chairman.*—The Commonwealth has only compulsorily acquired properties for temporary purposes during war-time under National Security Regulations.

*Mr. Merrifield.*—No. The Commonwealth only took possession under National Security Regulations; it acquires properties under the Lands Acquisition Act.

*The Chairman.*—I do not think in any case the Commonwealth has acquired temporarily either any land or any chattel save and except under a national security regulation.

*Mr. Merrifield.*—That is the point. Did not the Commonwealth acquire the taxation premises under uniform taxation?

*The Chairman.*—No, I think they pay rent to the State. The Commonwealth took over employees and taxation documents, but I think it is paying rent to the State for the use of the building.

*Mr. Merrifield.*—Suppose the Commonwealth wished to take certain power—and for the time being the States did not deem it politic to question the proposal—and then decided that it would acquire premises for that purpose.

*The Chairman.*—The Commonwealth would first have to show a specific head of power under which it would operate—a defence power or some other power.

*Mr. Merrifield.*—The final arbiter would be the court.

*The Chairman.*—The National Security Regulations made provision for the assessment of compensation in connection with the taking over of land.

*Mr. Merrifield.*—I am not referring to National Security Regulations now, as they no longer operate. Suppose it were agreed to transfer to the Commonwealth the administration of petrol rationing; would that give the Commonwealth the right compulsorily to acquire, say, the buildings in the Exhibition gardens?

*The Chairman.*—The Commonwealth has the power now to acquire any building used for a Commonwealth public purpose.

*Mr. Merrifield.*—I appreciate that, but this clause automatically transfers property without compulsory acquisition by the Commonwealth.

*The Chairman.*—No.

*Mr. Wiseman.*—There must be an application to the Registrar and, provided consent thereto is given by the Attorney-General for Victoria, the Registrar shall register the Commonwealth as the proprietor of the land.

*The Chairman.*—The clause reads *inter alia*—

Where property . . . . . has become vested in the Commonwealth under the provisions of the Commonwealth of Australia Constitution Act.

The land does not become vested until it is transferred. It could be transferred by voluntary arrangement as between the State and the Commonwealth, or it could be acquired by acquisition; under acquisition it would vest as from the date of acquisition.

*Mr. Merrifield.*—Section 85 of the Commonwealth of Australia Constitution becomes effective, as it provides that property of the State used exclusively in connection with a Department of the Public Service shall become vested in the Commonwealth.

*The Chairman.*—There is specific provision in the Commonwealth Constitution for the transfer of property from a State to the Commonwealth.

*Mr. Wiseman.*—Reverting to the matter of rules, the provision seems to be in accordance with the usual wording used in other Acts, for instance, the Soldier Settlement Act, No. 5107, section 42 (2) provides for regulations being laid before both Houses of Parliament within fourteen days after the making of such regulations.

*The Chairman.*—There must be something in the Acts Interpretation Act regarding disallowance.

*Mr. Schilling.*—I think there is.

*The Committee adjourned.*

TUESDAY, 6TH SEPTEMBER, 1949.

*Members Present:*

The Hon. A. M. Fraser in the Chair;	
<i>Council.</i>	<i>Assembly.</i>
The Hon. P. T. Byrnes,	Mr. Bailey,
The Hon. G. S. McArthur,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Merrifield,
	Mr. Oldham,
	Mr. Reid,
	Mr. Schilling.

Mr. Hubert Dallas Wiseman, of counsel, was in attendance.

*Mr. Wiseman.*—Before the Committee last adjourned I was asked to comment on the First Schedule, which contains the repeal provisions. I invite attention to page 34 of the explanatory paper, where there is the heading, "Part III.—Acts Affecting *Transfer of Land Act 1928.*" There I have set out: "The following Acts affect the *Transfer of Land Act 1928* and have

been dealt with in the manner hereinafter described:—” There follows a list of thirteen Acts. The first is the *Transfer of Land (Assurance Fund) Act 1929*, No. 3839, and the second is the *Transfer of Land (Assurance Fund) Act 1933*, No. 4164. Those are explained at page 34 of the explanatory paper in the first paragraph which follows the list—

1 and 2. Acts Nos. 3839 and 4164 relate only to the transference to the consolidated revenue of the sums therein set out from the assurance fund. These Acts have, consequently, not been consolidated. Those Acts are not referred to in the schedule.

*By the Chairman.*—They refer only to the transfer of certain money to consolidated revenue?

*Mr. Wiseman.*—Yes. Numbers 3 to 13 in the list correspond with the Acts set out in the First Schedule to the Bill, excluding the first one which is the *Transfer of Land Act 1928*. The *Transfer of Land Act 1928* is dealt with by repealing so much of it as is not already repealed.

*By Mr. Bailey.*—That means that the Act is gone?

*Mr. Wiseman.*—When the Bill is passed the 1928 Act goes entirely. The next Act in the First Schedule is the *Mortgagees (Powers of Sale) Act 1934*, No. 4265. The word “Mortgages” in the schedule to the Bill is a misprint; it should be “Mortgagees.” The sections proposed to be repealed are 5, 6, and 7. I invite attention to paragraph 3 on page 34 of the explanatory memorandum, which reads—

Act No. 4265 added the words in section 181 “and for a sum payable either in one amount or by instalments” after the words “several times” and added the words in section 182 “which is in fact received” after the words “The purchase money.”

*By the Chairman.*—What are the provisions of sections 5, 6, and 7?

*Mr. Wiseman.*—The Act is divided into two parts. Part I. deals with amendments of the *Property Law Act 1928*, and Part II. deals with amendments of the *Transfer of Land Act 1928*. Section 5 of the *Mortgagees (Powers of Sale) Act* provides that Part II. “shall be read and construed as one with the *Transfer of Land Act 1928*.” That is not important. Section 6 provides that in section 148 of the *Transfer of Land Act 1928* after the words “several times” there shall be inserted the words “and for a sum payable either in one amount or by instalments.”

*By the Chairman.*—The proposal in the Bill will take the place of the amended section 148?

*Mr. Wiseman.*—Yes.

*By the Chairman.*—Clauses 181 and 182 correspond with sections 148 and 149 of the 1928 Act, plus the amendment?

*Mr. Wiseman.*—Yes. No. 4 in the list of Acts in the explanatory paper is the *Local Government Act 1934*, No. 4279. Sub-section (2) of section 70 is to be repealed. That is referred to in paragraph 4 of the memorandum—

Act No. 4279, section 70 sub-section (2) (b) substituted the present sub-section (3) of section 264: Sub-section (2) (a) was in effect repealed by the *Local Government Act 1941*, No. 4869, section 35, sub-section (2).

That is related to clause 264 of the Bill, which is divided into five sub-clauses. Sub-clause (1) remains as it is in the Act. Sub-clause (2) comes from sub-section (2) of section 35 of the *Local Government Act 1941*, which was substituted for an amendment made by paragraph (a) of sub-section (2) of section 70 of the *Local Government Act 1934*. That paragraph reads—

(a) At the end of sub-section (2), there shall be inserted the words “and for mains for the supply of water gas and electricity and for sewerage services.”

The *Local Government Act of 1941*, No. 4869, provided in sub-section (2) of section 35—

For sub-section (2) of section 212 of the *Transfer of Land Act 1928* as amended by any Act there shall be substituted the following sub-section:—

Then followed the sub-section which was substituted for sub-section (2) of section 212 of the *Transfer of Land Act*, as amended by the 1939 Act. That now appears in the Bill.

*By Mr. McArthur.*—Is it correct to say that all the repeals mentioned in the schedule appear in the Bill practically in the same form?

*Mr. Wiseman.*—No, they do not all appear. For instance, the *Execution of Instruments Act 1939*, No. 4693, does not appear. That was a war-time measure, limited as to time, and is no longer of importance. I shall now discuss the *Public Trustee Act of 1939*, No. 4654. This is referred to in the explanatory paper, at page 34, clause 5, as follows:—

Act No. 4654, First Schedule, clause 13 (a) (i) amended the definition of “Committee” in section 4, by substituting “Public Trustee” for “Master-in-Equity” and by clause 13 (a) (ii) repealed the definition of “Curator” in that section.

The amendments made by clause 13 (b) of Act No. 4654 in sections 177 and 232 of the *Transfer of Land Act 1928* have been in effect repealed by the repeal of these sections and the substitution therefor of section 210.

The last paragraph means that sections 177 and 232 of the *Transfer of Land Act 1928* have been repealed, because they both dealt with the transmission of the estates of deceased persons. We went into this matter in detail, and clause 210 has been substituted. The way in which it has been worded makes it unnecessary to continue sections 177 and 232. Clause 13 of the *First Schedule of the Public Trustee Act, No. 4654* provides—

The *Transfer of Land Act 1928* shall be amended as follows:—

(a) In section four—

(i) in the interpretation of “Committee” for the words “the Master-in-Equity” there shall be substituted the words “Public Trustee”.

That appears in the definition—clause 4 of the Bill—

(ii) the interpretation of “Curator” shall be repealed. There is no definition of “Curator” in the Bill.

*By the Chairman.*—The Bill has been brought into accord with the amendments of the *Public Trustee Act*?

*Mr. Wiseman.*—Yes. Paragraph (b) of the *First Schedule to Act No. 4654* relates to sections 177 and 232 of the *Transfer of Land Act*, and provides—

(i) for the words “or of a rule to administer granted to the Curator or of any rule or order” there shall be substituted the words “or of any order”.

The intention, I think, was to get rid of the word “rule”—

(ii) for the words “rule to administer rule or order and upon the notification in the *Government Gazette* of the appointment of any succeeding Curator” there shall be substituted the words “or order”; and

(iii) for the words “administrator or Curator” (wherever occurring) there shall be substituted the words “or administrator”.

*By the Chairman.*—The *Public Trustee* becomes the legal personal representative, and clause 210 operates?

*Mr. Wiseman.*—That is the effect. The next Act that is mentioned is the *Transfer of Land (Forgeries) Act, No. 4689 of 1939*, and the explanatory note is as follows:—

Act No. 4689 was passed in consequence of the decision of the High Court in *Clements v. Ellis* (1934) V.L.R. 54; (1934) 51 C.L.R. 217. Section 2 of this Act gives a right of action against the Registrar as nominal defendant in



certain cases where any entry has been made in the register book in consequence of a forged instrument and the register book is subsequently rectified (sub-sections (1) to (3)). Sub-section (4) deprives a person of his right to claim under the section where he or his solicitor or agent was a party or privy to the forgery or had notice of the forgery before the registration of the forged instrument, or where the negligence of any such person has conduced to the forgery.

Section 3 of the Act provides for the payment out of the Assurance Fund of a sum of money as compensation for the loss sustained by Mr. Clements.

This Act has been dealt with as follows:—

Section 2 has been repealed.

Sub-sections (1) to (3) of section 2 have in effect been re-enacted in section 301 (1) (a) and (b) and (2) of the proposed Consolidation.

Sub-section (4) is, in substance, re-enacted in section 301 (3) of the proposed Consolidation.

Section 3 of Act No. 4689 remains untouched.

*By the Chairman.*—It has not been repealed?

*Mr. Wiseman.*—No.

*By the Chairman.*—As I presume that Mr. Clements has received the money, is there any virtue in retaining section 3?

*Mr. Wiseman.*—No. I think it would be as well to repeal the section.

*The Chairman.*—As there is being retained the remainder of the Act providing a defence in the case of a solicitor being a party or privy to a forgery or a person contributing to it by his own negligence, it would not appear that we require to perpetuate a provision dealing with one private individual who has already been paid.

*Mr. Wiseman.*—I would agree with that.

*Mr. Schilling.*—I suppose inquiries could be made as to whether payment has actually been made.

*The Chairman.*—The case occurred ten years ago. I should think that payment has been made.

*Mr. Thomas.*—In an earlier clause, it is provided that no action can be taken against the Registrar; whereas the explanatory paper relating to this consolidating measure states that section 2 of Act No. 4689 gives a right of action against the Registrar as nominal defendant.

*Mr. Wiseman.*—Clause 301 provides that, subject to the provisions of clauses 294 and 305, any person sustaining loss "by reason of any of the matters hereinafter appearing" shall be entitled to be indemnified out of the assurance fund. Part XV., in somewhat different form, continues the principle which has been in operation ever since the Transfer of Land Act was introduced. That is to say, if a person has—in the circumstances provided—sustained loss by reason of the functioning of that Act, he should be compensated. The conditions have been broadened to enable persons of a wider class who have sustained loss to recover against the assurance fund. The mechanics provided for enabling a person to recover against that fund has always been to enable him to bring an action against the Registrar as nominal defendant. Clause 296 exempts officers in the Titles Office from any action against them as individuals for any acts or omissions by them provided they have acted bona fide.

*The Chairman.*—The other matter to which Mr. Schilling referred affected sub-clause (11) of clause 301 which provides that the Registrar may require a party to be joined. We decided to consider the point raised.

*Mr. Wiseman.*—The appropriate amendment is under consideration. The *Execution of Instruments Act 1939*, No. 4693—number 7 on the list—deals with instruments and powers of attorney signed by any person while he was engaged on war service and a

further period of three months thereafter. As this Act is necessarily of limited duration and was in the nature of emergency legislation it was considered unnecessary to incorporate it in the consolidation. It merely gave certain facilities to persons engaged on war service with respect to the execution of instruments.

*By Mr. Reid.*—Did it not enable a commissioned officer above a certain rank to witness signatures to documents?

*Mr. Wiseman.*—I think so.

*Mr. Reid.*—I doubt whether there is now a great body of men concerned; but there are occupation forces in Japan to the members of which the continuation of the Act in question may be a convenience.

*By Mr. Byrnes.*—Technically—since the peace treaty has not been signed—Australia is still at war with Japan. Did not the Act apply to those actively engaged in war service?

*Mr. Reid.*—It was applied to members of the services in Australia as well as overseas.

*The Chairman.*—Section 3 of the Act provides—

The benefit of the privileges conferred by this Act on any person in relation to any period for which he is engaged on war service and for a period of three months thereafter shall also extend and apply to any person not engaged on war service in relation to any period during which being absent from Victoria he is for any reason connected with the said war unable to return to Victoria . . .

The Act has a fairly wide application and it might be dangerous at present to disregard it entirely.

*Mr. Wiseman.*—Perhaps it would be better not to incorporate it in the consolidation, but to let it stand as a separate Act.

*The Chairman.*—The matter could be considered in conjunction with the Act passed in 1941 which extended the classes of persons who could be authorized witnesses.

*Mr. Schilling.*—There is a smattering of Australian troops in Japan, where there are justices of the peace, notaries, public and Government officials by whom transfers can be witnessed. The Execution of Instruments Act was a war-time measure which I think is now objectionable in relation to vital legislation like the Transfer of Land Act.

*Mr. Wiseman.*—I do not think its incorporation in the consolidating measure was specifically considered. The present idea is merely to leave the 1939 Execution of Instruments Act to stand on its own footing.

*Mr. Reid.*—The availability of special witnesses was of considerable convenience to troops in Australia. Even though they had not been under battle conditions, it was often difficult for men to find qualified witnesses.

*Mr. Schilling.*—But at that time there were many thousands of men in the various branches of the fighting services. Now, however, there is only a handful of Victorian troops in Japan. The facilities to obtain authorized witnesses are ample.

*The Chairman.*—The Transfer of Land Act specified a very limited class. I think the question should be left to be considered in relation to the *Evidence Act 1941*.

*By Mr. Reid.*—Does the consolidating Bill extend the class of witnesses specified in the former legislation?

*Mr. Wiseman.*—In its present form it does not. The suggestion is, however, that the relevant clause be amended, in view of the *Evidence Act 1941*.

*The Chairman.*—That might overcome the difficulty. The *Execution of Instruments Act 1939* could then be repealed.

*Mr. Schilling.*—Possibly by the time this Bill is re-submitted to Parliament, Australian troops will no longer be in Japan.

*Mr. Wiseman.*—No. 8 on the list is the *Transfer of Land Act 1941*. That Act—No. 4813—provided for the registration of the Public Trustee as proprietor of land or of an interest in land of deceased persons in whose estate the Public Trustee has filed an election to administer. As to No. 9 on the list, we have already discussed the position, sub-clause (2) of clause 264 of the Bill being the same as sub-section (2) of section 35 of the 1941 Act. Section 33 of the *Local Government Act 1944* (No. 5056)—the tenth on the list—substitutes clause 263 of the Bill.

*The Chairman.*—That is to say, the provision has been taken from the *Local Government Act* and included in the Bill.

*Mr. Wiseman.*—That is so. No. 12 on the list is section 101 of the *Soldier Settlement Act 1946* (No. 5179) which inserted, in section 15 of the *Transfer of Land Act*, the words “(except in the case of a settlement interim lease under the *Soldier Settlement Acts*)” before the words “after payment.”

*By Mr. Merrifield.*—In the *Local Government Act 1944*, was it not made mandatory for a plan of subdivision to be lodged within one month of its sealing by the council? The matter affects the Registrar, and it appears that some provision has been taken out of that Act.

*Mr. Wiseman.*—The amendment to which I refer appears in clause 263 of the consolidating Bill.

*The Chairman.*—Section 33 of the *Local Government Act 1944* still operates; the consolidating Bill does not repeal it. It will still be mandatory to lodge a plan of subdivision within a month of its having been signed by a council.

*Mr. Schilling.*—It rests with the subdivider. When a plan has been sealed it must be lodged within a month. Otherwise, it becomes necessary to re-seal it.

*By the Chairman.*—Is not the *Local Government Act* the most appropriate statute in which to leave the provisions relating to sealing and lodgment?

*Mr. Merrifield.*—I do not think so. The question of time of lodgment is for the Registrar to decide.

*By Mr. Schilling.*—The matter is of a machinery character. Could it not be covered by the rules?

*Mr. Wiseman.*—I think so. It is not desirable to duplicate legislation. The relevant rule would, in effect, copy the section in the *Local Government Act*.

*By the Chairman.*—Could the Registrar extend the period of one month in which a plan of subdivision must be lodged? What would happen if it were not lodged within that period?

*Mr. Schilling.*—The plan would have to be re-sealed.

*By the Chairman.*—Why is it proposed to repeal section 33 of the *Local Government Act*?

*Mr. Wiseman.*—That has been replaced by clause 263. Section 33 of the *Local Government Act 1944*, provides—

For section two hundred and eleven of the *Transfer of Land Act 1928* there shall be substituted the following section:—

Then follows the section which is now clause 263 of the Bill.

Section 33 of the *Local Government Act 1944* was not repealed by the *Local Government Act 1946*, the consolidating Act.

As to Act No. 5291, section 152 of the *Transfer of Land Act 1928* provides that a mortgagee or annuitant may distrain on a tenant or occupier for arrears not exceeding the amount of rent due by such tenant or occupier. That was repealed by the *Landlord and Tenant Act 1948*. The thirteenth Act referred to on page 34 of the memorandum is the *Transfer of Land (Acquisitions) Act 1948*, No. 5314. That is incorporated in the consolidation clauses 218 to 223.

*By the Chairman.*—You propose to repeal the whole of the 1948 Act?

*Mr. Wiseman.*—Yes.

*By Mr. Merrifield.*—Has Mr. Wiseman taken into consideration the Melbourne (*Widening of Streets*) Act?

*Mr. Wiseman.*—I am going through the transcript of the evidence and that question among others will be picked up and attended to. They will all be collated.

*The Chairman.*—The only form on which there has been any discussion was that dealing with transfers. The rest are the ordinary forms. That means that practically all that is left is for Mr. Wiseman to go through the reports of the proceedings and deal with matters that have been adjourned or left for further consideration.

*The Committee adjourned.*



