VICTORIA - MINUTES OF THE PROCEEDINGS OF THE LEG. COUNCIL, SESSION 1950-51


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MINUTES OF THE PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL.

SESSION 1950-51.

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LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 1.

TUESDAY, 20TH JUNE, 1950.

1. The Council met pursuant to the Proclamation of His Excellency the Governor, bearing date the twenty-fourth day of May, 1950, which Proclamation was read by the Clerk and is as follows :—

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

PROCLAMATION

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

I, THE Governor of the State of Victoria, in the Commonwealth of Australia, do by this my Proclamation fix Tuesday, the twentieth day of June, 1950, as the time for the commencement and holding of the First Session of the Thirty-eighth Parliament of Victoria, for the despatch of business, at the hour of Eleven o'clock in the forenoon, in the Parliament Houses, situate in Spring-street, in the City of Melbourne : And the Honorable the Members of the Legislative Council and the Members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

Given under my Hand and the Seal of the State of Victoria aforesaid, at Melbourne, this twenty-fourth day of May, 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 !

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

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

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

MEMBERS OF THE LEGISLATIVE ASSEMBLY :

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

4947/50. (240 copies)

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

GEORGE THE SIXTH, by the Grace of God of Great Britain, Ireland, and the British Dominions beyond the Seas King, Defender of the Faith:

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

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

DALLAS BROOKS.

By His Excellency's Command,

T. T. HOLLWAY,
Premier.

Entered on Record by me in the Register of Patents, Book 32, page 64, this sixteenth day of June, One thousand nine hundred and fifty.

L. CHAPMAN, Under-Secretary.

Then the Honorable Mr. Justice O'Bryan said—

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

MEMBERS OF THE LEGISLATIVE ASSEMBLY :

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

The Members of the Legislative Assembly then withdrew.

The Commissioner withdrew.

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

3. DECLARATIONS OF MEMBERS.—The Honorables the President (Sir Clifden Eager), P. T. Byrnes, E. P. Cameron, G. L. Chandler, Sir Frank Clarke, A. M. Fraser, C. P. Gartside, T. Harvey, P. P. Inchbold, P. Jones, Sir James Kennedy, P. J. Kennelly, J. F. Kittson, J. H. Lienhop, H. C. Ludbrook, G. S. McArthur, W. MacAulay, A. E. McDonald, H. V. MacLeod, C. E. McNally, R. C. Rankin, W. Slater, 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, PERCY THOMAS BYRNES, 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 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 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 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 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, 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 £164.

"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 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, PAUL JONES, 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 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 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 £115.

"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."

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"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 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 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, 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 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 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, 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 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.

"HUGH VERNON 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 Karkarooc.

"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, 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 Horsham, and are known as 23 Harriet-street, Horsham.

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"And I further declare that such of the said lands or tenements as are situate in the municipal district of Horsham 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.

"R. C. RANKIN."

"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, 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.

"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 £92.

"And I further declare that I have not collusively or colorably obtained a title to or becomed 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 40A, section A, and allotment 32A, section A.

"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 £284.

"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."

4. DECLARATIONS OF MEMBERS.—The Honorables Sir William Angliss, Sir Frank Beaurepaire, P. L. Coleman, and C. E. Isaac 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, 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."

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" 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, CYRIL EVERETT ISAAC, 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 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."

5. APPROACH OF HIS EXCELLENCY THE GOVERNOR.—The approach of His Excellency the 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 :

I have taken an early opportunity, after the recent General Election of members of the Legislative Assembly, of calling you together for the consideration of public business requiring your attention.

On this, the first occasion of my opening Parliament, I desire to express my appreciation of the warm welcome which the people of Victoria have extended to me as the Representative of His Majesty the King. I have also been deeply touched by the truly kind friendliness with which I and my family have everywhere been received. I trust that during my stay here the well-being and prosperity of the State will be enhanced.

It is regretted that since Parliament last met, the deaths of the Honorable Sir Albert Dunstan, K.C.M.G., the Honorable William H. Everard, the Honorable Francis E. Old, and the Honorable Alfred J. Pittard, C.B.E., have occurred. Sir Albert Dunstan as Premier and Minister of the Crown, Mr. Everard as Speaker of the Legislative Assembly, Mr. Old as a Minister of the Crown, and Mr. Pittard as a Member of the Legislative Council rendered valuable public service in this State.

Arrangements are being made to celebrate, next year, the Centenary of Responsible Government in Victoria, as well as the Centenary of the discovery of gold.

My Advisers are also co-operating with the Prime Minister in the preparation of a programme to commemorate in 1951 the Jubilee of the foundation of the Commonwealth of Australia.

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

A review of the transactions in respect of Revenue and Expenditure for the year 1949–50 indicates that the financial operations for the year will result in a surplus.

Supplementary Estimates of expenditure for the financial year ending 30th June, 1950, together with a Supply Bill to make preliminary provision for the services of the ensuing financial year, will be submitted to you.

Estimates of Revenue and Expenditure for the year 1950–51 will be placed before you as early as possible.

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

Last year new records were established in housing, industrial production, and social advancement. These were achieved by planning, provision of adequate finance, the importation of coal and materials in short supply and the maintenance of industrial peace. This policy will be continued by my advisers.

Already 557,000 tons of coal have been imported, 25,000 tons remain to be delivered and additional orders for 880,000 tons have been placed. The Government will continue to import coal as required until its vast plans for the development of this State's own fuel and power resources are advanced sufficiently to meet our requirements.

Good progress has been made with the power and fuel development works at Kiewa, Morwell, Yallourn and Newport. To expedite these projects and other developmental works affecting Railways and Water Supply 2,150 imported pre-cut houses are to be erected to house the urgently-needed workers.

The Government will introduce a Bill designed to ensure continuity of gas supplies in this State, and to overcome the frequently recurring difficulties arising from dependence upon external sources of black coal.

The development of brown coal resources as raw material for the manufacture of gas has been the subject of investigation by a joint Parliamentary Committee, and as a result the Government is now satisfied that the large-scale manufacture of gas from brown coal is practicable.

The Government believes that the manufacture of gas from brown coal would best be achieved by legislation providing for a combination of Government and private enterprise. Such a plan would have the advantage of securing the protection and welfare of the public and also of making available the experience and technical and scientific knowledge of the gas companies.

The Milk Pasteurisation Committee appointed under the provisions of the legislation passed last year is surveying existing facilities for the pasteurisation, bottling, and sealing of milk, and the issue of pasteurisation licences.

Improved technical and scientific services will be provided for those engaged in primary production. The programme of the Department of Agriculture includes the extension of training and research facilities.

My Advisers are already planning to double the area under irrigation over the next ten years. Preliminary work has already begun on the Big Eildon Dam. Tenders for the construction of this dam will close on June 30th.

The Government will continue a vigorous policy of forest conservation and will endeavour to ensure that the forest resources are developed to make their maximum contribution in relation to timber production, water conservation and soil preservation.

An amount of £26,000,000 is being expended on the modernization of the railway system, including the purchase of trucks from New South Wales, the importation of locomotives from Great Britain, and the construction in our own Victorian workshops of up-to-date passenger rolling stock.

Approval has been given for the electrification of the line from Dandenong to Traralgon, and also of the line from Melbourne to Geelong.

Investigations are being made into proposals for the electrification of the Melbourne–Ballarat, Melbourne–Bendigo, and Melbourne–Seymour lines, and the construction of a city under-ground railway. These works will not be allowed to interfere with the Government's policy of accelerating the supply of electricity to rural centres.

The necessary land for the construction of the Upper Ferntree Gully–Emerald broad gauge railway is now being acquired.

In co-operation with the Commonwealth Government, my Advisers will continue to encourage British migration. Under the Free and Assisted Passage Schemes, more than 20,000 British Migrants have arrived in Victoria since 1947. The first party of specially-recruited railway workers is expected to arrive in a few weeks.

As part of a plan to modernize Police Services, wireless transmitters will be installed in each of the twelve newly-created Police District Headquarters outside the Metropolitan Area, and mobile units in these districts will be equipped with wireless sets. When fully operating the scheme will extend to provincial cities and country districts the police protection already provided in the metropolitan area by radio-controlled units.

As one of its earliest measures, the Government will submit a Bill to amend the Superannuation Act to provide for a further increase of 25 per cent. in the base rate of each unit of Superannuation.

Amendments to the Public Service Act to be introduced will include clauses removing anomalies relating to the granting of furlough to Public Servants.

New legislation to improve the penal system will be submitted by my Advisers. All the best features of the English Borstal system and of other overseas training systems will be introduced in the training centres being established at Langi Kal Kal and French Island for young offenders between the ages of seventeen and twenty-one years.

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Despite difficulties due to shortages of materials and labour, progress with the construction of Hospitals, Nurses' Quarters, Infant Welfare and Pre-School Centres has steadily improved. The building programme for these works, in both the country and metropolitan areas, will be expanded this year.

Legislation to provide for the establishment of a Mental Hygiene Authority will be introduced. Many sections of the community will be represented on the Authority. The legislation will ensure a new outlook for patients and in the prevention and treatment of mental disorders. Provision will be made for separate accommodation for ex-service personnel whose mental condition is not accepted by the Repatriation Commission, now or at any future time, as being due to war service.

Measures to be taken by the Health Department in co-operation with registered dentists will eventually make available adequate dental treatment to school and pre-school children throughout the State.

To alleviate the difficulties of housewives in need of assistance, efforts are being made to encourage Municipal Councils to extend the Home Help Scheme which is operating in some suburbs. Greatly increased financial aid will be given to councils for this purpose.

Experiments in slum abolition have proved successful and the Government intends to proceed vigorously with this urgently needed reform. It is intended to rebuild closely-settled areas leaving adequate provision for parks and playgrounds.

Houses are now being built in Victoria at the rate of 18,000 per annum. The Housing Commission has completed more than 11,000 houses, and it has 3,200 under construction.

A feature of the Commission's activities has been its country housing programme. More than 3,000 houses have been erected in 86 country towns, and 1,000 are under construction.

It is proposed that the Housing Commission should purchase overseas 1,000 houses to supplement its local building programme.

Legislation will be submitted to provide that homeseekers, including tenants of Housing Commission homes, who purchase houses through existing financial institutions, may obtain the benefit of Government Guarantee up to 90 per cent. of the value of the home. Steps are being taken to accelerate the valuation of additional Housing Commission properties to facilitate their purchase by tenants.

This scheme will be supplementary to the extensive programme at present being carried out by the Co-operative Housing Societies.

The policy of the Government in pioneering the importation of coal and housing materials has proved very successful. In accordance with its expanding decentralization plan, the Government now proposes to submit a Bill to authorize the Minister-in-Charge of Materials to subsidize imported material for decentralized factories in country areas. The funds available for subsidies of this nature will be increased by £2,000,000.

It is also intended to relax building controls relating to country factories, amenities, and institutions except in certain areas where marked industrial expansion is creating an acute country housing shortage.

My Advisers will intensify their efforts to overtake the shortage of school buildings and teachers' residences.

Among measures to be taken are the purchase and erection of prefabricated class-room units, and the provision of additional residences for married teachers in country districts and of flats for women teachers in consolidated schools.

The campaign to recruit teachers is being continued. A two-year course of training for primary school teachers is being introduced, together with University Courses for Secondary and Technical Teachers.

Pursuant to the legislation passed last session, the Soil Conservation Authority has now been constituted. My Advisers will render the Authority every assistance to enable it to carry out effectively the important work which has been entrusted to it.

Despite the high ruling prices for land, soldier settlement in Victoria is considerably ahead of the progress being made in any other State.

Up to the present, 3,050 ex-servicemen have received rural rehabilitation under the general or single-unit farm scheme, and loans totalling £6,300,000 have been made to soldiers to purchase farms of their own choice.

The development of the Murray Valley and Robinvale irrigation soldier settlement schemes is now well advanced, and it is expected that the development of the Nambrok-Denison irrigation settlement in Gippsland will commence soon.

Active steps have been taken to implement the provisions of the *Vermin and Noxious Weeds Act* 1949.

Landowners are now receiving valuable assistance by way of advances, the use of departmental equipment, and facilities for buying fumigants and weedicides at wholesale prices. Eventually, the Government will assume full responsibility for the destruction of vermin and noxious weeds on all roads and water easements.

Faced with the great problems of restoring the highways and main roads of this State to their pre-war standard, my Advisers are taking steps to obtain from the Commonwealth Government a revision on a more equitable basis of the revenue derived from the petrol tax.

It is imperative that the Country Roads Board should be provided with greater funds for improving present roads and for extending the road system of the State to enable the Government to give effect to its policy of decentralized development.

The Government proposes to set up a Ministry of Labour and Industry. This ministry will also administer the Workers' Compensation Act, which it is proposed should be liberalized and consolidated.

A Commission of Inquiry is to be appointed to examine the functions and financial responsibilities of municipalities.

The Rural Finance Corporation is now functioning satisfactorily. The legislation under which it was constituted is to be amended to permit the Corporation to provide advances to build houses for workers in decentralized secondary industries.

Amendments to the Factories and Shops Act will also be submitted to give effect to the principal findings of the Board of Inquiry, including the constitution of a Wages Board for rural workers.

A Bill relating to the franchise for the Legislative Council will be brought forward.

Among other legislation to be submitted during the session will be a measure to improve the quality of bread and to abolish the zoning of deliveries, and Bills relating to—

Weights and Measures
Statute Law Revision
Goods (Textile Products)
Juries
Legal Aid
Nurses
Medical (Cancer)
Pure Foods
Trustee (Investment)
Transfer of Land
Melbourne Harbour Trust
Metropolitan Meat Supply
Geelong Harbour Trust
Teaching Service
Crown Land Development; and
Valuation of Land.

The Government will co-operate with the Federal Government in implementing and strengthening anti-Communist legislation.

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL:

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY:

I desire to emphasize that to-day, perhaps more than ever before, there is a need for all Christian people to rally and unite in an effort to further goodwill and understanding in the community.

With this thought, I now leave you to the discharge of the high and important duties with which you are entrusted in the earnest hope that Divine Providence may guide your deliberations and further the welfare of the people of the State.

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

The Legislative Assembly then withdrew.

6. DECLARATION OF MEMBER.—Colonel the Honorable G. V. Lansell 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, 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."

7. MELBOURNE HARBOR TRUST (HOUSING ADVANCES) BILL.—On the motion of the Honorable Sir James Kennedy, leave was given to bring in a Bill to amend Section Thirty-eight of the *Melbourne Harbor Trust Act* 1928, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

8. 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 Percival Pennell Inchbold,
The Honorable Sir James Kennedy,
The Honorable Patrick John Kennelly,
The Honorable Gordon Stewart McArthur, and
The Honorable Allan Elliott McDonald

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

Given under my hand this twentieth day of June, One thousand nine hundred and fifty.

CLIFDEN EAGER,
President of the Legislative Council.

9. 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 Gilbert Lawrence Chandler,
The Honorable Paul Jones, 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 twentieth day of June, One thousand nine hundred and fifty.

CLIFDEN EAGER,
President of the Legislative Council.

10. PUBLIC WORKS COMMITTEE.—The Honorable Sir James Kennedy moved, by leave, That the following Members of this House be appointed members of the Public Works Committee, viz. :—the Honorable Trevor Harvey and the Honorable Hugh Vernon MacLeod.

Question—put and resolved in the affirmative.

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

Question—put and resolved in the affirmative.

12. LEAVE OF ABSENCE.—The Honorable P. J. Kennelly moved, by leave, That leave of absence be granted to the Honorable William James Beckett for one month on account of urgent private business.

Question—put and resolved in the affirmative.

The Honorable P. J. Kennelly moved, by leave, That leave of absence be granted to the Honorable John William Galbally for three months on account of urgent private business.

Question—put and resolved in the affirmative.

13. PAPERS.—The Honorable Sir James Kennedy presented, by command of His Excellency the Governor—

Communist Party—Report of the Royal Commission appointed to inquire into and report upon the origins, aims, objects and funds of the Communist Party in Victoria and other related matters.

Factories and Shops Acts—Final Report of the Board of Inquiry appointed to examine suggestions for amendment of the Factories and Shops Acts.

Freight Rates and Freight Subsidies in relation to the Decentralization of Industry—Report of Board of Inquiry.

Indeterminate Sentences Board—Report for the year 1948–49.

Penal Establishments, Gaols, and Reformatory Prisons—Report and Statistical Tables for the year 1949.

Police—Report of the Chief Commissioner of Police for the year 1948

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 :—

Adult Education Act 1946—Amendment of Regulations.

Apprenticeship Acts—Amendment of Regulations—

Aircraft Trades Regulations (No. 1) (three papers).
Boilermaking and/or Steel Construction Trades Regulations (No. 2) (three papers).
Boilermaking and/or Steel Construction Trades Regulations (No. 3).
Boot Trades Regulations (two papers).
Boot Trades Regulations (No. 2).
Bread Making and Baking Trade Regulations (No. 1) (two papers).
Bricklaying Trade Regulations (No. 1) (two papers).
Butchering and/or Small Goods Making Trades Regulations (No. 1) (three papers).
Carpentry and Joinery Trades Regulations.
Carpentry and Joinery Regulations (No. 1) (two papers).
Dental Mechanic Trade Regulations (No. 1) (three papers).
Electrical Trades Regulations.
Electrical Trades Regulations (No. 1) (three papers).
Electroplating Trade Regulations (No. 1) (three papers).
Engineering Trades Regulations (No. 2) (three papers).
Engineering Trades Regulations (No. 4) (three papers).
Fibrous Plastering Trade Regulations.
Ladies' and/or Men's Hairdressing Trades Regulations (No. 1) (two papers).
Motor Mechanics Trades Regulations (three papers).
Moulding Trades Regulations (No. 2) (three papers).
Painting, Decorating and Signwriting Regulations (No. 2) (three papers).
Pastrycooking Trade Regulations (No. 1) (two papers).
Plastering Regulations (No. 2) (three papers).
Plumbing and Gasfitting Trades Regulations (three papers).
Printing and Allied Trades Regulations (three papers).
Printing and Allied Trades Regulations (No. 1).
Printing Trades Regulations (No. 1).
Sheet Metal Trade Regulations (No. 2) (three papers).
Watch and/or Clock Making Trades Regulations (No. 1) (two papers).
Watch and/or Clock Making Trades Regulations (No. 2).

Coal Mines Regulation Act 1928—Report of the General Manager of the State Coal Mines, including the State Coal Mines Balance-sheet and Statement of Accounts duly audited, &c., for the year 1948–49.

Companies Act 1938—Return by Prothonotary of business of the Supreme Court in connexion with the winding-up of Companies during the year 1949.

Constitution Act Amendment Acts—Amendment of Regulations—

Legislative Assembly Elections Regulations.
Legislative Council Elections Regulations.

Country Fire Authority Acts—

Amendment of Regulations (four papers).
Report of the Country Fire Authority for the year 1948–49.

Country Roads Act 1928—Report of the Country Roads Board for the year 1948–49.

Dairy Products Acts—Report of the Victorian Dairy Products Board for the six months ended 31st December, 1949.

Dried Fruits Acts

Amendment of Regulations.
Statement showing details of Receipts and Expenditure under the Dried Fruits Acts during the year 1949.

Education Act 1928—Amendment of Regulations—

Regulation V. (C)—Subsidized Schools.
Regulation XIII. (H)—Certificate of Competency in Speech Training.
Regulation XVI.—Tuition Fees for Secondary Education.
Regulation XXI.—Scholarships and Bursaries (three papers).

Explosives Act 1928—Orders in Council relating to—

Classification of Explosives—Class 3—Nitro-Compound (two papers).
Definition of Explosives—

Class 1—Gunpowder ; Class 2— Nitrate Mixture ; Class 3—Nitro-Compound.
Class 3—Nitro-Compound (two papers).

Factories and Shops Acts—Report of the Chief Inspector of Factories and Shops for the year 1948.

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Fire Brigades Acts—
Metropolitan Fire Brigades Board Appeal Tribunal Regulations (two papers).
Report of the Metropolitan Fire Brigades Board for the year 1948–49.

Forests Act 1928—Report of the Forests Commission for the year 1948–49.

Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (Nos. 69 to 73) (five papers).

Geelong Harbor Trust Act 1928—Amendment of Regulations.

Geelong Waterworks and Sewerage Act 1928—Balance-sheet of the Geelong Waterworks and Sewerage Trust for the year 1948–49.

Health Acts—Eating-house Regulations 1950.

Hospitals and Charities Act 1948—
Certificates of the Minister of Health relating to the proposed compulsory resumption of land for the purposes of the Lorne Hospital, Melbourne District Nursing Society and After-Care Hospital, Robinvale and District Hospital, St. George's Hospital (four papers).
Hospitals and Charities Additional Regulations 1950.

Land Act 1928—
Certificates of the Chief Secretary relating to the proposed compulsory resumption of land for the purposes of police stations at Lara and Richmond South (two papers).
Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Burwood, California Gully, Cohuna, Footscray West, Red Hill, Toorak, and Woodend (ten papers).
Particulars of Lease of Swamp or Reclaimed Lands under Section 110.
Report for the year 1948–49.
Schedule of country lands proposed to be sold by public auction (four papers).

Latrobe Valley Development Loan and Application Act 1949—Latrobe Valley Development Advisory Committee Regulations.

Legal Profession Practice Acts—
Auditors (Disclosure of Information) Rules 1949.
Claims against the Solicitors' Guarantee Fund Rules 1949.
Council of Legal Education—Amendment of Rules relating to the Qualification and Admission of Candidates.
Solicitors (Professional Conduct and Practice) Rules 1950.

Marketing of Primary Products Act 1935—
Proclamations—
Declaring that Chicory shall become the property of the Chicory Marketing Board for a further period of two years.
Declaring that Onions shall become the property of the Onion Marketing Board for a further period of two years.
Regulations—Maize Marketing Board—Fifteenth period of time for the computation of or accounting for the net proceeds of the sale of maize.

Milk Board Acts—Regulations—
Milk Depots.
Travelling Expenses.

Poisons Acts—
Poisons Regulations 1949 (No. 2).
Proclamations—
Dangerous Drugs.
Poisonous Substances and Preparations.

Police Regulations Acts—Determinations Nos. 24 and 25 of the Police Classification Board (two papers).

Prices Regulation Acts—Prices Regulations (Victoria) Nos. 3 and 4 (two papers).

Public Authorities Marks Act 1930, and State Electricity Commission Acts—Restrictions on Electrical Apparatus (Labels) Regulations.

Public Service Act 1946—
Amendment of Public Service (Public Service Board) Regulations—
Part II.—Promotions and Transfers—Technical and General Division—
Department of Lands and Survey.
Part III.—Salaries, Increments and Allowances—
Administrative Division—
Department of Education.
Department of Health.
Department of Law.
Administrative and Professional Divisions—Scale of Rates of Annual Salaries in Class "A1".

Professional Division—
- Department of Agriculture (four papers).
- Department of Health.
- Department of Lands and Survey (two papers).
- Department of Law (seven papers).
- Department of Mines (two papers).
- Department of Premier (two papers).
- Department of Public Works (four papers).
- Department of State Forests (two papers).
- Department of Treasurer.
- Department of Water Supply (two papers).
- Departments of Agriculture and Water Supply.
- Departments of Education, Public Works, and Agriculture.
- Departments of Health and Agriculture.
- Departments of Health and State Forests.
- Departments of Health and Water Supply.
- Departments of Labour and Public Works.
- Departments of Law, Health, and Agriculture.

Technical and General Division—
- Department of Agriculture.
- Department of Chief Secretary (four papers).
- Department of Health (four papers).
- Department of Lands and Survey.
- Department of Treasurer (five papers).
- Department of Water Supply.
- Departments of Premier and Agriculture.
- Departments of Public Works and Water Supply.
- General.
- General and Department of Water Supply.
- General and Departments of Lands and Survey, and Health.

Technical and General Division and Temporary Employees—Department of Premier.

Temporary Employees—
- Department of Agriculture (two papers).
- Department of Chief Secretary (two papers).
- Department of Health (eight papers).
- Department of Mines.
- Department of Public Works.
- Department of State Forests.
- Department of Treasurer (three papers).
- Departments of Education and Water Supply.
- Departments of Health and Agriculture.
- Departments of Lands and Survey, Public Works, Health, and Water Supply.
- Departments of Premier and Agriculture.
- General and Department of Water Supply.

Part V.—Travelling Expenses (two papers).

Report of the Public Service Board for the year 1948–49.

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

Railways Act 1928—Reports of the Victorian Railways Commissioners for the quarters ended 30th September and 31st December, 1949 (two papers).

Registration of Births, Deaths and Marriages Act 1928—General Abstract of the number of Births, Deaths, and Marriages registered during the year 1949 in Victoria.

River Improvement Act 1948—
- Notice of Intention to convert the Latrobe (Morwell), Latrobe River, and Latrobe Drainage Areas into the Latrobe River Improvement District.
- Regulations—
  - King River Improvement Trust—Qualification, Dispualification, Election, Appointment, Removal, and Term of Office of Commissioners.
  - Proceedings of Commissioners of Riuer Improvement Trusts and other Matters incidental thereto.

River Murray Waters Act 1915—Report of the River Murray Commission for the year 1948–49.

Road Traffic Act 1935—Amendment of Regulations—Major Streets (two papers).

State Development Act 1941—Report of the State Development Committee on the Alpine Regions of Victoria—Ski-ing and Tourists Resorts.

State Electricity Commission Acts—Wiring Regulations 1950.

State Savings Bank Act 1928—General Order No. 41.

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Superannuation Act 1928—Report of the State Superannuation Board for the year 1948–49.
Supreme Court Acts—Rules of the Supreme Court (three papers).
Teaching Service Act 1946—
Amendment of Regulations—
Teaching Service (Classification, Salaries, and Allowances) Regulations (five papers).
Teaching Service (Governor in Council) Regulations (two papers).
Teaching Service (Teachers Tribunal) Regulations (fifteen papers).
Report of the Teachers Tribunal for the year 1948–49.
Transport Regulation Acts—Amendment of Transport Regulations (General Regulations No. 1).
Vermin and Noxious Weeds Act 1928—Amendment of the Bonus for Vermin Destruction Regulations 1928.
Vermin and Noxious Weeds Act 1949—Regulations.
Victorian Inland Meat Authority Act 1942—Report of the Victorian Inland Meat Authority for the year 1948–49.
Water Acts—Report of the State Rivers and Water Supply Commission for the year 1948–49.

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

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

MAY IT PLEASE YOUR EXCELLENCY—

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

Debate ensued.

The Honorable P. 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.

15. ADJOURNMENT.—The Honorable Sir James 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 fifty-six minutes past Five o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 2.

TUESDAY, 27TH JUNE, 1950.

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

2. DECLARATION OF MEMBER.—The Honorable W. J. Beckett 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, WILLIAM JAMES BECKETT, 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 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."

3. PUBLIC WORKS COMMITTEE.—The Honorable P. T. Byrnes moved, by leave, That the Honorable Dudley Joseph Walters be appointed a member of the Public Works Committee.

Question—put and resolved in the affirmative.

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

Adoption of Children Act 1928 and the Supreme Court Act 1928—Adoption of Children (Court of Petty Sessions) Rules 1950.

Co-operative Housing Societies Act 1944—Report of the Registrar of Co-operative Housing Societies for the year 1948-49.

Explosives Act 1928—Order in Council relating to Classification of Explosives—Class 3—Nitro-Compound.

Justices Act 1928 and the Acts Interpretation Act 1928—Rules under the Justices Acts (two papers).

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 31st March, 1950.

5. STANDING ORDERS COMMITTEE.—The Honorable P. T. Byrnes moved, by leave, That 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 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.

6. HOUSE COMMITTEE.—The Honorable P. T. Byrnes moved, by leave, That the Honorables Sir William Angliss, P. T. Byrnes, Sir Frank Clarke, P. Jones, and G. J. Tuckett be members of the House Committee.

Question—put and resolved in the affirmative.

7. LIBRARY COMMITTEE.—The Honorable P. T. Byrnes moved, by leave, That the Honorables the President, P. L. Coleman, P. P. Inchbold, R. C. Rankin, and W. Slater be members of the Joint Committee to manage the Library.

Question—put and resolved in the affirmative.

4947/50. (240 Copies.)

8. PRINTING COMMITTEE.—The Honorable P. T. Byrnes moved, by leave, That the Honorables the President, G. L. Chandler, J. W. Galbally, C. E. Isaac, J. F. Kittson, Colonel G. V. Lansell, W. MacAulay, C. E. McNally, R. C. Rankin, and F. M. Thomas be members of the Printing Committee; three to be the quorum.

Question—put and resolved in the affirmative.

9. ADDRESS IN REPLY TO SPEECH OF HIS EXCELLENCY THE GOVERNOR—DISCHARGE OF ORDER OF THE DAY.—The Order of the Day for the resumption of the debate on the question, That the Council agree to the Address to His Excellency the Governor in reply to His Excellency's Opening Speech (for Address see page 17 *ante*), having been read—

The Honorable P. T. Byrnes moved, That the said Order be discharged.

Question—put and resolved in the affirmative.

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

11. ADJOURNMENT.—The Honorable P. T. Byrnes moved, That the Council, at its rising, adjourn until to-morrow at half-past Four o'clock.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 3.

WEDNESDAY, 28TH JUNE, 1950.

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

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

Apprenticeship Acts—Amendment of Bread Making and Baking Trade Regulations (No. 1).

Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (No. 74).

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

Part III.—Salaries, Increments and Allowances—

Administrative Division—

Department of Chief Secretary (two papers).

Professional Division—

Department of Agriculture.
Department of Chief Secretary (two papers).
Department of Health.
Department of Law.
Department of Mines.
Department of State Forests.
Departments of Agriculture and Water Supply.

Technical and General Division—

Department of Chief Secretary (two papers).
Department of Health (three papers).
Departments of Law and Chief Secretary.

Temporary Employees—

Department of Agriculture (two papers).
Department of Chief Secretary.
Department of Education.
Department of Health.
Department of State Forests.
Department of Water Supply.

3. MARINE (TEMPORARY EXEMPTIONS) BILL.—On the motion of the Honorable P. T. Byrnes, leave was given to bring in a Bill to authorize The Marine Board of Victoria temporarily to exempt certain Harbor Construction Contractors and their Vessels and Personnel from compliance with Provisions of the Marine Acts and the Regulations thereunder, 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.

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

5. CONSOLIDATED REVENUE BILL (No. 1).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply out of the Consolidated Revenue the sum of Seven million seven hundred and six thousand seven hundred and eighty-five pounds to the service of the year One thousand nine hundred and fifty and One thousand nine hundred and fifty-one*" and desiring the concurrence of the Council therein.

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

House in Committee.

The President resumed the Chair; and the Honorable 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. 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 Two million three hundred and sixty-one thousand five hundred and ninety-seven 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 P. T. Byrnes, 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. SUPERANNUATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Superannuation Acts*" and desiring the concurrence of the Council therein.

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

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

House in Committee.

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

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 4.

TUESDAY, 8TH AUGUST, 1950.

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. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes presented a Message from His Excellency the Governor informing the Council that he had, on the 30th June last, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Consolidated Revenue Act (*No.* 1).
Consolidated Revenue Act (*No.* 2).
Superannuation Act.

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

Apprenticeship Acts—

Amendment of Bread Making and Baking Trade Regulations (Nos. 1 and 2) (two papers).
Variation of Proclamation of the Moulding Trade.

Dried Fruits Acts—Amendment of Regulations—Travelling expenses of members of Board.

Explosives Act 1928—

Orders in Council relating to—

Classification of Explosives—Classes 1 to 7.
Definition of Explosives—Class 6—Ammunition.

Report of the Chief Inspector of Explosives on the working of the Act during the year 1949.

Factories and Shops Acts and Ministry of Health Act 1943—Amendment of Regulations—Fee for certificate of fitness.

Fisheries Acts—Notices of Intention to issue Proclamations—

To prohibit all fishing in or the taking of fish from Jim Crow Creek from 1st May to 31st August in each year.

To prohibit all fishing in or the taking of fish from Taylor's Lake, near Horsham, from 1st September to 30th November in each year.

Footwear Regulation Acts—Footwear Regulations.

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 1949.

4947/50. (240 copies)

Fruit and Vegetables Acts—Amendment of Regulations—Bananas.

Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (Nos. 75 to 78) (four papers).

Geelong Harbor Trust Acts—Accounts and Statement of Receipts and Expenditure of the Geelong Harbor Trust Commissioners for the year 1949.

Hospitals and Charities Act 1948—Certificate of the Minister of Health relating to the proposed compulsory resumption of land for the purposes of Moorabbin Hospital.

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

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

Lands Compensation Act 1928—Return under section 37 showing particulars of purchases, sales, or exchanges of land by the State Electricity Commission for the year 1949-50.

Local Authorities Superannuation Acts—Local Authorities Superannuation Regulations No. 4.

Marketing of Primary Products Act 1935—

Proclamation declaring that Potatoes shall become the property of the Potato Marketing Board for the period from 19th December, 1949, to 31st October, 1950.

Regulations—

Onion Marketing Board—Thirty-eighth period of time for the computation of or accounting for the net proceeds of the sale of onions.

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

Travelling expenses of members of—

Chicory Marketing Board.

Onion Marketing Board, Maize Marketing Board, Egg and Egg Pulp Marketing Board, and Potato Marketing Board.

Milk Pasteurization Act 1949—Regulations relating to remuneration and travelling expenses of members of Committee.

Opticians Registration Act 1935—Amendment of Opticians Regulations 1946.

Public Service Act 1946—

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

Amendment of Public Service (Public Service Board) Regulations—

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

Part III.—Salaries, Increments and Allowances—

Administrative Division—

Department of Treasurer.
Department of Water Supply.

Professional Division—

Department of Agriculture.
Department of Chief Secretary (two papers).
Department of Health (three papers).
Department of Public Works.
Department of State Forests.
Department of Water Supply.
Departments of Chief Secretary, Law, and Lands and Survey.

Professional Division, Technical and General Division, and Temporary Employees—Quarters, Rent, &c.

Regulation 63—Overtime Allowances.

Technical and General Division—

Department of Agriculture.
Department of Chief Secretary.
Department of Education.
Department of Health (two papers).
Department of Public Works.
Department of State Forests.
Department of Treasurer.
Department of Water Supply (two papers).

Temporary Employees—

Department of Health (two papers).
Department of Public Works (two papers).
Department of Water Supply.

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Rural Finance Corporation Act 1949—Rural Finance Corporation Regulations.

State Savings Bank Act 1928—General Order No. 42.

Teaching Service Act 1946—Amendment of Regulations—

Teaching Service (Governor in Council) Regulations (two papers).
Teaching Service (Teachers Tribunal) Regulations (eight papers).

Trade Unions Act 1928—Report of the Government Statist for the year 1949.

Victorian Inland Meat Authority Act 1942—Amendment of Regulations—Travelling expenses of members of the Authority.

5. MELBOURNE HARBOR TRUST (HOUSING ADVANCES) 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.

6. DECLARATION OF MEMBER.—The Honorable J. W. Galbally 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, 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 or 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."

7. MARINE (TEMPORARY EXEMPTIONS) 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.

8. ADJOURNMENT.—The Honorable P. T. Byrnes moved, That the Council, at its rising, adjourn until Tuesday, the 22nd instant, at half-past Four o'clock.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at forty minutes past Six o'clock, adjourned until Tuesday, the 22nd instant.

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 5.

TUESDAY, 22ND AUGUST, 1950.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes presented a Message from His Excellency the Governor, informing the Council that he had, on the 15th instant, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—

Marine (Temporary Exemptions) Act.

3. PYALONG 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 Reservations of certain Land in the Parish of Pyalong temporarily reserved as a Site for Racing Cricket and Recreation and for the Exchange thereof for certain other Land in the said Parish to be reserved as a Site for Racing and Public Recreation*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. PRINTERS AND NEWSPAPERS (FOREIGN ADVERTISEMENTS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Newspaper Advertisements in Foreign Languages*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. 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 Seven million five hundred and fifty thousand five hundred and eighty-three pounds to the service of the year One thousand nine hundred and fifty and One thousand nine hundred and fifty-one*" and desiring the concurrence of the Council therein.

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

6. MELBOURNE (BOWEN-STREET) LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Closing of Bowen-street and part of an adjoining Lane in the City of Melbourne and to validate certain Crown Grants and Reservations, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. UNIVERSITY (VETERINARY RESEARCH) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'University (Veterinary Research) Act* 1945'" and desiring the concurrence of the Council therein.

On the motion of the Honorable T. Harvey, 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. POLICE REGULATION (PENSIONS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Pensions of Members of the Police Force and their Widows, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. MARINE (TEMPORARY EXEMPTIONS) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

4947/50. (240 copies.)

10. PAPERS.—The Honorable P. T. Byrnes presented, by command of His Excellency the Governor—
Education—Report of the Minister of Education for the year 1948–49.

Ordered to lie on the Table.

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

Apprenticeship Acts—Amendment of Regulations—

Aircraft Trades Regulations (No. 1).
Boilermaking and/or Steel Construction Trades Regulations (No. 2).
Boot Trades Regulations.
Bread Making and Baking Trade Regulations (No. 1).
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 (No. 1).
Engineering Trades Regulations (No. 2).
Electroplating Trade Regulations (No. 1).
Engineering Trades Regulations (No. 4).
Fibrous Plastering Trade Regulations.
Ladies' and/or Men's Hairdressing Trades Regulations (No. 1).
Motor Mechanics Trades Regulations.
Moulding Trades Apprenticeship Regulations.
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).

Explosives Act 1928—Orders in Council relating to—

Classification of Explosives—Class 7—Firework.
Definition of Explosives—Class 7—Firework.

Fisheries Acts—Notices of Intention to issue Proclamations—

To alter the minimum length for bream.
To prohibit all fishing in or the taking of fish from certain waters from 1st September to 30th November in each year.
To prohibit fishing from boats driven by power in portion of the Big River.
To prohibit fishing in the Goulburn River, &c., above Alexandra.

Free Library Service Board Act 1946—Free Library Service Board Regulations 1950.

Friendly Societies Act 1928—Report of the Government Statist for the year 1948–49.

Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (Nos. 79 and 80) (two papers).

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

Public Service Act 1946—

Amendment of Public Service (Governor in Council) Regulations—Part IV.—Leave of Absence.
Amendment of Public Service (Public Service Board) Regulations—
Part II.—Transfers and Promotions—Professional Division—Regulation 40A.
Part III.—Salaries, Increments and Allowances—
Professional Division—
Department of Agriculture.
Department of State Forests.
Technical and General Division—
Department of Agriculture.
Department of Chief Secretary (two papers).
Department of Health.
Department of Lands and Survey.
Department of Premier.
Department of Public Works (two papers).
Temporary Employees—Department of Chief Secretary.

Seeds Acts—Amendment of Regulations—Onion Seed.

Soldier Settlement Acts—Additions to Regulations.

Teaching Service Act 1946—Amendment of Regulations—

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

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11. MELBOURNE AND METROPOLITAN BOARD OF WORKS (BORROWING POWERS) BILL.—On the motion of the Honorable P. T. Byrnes, leave was given to bring in a Bill to increase the Borrowing Powers of the Melbourne and Metropolitan Board of Works, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

12. GOODS (TEXTILE PRODUCTS) BILL.—On the motion of the Honorable T. Harvey, leave was given to bring in a Bill relating to Trade Descriptions of Textile Products, 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. DRAINAGE AREAS BILL.—On the motion of the Honorable P. T. Byrnes, leave was given to bring in a Bill to amend the *Drainage Areas 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.

14. LEGISLATIVE COUNCIL FRANCHISE BILL.—The Honorable Sir James Kennedy moved, That he have leave to bring in a Bill to extend the Franchise for the Elections for the Legislative Council.

Debate ensued.

Question put.

The Council divided.

Ayes, 14.	Noes, 15.
The Hon. Sir William Angliss,	The Hon. W. J. Beckett,
Sir Frank Beaurepaire,	P. T. Byrnes,
E. P. Cameron,	P. L. Coleman,
G. L. Chandler,	A. M. Fraser,
C. P. Gartside (*Teller*),	J. W. Galbally (*Teller*),
C. E. Isaac,	T. Harvey,
Sir James Kennedy,	P. P. Inchbold,
J. F. Kittson,	P. Jones,
Col. G. V. Lansell,	P. J. Kennelly (*Teller*),
H. C. Ludbrook,	W. MacAulay,
G. S. McArthur (*Teller*),	C. E. McNally,
A. E. McDonald,	W. Slater,
R. C. Rankin,	I. A. Swinburne,
A. G. Warner.	F. M. Thomas,
	G. J. Tuckett.

And so it passed in the negative.

15. ADJOURNMENT.—The Honorable P. T. Byrnes moved, That the Council, at its rising, adjourn until Tuesday next at half-past Four o'clock.

The Honorable Sir James Kennedy moved, as an amendment, That the words " Tuesday next " be omitted with the view of inserting in place thereof the word " to-morrow ".

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

The Council divided.

Ayes, 15.	Noes, 14.
The Hon. W. J. Beckett,	The Hon. Sir William Angliss,
P. T. Byrnes,	Sir Frank Beaurepaire,
P. L. Coleman,	E. P. Cameron,
A. M. Fraser,	G. L. Chandler,
J. W. Galbally,	C. P. Gartside,
T. Harvey,	C. E. Isaac,
P. P. Inchbold,	Sir James Kennedy,
P. Jones (*Teller*),	J. F. Kittson,
P. J. Kennelly,	Col. G. V. Lansell,
W. MacAulay,	H. C. Ludbrook,
C. E. McNally,	G. S. McArthur,
W. Slater (*Teller*),	A. E. McDonald (*Teller*),
I. A. Swinburne,	R. C. Rankin,
F. M. Thomas,	A. G. Warner (*Teller*).
G. J. Tuckett.	

And so it was resolved in the affirmative.

Question—That the Council, at its rising, adjourn until Tuesday next at half-past Four o'clock—put and resolved in the affirmative.

The Honorable P. T. Brynes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 6.

TUESDAY, 29TH AUGUST, 1950.

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

2. POLICE OFFENCES (RACE-MEETINGS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section One hundred and fifty-two of the 'Police Offences Act* 1928'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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. NON-CONTRIBUTORY STATE PENSIONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to increase certain Non-Contributory State Pensions*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable I. A. Swinburne, 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. MELBOURNE HARBOR TRUST (HOUSING ADVANCES) 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. MELBOURNE HARBOR TRUST (HOUSING ADVANCES) BILL.—The President announced the receipt of a communication from the Clerk of the Parliaments (pursuant to Joint Standing Order No. 21) reporting that the following clerical error has been discovered in this Bill, viz.:—In clause 1, line 12, the word "Trusts" has been inserted instead of the word "Trust".

   On the motion of the Honorable P. T. Byrnes, the Council agreed that the said error be corrected by the insertion of the word "Trust" instead of the word "Trusts" in clause 1, line 12.

   Ordered—That the communication from the Clerk of the Parliaments be transmitted to the Assembly with a Message requesting their concurrence in the correction of the said error.

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

   Fisheries Acts—Notices of Intention to issue Proclamations—

   Respecting the close season, limits of catch, &c., for oysters in Victorian waters.
   Respecting the use of nets around piers and jetties, including Kerferd-road Jetty and St. Kilda Pier.

   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.

   Land Act 1928—Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Newport West and Pascoe Vale South (six papers).

   Local Government Act 1946—Order in Council relating to compulsory voting for the election of councillors for the Cities of Collingwood and Ararat.

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

   Administrative Division—Department of Treasurer.

   Professional Division—

   Department of Chief Secretary (two papers).
   Department of Law.
   Department of Premier.

   Technical and General Division—Department of Health (two papers).

   Temporary Employees—General and Department of Lands and Survey.

7. DAYS OF BUSINESS.—The Honorable P. T. Byrnes 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.

Debate ensued.

Question—put and resolved in the affirmative.

8. STATE ELECTRICITY COMMISSION (CONTRACTS) BILL.—On the motion of the Honorable I. A. Swinburne, leave was given to bring in a Bill to amend the Third Schedule to the *State Electricity Commission Act* 1928, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. CONSOLIDATED REVENUE BILL (No. 3).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 12th September next.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 7.

TUESDAY, 12TH SEPTEMBER, 1950.

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

2. MESSAGE FROM THE DEPUTY FOR HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes presented a Message from the Deputy for His Excellency the Governor, informing the Council that he had, on the 1st instant, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Consolidated Revenue Act (*No.* 3).
Melbourne Harbor Trust (*Housing Advances*) *Act.*

3. LEGISLATIVE COUNCIL REFORM BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to introduce Adult Suffrage at Legislative Council Elections, to amend the Law relating to Qualification for Membership of and Elections for the Legislative Council, to provide for the Re-definition of the Boundaries of Electoral Provinces for the Legislative Council, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. AGRICULTURAL COLLEGES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to further amend Section Five of the 'Agricultural Colleges Act* 1944'" and desiring the concurrence of the Council therein.

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

5. MELBOURNE HARBOR TRUST (HOUSING ADVANCES) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have concurred with the Council in correcting the clerical error reported by the Clerk of the Parliaments in this Bill.

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

Apprenticeship Acts—Amendment of Regulations—
General Regulations (No. 7).
Printing and Allied Trades Regulations.

Constitution Statute—Statement of Expenditure under Schedule D to Act 18 and 19 Vict., Cap. 55, and Acts Nos. 3660 and 5380 during the year 1949-50.

Fisheries Acts—Notices of Intention to issue Proclamations—
To alter the restrictions on the use of certain nets in Port Phillip Bay.
To prohibit all fishing in or the taking of fish from the Jubilee Dam at Italian Gully until 30th September, 1952.
To prohibit fishing and prescribe a bag limit for trout in Birch's or Bullarook Creek, Tullaroop or Deep Creek, and McCallum's or Mount Greenock Creek.

Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (No. 81).
Legal Profession Practice Acts—Solicitors' (Audit and Practising Certificates) Rules 1950.
Melbourne Harbor Trust Act 1928—Statement of Accounts of the Melbourne Harbor Trust Commissioners for the year 1949.

Motor Car Acts—Amendment of Regulations.
Public Library, National Gallery and Museums Acts—Museum of Applied Science Regulations 1950.

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 Law (two papers).
Department of State Forests.
Technical and General Division—General and Department of Premier.
Temporary Employees—
Department of Agriculture.
General.

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

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7. UNIVERSITY (VETERINARY RESEARCH) 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. PYALONG 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.

9. POLICE REGULATION (PENSIONS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

The Honorable 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. MELBOURNE AND METROPOLITAN BOARD OF WORKS (BORROWING POWERS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

Debate ensued.

The Honorable C. P. Gartside moved, That the debate be now adjourned.

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

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

11. GOODS (TEXTILE PRODUCTS) 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.

12. PRICES REGULATION (EXTENSION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to extend the Operation of the Prices Regulation Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 6 to 10 inclusive, be postponed until after No. 11.

14. STATE ELECTRICITY COMMISSION (CONTRACTS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

Debate ensued.

The Honorable A. E. McDonald 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 P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 8.

TUESDAY, 19TH SEPTEMBER, 1950.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

University (Veterinary Research) Act.
Pyalong Lands Exchange Act.

3. PUBLIC TRUSTEE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Law relating to the Public Trustee*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. WEIGHTS AND MEASURES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Weights and Measures Act* 1939'" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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 :—

Apprenticeship Acts—Amendment of Butchering and/or Small Goods Making Trades Regulations (No. 1).

Fisheries Acts—Notice of Intention to issue a Proclamation to prohibit any method of fishing from boats driven by power in inland waters.

Hospitals and Charities Act 1948—Report of the Hospitals and Charities Commission for the year 1949-50.

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

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

Professional Division—Department of Agriculture.
Technical and General Division—Department of Agriculture.
Temporary Employees—Department of Water Supply.

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

6. LEGISLATIVE COUNCIL REFORM BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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, the 3rd October next.

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7. DRAINAGE AREAS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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.

8. STATE ELECTRICITY COMMISSION (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 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. MELBOURNE AND METROPOLITAN BOARD OF WORKS (BORROWING POWERS) 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, after debate, read a third time and passed.

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

10. POLICE REGULATION (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 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.

11. PRINTERS AND NEWSPAPERS (FOREIGN ADVERTISEMENTS) 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.

12. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affimative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 9.

TUESDAY, 26TH SEPTEMBER, 1950.

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

2. STATUTE LAW REVISION COMMITTEE.—The Honorable P. T. Byrnes moved, by leave, That the Statute Law Revision Committee have power to travel to and hold meetings in Adelaide for the purpose of inquiring into the practice with respect to the transfer of land in South Australia.

Debate ensued.

Question—put and resolved in the affirmative.

Ordered—That a Message be sent to the Assembly acquainting them with the foregoing resolution.

3. STATUTE LAW REVISION COMMITTEE.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to a resolution that the Statute Law Revision Committee have power to travel to and hold meetings in Adelaide for the purpose of inquiring into the practice with respect to the transfer of land in South Australia.

4. 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 the Mooroopna and District Base Hospital.

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

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

Technical and General Division—

Department of Education.
Department of Health (two papers).
General.

Temporary Employees—

Department of Treasurer.
Department of Water Supply.

5. MELBOURNE AND METROPOLITAN BOARD OF WORKS (CONTRACTS) BILL.—On the motion of the Honorable P. T. Byrnes, leave was given to bring in a Bill to amend Section Thirty-seven of the *Melbourne and Metropolitan Board of Works 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.

6. PUBLIC CONTRACTS (AMENDMENT) BILL.—On the motion of the Honorable P. T. Byrnes, leave was given to bring in a Bill to amend Section Four of the *Public Contracts 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. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 1, be postponed until later this day.

8. POLICE REGULATION (PENSIONS) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable 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.

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9. PRINTERS AND NEWSPAPERS (FOREIGN ADVERTISEMENTS) 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 an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

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

10. MELBOURNE (BOWEN-STREET) 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.

11. DRAINAGE AREAS 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 transmitted to the Assembly with a Message desiring their concurrence therein.

12. POLICE OFFENCES (RACE-MEETINGS) 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.

13. NON-CONTRIBUTORY STATE PENSIONS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved to the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 10.

TUESDAY, 3RD OCTOBER, 1950.

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

2. FACTORIES AND SHOPS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Factories and Shops Acts, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable T. Harvey, 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. NURSES AND MIDWIVES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Mental Nurses and the Registration thereof, to amend the Nurses Acts and the Midwives Acts, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable I. A. Swinburne, 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. COAL MINING INDUSTRY (LONG SERVICE LEAVE) 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 Granting of Long Service Leave to Employés in the Coal Mining Industry*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. P. Inchbold, 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. GOODS (TEXTILE PRODUCTS) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

6. PRINTERS AND NEWSPAPERS (FOREIGN ADVERTISEMENTS) 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 :—

   Country Fire Authority Acts—Amendment of Regulations—
   - Country Fire Authority (General) Regulations.
   - Duties and Conduct of Officers and Employees.

   Explosives Act 1928—Order in Council relating to the Definition of Explosives.

   Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (No. 82).

   Marketing of Primary Products Act 1935—Egg and Egg Pulp Marketing Board—Amendment of Regulations (two papers).

   Mothercraft Nurses Act 1949—Mothercraft Nurses Regulations 1950.

   Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—
   Part III.—Salaries, Increments and Allowances—
   - Professional Division—
     - Department of Law.
     - Department of Premier.
     - Department of Treasurer.
   - Technical and General Division—
     - Department of Health (three papers).
     - General and Departments of Education and Public Works.
   - Technical and General Division and Temporary Employees—Department of Premier.
   - Temporary Employees—
     - Department of Chief Secretary.
     - Department of Health.
     - Department of Water Supply.
     - General and Departments of Chief Secretary, Treasurer, Education, Lands and Survey, Agriculture, Health, and Labour.

   Road Traffic Act 1935—Regulation—Major Streets.

4947/50. (240 copies.)

8. LEGISLATIVE COUNCIL REFORM 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.

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

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 11.

TUESDAY, 10TH OCTOBER, 1950.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes presented a Message from His Excellency the Governor informing the Council that he had, on the 4th instant, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Goods (Textile Products) Act.

Police Regulation (Pensions) Act.

Melbourne (Bowen-street) Land Act.

Printers and Newspapers (Foreign Advertisements) Act.

Police Offences (Race-meetings) Act.

Non-Contributory State Pensions Act.

3. POLICE REGULATION (PENSIONS) AMENDMENT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Six of the 'Police Regulation (Pensions) Act* 1950'" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. LEGISLATIVE COUNCIL REFORM 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.

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

Country Fire Authority Acts—Regulations relating to the issue of debentures.

Education Act 1928—Report of the Council of Public Education for the year 1949-50.

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

Masseurs Act 1928—Amending Masseurs Regulations 1950.

Melbourne and Metropolitan Tramways Act 1928—Report and Statement of Accounts of the Melbourne and Metropolitan Tramways Board for the year 1949-50.

Motor Omnibus Act 1928—Amendment of Urban Motor Omnibus Regulations.

Police Regulation Acts—Amendment of Police Regulations.

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 Lands and Survey.

River Improvement Act 1948—Regulations—

Latrobe River Improvement Trust—Election and Term of Office of Commissioners, and any Matter incidental thereto.

River Improvement Trusts—Qualification, Disqualification, Election, Appointment, Removal, and Term of Office of Commissioners.

Tarwin River Improvement Trust—Election and Term of Office of Commissioners, and any Matter incidental thereto.

State Savings Bank Act 1928—State Savings Bank of Victoria—Statements and Returns for the year 1950.

4947/50. (240 copies.)

6. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. T. Byrnes 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 be rescinded and that, for the remainder of the Session, Government business shall take precedence of all other business.

Debate ensued.

Question—put.

The Council divided.

Ayes, 17.	Noes, 13.
The Hon. W. J. Beckett,	The Hon. Sir William Angliss,
P. T. Byrnes,	Sir Frank Beaurepaire,
P. L. Coleman (*Teller*),	E. P. Cameron,
A. M. Fraser,	G. L. Chandler,
J. W. Galbally,	Sir Frank Clarke,
T. Harvey,	C. P. Gartside,
P. P. Inchbold,	C. E. Isaac (*Teller*),
P. Jones,	Sir James Kennedy,
P. J. Kennelly,	J. F. Kittson (*Teller*),
Col. G. V. Lansell,	A. E. McDonald,
J. H. Lienhop,	H. V. MacLeod,
W. MacAulay (*Teller*),	R. C. Rankin,
W. Slater,	A. G. Warner.
I. A. Swinburne,	
F. M. Thomas,	
G. J. Tuckett,	
D. J. Walters.	

And so it was resolved in the affirmative.

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

Debate ensued.

The Honorable D. J. Walters 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. PRICES REGULATIONS (EXTENSION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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. 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. WEIGHTS AND MEASURES BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

Debate ensued.

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

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

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

11. MELBOURNE AND METROPOLITAN BOARD OF WORKS (CONTRACTS) 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.

12. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 12.

TUESDAY, 17TH OCTOBER, 1950.

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

2. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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 11th instant—

   Legislative Council Reform Act.

   On the 17th instant—

   State Electricity Commission (Contracts) Act.

3. GAS AND FUEL CORPORATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to approve validate ratify and otherwise give effect to an Agreement between the State of Victoria The Metropolitan Gas Company and The Brighton Gas Company Limited, to establish constitute and incorporate a Public Authority to be called the 'Gas and Fuel Corporation of Victoria', to make provision with respect to the Objects Powers and Duties of such Authority, to provide for the Raising of Money by the State and the Application of such Money, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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. SUPREME COURT (JUDGES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Fifteen of the 'Supreme Court Act* 1928'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. P. Inchbold, 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. FORESTS (ACCOUNTS AND FUNDS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for a Forests Stores Suspense Account and a Forests Plant and Machinery Fund*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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. STATE ELECTRICITY COMMISSION (CONTRACTS) 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. 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 1949-50.

   Apprenticeship Acts—Butchering Trades Apprenticeship Regulations.

   Dairy Products Acts—Report of the Victorian Dairy Products Board for the six months ended 30th June, 1950.

   Education Act 1928—Amendment of Regulations—

      Regulation XVI.—Tuition Fees for Secondary Education.

      Regulation XXI.—Scholarships and Bursaries.

4947/50 (240 copies.)

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

Fisheries Acts—Notices of Intention to issue Proclamations—

Respecting fishing licences and renewal of such licences.

To alter the regulations regarding the use of long lines and certain other fishing lines in the Port of Port Phillip (including Corio, Hobson's, and Swan Bays).

To alter the regulations respecting long lines in Western Port Bay.

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

Marketing of Primary Products Act 1935—Onion Marketing Board—Regulations—Registration of Producers of Onions.

Police Regulation Act 1946—Determinations Nos. 26 to 28 of the Police Classification Board (three papers).

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

Professional Division—Department of State Forests.

Temporary Employees—Department of Chief Secretary.

Supreme Court Acts—Rules of the Supreme Court.

8. Building Operations and Building Materials Control (Amendment) Bill.—On the motion of the Honorable I. A. Swinburne, leave was given to bring in a Bill to amend the Building Operations and Building Materials Control Acts, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. Police Regulation (Pensions) Amendment Bill.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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 Order of the Day.—Ordered—That the consideration of Order of the Day, Government Business, No. 2, be postponed until later this day.

11. Prices Regulation (Extension) 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. Postponement of Orders of the Day.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 4 to 6 inclusive, be postponed until later this day.

13. Factories and Shops (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.

14. Adjournment.—The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 13.

WEDNESDAY, 18TH OCTOBER, 1950.

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 second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

   Debate ensued.

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

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

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

3. GAS AND FUEL CORPORATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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.

4. NURSES AND MIDWIVES BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair; and the Honorable 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. 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.

6. PUBLIC TRUSTEE 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.

7. WEIGHTS AND MEASURES 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. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

   Question—put and resolved in the affirmative.

   The Honorable P. T. Byrnes moved, That the House do now adjourn.

   Debate ensued.

   Question—put and resolved to the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 14.

TUESDAY, 24TH OCTOBER, 1950.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

Police Regulation (Pensions) Amendment Act.
Prices Regulation (Extension) Act.
Factories and Shops (Amendment) Act.
Nurses and Midwives Act.
Weights and Measures 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 Seven million nine hundred and seventy-five thousand three hundred and ninety-nine pounds to the service of the year One thousand nine hundred and fifty and One thousand nine hundred and fifty-one*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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 :—

Poisons Acts—Pharmacy Board of Victoria—

Dangerous Drugs Regulations 1950.

Proclamations amending—

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

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

Part III.—Salaries, Increments, and Allowances—Professional Division—Department of Chief Secretary.

Teaching Service Act 1946—Amendment of Regulations—

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

Workers' Compensation Acts—Workers' Compensation Board Fund—Balance-sheet and Statement of Receipts and Expenditure for the year 1949-50.

5. 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 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.

4947/50. (240 Copies.)

6. SHRINE OF REMEMBRANCE SITE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to authorize the Shrine of Remembrance Trustees to erect a Memorial to commemorate the Sacrifice and Fortitude of Men and Women who served in the World War of* 1939–1945, *and for other purposes*" and desiring the concurrence of the Council therein.

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

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

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

   House in Committee.

   The President resumed the Chair; and the Honorable 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. GAS AND FUEL 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, having been read—

   Debate resumed.

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

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

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

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 15.

WEDNESDAY, 25TH OCTOBER, 1950.

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

2. TEACHING SERVICE (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Teaching Service Act* 1946'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. P. Inchbold, 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. 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 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 P. T. Byrnes, 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. ACTS INTERPRETATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Six of the 'Acts Interpretation Act* 1928'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable I. A. Swinburne, 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. GRAIN ELEVATORS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Grain Elevators Acts*" and desiring the concurrence of the Council therein.

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

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6. STATUTE LAW REVISION COMMITTEE—LIMITATION OF ACTIONS.—The Honorable P. T. Byrnes brought up a Report from the Statute Law Revision Committee on Limitation of Actions.

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 :—

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

Transport Regulation Acts—Report of the Transport Regulation Board for the year 1949–50.

8. CONSOLIDATED REVENUE BILL (No. 4).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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. IMPORTED MATERIALS LOAN AND APPLICATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Imported Materials Loan and Application Act* 1949'" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. VICTORIAN INLAND MEAT AUTHORITY (ADVANCES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Nineteen of the 'Victorian Inland Meat Authority Act* 1942'" and desiring the concurrence of the Council therein.

On the motion of the Honorable T. Harvey, 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. DRAINAGE AREAS BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

12. ADJOURNMENT.—The Honorable P. T. Byrnes 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 sixteen minutes past Eleven o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 16.

TUESDAY, 31ST OCTOBER, 1950.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

   Supreme Court (Judges) Act.
   Drainage Areas Act.
   Consolidated Revenue Act (No. 4).

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 I. A. Swinburne, 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. CATTLE COMPENSATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Four and Five of the 'Cattle Compensation Act* 1928'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable T. Harvey, 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 :—

   Medical Act 1928—Pharmacy Board of Victoria—Pharmacy Regulations 1950.

   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.

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

   Trotting Races Act 1946—Amendment of Regulations—Fees and Travelling Allowances.

6. GAS AND FUEL 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, having been read—

   Debate resumed.

   The Honorable A. E. McDonald moved, That the debate be adjourned until the next day of meeting.

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

4947/50. (240 copies.)

The Council divided.

Ayes, 11.	Noes, 15.
The Hon. E. P. Cameron,	The Hon. W. J. Beckett,
G. L. Chandler,	P. T. Byrnes,
C. P. Gartside,	P. L. Coleman,
C. E. Isaac,	T. Harvey,
Sir James Kennedy,	P. P. Inchbold,
J. F. Kittson (*Teller*),	P. Jones (*Teller*),
G. S. McArthur (*Teller*),	P. J. Kennelly,
A. E. McDonald,	Col. G. V. Lansell,
H. V. MacLeod,	J. H. Lienhop,
R. C. Rankin,	W. MacAulay (*Teller*),
A. G. Warner.	W. Slater,
	I. A. Swinburne,
	F. M. Thomas,
	G. J. Tuckett,
	D. J. Walters.

And so it passed in the negative.

Debate on the main question continued.

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

WEDNESDAY, 1ST NOVEMBER, 1950.

Debate continued.

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

The Council divided.

Ayes, 14.	Noes, 11.
The Hon. W. J. Beckett,	The Hon. E. P. Cameron,
P. T. Byrnes,	G. L. Chandler,
P. L. Coleman,	C. P. Gartside,
T. Harvey,	C. E. Isaac (*Teller*),
P. P. Inchbold,	Sir James Kennedy,
P. Jones (*Teller*),	J. F. Kittson (*Teller*),
P. J. Kennelly,	G. S. McArthur,
J. H. Lienhop,	A. E. McDonald,
W. MacAulay,	H. V. MacLeod,
W. Slater,	R. C. Rankin,
I. A. Swinburne,	A. G. Warner.
F. M. Thomas,	
G. J. Tuckett,	
D. J. Walters (*Teller*).	

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

House in Committee.

The President resumed the Chair; and the Honorable R. C. Rankin having reported that the Committee had agreed to the Bill without amendment, the Report was adopted.

The Honorable P. T. Byrnes moved, That the Bill be now read a third time.

Debate ensued.

Question—put.

The Council divided.

Ayes, 14.	Noes, 11.
The Hon. W. J. Beckett,	The Hon. E. P. Cameron (*Teller*),
P. T. Byrnes,	G. L. Chandler,
P. L. Coleman (*Teller*),	C. P. Gartside (*Teller*),
T. Harvey,	C. E. Isaac,
P. P. Inchbold,	Sir James Kennedy,
P. Jones,	J. F. Kittson,
P. J. Kennelly,	G. S. McArthur,
J. H. Lienhop,	A. E. McDonald,
W. MacAulay,	H. V. MacLeod,
W. Slater (*Teller*),	R. C. Rankin,
I. A. Swinburne,	A. G. Warner.
F. M. Thomas,	
G. J. Tuckett,	
D. J. Walters.	

And so it was resolved in the affirmative.—Bill read a third time and passed.

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

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

ROY S. SARAH,
Clerk of the Legislative Council.

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No. 17.

WEDNESDAY, 1ST NOVEMBER, 1950.

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:—

   Town and Country Planning Act 1944—Report of the Town and Country Planning Board for the year 1949-50.

3. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 and 2, be postponed until later this day.

4. FORESTS (ACCOUNTS AND FUNDS) 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. COAL MINING INDUSTRY (LONG SERVICE LEAVE) 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. 4 to 8 inclusive, be postponed until later this day.

7. ACTS INTERPRETATION (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

   Debate ensued.

   The Honorable A. E. McDonald 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.

8. PUBLIC CONTRACTS (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.

9. ACTS INTERPRETATION (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.

10. AGRICULTURAL COLLEGES (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.

11. ADJOURNMENT.—The Honorable P. T. Byrnes 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-eight minutes past Nine o'clock, adjourned until Wednesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 18.

WEDNESDAY, 8TH NOVEMBER, 1950.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

   Forests (Accounts and Funds) Act.
   Coal Mining Industry (Long Service Leave) Act.
   Acts Interpretation (Amendment) Act.
   Agricultural Colleges (Amendment) Act.

3. 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 P. T. Byrnes, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

4. WATER BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Water Acts, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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 direction of an Act 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 Numurkah and Prahran (two papers).

6. SHRINE OF REMEMBRANCE SITE 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. TEACHING SERVICE (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold moved, That this Bill be now read a second time.

   Debate ensued.

   The Honorable C. E. Isaac moved, That the debate be now adjourned.

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

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

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8. PUBLIC WORKS 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 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. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (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.

10. GRAIN ELEVATORS 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. COAL MINES REGULATION (ACCIDENTS RELIEF) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Division Fourteen of Part I. of the 'Coal Mines Regulation Act* 1928' *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. ADJOURNMENT.—ALTERATION OF HOUR OF MEETING.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until to-morrow at Eleven o'clock.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes 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.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 19.

THURSDAY, 9TH NOVEMBER, 1950.

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

2. 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.

3. TEACHING SERVICE (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.

4. IMPORTED MATERIALS LOAN AND APPLICATION (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.

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5. TALLANGATTA TOWNSHIP (REMOVAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Removal of the Township at Tallangatta to a new Site, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. VICTORIAN INLAND MEAT AUTHORITY (ADVANCES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable T. Harvey moved, That this Bill be now read a second time.

Debate ensued.

The Honorable J. H. Lienhop 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 Four o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 20.

TUESDAY, 14TH NOVEMBER, 1950.

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

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

Building Operations and Building Materials Control (Amendment) Act.
Shrine of Remembrance Site Act.
Public Works Loan and Application Act.
Grain Elevators Act.
Teaching Service (Amendment) Act.
Imported Materials Loan and Application (Amendment) Act.

3. MEDICAL BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Medical Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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 :—

Adult Education Act 1946—Report of the Council of Adult Education for the year 1949-50.
Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (No. 83).
Local Government Act 1946—Proposed amendments of the Uniform Building Regulations.
Mental Hygiene Act 1928—Report of the Director of Mental Hygiene for the year 1949.
Milk and Dairy Supervision Act 1943—Amendment of Metropolitan Milk Supply Regulations.
Prices Regulation Acts—Prices Regulations (Victoria) No. 5.
Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—
Part II.—Promotions and Transfers—Professional Division—Regulation 40A.
Part III.—Salaries, Increments, and Allowances—
Administrative and Professional Divisions—Scale of Rates of Annual Salaries (not including Female Officers classified below Class "C" in the Professional Division); and Professional Division—Scale of Rates of Annual Salaries of Female Officers classified below Class "C".
Administrative Division—Departments of Premier, Chief Secretary, Treasurer, Education, Law, Lands and Survey, Public Works, Health, Agriculture, Labour, State Forests, and Water Supply.

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Professional Division—

Department of Law.

Departments of Premier, Chief Secretary, Treasurer, Law, Lands and Survey, Public Works, Mines, Health, Agriculture, Labour, State Forests, and Water Supply.

Regulations 48A, 49, 60, 63 and 65.

Technical and General Division—

Department of Chief Secretary.
Department of Health.
Department of Lands and Survey.

Temporary Employees—General and Departments of Premier and Water Supply.

Part V.—Travelling Expenses—Regulation 95.

Railways Act 1928—Report of the Victorian Railways Commissioners for the year 1949–50.

Teaching Service Act 1946—Amendment of Regulations—

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

5. WATER SUPPLY 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 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. VICTORIAN INLAND MEAT AUTHORITY (ADVANCES) 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 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.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 21.

WEDNESDAY, 15TH NOVEMBER, 1950.

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

2. 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 I. A. Swinburne, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

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3. 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-one*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. MELBOURNE AND METROPOLITAN BOARD OF WORKS (CONTRACTS) 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. MELBOURNE AND METROPOLITAN BOARD OF WORKS (BORROWING POWERS) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

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

State Development Act 1941—Interim Report of the State Development Committee on Tourist Facilities and National Parks.

Statute Law Revision Committee Act 1948—Statute Law Revision Committee (Travelling Expenses) Regulations.

Water Acts—General Regulations for the Election of Commissioners of Waterworks Trusts.

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

House in Committee.

The President resumed the Chair; and the Honorable 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. TALLANGATTA TOWNSHIP (REMOVAL) 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 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. MENTAL HYGIENE AUTHORITY 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 Constitution and Functions of a Mental Hygiene Authority, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. JUBILEE AND CENTENARY SPORTS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Sports in connexion with the Celebration of the Jubilee of the Commonwealth of Australia and the Centenary of Government in Victoria*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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 MINES REGULATION (ACCIDENTS RELIEF) 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. WATER BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 22.

TUESDAY, 21ST NOVEMBER, 1950.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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.
   Victorian Inland Meat Authority (Advances) Act.
   Melbourne and Metropolitan Board of Works (Contracts) Act.
   Melbourne and Metropolitan Board of Works (Borrowing Powers) Act.
   Cattle Compensation Act.
   Coal Mines Regulation (Accidents Relief) Act.
   Public Contracts (Amendment) Act.

3. MCPHERSON'S LIMITED PENSION FUND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to remove Doubts as to the Validity of the Trusts of a Pension Fund established under a Trust Instrument of McPherson's Proprietary Limited, to provide for the Alteration of the said Instrument and to incorporate the Trustees of the said Fund*" and desiring the concurrence of the Council therein.

   Bill ruled to be a Private Bill.

   The Honorable I. A. Swinburne 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.

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

4. COUNTRY ROADS BOARD BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Country Roads Board*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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. MOTOR CAR (DRIVERS' LICENCES) 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 Act* 1928'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable T. Harvey, 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. PUBLIC CONTRACTS (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.

7. ADJOURNMENT.—MOTION UNDER STANDING ORDER NO. 53.—The Honorable Sir James Kennedy moved, That the Council do now adjourn, and said he proposed to speak on the subject of "The failure of the Government in view of the existing state of chaos to proclaim a state of emergency under existing legislation for the purpose of (*a*) providing essential transport for primary products which are necessary to feed the people; (*b*) ensuring that the railway men have an opportunity of voting under conditions of secrecy and freedom; (*c*) preserving industrial law within the community and providing for the safety of the travelling public; and (*d*) preventing further price increases by reason of the strike"; and six Members having risen in their places and required the motion to be proposed—

   Debate ensued.

   Question—put.

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The Council divided.

Ayes, 14.	Noes, 18.
The Hon. Sir William Angliss,	The Hon. W. J. Beckett,
E. P. Cameron (*Teller*),	P. T. Byrnes,
G. L. Chandler (*Teller*),	P. L. Coleman,
Sir Frank Clarke,	A. M. Fraser,
C. P. Gartside,	J. W. Galbally,
C. E. Isaac,	T. Harvey,
Sir James Kennedy,	P. P. Inchbold,
J. F. Kittson,	P. Jones,
H. C. Ludbrook,	P. J. Kennelly,
G. S. McArthur,	Col. G. V. Lansell,
A. E. McDonald,	J. H. Lienhop,
H. V. MacLeod,	W. MacAulay,
R. C. Rankin,	C. E. McNally (*Teller*),
A. G. Warner.	W. Slater,
	I. A. Swinburne,
	F. M. Thomas (*Teller*),
	G. J. Tuckett,
	D. J. Walters.

And so it passed in the negative.

8. PAPERS.—The Honorable P. T. Byrnes presented, by command of His Excellency the Governor—
Indeterminate Sentences Board—Report for the year 1949–50.

Ordered to lie on the Table.

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

Apprenticeship Acts—Amendment of Regulations—

Aircraft Trades Regulations (No. 1).
Boilermaking and/or Steel Construction Trades Regulations (No. 2).
Boot Trades Regulations.
Bread Making and Baking Trade Regulations (No. 1).
Bricklaying Trade Regulations (No. 1).
Butchering Trades Apprenticeship Regulations.
Carpentry and Joinery Regulations (No. 1).
Cooking Trade Apprenticeship Regulations (two papers).
Dental Mechanic Trade Regulations (No. 1).
Electrical Trades Regulations (No. 1).
Electroplating Trade Regulations (No. 1).
Engineering Trades Regulations (No. 2).
Engineering Trades Regulations (No. 4).
Ladies' and/or Men's Hairdressing Trades Regulations (No. 1).
Motor Mechanics Trades Regulations.
Moulding Trades Apprenticeship Regulations.
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).

Police Regulation Acts—Amendment of Police Regulations.

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

Part II.—Promotions and Transfers—Professional Division—Department of Premier.

Part III.—Salaries, Increments, and Allowances—Professional Division—

Department of Agriculture.
Department of Chief Secretary.
Department of Treasurer.

9. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 and 2, be postponed until later this day.

10. MENTAL HYGIENE AUTHORITY BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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.

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

House in Committee.

The President resumed the Chair; and the Honorable 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. SURPLUS REVENUE (UNEXPENDED BALANCES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to certain Unexpended Balances under certain Surplus Revenue Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. GELLIONDALE LAND (MINERAL LEASE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to authorize the Resumption by the Crown of certain Land at Gelliondale bearing Mineral Deposits in the Form of Brown Coal, and for other purposes*" and desiring the concurrence of the Council therein.

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

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 23.

WEDNESDAY, 22ND NOVEMBER, 1950.

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:—

Constitution Act Amendment Act 1928—Part IX.—

Statement of Appointments in the Department of the Legislative Council and Legislative Assembly House Committee.

Statements of persons temporarily employed in the Departments of the Legislative Council, the Parliament Library, and the Legislative Council and Legislative Assembly House Committee (three papers).

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

State Savings Bank Act 1928—General Order No. 43.

3. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. T. Byrnes moved, That so much of the Sessional Orders as provides that no new business shall be taken after the hour of half-past Ten o'clock be rescinded and that for the remainder of the Session new business may be taken at any hour.

Debate ensued.

Question—put and resolved in the affirmative.

4. LOCAL GOVERNMENT (IMPORTED HOUSES) BILL.—On the motion of the Honorable P. T. Byrnes, leave was given to bring in a Bill to amend Section Nine hundred and one of the *Local Government Act* 1946, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. 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 T. Harvey, 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. POLICE OFFENCES (ANIMALS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Division Two of Part II. of the 'Police Offences Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. 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 amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

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

8. JUBILEE AND CENTENARY SPORTS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold 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. 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. 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 W. MacAulay having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

11. LANDLORD AND TENANT (SERVICEMEN) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Seventy-one of the 'Landlord and Tenant Act* 1948'" and desiring the concurrence of the Council therein.

On the motion of the Honorable T. Harvey, 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. 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 P. T. Byrnes, 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. 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.

14. COUNTRY ROADS BOARD BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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.

15. 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.

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16. Motor Car (Drivers' Licences) 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.

17. Adjournment.—Alteration of Hour of Meeting.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until to-morrow at Eleven o'clock.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 24.

THURSDAY, 23rd NOVEMBER, 1950.

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

2. Municipalities and Other Authorities Finances Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to increase the Fees for Licences to drive Motor Cars, to make Provision in respect of the Finances of Municipalities the Country Roads Board and other Public Authorities, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. Tallangatta Township (Removal) 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.

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

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

5. Medical 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. Local Government (Imported Houses) Bill.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

Debate ensued.

The Honorable F. M. Thomas 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.

7. State Forests 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 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 Orders of the Day.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 4 and 5, be postponed until the next day of meeting.

9. McPherson's Limited Pension Fund Bill.—The Order of the Day for the first reading of this Bill having been read, the Honorable I. A. Swinburne produced a receipt showing that the sum of £20 had been paid into the Treasury for the public uses of the State and moved, That this Bill be now read a first time.

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

10. Surplus Revenue (Unexpended Balances) 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. Gelliondale Land (Mineral Lease) Bill.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

    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 the next day of meeting.

12. Police Offences (Animals) Bill.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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. Public Officers Salaries Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Salaries of certain Public Officers*" and desiring the concurrence of the Council therein.

    On the motion of the Honorable P. T. Byrnes, 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. Police Offences (Idle and Disorderly Persons) Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Paragraph* (5) *of Section Sixty-nine of the 'Police Offences Act* 1928'" and desiring the concurrence of the Council therein.

    On the motion of the Honorable I. A. Swinburne, 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. Railways Dismantling Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Dismantling of Sections of certain Railways, and for other purposes*" and desiring the concurrence of the Council therein.

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

16. 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 amendments made by the Council in this Bill.

17. Postponement of Order of the Day.—Ordered—That the consideration of Order of the Day, Government Business, No. 10, be postponed until later this day.

18. 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 P. Jones having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 25.

TUESDAY, 28TH NOVEMBER, 1950.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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 Act.
Administration and Probate Duties Act.
Country Roads Board Act.
Land Tax Act.
Motor Car (Drivers' Licences) Act.
Tallangatta Township (Removal) Act.

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 Education relating to the proposed compulsory resumption of land for the purposes of a school at Prahran.
Milk Board Acts—Report and Statement of Accounts of the Milk Board for the year 1948-49.
Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 30th June, 1950.
Zoological Gardens Act 1936—Amendment of Regulations.

4. EDUCATION (RELIGIOUS INSTRUCTION) BILL.—On the motion of the Honorable P. P. Inchbold, leave was given to bring in a Bill relating to Secular and Religious Instruction in State Schools, 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. LOCAL GOVERNMENT (IMPORTED HOUSES) 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.

6. GELLIONDALE LAND (MINERAL LEASE) 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 P. Jones having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

7. 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.

8. MENTAL HYGIENE AUTHORITY 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. P. Gartside moved, as an amendment, That all the words after "That" be omitted with the view of inserting in place thereof the words "in the opinion of this House this Bill should not be read a second time until a Select Committee representative of all parties in this House has been appointed to consider and formulate proposals for a Bill to provide for the proper control and administration of all matters relating to mental hygiene".

Debate ensued.

4947/50. (240 Copies.)

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

WEDNESDAY, 29TH NOVEMBER, 1950.

Debate continued.

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

The Council divided.

Ayes, 15.	Noes, 12.
The Hon. P. T. Byrnes,	The Hon. E. P. Cameron,
P. L. Coleman,	G. L. Chandler (*Teller*),
A. M. Fraser (*Teller*),	C. P. Gartside,
T. Harvey,	C. E. Isaac,
P. P. Inchbold,	Sir James Kennedy,
P. J. Kennelly,	J. F. Kittson (*Teller*),
Col. G. V. Lansell,	H. C. Ludbrook,
J. H. Lienhop,	G. S. McArthur,
W. MacAulay (*Teller*),	A. E. McDonald,
C. E. McNally,	H. V. MacLeod,
W. Slater,	R. C. Rankin,
I. A. Swinburne,	A. G. Warner.
F. M. Thomas,	
G. J. Tuckett,	
D. J. Walters.	

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

Question—That this Bill be now read a second time—put and resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

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. 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 9, sub-section (13), page 9, paragraph (*k*), line 11, the word "of" has been inserted instead of the word "or", and acquainting the Council that they have agreed that such error be corrected by the insertion of the word "or" instead of the word "of" in clause 9, sub-section (13), page 9, paragraph (*k*), line 11, and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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—That the consideration of Orders of the Day, Government Business, Nos. 5 and 6, be postponed until the next day of meeting.

12. LANDLORD AND TENANT (SERVICEMEN) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable T. Harvey moved, That this Bill be now read a second time.

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

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

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

13. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 8 and 9, be postponed until later this day.

14. POLICE OFFENCES (IDLE AND DISORDERLY PERSONS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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

And then the Council, at thirty-seven 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. 26.

WEDNESDAY, 29TH NOVEMBER, 1950.

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

2. STATE ELECTRICITY COMMISSION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make further provision with respect to the Scheme for the Development of the Brown Coal Briquette Industry in the Latrobe Valley, and to increase the Borrowing Powers of the State Electricity Commission of Victoria, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable T. Harvey, 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. PUBLIC WORKS LOAN AND APPLICATION BILL (No. 2).—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 P. T. Byrnes, 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. GEELONG (KARDINIA PARK) LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to adjust the Common Boundaries of Two Reserves in the City of Geelong*" and desiring the concurrence of the Council therein.

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

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

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

6. MINISTERS OF THE CROWN AND PARLIAMENTARY SALARIES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make provision with respect to Ministers of the Crown and certain Parliamentary Salaries and Reimbursement of Expenses*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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. LOCAL GOVERNMENT (IMPORTED HOUSES) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

8. LOCAL GOVERNMENT (SHIRE OF BRAYBROOK) BILL.—On the motion (by leave without notice) of the Honorable P. T. Byrnes, leave was given to bring in a Bill to enable the Governor in Council to declare the Shire of Braybrook a City, and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. STATUTE LAW REVISION COMMITTEE—TRANSFER OF LAND BILL.—The Honorable P. T. Byrnes brought up a Second 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.

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

    Factories and Shops Acts—Report of the Chief Inspector of Factories and Shops for the year 1949.

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

    Milk and Dairy Supervision Acts—Amendment of Dairy Produce Regulations.

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

        Part II.—Promotions and Transfers—Regulation 34.

        Part III.—Salaries, Increments, and Allowances—

            Administrative Division—Department of Law.

            Professional Division—

                Department of Chief Secretary.
                Department of Law.
                Departments of Chief Secretary and State Forests.

Technical and General Division—Department of Water Supply.

Temporary Employees—

Department of Chief Secretary.

Department of Water Supply.

Soil Conservation and Land Utilization Act 1947—Report of the Soil Conservation Authority for the year 1949–50.

11. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. T. Byrnes moved, That so much of the Sessional Orders as provides that the hour of meeting on Thursdays shall be half-past Four o'clock be suspended and that during the remainder of the Session the Council shall meet on Thursdays at Eleven o'clock.

Question—put and resolved in the affirmative.

12. EDUCATION (RELIGIOUS INSTRUCTION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold 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.

13. POLICE OFFENCES (ANIMALS) 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.

14. WORKERS' COMPENSATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Workers' Compensation Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. FIRE BRIGADES (LONG SERVICE LEAVE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for Long Service Leave for Officers and Employés of the Metropolitan Fire Brigades Board and the Country Fire Authority, and for other purposes*" and desiring the concurrence of the Council therein.

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

16. FISHERIES (INLAND ANGLING) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Angling in Inland Waters*" and desiring the concurrence of the Council therein.

On the motion of the Honorable T. Harvey, 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. EDUCATION (RELIGIOUS INSTRUCTION) 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.

18. RAILWAY 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 Railway Purposes and to Sanction the Issue and Application of the Money so raised and of other Money 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 P. T. Byrnes, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

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19. JUBILEE AND CENTENARY SPORTS 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.

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

THURSDAY, 30TH NOVEMBER, 1950.

Debate continued.

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

The Council divided.

Ayes, 14.	Noes, 11.
The Hon. P. T. Byrnes,	The Hon. W. J. Beckett,
P. L. Coleman,	E. P. Cameron,
T. Harvey,	G. L. Chandler,
P. P. Inchbold,	C. E. Isaac,
P. Jones,	Sir James Kennedy,
P. J. Kennelly,	H. C. Ludbrook,
Col. G. V. Lansell,	G. S. McArthur (*Teller*),
J. H. Lienhop,	A. E. McDonald (*Teller*),
C. E. McNally (*Teller*),	H. V. MacLeod,
W. Slater,	R. C. Rankin,
I. A. Swinburne,	A. G. Warner.
F. M. Thomas,	
G. J. Tuckett,	
D. J. Walters (*Teller*).	

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

House in Committee.

The President resumed the Chair; and the Honorable 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.

20. MCPHERSON'S LIMITED PENSION FUND BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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.

21. LANDLORD AND TENANT (SERVICEMEN) 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.

22. MUNICIPALITIES AND OTHER AUTHORITIES FINANCES BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

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

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

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

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

24. RAILWAYS DISMANTLING 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.

25. GEELONG (KARDINIA PARK) 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.

26. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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 fifty-one minutes past Two o'clock in the morning, adjourned until this day.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 27.

THURSDAY, 30TH NOVEMBER, 1950.

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

2. PAPERS.—The Honorable P. T. Byrnes presented, by command of His Excellency the Governor—

Electricity Supply—Report of Electricity Supply Board of Inquiry.
Police—Report of the Chief Commissioner of Police for the year 1949.

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:—

Free Library Service Board Act 1946—Report of the Free Library Service Board for the year 1949–50.

Public Library National Gallery and Museums Acts—Reports, with Statements of Income and Expenditure, for the year 1949–50 of the—

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

3. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. T. Byrnes moved, That during the remainder of the Session the Council shall meet for the despatch of business on Fridays and that Eleven o'clock shall be the hour of meeting.

Question—put and resolved in the affirmative.

4. LOCAL GOVERNMENT (SHIRE OF BRAYBROOK) 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. 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.

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6. EDUCATION (RELIGIOUS INSTRUCTION) 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 Deputy-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.

7. 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.

8. MUNICIPALITIES AND OTHER AUTHORITIES FINANCES 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. WORKERS' COMPENSATION (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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

10. PUBLIC OFFICERS SALARIES BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The 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.

11. STATE ELECTRICITY COMMISSION 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.

12. 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 1949–50.

Victorian Inland Meat Authority Act 1942—Report of the Victorian Inland Meat Authority for the year 1949–50.

13. PUBLIC WORKS LOAN AND APPLICATION BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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. MINISTERS OF THE CROWN AND PARLIAMENTARY SALARIES BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

Debate ensued.

Question—put.

The Council divided.

Ayes, 21.	Noes, 10.
The Hon. W. J. Beckett,	The Hon. Sir William Angliss,
P. T. Byrnes,	E. P. Cameron,
P. L. Coleman,	G. L. Chandler,
A. M. Fraser (*Teller*),	C. P. Gartside,
J. W. Galbally (*Teller*),	Sir James Kennedy,
T. Harvey,	J. F. Kittson (*Teller*),
P. P. Inchbold,	G. S. McArthur,
C. E. Isaac,	A. E. McDonald (*Teller*),
P. Jones,	R. C. Rankin,
P. J. Kennelly,	A. G. Warner.
Col. G. V. Lansell,	
J. H. Lienhop,	
H. C. Ludbrook,	
W. MacAulay,	
H. V. MacLeod,	
C. E. McNally,	
W. Slater,	
I. A. Swinburne,	
F. M. Thomas,	
G. J. Tuckett,	
D. J. Walters.	

And so it 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 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 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.

15. Fire Brigades (Long Service Leave) Bill.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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

16. Fisheries (Inland Angling) Bill.—The Order of the Day for the second reading of this Bill having been read, the Honorable T. Harvey 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, 1st DECEMBER, 1950.

Debate continued.

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

The Council divided.

Ayes, 17.	Noes, 8.
The Hon. P. T. Byrnes,	The Hon. E. P. Cameron,
P. L. Coleman,	G. L. Chandler (*Teller*),
A. M. Fraser,	C. P. Gartside,
T. Harvey,	Sir James Kennedy,
P. P. Inchbold,	J. F. Kittson,
C. E. Isaac (*Teller*),	G. S. McArthur,
P. Jones,	A. E. McDonald,
P. J. Kennelly,	A. G. Warner (*Teller*).
J. H. Lienhop,	
H. C. Ludbrook,	
W. MacAulay,	
H. V. MacLeod (*Teller*),	
C. E. McNally,	
I. A. Swinburne,	
F. M. Thomas,	
G. J. Tuckett,	
D. J. Walters.	

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

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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. MENTAL HYGIENE AUTHORITY 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 the Schedule, Part A, clause 1, paragraph (*a*), sub-paragraph (i), in the interpretation of "Authority" the expression "Mental Hygiene Act 1950" has been inserted instead of the expression "Mental Hygiene Authority Act 1950", and acquainting the Council that they have agreed that such error be corrected by the insertion of the expression "Mental Hygiene Authority Act 1950" instead of the expression "Mental Hygiene Act 1950" in the Schedule, Part A, clause 1, paragraph (*a*), sub-paragraph (i), in the interpretation of "Authority", and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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.

18. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 11, be postponed until later this day.

19. PUBLIC TRUSTEE 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 returned to the Assembly with a Message acquainting them that the Council have agreed to the same with amendments and desiring their concurrence therein.

20. RAILWAY 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 having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

21. 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-one and to appropriate the Supplies granted in this Session of Parliament*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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.

22. EDUCATION (RELIGIOUS INSTRUCTION) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

23. 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 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. WORKERS' COMPENSATION (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.

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

26. LANDLORD AND TENANT (SERVICEMEN) 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.

27. McPherson's Limited Pension Fund 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.

28. Local Government (Shire of Braybrook) Bill.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

29. Adjournment.—The Honorable P. T. Byrnes 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 fifty-two minutes past Six o'clock in the morning, adjourned until a day and hour to be fixed by the President or, if the President is unable to act on account of illness or other cause, by the Chairman of Committees, which time of meeting shall be notified to each Honorable Member by telegram or letter.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 28.

TUESDAY, 26TH JUNE, 1951.

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. SUBSTITUTED DECLARATION OF MEMBER.—The Honorable A. M. Fraser delivered to the Clerk the following substituted Declaration, viz. :—

"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 Prahran and are known as 113 Osborne-street, South Yarra.

"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 £110.

"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."

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

Government House,
Melbourne, 19th January, 1951.

Mr. President,

I have the honour to transmit to you the attached communication which I have received this day from the Honorable J. H. Lienhop, resigning his seat as a Member of the Legislative Council representing the Bendigo Province of Victoria.

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

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

Parliament House,
Melbourne, C.1., 18th January, 1951.

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

Your Excellency,

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

I have the honour to be,
Your Excellency's most obedient servant,
J. H. LIENHOP.

3956/51. (240 Copies.)

5. RETURN TO WRIT.—The President announced that on the 12th February last he had issued a Writ for the election of a Member to serve for the Bendigo Province in the place of the Honorable John Herman Lienhop, resigned, and that such Writ had been returned to him and by the indorsement thereon it appeared that Thomas Henry Grigg had been elected in pursuance thereof.

6. SWEARING-IN OF NEW MEMBER.—The Honorable Thomas Henry Grigg, having been introduced, took and subscribed the Oath of Allegiance, 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, THOMAS HENRY GRIGG, 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 Maldon, and are known as Poultry Farm, Hornsby-street, Maldon, Section 16A, Parish of Maldon, Allotments 1, 2, 3, 4, and 5.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Maldon 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.

"T. H. GRIGG."

7. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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 5th December, 1950—

Medical Act.
State Forests Loan and Application Act.
Surplus Revenue (Unexpended Balances) Act.
Treasury Bonds Act.
Co-operative Housing Societies Act.
Police Offences (Idle and Disorderly Persons) Act.
Gelliondale Land (Mineral Lease) Act.
Local Government (Imported Houses) Act.
Police Offences (Animals) Act.

On the 6th December, 1950—

Gas and Fuel Corporation Act.

On the 11th December, 1950—

Jubilee and Centenary Sports Act.
Railways Dismantling Act.
Geelong (Kardinia Park) Land Act.
Coal Mine Workers Pensions (Amendment) Act.
Municipalities and Other Authorities Finances Act.
Public Officers Salaries Act.
State Electricity Commission Act.
Public Works Loan and Application Act (No. 2).
Ministers of the Crown and Parliamentary Salaries Act.
Fire Brigades (Long Service Leave) Act.
Fisheries (Inland Angling) Act.
Mental Hygiene Authority Act.
Railway Loan and Application Act.
Education (Religious Instruction) Act.
Workers' Compensation (Amendment) Act.
Public Trustee Act.
McPherson's Limited Pension Fund Act.
Landlord and Tenant (Servicemen) Act.
Local Government (Shire of Braybrook) Act.

8. 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 Nine million four hundred and ninety thousand four hundred and thirty-two pounds to the service of the year One thousand nine hundred and fifty-one and One thousand nine hundred and fifty-two*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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.

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9. LEAVE OF ABSENCE.—The Honorable G. S. McArthur moved, by leave, That leave of absence be granted to the Honorable Allan Elliott McDonald for three months on account of ill-health.

Question—put and resolved in the affirmative.

The Honorable Sir Frank Clarke moved, by leave, That leave of absence be granted to the Honorable Sir Frank Beaurepaire for three months on account of urgent private business.

Question—put and resolved in the affirmative.

The Honorable G. L. Chandler moved, by leave, That leave of absence be granted to the Honorable Sir William Angliss for three months on account of urgent private business.

Question—put and resolved in the affirmative.

10. JUSTICES (SERVICE OF PROCESS) BILL.—On the motion (by leave without notice) of the Honorable I. A. Swinburne, leave was given to bring in a Bill to make Further 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 to be read a second time on the next day of meeting.

11. EDUCATION (AMENDMENT) BILL.—On the motion (by leave without notice) of the Honorable P. P. Inchbold, leave was given to bring in a Bill to amend the *Education 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.

12. STATE DEVELOPMENT BILL.—On the motion (by leave without notice) of the Honorable I. A. Swinburne, leave was given to bring in a Bill to amend the State Development Acts, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

13. CRANES REGULATION BILL.—On the motion (by leave without notice) of the Honorable T. Harvey, leave was given to bring in a Bill relating to Cranes, 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.

14. FRIENDLY SOCIETIES BILL.—On the motion (by leave without notice) of the Honorable P. P. Inchbold, leave was given to bring in a Bill to amend the *Friendly Societies 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.

15. LOCAL GOVERNMENT (OVERDRAFTS) BILL.—On the motion (by leave without notice) of the Honorable P. T. Byrnes, leave was given to bring in a Bill to amend Section Four hundred and thirty-five of the *Local Government Act* 1946, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

16. LOCAL GOVERNMENT (ENROLMENT) BILL.—On the motion (by leave without notice) of the Honorable P. T. Byrnes, leave was given to bring in a Bill to amend Section Seventy-four of the *Local Government Act* 1946, 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. PAPERS.—The Honorable P. T. Byrnes presented, by command of His Excellency the Governor—

John Graham Building Constructions—Report of Board of Inquiry into Certain Complaints of Improper Practices in respect of Contracts.

Licensing Court and Licences Reduction Board—Report and Statement of Accounts, 30th June, 1950.

Superannuation Acts—Report of Actuary (O. Gawler, Esq., F.I.A.) on his investigation at the expiration of the Fifth Quinquennium (30th June, 1950).

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

Apprenticeship Acts—Amendment of Regulations—

Aircraft Trades Regulations (No. 1) (three papers).
Boilermaking and/or Steel Construction Trades Regulations (No. 2) (two papers).
Boilermaking Trades Apprenticeship Regulations (two papers).
Boot Trades Regulations (four papers).
Bread Making and Baking Trade Regulations (No. 1) (three papers).
Bricklaying Trade Regulations (No. 1) (three papers).
Butchering Trades Apprenticeship Regulations (three papers).
Carpentry and Joinery Regulations (No. 1) (three papers).
Cooking Trade Apprenticeship Regulations (two papers).
Dental Mechanic Trade Regulations (No. 1) (three papers).
Electrical Trades Apprenticeship Regulations (two papers).
Electrical Trades Regulations (No. 1) (two papers).
Electroplating Trade Regulations (No. 1) (three papers).
Engineering Trades Apprenticeship Regulations (two papers).
Engineering Trades Regulations (No. 2) (two papers).
Engineering Trades Regulations (No. 4) (two papers).
Fibrous Plastering Trade Apprenticeship Regulations (two papers).
Fibrous Plastering Trade Regulations (two papers).
Ladies' and/or Men's Hairdressing Trades Regulations (No. 1) (two papers).

Motor Mechanics Trades Apprenticeship Regulations (two papers).
Motor Mechanics Trades Regulations (two papers).
Moulding Trades Apprenticeship Regulations (three papers).
Painting, Decorating, and Signwriting Regulations (No. 2) (two papers).
Painting Trades Apprenticeship Regulations (two papers).
Pastrycooking Trade Regulations (No. 1) (three papers).
Plastering Regulations (No. 2) (three papers).
Plumbing and Gasfitting Trades Regulations (three papers).
Printing and Allied Trades Apprenticeship Regulations (two papers).
Printing and Allied Trades Regulations (two papers).
Printing Trades Regulations (No. 1) (three papers).
Sheet Metal Trade Regulations (No. 2) (three papers).
Watch and/or Clock Making Trades Regulations (No. 1) (three papers).

Building Operations and Building Materials Control Act 1946—Building Operations and Materials Control Regulations 1951.

Children's Court Act 1928—Amendment of Regulations (two papers).

Coal Mines Regulation Act 1928—Report of the General Manager of the State Coal Mines, including the State Coal Mines Balance-sheet and Statement of Accounts, duly audited, &c., for the year 1949–50.

Coal Mine Workers Pensions Act 1942—Statement of Accounts of the Pensions Tribunal for the year 1949–50, duly audited.

Companies Act 1938—Return by Prothonotary of business of the Supreme Court in connexion with the winding-up of Companies during the year 1950.

Constitution Act Amendment Act 1928—Statement of Appointments and Alteration in Classification in the Departments of the Legislative Council and Legislative Assembly (two papers).

Co-operative Housing Societies Acts—

Co-operative Housing Societies (Administrative) Regulations.
Co-operative Housing Societies (General) Regulations (No. 6).
Report of the Registrar of Co-operative Housing Societies for the year 1949–50.

Country Fire Authority Acts—

Amendment of Regulations (six papers).
Report of the Country Fire Authority for the year 1949–50.

Country Roads Act 1928—Report of the Country Roads Board for the year 1949–50.

County Court Act 1928—Order in Council relating to Fees in County Courts.

Crimes Act 1928—Criminal Appeal Rules 1950.

Dairy Products Acts—Report of the Victorian Dairy Products Board for the six months ended 31st December, 1950.

Dried Fruits Acts—

Amendment of Regulations (two papers).
Statement showing details of Receipts and Expenditure under the Dried Fruits Acts during the year 1950.

Education Act 1928—Amendment of Regulations—

Regulation IV. (B)—Proficiency Certificate.
Regulation IV. (F)—Girls' Secondary School Intermediate Certificate.
Regulation IV. (G)—Girls' Secondary School Leaving Certificate.
Regulation XIX.—Allowances for School Requisites and Maintenance to Pupils attending Post-primary Schools and Classes.
Regulation XX. (F)—Trained Secondary Teacher's Certificate (Art and Crafts).
Regulation XX. (G)—Trained Art and Crafts Teacher's Certificate (Primary).
Regulation XX.—(H)—Trained Speech Teacher's Certificate.
Regulation XXI.—Scholarships and Bursaries (two papers).
Regulation XXII.—Conduct of Examinations.
Regulation XXIX.—School Committees.
Regulation XXXIII.—Consolidated Schools and Group Schools.
Regulation XXXV.—Girls' Secondary Schools.
Regulation XXXVI.—District High Schools.
Regulation XXXVIII.—Technical Schools.

Education Act 1928, University Act 1928, Forests Act 1928, and Teaching Service Act 1946—All Regulations of the Education Department rescinded—Regulations substituted.

Explosives Act 1928—Orders in Council relating to—

Classification of Explosives—Class 3—Nitro-Compound (two papers).
Definition of Explosives—Class 3—Nitro-Compound (three papers).

Fire Brigades Act 1928—

Metropolitan Fire Brigades General Regulations 1951.
Report of the Metropolitan Fire Brigades Board for the year 1949–50.

Forests Act 1928—Report of the Forests Commission for the year 1949–50.

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Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (Nos. 84 to 98) (fifteen papers).

Geelong Harbor Trust Acts—Accounts and Statement of Receipts and Expenditure of the Geelong Harbor Trust Commissioners for the year 1950.

Geelong Waterworks and Sewerage Act 1928—Balance-sheet of the Geelong Waterworks and Sewerage Trust as at 30th June, 1950.

Grain Elevators Act 1934—Report of the Grain Elevators Board for the year ended 31st October, 1949.

Infectious Diseases Hospital Act 1928—Infectious Diseases Hospital Regulations 1951.

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Burwood East, Colac, Corio, Kalkallo, Koonung, Macleod, Moorabbin West, Morwell, Patchewollock, Robinvale, Tootgarook, Warragul, Wendouree, Whittlesea, and Wood's Point (eighteen papers).

Certificate of the Minister of Mines relating to the proposed compulsory resumption of land for the purposes of enabling a mineral lease to be granted at Gelliondale.

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

Land Tax Act 1928—Statement of moneys received and expended for the year 1949–50.

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

Legislative Council Reform Act 1950—Report by the Commissioners appointed for the purposes of the Re-definition of the Boundaries of Electoral Provinces for the Legislative Council, together with Map.

Marketing of Primary Products Act 1935—

Proclamations—

Declaring that Barracouta shall be a commodity.

Declaring that Barracouta shall be a product.

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

Regulations—

Definition of producers of Barracouta.

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

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

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 1949–50.

Midwives Act 1928—Amending Midwives Regulations 1950.

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

Milk Board Acts—Regulation prescribing a Milk Depot.

Ministry of Health Act 1943—Amendment of Ministry of Health (Poliomyelitis) Regulations 1946.

Motor Car Acts—Amendment of Motor Car Regulations 1931 (two papers).

Motor Car (Third-Party Insurance) Act 1939—

Amendment of Regulations.

Statistical Returns by Authorized Insurers for the year 1949–50.

Motor Car (Third-Party Insurance) Act 1939 and Workers' Compensation Act 1928—Report, Profit and Loss Account, and Balance-sheet for the year 1949–50 of—

State Accident Insurance Office.

State Motor Car Insurance Office.

Nurses Act 1928—

Amending Nurses Regulations 1950.

Amending Nurses Regulations 1950 (No. 2).

Opticians Registration Act 1935—Amendment of Opticians Regulations 1946.

Poisons Acts—Pharmacy Board of Victoria—

Dangerous Drugs Regulations 1951.

Proclamations amending—

Second Schedule to Poisons Act 1928.

Sixth Schedule to Poisons Act 1928.

Police Regulation Acts—

Amendment of Regulations (two papers).

Determinations Nos. 29 to 31 of the Police Classification Board (three papers).

Public Library, National Gallery and Museums Acts—National Museum of Victoria Regulations 1950.

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Department of Public Works.
Department of State Forests.
Department of Treasurer (three papers).
Department of Water Supply (two papers).
General (two papers).
General and Department of Water Supply.
General and Departments of Premier, Chief Secretary, Treasurer, Education, Law, Lands and Survey, Public Works, Mines, Health, Agriculture, State Forests, and Water Supply.

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

Part IIIA.—Automatic Adjustment of Salaries and Wages in accordance with the Variations in the Cost of Living—Regulation 65A.

Part IV.—Automatic Adjustment of Salaries and Wages in accordance with the Variations in the Cost of Living—Regulation 78 (two papers).

Part V.—Travelling Expenses.

Part VI.—Travelling Expenses (four papers).

Public Trustee Act 1950—Regulation.

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 30th September, 1950.

Registration of Births, Deaths and Marriages Act 1928—General Abstract of the number of Births, Deaths, and Marriages registered during the year 1950.

River Murray Waters Act 1915—Report of the River Murray Commission for the year 1949–50.

Rural Finance Corporation Act 1949—Additional Regulation—Lien on Crops.

Soldier Settlement Act 1945—Report of the Soldier Settlement Commission for the year 1949–50.

State Coal Mine Industrial Tribunal Act 1932—Award No. 74 made by the State Coal Mine Industrial Tribunal relating to rates of pay of certain workers at the State Coal Mine, Wonthaggi, together with the Report of the Victorian Railways Commissioners with regard thereto.

State Development Act 1941—Report of the State Development Committee on Tourist Facilities—Government Tourist Bureaux.

State Savings Bank Act 1928—General Order No. 44.

Superannuation Act 1928—Report of the State Superannuation Board for the year 1949–50.

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

Teaching Service Act 1946—

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

Town and Country Planning Act 1944—Cobram Planning Scheme 1949.

Transport Regulation Acts—Amendment of Transport Regulations (General Regulations No. 1).

Water Acts—Report of the State Rivers and Water Supply Commission for the year 1949–50.

Workers' Compensation Acts—Amendment of—

Workers' Compensation Board Regulations (No. 1).
Workers' Compensation Regulations 1942.

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

18. RE-DEFINITION OF BOUNDARIES OF ELECTORAL PROVINCES.—The Honorable W. J. Beckett moved, by leave, That the Report of the Commissioners appointed for the purposes of the re-definition of the boundaries of Electoral Provinces for the Legislative Council, together with map, be printed.

Debate ensued.

Motion, by leave, withdrawn.

19. CONSOLIDATED REVENUE BILL (No. 5).—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.

20. STATE ELECTRICITY COMMISSION (OVERDRAFT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Sixteen of the 'State Electricity Commission (Financial) Act* 1937'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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.

21. LOCAL GOVERNMENT (ENROLMENT) 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.

22. STATE ELECTRICITY COMMISSION (OVERDRAFT) 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. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 10th July next.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at twenty-two minutes past Eleven o'clock, adjourned until Tuesday, the 10th July next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 29.

TUESDAY, 10TH JULY, 1951.

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

2. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR AND HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable P. T. Byrnes presented a Message from His Excellency the Governor informing the Council that he had, on 28th June last, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—

Consolidated Revenue Act (*No.* 5).

The Honorable P. T. Byrnes presented Messages from His Excellency the Lieutenant-Governor, as Deputy for 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 3rd instant—

State Electricity Commission (*Overdraft*) *Act.*

On the 5th instant—

Local Government (*Enrolment*) *Act.*

3. RAILWAYS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections One hundred and forty-six and One hundred and forty-seven of the 'Railways Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. POISONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Third Part of the Second Schedule to the 'Poisons Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable T. Harvey, 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. COAL MINING INDUSTRY (LONG SERVICE LEAVE) AMENDMENT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Two of the 'Coal Mining Industry* (*Long Service Leave*) *Act* 1950'" and desiring the concurrence of the Council therein.

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

Bill ruled to be a Private Bill.

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

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes, 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.

3956/51. (240 copies.)

7. LOCAL GOVERNMENT (ENROLMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

8. PAPERS.—The Honorable P. T. Byrnes presented, by command of His Excellency the Governor—

Penal Establishments, Gaols, and Reformatory Prisons—Report and Statistical Tables for the year 1950.

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 :—

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

Education Acts—Amendment of Regulation XLII.—Religious Instruction in State Schools.

Education Act 1928 and Teaching Service Act 1946—Amendment of Regulation XLIV.—School Hours and Organization.

Fisheries Acts—Notices of Intention to issue Proclamations—

Respecting licences to be issued under the Fisheries (Inland Angling) Act 1950.

To fix a day upon which the Fisheries (Inland Angling) Act 1950 shall come into operation.

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 1950.

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Bellfield, Modella, Stawell, Tongala, and Walwa (six papers).

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

Local Government Act 1946—Order in Council relating to compulsory voting for the election of councillors for the City of Sunshine and the Shire of Woorayl.

Milk Board Acts—Report and Statement of Accounts of the Milk Board for the year 1949-50.

Police Regulation Acts—Determinations Nos. 32 and 33 of the Police Classification Board (two papers).

Public Service Act 1946—

Amendment of Public Service (Governor in Council) Regulations—Part IV.—Leave of Absence—Sick Leave—Regulations 37, 40, and 41 (three papers).

Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances—Professional Division—Department of Agriculture.

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 31st December, 1950.

Soldier Settlement Acts—Additions to Regulations.

State Electricity Commission Acts—Protection of Electrical Operations Regulations.

Teaching Service Act 1946—Amendment of Teaching Service (Governor in Council) Regulations.

Trade Unions Act 1928—Report of the Government Statist for the year 1950.

9. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. T. Byrnes moved, That so much of the resolutions with regard to the Sessional Orders agreed to by the Council on the 10th October and the 22nd, 29th, and 30th November last as provides that, for the remainder of the Session, Government business shall take precedence of all other business on Wednesday in each week, new business may be taken at any hour, the Council shall meet for the despatch of business on Fridays, and the hour of meeting on Thursdays and Fridays shall be Eleven o'clock, be rescinded, and that, for the remainder of the Session, Private Members' business shall take precedence of Government business on Wednesday in each week, no new business shall be taken after half-past Ten o'clock, and the hour of meeting on Thursdays shall be half-past Four o'clock.

Question—put and resolved in the affirmative.

10. JUSTICES (SERVICE OF PROCESS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

The Honorable 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.

11. EDUCATION (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold moved, That this Bill be now read a second time.

Debate ensued.

The Honorable C. E. Isaac 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. 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.

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13. CRANES REGULATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable T. Harvey moved, That this Bill be now read a second time.

Debate ensued.

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

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

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

14. 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.

15. FRIENDLY 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 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 transmitted to the Assembly with a Message desiring their concurrence therein.

16. LOCAL GOVERNMENT (OVERDRAFTS) 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.

17. CRIMES (REFORMATORY PRISONS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Five hundred and twenty-three and Five hundred and twenty-nine of the 'Crimes Act* 1928*', and for other purposes*" and desiring the concurrence of the Council therein.

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

House in Committee.

The President resumed the Chair; and the Honorable 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.

18. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 30.

TUESDAY, 17TH JULY, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes presented a Message from His Excellency the Governor informing the Council that he had, on the 12th instant, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—

Crimes (Reformatory Prisons) Act.

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

On the motion of the Honorable T. Harvey, 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. STATUTE LAW REVISION COMMITTEE—TRANSFER OF LAND BILL 1949.—The Honorable P. T. Byrnes brought up the Final 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.

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

Fisheries Acts—Notice of Intention to issue Proclamations—

Respecting prohibition of fishing in Lakes Purrumbete and Bullen Merri.

To alter the Regulations respecting fishing in the Glenmaggie Reservoir and the Macalister River and its tributaries.

Infectious Diseases Hospital Act 1928—Amendment of Regulations with respect to the diseases which may be treated at the Queen's Memorial Infectious Diseases Hospital.

Police Regulation Acts—Amendment of Police Regulations.

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

Part III.—Salaries, Increments and Allowances—

Administrative Division—Department of Chief Secretary.

Professional Division—

Department of Agriculture.
Department of Chief Secretary.
Department of Crown Lands and Survey.
Department of Premier.

Technical and General Division—

Department of Agriculture.
Department of Chief Secretary.
Department of Health (two papers).
Department of State Forests.

Temporary Employees—

Department of Health (two papers).
Department of State Forests.

Part VI.—Travelling Expenses—Reimbursement of certain officers for expenses.

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 31st March, 1951.

6. GEELONG HARBOR TRUST (AMENDMENT) BILL.—On the motion of the Honorable P. T. Byrnes, leave was given to bring in a Bill to amend the Law relating to the Geelong Harbor Trust, 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.

7. 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.

3956/51. (240 copies.)

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. EDUCATION (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.

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. THE GEELONG GAS COMPANY'S 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.

11. RAILWAYS (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.

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

House in Committee.

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

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

13. GEELONG HARBOR TRUST (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

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

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

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

14. SELECT COMMITTEE (EGG AND EGG PULP MARKETING) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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.

15. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 31.

TUESDAY, 24TH JULY, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

The Geelong Gas Company's Act.
Railways (Amendment) Act.
Poisons Act.
Select Committee (Egg and Egg Pulp Marketing) Act.

3. PUBLIC SERVICE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Public Service Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. STAMPS (CHEQUES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Method of Collection of Stamp Duties on Cheques*" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. ADJOURNMENT.—MOTION UNDER STANDING ORDER No. 53.—The Honorable C. P. Gartside moved, That the Council do now adjourn, and said he proposed to speak on the subject of "The menace to health and property caused by the serious flooding of pastoral, agricultural and residential areas in and around the City of Chelsea"; and six Members having risen in their places and required the motion to be proposed, the question was put and, after debate, negatived.

6. 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 Horsham Public Cemetery.

Education Act 1928—Amendment of Regulations—

Regulation XX. (A)—Trained Primary Teacher's Certificate.
Regulation XX. (K)—Trained Trade Instructor's Certificate.
Regulation XX. (L)—Trained Technical Teacher's Certificate.
Regulation XXXIII.—Consolidated Schools and Group Schools.

Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (Nos. 99 and 100) (two papers).

Motor Car (Third-Party Insurance) Act 1939—Amendment of Regulations.

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

Professional Division—

Department of Agriculture (two papers).
Department of Chief Secretary.
Department of Law (two papers).

Technical and General Division—

Department of Agriculture.
Department of Chief Secretary.
Departments of Premier and Agriculture.

Temporary Employees—Departments of Premier and Agriculture.

Teaching Service Act 1946—Amendment of Teaching Service (Governor in Council) Regulations.

3956/51. (240 copies.)

7. CRANES 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, having been read—

Debate resumed.

Question—put.

The Council divided.

Ayes, 13.	Noes, 11.
The Hon. P. T. Byrnes,	The Hon. Sir Frank Beaurepaire,
P. L. Coleman,	E. P. Cameron,
A. M. Fraser (*Teller*),	G. L. Chandler,
T. Harvey,	C. P. Gartside,
P. P. Inchbold,	T. H. Grigg (*Teller*),
P. Jones,	C. E. Isaac (*Teller*),
P. J. Kennelly,	Sir James Kennedy,
W. MacAulay,	J. F. Kittson,
C. E. McNally (*Teller*),	H. V. MacLeod,
I. A. Swinburne,	R. C. Rankin,
F. M. Thomas,	A. G. Warner.
G. J. Tuckett,	
D. J. Walters.	

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

House in Committee.

The President resumed the Chair; and the Honorable 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.

8. COAL MINING INDUSTRY (LONG SERVICE LEAVE) 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. GEELONG HARBOR TRUST (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 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. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 7th August next.

Question—put and resolved in the affirmative.

And then the Council, at one minute past Nine o'clock, adjourned until Tuesday, the 7th August next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 32.

TUESDAY, 7TH AUGUST, 1951.

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

2. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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 31st July last—

   Coal Mining Industry (Long Service Leave) Amendment Act.

   On the 7th instant—

   Education (Amendment) Act.
   Friendly Societies Act.

3. VERMIN AND NOXIOUS WEEDS (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Twenty-eight of the 'Vermin and Noxious Weeds Act* 1949'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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. COAL MINE WORKERS PENSIONS (CONTRIBUTIONS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Twenty-three of the 'Coal Mine Workers Pensions Act* 1942'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. P. Inchbold, 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. MILK BOARD BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Supply Sale and Distribution of Milk in Milk Districts, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable T. Harvey, 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. WATER (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Water Acts, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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. MEDICAL (TEMPORARY REGISTRATION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision for the Temporary Registration as Medical Practitioners of certain Persons with Foreign Medical Qualifications temporarily in Victoria in connexion with Medical Teaching or Research*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable I. A. Swinburne, 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.

3956/51. (240 copies.)

8. TRANSFER OF LAND (FORGERIES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Transfer of Land (Forgeries) Act* 1939', *to provide for a Payment from the Assurance Fund in a Certain Case, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. BENDIGO (ROSALIND PARK) LANDS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Reservations and Grant of certain Lands within and adjacent to Rosalind Park in the City of Bendigo*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. WINCHELSEA COAL MINE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Purchase Working and Sale of an Open Cut Brown Coal Mine near Winchelsea*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. COUNTRY FIRE AUTHORITY (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Fifty-eight of the 'Country Fire Authority Act* 1944'" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. RAILWAYS DISMANTLING BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Dismantling of certain Railways and Sections of Railways, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable T. Harvey, 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. FIRE BRIGADES (LONG SERVICE LEAVE) AMENDMENT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Long Service Leave for Officers and Employés of the Metropolitan Fire Brigades Board and the Country Fire Authority*" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. STATE DEVELOPMENT 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 follows :—

1. Clause 2, line 15, omit "Parliamentary".
2. Clause 3, line 7, omit "Parliamentary".
3. Clause 5, line 36, omit "Parliamentary".

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

15. EDUCATION (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.

16. FRIENDLY SOCIETIES BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

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

Fisheries Acts—Notice of Intention to issue a Proclamation to revoke the Proclamation permitting netting in Lake Batyo Catyo.

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

Department of Health.
General and Departments of Mines and Water Supply.

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State Coal Mine Industrial Tribunal Act 1932—Award No. 75 made by the State Coal Mine Industrial Tribunal relating to conditions of employment of certain workers at the State Coal Mine, Wonthaggi, together with the Report of the Victorian Railways Commissioners with regard thereto.

Teaching Service Act 1946—Report of the Teachers Tribunal for the year 1949–50.

18. PUBLIC 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 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.

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

House in Committee.

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

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

20. COUNTRY FIRE AUTHORITY (FINANCIAL) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

The Honorable 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.

21. COAL MINE WORKERS PENSIONS (CONTRIBUTIONS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold 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.

22. 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.

23. GEELONG HARBOR TRUST (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.

24. VERMIN AND NOXIOUS WEEDS (FINANCIAL) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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.

25. ADJOURNMENT.—The Honorable P. T. Byrnes 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 minutes past Ten o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 33.

TUESDAY, 14TH AUGUST, 1951.

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

2. RAILWAYS (FURLOUGH) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Long Service Leave for Officers and Employés in the Railway Service, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. P. Inchbold, 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 REGULATION (FURLOUGH) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Long Service Leave for Members of the Police Force*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable I. A. Swinburne, 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. CONSOLIDATED REVENUE BILL (No. 6).—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 Nine million five hundred and sixty-nine thousand three hundred and fifteen pounds to the service of the year One thousand nine hundred and fifty-one and One thousand nine hundred and fifty-two*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. P. Inchbold for the Honorable P. T. Byrnes, 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. CONSOLIDATED REVENUE BILL (No. 7).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply out of the Consolidated Revenue the sum of Two million seven hundred and seventy-two thousand four hundred and eighty pounds to the service of the year One thousand nine hundred and fifty and One thousand nine hundred and fifty-one*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. P. Inchbold for the Honorable P. T. Byrnes, 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. PUBLIC SERVICE 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. ADJOURNMENT—MOTION UNDER STANDING ORDER No. 53.—The Honorable A. G. Warner moved, That the Council do now adjourn, and said he proposed to speak on the subject of "Anomalies existing under the present system of rent control and proposals for overcoming them"; and six Members having risen in their places and required the motion to be proposed, the question was put and, after debate, negatived.

8. NEWPORT "A" POWER STATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Transfer of the Newport 'A' Power Station to the State Electricity Commission of Victoria*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable I. A. Swinburne, 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.

3956/51. (240 copies.)

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

Apprenticeship Acts—Amendment of Regulations—

Butchering Trades Apprenticeship Regulations.
Printing Trades (Country) Apprenticeship Regulations.

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

Part II.—Promotions and Transfers—Administrative and Professional Divisions.
Part III.—Salaries, Increments, and Allowances—

Professional Division—

Department of Agriculture.
Department of Health (two papers).

Technical and General Division—

Department of Health (two papers).
General and Departments of Premier, Education, and Agriculture.

Temporary Employees—

Department of Agriculture.
Department of Chief Secretary.
Department of Health.
Departments of Chief Secretary, Education, and Health.
General and Departments of Chief Secretary and Health.
General and Departments of Education and Agriculture.

Part VI.—Travelling Expenses—Divisions III. and IV.

Town and Country Planning Act 1944—City of Nunawading Planning Scheme 1949.

10. MILK BOARD BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable T. Harvey 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 Tuesday next.

11. COUNTRY FIRE AUTHORITY (FINANCIAL) 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.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 34.

WEDNESDAY, 15TH AUGUST, 1951.

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. WRONGS (CONTRIBUTORY NEGLIGENCE) BILL.—On the motion of the Honorable J. W. Galbally, leave was given to bring in a Bill to amend the Law relating to Contributory Negligence and for 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.

4. LEGISLATIVE COUNCIL BILL.—On the motion of the Honorable Sir James Kennedy, leave was given to bring in a Bill relating to the Constitution of 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.

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5. CONSOLIDATED REVENUE BILL (No. 6).—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. CONSOLIDATED REVENUE BILL (No. 7).—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

Debate ensued.

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

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

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

7. COAL MINE WORKERS PENSIONS (CONTRIBUTIONS) 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. VERMIN AND NOXIOUS WEEDS (FINANCIAL) 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. WATER (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 35.

TUESDAY, 21ST AUGUST, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

State Development Act.
Stamps (Cheques) Act.
Public Service Act.
Country Fire Authority (Financial) Act.
Consolidated Revenue Act.
Coal Mine Workers Pensions (Contributions) Act.
Vermin and Noxious Weeds (Financial) Act.

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

Education Act 1928—Amendment of Regulations—
Regulation XX. (I.).—Trained Homecrafts Teacher's Certificate (Primary).
Regulation XX. (J.).—Trained Teacher-Librarian's Certificate.

Explosives Act 1928—Orders in Council relating to—
Classification of Explosives—Class 3—Nitro-compound.
Definition of Explosives—Class 3—Nitro-compound.

Gas Regulation Act 1933—Gas Regulation (Emergency Powers) Regulations (Nos. 101 to 103) (three papers).

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

Motor Omnibus Act 1928—Amendment of Regulations—
Metropolitan Motor Omnibus Regulations.
Urban Motor Omnibus Regulations.

Teaching Service Act 1946—Amendment of Teaching Service (Governor in Council) Regulations.

Supreme Court Acts—Rules of the Supreme Court—Ordinary Scale of Costs.

4. MEDICAL (TEMPORARY REGISTRATION) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair ; and the Honorable 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. WINCHELSEA COAL MINE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold 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 Tuesday next.

3956/51. (240 copies.)

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. CONSOLIDATED REVENUE BILL (No. 7).—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.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 36.

WEDNESDAY, 22ND AUGUST, 1951.

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

2. 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 (Governor in Council) Regulations.
Teaching Service (Teachers Tribunal) Regulations (two papers).

3. WRONGS (CONTRIBUTORY NEGLIGENCE) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. W. Galbally moved, That this Bill be now read a second time.

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

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

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

4. WRONGS (CONTRIBUTORY NEGLIGENCE) BILL.—The Honorable P. T. Byrnes moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for consideration and report.

Question—put and resolved in the affirmative.

5. POSTPONEMENT OF ORDERS OF THE DAY.—

Ordered—That the consideration of Order of the Day, General Business, No. 2, be postponed until the next day of meeting.

Ordered—That the consideration of Order of the Day, Government Business, No. 1, be postponed until later this day.

6. RAILWAYS (FURLOUGH) 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. POLICE REGULATION (FURLOUGH) 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.

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9. MILK BOARD 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.

10. LOCAL GOVERNMENT (OVERDRAFTS) 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 on the next day of meeting.

11. MARKETING OF PRIMARY PRODUCTS (TOMATOES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Four of the 'Marketing of Primary Products Act* 1935'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. ADJOURNMENT.—The Honorable P. T. Byrnes 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 Eleven o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 37.

TUESDAY, 28TH AUGUST, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

Medical (Temporary Registration) Act.
Consolidated Revenue Act.
Railways (Furlough) Act.
Police Regulation (Furlough) Act.
Milk Board Act.

3. STATUTE LAW REVISION COMMITTEE—STATUTE LAW REVISION BILL.—The Honorable P. T. Byrnes 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.

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

Country Fire Authority Acts—Amendment of Regulations—

Country Fire Authority (General) Regulations.
Duties and Conduct of Officers and Employees.

Fisheries Acts—Notices of Intention to Issue Proclamations—

Respecting the close season for trout.
To revoke the Proclamation prohibiting fishing in portion of the Broken River near Benalla.

Fungicides Acts—Insecticides Regulations 1951.

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

Landlord and Tenant Act 1948—Landlord and Tenant Regulations (No. 3).

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 1950-51.

Poisons Acts—Proclamation amending the Sixth Schedule to the Poisons Act 1928.

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

Administrative Division—Department of Water Supply.

Professional Division—

Department of Agriculture.
Department of Chief Secretary (two papers).
Department of Crown Lands and Survey.
Department of Public Works.

Temporary Employees—Department of Agriculture.

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

State Coal Mine Industrial Tribunal Act 1932—Award No. 76 made by the State Coal Mine Industrial Tribunal relating to rates of pay and working conditions of certain workers at the State Coal Mine, Wonthaggi, together with the Report of the Victorian Railways Commissioners with regard thereto.

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

3956/51. (240 copies.)

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. TRANSFER OF LAND (FORGERIES) 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.

7. 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.

8. NEWPORT "A" POWER STATION 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.

9. 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.

10. LOCAL GOVERNMENT (OVERDRAFTS) 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 18, after "sale" insert "of gas residuals and".

The Honorable P. T. Byrnes moved, That the Council agree to the amendment made by the Assembly and make the following amendments in the Bill:—

Clause 2, line 14, before "charges" insert "and one-third of all".

Clause 2, line 16, before "charges" insert "received by the municipality in the previous year and one-third of all".

Debate ensued.

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the amendment made by the Assembly in this Bill, and have made amendments in the Bill, and desiring their concurrence therein.

11. BENDIGO (ROSALIND PARK) 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.

12. RAILWAYS DISMANTLING BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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.

13. MARKETING OF PRIMARY PRODUCTS (TOMATOES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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. ADJOURNMENT.—The Honorable P. T. Byrnes 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 nineteen minutes past Ten o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 38.

TUESDAY, 4TH SEPTEMBER, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

   Bendigo (Rosalind Park) Lands Act.
   Railways Dismantling Act.

3. TRANSPORT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to establish a Ministry of Transport and to provide for the Better Co-ordination of Transport in Victoria, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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 :—

   Land Act 1928—Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Black Hill, Cranbourne, Kyabram, and Mordialloc (four papers).

   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 Premier.

         Departments of Law and Health.

      Technical and General Division—Department of State Forests.

      Temporary Employees—Departments of Treasurer, Crown Lands and Survey, Public Works, Mines, Health, Agriculture, and Water Supply.

   Teaching Service Act 1946—Amendment of Teaching Service (Governor in Council) Regulations.

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. TRANSFER OF LAND (FORGERIES) 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.

7. 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.

3956/51. (240 copies.)

8. NEWPORT "A" POWER STATION 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.

9. MARKETING OF PRIMARY PRODUCTS (TOMATOES) 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.

10. LOCAL GOVERNMENT (OVERDRAFTS) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

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

House in Committee.

The President resumed the Chair; and the Honorable P. Jones 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.

12. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 18th instant.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at thirty-four minutes past Ten o'clock, adjourned until Tuesday, the 18th instant.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 39.

TUESDAY, 18TH SEPTEMBER, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable P. T. Byrnes presented a Message from His Excellency the Lieutenant-Governor, as Deputy for the Governor, informing the Council that he had, on the 11th instant, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Transfer of Land (Forgeries) Act.
Newport "A" Power Station Act.
Local Government (Overdrafts) Act.
Marketing of Primary Products (Tomatoes) Act.

3. BENEFIT ASSOCIATIONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Registration of Sickness Hospital Medical and Funeral Benefit Associations, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. FIREARMS 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 Firearms*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. MARINE (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Marine Act* 1928', *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. SPECIAL FUNDS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Seven of the 'Special Funds Act* 1910'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Agricultural Colleges Acts—Agricultural Colleges Leases and Grants Regulations 1951.

Apprenticeship Acts—Amendment of Regulations—

Aircraft Trades Regulations (No. 1).
Boilermaking Trades Apprenticeship Regulations.
Boot Trades Regulations.
Bread Making and Baking Trade Regulations (No. 1).
Bricklaying Trade Regulations (No. 1).
Butchering Trades Apprenticeship Regulations.
Carpentry and Joinery Regulations (No. 1).
Cooking Trade Apprenticeship Regulations.
Dental Mechanic Trade Regulations (No. 1).

3956/51. (240 copies.)

Electrical Trades Apprenticeship Regulations.
Electroplating Trade Regulations (No. 1).
Engineering Trades Apprenticeship Regulations.
Fibrous Plastering Trade Apprenticeship Regulations.
Ladies' and/or Men's Hairdressing Trades Regulations (No. 1).
Motor Mechanics Trades Apprenticeship Regulations.
Moulding Trades Apprenticeship Regulations.
Painting Trades Apprenticeship Regulations.
Pastrycooking Trade Regulations (No. 1).
Plastering Regulations (No. 2).
Plumbing and Gasfitting Trades Regulations.
Printing and Allied Trades Apprenticeship Regulations.
Printing Trades (Country) Apprenticeship Regulations.
Sheet Metal Trade Regulations (No. 2).
Watch and/or Clock Making Trades Regulations (No. 1).

Hospitals and Charities Act 1948—Report of the Hospitals and Charities Commission for the year 1950–51.

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

Police Regulation Acts—Amendment of 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 (two papers).
Department of Crown Lands and Survey.
Department of Health.
Department of Law.
Department of State Forests.

Technical and General Division—

Department of Agriculture.
Department of Water Supply.
Departments of Health and Chief Secretary.

Temporary Employees—

Department of Agriculture.
Department of Chief Secretary.
Department of Health.
Department of Health, General, and Department of Chief Secretary.

River Improvement Act 1948—Regulations—

Avon River Improvement Trust—Election and Term of Office of Commissioners, and any Matter incidental thereto.

Snowy River Improvement Trust—Election and Term of Office of Commissioners, and any Matter incidental thereto.

Supreme Court Acts—Rules of the Supreme Court.

Teaching Service Act 1946—

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

Amendment of Teaching Service (Teachers Tribunal) Regulations.

Workers' Compensation Acts—Workers' Compensation Board Fund—Balance-sheet and Statement of Receipts and Expenditure for the year 1950–51.

8. Building Operations and Building Materials Control (Extension) Bill.—On the motion of the Honorable I. A. Swinburne, leave was given to bring in a Bill to amend Section Twenty-three of the *Building Operations and Building Materials Control Act* 1946, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

9. Housing Bill.—On the motion of the Honorable I. A. Swinburne, leave was given to bring in a Bill to amend the Housing Acts, and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

10. Standing Order—Lapsed Bills Restoration.—The Honorable P. T. Byrnes moved, That the following be adopted as a Standing Order of this House, to remain in force until the end of the next Session of this present Parliament and no longer, viz.:—"When a motion to bring in any Bill or to read for the first time any Bill brought up from the Assembly is agreed to, if such Bill bears a certificate from the Clerk of this House that it is identical with a Bill as last agreed to by the House which passed its second reading in the previous Session of the same Parliament but was not finally disposed of by both Houses when the Session closed, then a motion may be made that such Bill be advanced to the stage it had reached in this House in the previous Session or to any earlier stage. If such last-mentioned motion be agreed to the Bill shall thereupon be passed without amendment or debate through each of the stages authorized by such motion and thereafter shall be proceeded with and dealt with in the same manner as other Bills".

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Debate ensued.

Question—put and resolved in the affirmative.

Ordered—That the Standing Order be laid before His Excellency the Governor and his approval requested thereto.

11. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 and 2, be postponed until later this day.

12. WINCHELSEA COAL MINE 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.

13. TRANSPORT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

Debate ensued.

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

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

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

14. ADJOURNMENT.—The Honorable P. T. Byrnes 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 Nine o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 40.

TUESDAY, 25TH SEPTEMBER, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

   Winchelsea Coal Mine Act.

3. IMPORTED MATERIALS LOAN AND APPLICATION (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Imported Materials Loan and Application Act* 1949'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable I. A. Swinburne, 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. TRANSPORT REGULATION BOARD BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Three of the 'Transport Regulation Act* 1932'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. P. Inchbold, 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. PORTLAND HARBOR TRUST (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Forty-two of the 'Portland Harbor Trust Act* 1949'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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. 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 T. Harvey, 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. CO-OPERATIVE HOUSING SOCIETIES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Co-operative Housing Societies Acts, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable I. A. Swinburne, 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. STANDING ORDER—LAPSED BILLS RESTORATION.—The President announced the receipt of a communication from the Clerk of the Council reporting that, pursuant to the resolution of the Council, the new Standing Order relating to the Restoration of Lapsed Bills, adopted by the Council on the 18th instant, was this day laid before His Excellency the Governor for his approval, and that His Excellency was pleased to approve of the same.

3956/51. (240 copies.)

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

Barley Marketing Act 1948—Amendment of Barley Marketing (Elections) Regulations 1948.

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

Midwives Act 1928—Midwives Regulations 1951.

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 Premier.

Technical and General Division—

Department of Agriculture.
Department of Chief Secretary.

Temporary Employees—

Department of Agriculture.
Department of Chief Secretary.

Part III.—Salaries, Increments and Allowances—Regulation 75; and Part VI.—Travelling Expenses—Regulation 96.

Stamps Act 1946—Stamps (Cheques) Act 1951 Regulations.

Teaching Service Act 1946—Amendment of Regulations—

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

10. TRANSPORT 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 Sir James Kennedy moved, That the debate be now adjourned.

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

Ordered—That the debate be adjourned until later this day.

11. ADDRESSES TO HIS MAJESTY KING GEORGE VI. AND HIS EXCELLENCY THE GOVERNOR.—The President announced the receipt of a Message from the Assembly transmitting an Address to His Majesty the King and an Address to His Excellency the Governor adopted this day by the Assembly and desiring the concurrence of the Council therein.

The Address to His Majesty the King was read by the Clerk and is as follows :—

TO THE KING'S MOST EXCELLENT MAJESTY :

MOST GRACIOUS SOVEREIGN :

We, Your Majesty's most dutiful and loyal subjects, the Legislative Assembly of Victoria, in Parliament assembled, beg to approach Your Majesty, on behalf of the people of Victoria, with expressions of deep regret for Your illness.

The knowledge that Your Majesty had to undergo the ordeal and risks of a surgical operation was received by Your Majesty's subjects in Victoria with deep concern, and it is their heartfelt wish and earnest prayer that Your Majesty may soon be fully restored to health.

The Honorable P. T. Byrnes, moved, That this House agree with the Assembly in the Address to His Majesty the King, and that the blank in the Address be filled up by the insertion of the words " Legislative Council and the ".

Debate ensued.

Question—put and resolved in the affirmative.

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

MAY IT PLEASE YOUR EXCELLENCY :

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

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

Question—put and resolved in the affirmative.

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

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12. TRANSPORT 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. Isaac 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. 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.

14. FIREARMS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

Debate ensued.

The Honorable C. P. Gartside moved, That the debate be now adjourned.

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

Ordered—That the debate be adjourned until Tuesday next.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 41.

WEDNESDAY, 26TH SEPTEMBER, 1951.

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

2. STATUTE LAW REVISION COMMITTEE—WORKERS COMPENSATION BILL.—The Honorable P. T. Byrnes 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.

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

Fisheries Acts—Notice of Intention to issue a Proclamation to alter the Regulations respecting long lines in Western Port Bay.

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

5. TRANSPORT 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 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.

6. BENEFIT ASSOCIATIONS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

The Honorable 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.

7. HOUSING BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

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

House in Committee.

The President resumed the Chair; and the Honorable 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. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 5, be postponed until later this day.

10. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne 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.

11. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 42.

TUESDAY, 2ND OCTOBER, 1951.

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

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

   Apprenticeship Acts—Amendment of Cooking Trade Apprenticeship Regulations.

   Education Act 1928—Report of the Council of Public Education for the year 1950–51.

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

3. TRANSPORT 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.

4. BENEFIT ASSOCIATIONS 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.

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

6. MARINE (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 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.

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

ROY S. SARAH,
Clerk of the Legislative Council.

3956/51. (240 copies.)

No. 43.

WEDNESDAY, 3RD OCTOBER, 1951.

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

2. GREATER MELBOURNE COUNCIL BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for a Greater Melbourne Council and for the better Management of the Melbourne Metropolitan District, and for other purposes*" and desiring the concurrence of the Council therein.

The Honorable P. T. Byrnes moved, That this Bill be now read a first time.

Question—put.

The Council divided.

Ayes, 16.	Noes, 17.
The Hon. W. J. Beckett,	The Hon. Sir William Angliss,
P. T. Byrnes,	Sir Frank Beaurepaire,
P. L. Coleman (*Teller*),	E. P. Cameron,
A. M. Fraser,	G. L. Chandler (*Teller*),
J. W. Galbally,	Sir Frank Clarke,
T. Harvey,	C. P. Gartside,
P. P. Inchbold,	T. H. Grigg,
P. Jones,	C. E. Isaac,
P. J. Kennelly,	Sir James Kennedy,
W. MacAulay (*Teller*),	J. F. Kittson,
C. E. McNally,	Sir George Lansell,
W. Slater,	H. C. Ludbrook,
I. A. Swinburne,	G. S. McArthur (*Teller*),
F. M. Thomas,	A. E. McDonald,
G. J. Tuckett,	H. V. MacLeod,
D. J. Walters.	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:—

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

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

Part III.—Salaries, Increments and Allowances—

Administrative Division—

Department of Chief Secretary.
Department of Water Supply.

Professional Division—Department of Chief Secretary.
Technical and General Division—Department of Water Supply.
Temporary Employees—

Department of Law.
Department of Treasurer.

Part VI.—Travelling Expenses—Regulation 98.

4. POSTPONEMENT OF NOTICE OF MOTION.—Ordered, after debate, That the consideration of the Notice of Motion, General Business, be postponed until the next day of meeting.

5. POSTPONEMENT OF ORDERS OF THE DAY.—

Ordered—That the consideration of Order of the Day, General Business, No. 1, be postponed until the next day of meeting.

Ordered, after debate, That the consideration of Order of the Day, General Business, No. 2, be postponed until the next day of meeting.

Ordered—That the consideration of Order of the Day, Government Business, No. 1, be postponed until later this day.

6. HOUSING 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 A. G. Warner moved, That the debate be now adjourned.

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

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

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7. BENEFIT ASSOCIATIONS 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 an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, 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 with an amendment and desiring their concurrence therein.

8. MARINE (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 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. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) 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 A. G. Warner moved, That the debate be now adjourned.

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

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

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

House in Committee.

The 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.

11. FIREARMS 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.

12. IMPORTED MATERIALS LOAN AND APPLICATION (FINANCIAL) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

The Honorable 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. TRANSPORT REGULATION BOARD BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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. LATROBE VALLEY DRAINAGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Treatment and Disposal of Industrial and Domestic Waste in and for the Latrobe Valley and the Prevention of Pollution of the Latrobe River, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 9, be postponed until later this day.

16. CO-OPERATIVE HOUSING SOCIETIES (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

The Honorable 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.

17. ADJOURNMENT.—The Honorable P. T. Byrnes 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 sixteen minutes past Ten o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 44.

TUESDAY, 9TH OCTOBER, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

   Special Funds (Amendment) Act.
   Transport Act.
   Marine (Amendment) Act.
   Portland Harbor Trust (Amendment) Act.
   Transport Regulation Board Act.

3. USHER OF THE BLACK ROD.—The President announced that, on the 2nd instant, His Excellency the Governor in Council approved of the style or title of the office of Usher of the Legislative Council being changed to that of Usher of the Black Rod.

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

   Education Act 1928—Amendment of Regulations—Regulation V.—Special Schools and Classes.

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

   Public Service Act 1946—

   Amendment of Public Service (Governor in Council) Regulations—Part V.—Stores and Transport.

   Amendment of Public Service (Public Service Board) Regulations—

   Part II.—Promotions and Transfers—Technical and General Division—Regulation 52.

   Part III.—Salaries, Increments and Allowances—

   Technical and General Division—Department of Health.
   Temporary Employees—Department of Health.

5. IMPORTED MATERIALS LOAN AND APPLICATION (FINANCIAL) 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.

3956/51. (240 copies.)

6. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 2 to 7 inclusive, be postponed until later this day.

7. WATER (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 an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

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

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

Debate resumed.

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

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

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

9. SOLDIER SETTLEMENT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable T. Harvey 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. CO-OPERATIVE HOUSING SOCIETIES (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.

11. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable P. T. Byrnes 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 Ten o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 45.

TUESDAY, 16TH OCTOBER, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

Imported Materials Loan and Application (Financial) Act.
Co-operative Housing Societies (Amendment) Act.

3. STATUTE LAW REVISION COMMITTEE—WRONGS (CONTRIBUTORY NEGLIGENCE) BILL.—The Honorable P. T. Byrnes 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.

4. PAPERS.—The Honorable P. T. Byrnes presented, by command of His Excellency the Governor—

State Electricity Commission—Report on the Final Phase of the Rural Electrification of the State.

Ordered to lie on the Table.

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

Apprenticeship Acts—

Bread Trade Apprenticeship Regulations.

Pastrycooking Trade Apprenticeship Regulations.

Friendly Societies Act 1928—Report of the Government Statist for the year 1949-50.

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Balwyn East and Spring Gully (two 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 1950-51.

Public Service Act 1946—Amendment of Regulations—

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

Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances—

Professional Division—

Department of Chief Secretary.
Department of Premier.
Department of Public Works.
Department of Water Supply.

Technical and General Division—Department of Public Works.

Temporary Employees—Department of Premier.

5. UNIVERSITY BILL.—On the motion of the Honorable P. P. Inchbold, leave was given to bring in a Bill to amend Sections Eighteen and Thirty-three of the *University 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.

3956/51. (240 copies.)

6. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) 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.

7. LATROBE VALLEY DRAINAGE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold 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.

8. EGG AND EGG PULP MARKETING BOARD BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Temporary Provision with respect to the Egg and Egg Pulp Marketing Board*" and desiring the concurrence of the Council therein.

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

The Honorable P. T. Byrnes moved, That this Bill be now read a second time.

Debate ensued.

The Honorable C. P. Gartside moved, as an amendment, That the word "now" be omitted and the words "this day six months" added after the word "time".

Debate ensued.

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

The Council divided.

Ayes, 16.	Noes, 15.
The Hon. W. J. Beckett,	The Hon. Sir William Angliss,
P. T. Byrnes,	Sir Frank Beaurepaire,
P. L. Coleman,	E. P. Cameron (*Teller*),
A. M. Fraser,	G. L. Chandler,
J. W. Galbally (*Teller*),	C. P. Gartside,
T. Harvey,	T. H. Grigg,
P. P. Inchbold,	C. E. Isaac,
P. Jones,	Sir James Kennedy,
P. J. Kennelly,	J. F. Kittson,
Sir George Lansell,	H. C. Ludbrook (*Teller*),
W. MacAulay,	G. S. McArthur,
C. E. McNally,	A. E. McDonald,
W. Slater,	H. V. MacLeod,
I. A. Swinburne,	R. C. Rankin,
F. M. Thomas,	A. G. Warner.
D. J. Walters (*Teller*).	

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

Question—That this Bill be now read a second time—put and resolved in the affirmative—Bill read a second time and committed to a Committee of the whole.

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. 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, having been read—

Debate resumed.

The Honorable E. P. Cameron 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 minutes past Ten o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 46.

WEDNESDAY, 17TH OCTOBER, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

Egg and Egg Pulp Marketing Board Act.

3. CONSOLIDATED REVENUE BILL (No. 8).—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 Ten million eight hundred and sixty-three thousand five hundred and seventy-nine pounds to the service of the year One thousand nine hundred and fifty-one and One thousand nine hundred and fifty-two*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. STAMPS (BETTING TAX) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Betting Tax*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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 (CONTRIBUTORY NEGLIGENCE) 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.

6. LEGISLATIVE COUNCIL BILL.—DISCHARGE OF ORDER OF THE DAY.—The Order of the Day for the second reading of this Bill having been read—

The Honorable Sir James Kennedy moved, That the said Order be discharged.

Question—put and resolved in the affirmative.

Ordered—That the Bill be withdrawn.

7. 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.

The 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 returned to the Assembly with a Message acquainting them that the Council have agreed to the same with an amendment and desiring their concurrence therein.

8. TRANSPORT REGULATION (FEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act with respect to Fees under the Transport Regulation Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. LICENSING (FEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Fees under Sections Nineteen Forty-three and Two hundred and fifty-eight of the 'Licensing Act* 1928', *and for other purposes*" and desiring the concurrence of the Council therein.

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

10. FACTORIES AND SHOPS (REGISTRATION FEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to re-enact the Second Schedule to the 'Factories and Shops Act* 1928'" and desiring the concurrence of the Council therein.

    On the motion of the Honorable T. Harvey, 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. UNIVERSITY BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold 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. LAND TAX BILL (NO. 2).—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-two*" and desiring the concurrence of the Council therein.

    On the motion of the Honorable P. T. Byrnes, 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. ADJOURNMENT.—The Honorable P. T. Byrnes 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-five minutes past Nine o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 47.

TUESDAY, 23RD OCTOBER, 1951.

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

2. MOTOR CAR (REGISTRATION FEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Registration Fees in respect of Motor Cars, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. T. Byrnes, 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:—

   Anti-Cancer Council Act 1936—Report of the Anti-Cancer Council for the year 1950–51.

   Education Act 1928—Amendment of Regulation XXVIII.—Use of School Buildings.

   Fisheries Acts—Notice of Intention to make a Proclamation respecting fishing licences and renewal of such licences.

   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.

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

      Administrative Division—Department of Treasurer.

      Professional Division—

         Department of Agriculture (two papers).
         Department of Chief Secretary.
         Department of Law.
         Department of Premier.

      Technical and General Division—

         Department of Agriculture.
         Department of Chief Secretary.

      Temporary Employees—Department of Health.

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

4. STAMPS (BETTING 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.

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

   Debate resumed.

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

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

   Ordered—That the debate be adjourned until later this day.

3956/51. (240 copies.)

6. TRANSPORT REGULATION (FEES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold moved, That this Bill be now read a second time.

Debate ensued.

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

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

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

7. LICENSING (FEES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

Debate ensued.

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

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

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

8. FACTORIES AND SHOPS (REGISTRATION FEES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable T. Harvey moved, That this Bill be now read a second time.

Debate ensued.

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

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

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

9. LAND TAX BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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. CONSOLIDATED REVENUE BILL (No. 8).—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. PUBLIC ACCOUNT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Public Account, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. P. Inchbold, 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. MARINE (PILOTAGE RATES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to increase certain Maximum Rates of Pilotage under the Marine Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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 fourteen minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 48.

WEDNESDAY, 24TH OCTOBER, 1951.

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

2. GRACE JOEL SCHOLARSHIP BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to validate the Actions of the Trustees of the Public Library Museums and National Gallery of Victoria and the Trustees of the National Gallery of Victoria in the Administration of the Trust created by the Will of Grace Jane Joel and to provide for the Removal of Doubts as to the Construction of the said Will*" and desiring the concurrence of the Council therein.

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

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

State Savings Bank Act 1928—State Savings Bank of Victoria—Statements and Returns for the year 1950–51.

Transport Regulation Acts—Report of the Transport Regulation Board for the year 1950–51.

4. LOCAL GOVERNMENT (IMPORTED HOUSES) BILL (No. 2).—On the motion of the Honorable P. T. Byrnes, leave was given to bring in a Bill to amend Section Nine hundred and one of the *Local Government Act* 1946, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. ALTERATION OF SESSIONAL ORDERS.—The Honorable P. T. Byrnes 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, that no new business be taken after half-past Ten o'clock, and that the hour of meeting on Thursdays shall be half-past Four o'clock be rescinded and that, for the remainder of the Session, Government business shall take precedence of all other business, new business may be taken at any hour, and the hour of meeting on Thursdays shall be Eleven o'clock.

Debate ensued.

Question—put and resolved in the affirmative.

6. UNIVERSITY BILL.—The Order of the Day for the resumption of the debate on the question, 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.

7. TRANSPORT REGULATION (FEES) 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. ADMINISTRATION AND PROBATE (ESTATES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to Duties on Deceased Persons' Estates, to amend Part VI. of the 'Administration and Probate Act* 1928', *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. STAMPS (DUTIES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Third Schedule to the 'Stamps Act* 1946'" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. LICENSING (FEES) 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 W. Slater moved, by leave, That it be an instruction to the Committee that they have power to consider a suggested amendment to remove doubts about the existing apportionment of licence fees between occupier and owner.

Debate ensued.

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 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 1, line 7, omit "constructed" and insert "construed".

2. Clause 2, sub-clause (1), page 2, line 32, at the end of the sub-clause insert the following new sub-clause:—

"( ) After paragraph (*c*) of sub-section (3) of section nineteen of the Principal Act there shall be inserted the expression—

'and any term of any agreement or lease—

(i) whereby the rent or any part of the rent for any licensed premises or any collateral payment or obligation is or may be computed by reference, direct or indirect, to purchases or sales of liquor; or

(ii) which in the opinion of any court of competent jurisdiction would frustrate or avoid the operation of the foregoing provisions of this sub-section—

shall be void and of no effect' "—

and asked leave to sit again.

On the motion of the Honorable P. T. Byrnes, the Council adopted the resolution reported from the Committee of the whole.

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

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

11. FACTORIES AND SHOPS (REGISTRATION FEES) 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. MOTOR CAR (REGISTRATION FEES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes moved, That this Bill be now read a second time.

Debate ensued.

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

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

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

13. PUBLIC ACCOUNT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. P. Inchbold 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.

14. MARINE (PILOTAGE RATES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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 P. T. Byrnes moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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No. 49.

THURSDAY, 25TH OCTOBER, 1951.

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

2. PRICES REGULATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Prices Regulation Acts*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable I. A. Swinburne, 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. BENEFIT ASSOCIATIONS 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.

4. SOLDIER SETTLEMENT 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.

5. MARINE (PILOTAGE RATES) 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. LATROBE VALLEY DRAINAGE 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.

7. LOCAL GOVERNMENT (IMPORTED HOUSES) BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

   House in Committee.

   The President resumed the Chair; and the Honorable 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. GRACE JOEL SCHOLARSHIP BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable I. A. Swinburne moved, That this Bill be now read a second time.

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

   Debate ensued.

   Motion—That the debate be now adjourned—by leave, withdrawn.

   Debate on the main question 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 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. CHARITABLE TRUSTS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to certain Charitable Trusts*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable P. P. Inchbold, 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. GIPPSLAND RAILWAY (DUPLICATION AND REGRADING) EXTENSION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend and extend the Operation of the 'Gippsland Railway (Duplication and Regrading) Act* 1948'" and desiring the concurrence of the Council therein.

On the motion of the Honorable T. Harvey, 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. WATER (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.

12. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 5 to 7 inclusive, be postponed until the next day of meeting.

13. ADMINISTRATION AND PROBATE (ESTATES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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-four minutes past Four o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 50.

TUESDAY, 30TH OCTOBER, 1951.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes presented a Message from His Excellency the Governor informing the Council that with reference to the message of sympathy which he was requested to send to Buckingham Palace, on behalf of the Parliament and the people of Victoria, a reply has been received saying how very much that kind message of sympathy to His Majesty the King was appreciated.

3. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable P. T. Byrnes 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. :—

Stamps (Betting Tax) Act.
Land Tax Act.
Consolidated Revenue Act.
Transport Regulation (Fees) Act.
Factories and Shops (Registration Fees) Act.
Soldier Settlement Act.
Marine (Pilotage Rates) Act.
Water (Amendment) Act.

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

Country Fire Authority Acts—

Country Fire Authority Superannuation Fund Regulations 1951.

Regulations relating to the issue of debentures.

Egg and Egg Pulp Marketing Board Act 1951—Proclamations—

Appointing a person to be the manager of the Egg and Egg Pulp Marketing Board.

Suspending the members of the Egg and Egg Pulp Marketing Board.

Explosives Act 1928—

Orders in Council relating to—

Classification of Explosives—Class 6—Ammunition.

Definition of Explosives—Class 6—Ammunition.

Report of the Chief Inspector of Explosives on the working of the Act during the year 1950.

Fisheries Acts—Notices of intention to issue Proclamations—

To prohibit the use of certain seine nets in the waters of Port Phillip between Mentone Pier and Mornington Pier.

To specify the Wurdee Boluc Reservoir as inland water for the purpose of section 5 of the Fisheries (Inland Angling) Act 1950.

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

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

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

5. PUBLIC ACCOUNT 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.

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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. BENEFIT ASSOCIATIONS 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 certain clerical errors in this Bill, viz:—

In clause 3, sub-clause (3), paragraph (*b*), line 41, the word "*Assurance*" has been inserted instead of the word "*Insurance*".

In clause 9, line 33, the word "*Assurance*" has been inserted instead of the word "*Insurance*"—

and acquainting the Council that they have agreed that such errors be corrected by the insertion of the word "*Insurance*" instead of the word "*Assurance*" in clause 3, sub-clause (3), paragraph (*b*), line 41, and by the insertion of the word "*Insurance*" instead of the word "*Assurance*" in clause 9, line 33, and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, the Council concurred with the Assembly in the correction of the clerical errors discovered in this Bill and ordered that a Message be sent to the Assembly acquainting them therewith.

7. ADMINISTRATION AND PROBATE (ESTATES) 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 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.

8. POSTPONEMENT OF ORDERS OF THE DAY—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 3 to 10 inclusive, be postponed until later this day.

9. HOUSING 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 adjourned until the next day of meeting.

Debate ensued.

The Honorable A. G. Warner moved, That the question be now put, and six other Members having risen in their places as indicating approval of the motion—

Question—That the question be now put—put.

The Council divided.

Ayes, 16.	Noes, 15.
The Hon. Sir William Angliss,	The Hon. W. J. Beckett,
Sir Frank Beaurepaire,	P. T. Byrnes,
E. P. Cameron,	P. L. Coleman,
G. L. Chandler (*Teller*),	A. M. Fraser,
Sir Frank Clarke,	J. W. Galbally,
C. P. Gartside (*Teller*),	T. Harvey,
T. H. Grigg,	P. P. Inchbold,
C. E. Isaac,	P. J. Kennelly,
Sir James Kennedy,	W. MacAulay,
J. F. Kittson,	C. E. McNally,
Sir George Lansell,	W. Slater (*Teller*),
H. C. Ludbrook,	I. A. Swinburne,
G. S. McArthur,	F. M. Thomas,
H. V. MacLeod,	G. J. Tuckett,
R. C. Rankin,	D. J. Walters (*Teller*).
A. G. Warner.	

And so it was resolved in the affirmative.

The Council ordered that the question be divided.

Question—That the debate be now adjourned—put.

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The Council divided.

Ayes, 15.	Noes, 16.
The Hon. W. J. Beckett,	The Hon. Sir William Angliss,
P. T. Byrnes,	Sir Frank Beaurepaire (*Teller*),
P. L. Coleman,	E. P. Cameron,
A. M. Fraser,	G. L. Chandler,
J. W. Galbally,	Sir Frank Clarke,
T. Harvey,	C. P. Gartside,
P. P. Inchbold,	T. H. Grigg,
P. J. Kennelly (*Teller*),	C. E. Isaac,
W. MacAulay,	Sir James Kennedy,
C. E. McNally,	J. F. Kittson,
W. Slater,	Sir George Lansell,
I. A. Swinburne,	H. C. Ludbrook (*Teller*),
F. M. Thomas (*Teller*),	G. S. McArthur,
G. J. Tuckett,	H. V. MacLeod,
D. J. Walters.	R. C. Rankin,
	A. G. Warner.

And so it passed in the negative.

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

WEDNESDAY, 31ST OCTOBER, 1951.

Debate on the question—That this Bill be now read a second time—continued.

The Honorable P. T. Byrnes moved, That the House do now adjourn.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 51.

WEDNESDAY, 31ST OCTOBER, 1951.

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

2. KERANG AND KOONDROOK TRAMWAY BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Transfer from the Shire of Kerang to The Victorian Railways Commissioners of the Kerang and Koondrook Tramway, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable T. Harvey, 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. BALLAARAT GAS COMPANY'S BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Eleven of 'The Ballaarat Gas Company's Act* 1857'" and desiring the concurrence of the Council therein.

   Bill ruled to be a Private Bill.

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

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

4. BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

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

   Railways Act 1928—Report of the Victorian Railways Commissioners for the year 1950-51.

6. PRICES 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 returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

7. LICENSING (FEES) 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 one of the amendments suggested by the Council, and have made the other amendment with modifications, and desiring the concurrence of the Council therein.

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

8. LAND (DEVELOPMENT LEASES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Granting of Development Leases of certain Lands*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. FIREARMS OFFENCES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make provision with respect to Offences involving the Unlawful Use of Firearms or Imitation Firearms and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable I. A. Swinburne, 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. REVOCATION AND EXCISION OF CROWN RESERVATIONS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Revocation of the Permanent Reservations and Crown Grants of certain Lands, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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.

11. UNIVERSITY BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

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

On the motion of the Honorable I. A. Swinburne, 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.

13. ADMINISTRATION AND PROBATE (ESTATES) 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 4, sub-clause (1), paragraph (*d*), page 5, line 16, omit "real property" and insert "land or estate or interest therein".

2. Clause 4, sub-clause (1), paragraph (*e*), page 5, line 35, at the end of this paragraph insert:—

"Provided that where the matrimonial home of the deceased person is comprised in any property which is also used for other purposes a separate valuation shall be made of the portion of the property used principally as a matrimonial home and the portion used for such other purposes and only the beneficial interest of the deceased person in that part of the property that was used principally for the purpose of his matrimonial home shall be excluded from the operation of this paragraph (*e*)".

3. First Schedule, paragraph 8, sub-paragraph (*b*), omit—

"and".

4. First Schedule, paragraph 8, at the end of this paragraph insert—

"and

( ) step-children of the deceased person"—

and asked leave to sit again.

On the motion of the Honorable P. T. Byrnes, 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, later this day, again resolve itself into a Committee of the whole.

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14. STAMPS (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.

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

On the motion of the Honorable P. P. Inchbold, 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.

16. CHARITABLE TRUSTS BILL.—This Bill was, according to Order and after debate, read a second time.

Ordered—That the Bill be committed to a Committee of the whole on Tuesday next.

17. GIPPSLAND RAILWAY (DUPLICATION AND REGRADING) 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.

18. PARLIAMENTARY SALARIES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision with respect to certain Parliamentary Salaries Allowances and Reimbursements of Expenses*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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. PARLIAMENTARY CONTRIBUTORY RETIREMENT FUND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Parliamentary Contributory Retirement Fund Act* 1946', *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable P. T. Byrnes, 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.

20. 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.

21. FIRE BRIGADES (LONG SERVICE LEAVE) AMENDMENT BILL.—This Bill was, according to Order and after debate, read a second time.

Ordered—That the Bill be committed to a Committee of the whole on Tuesday next.

22. MOTOR CAR (REGISTRATION FEES) 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.

23. ADMINISTRATION AND PROBATE (ESTATES) 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.

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

25. LICENSING (FEES) 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 amendment made by the Assembly which was suggested by the Council and the amendment suggested by the Council in clause 2 as modified and made by the Assembly, without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same, including the amendment suggested by the Council which was made by the Assembly and the amendment suggested by the Council in clause 2 as modified and made by the Assembly, without amendment.

26. LAND (DEVELOPMENT LEASES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable P. T. Byrnes 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, 1ST NOVEMBER, 1951.

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 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.

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

House in Committee.

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

28. PARLIAMENTARY CONTRIBUTORY RETIREMENT FUND BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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.

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

House in Committee.

The President resumed the Chair; and the Honorable 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.

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

House in Committee.

The President resumed the Chair; and the Honorable 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.

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31. ADMINISTRATION AND PROBATE (ESTATES) 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 the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same, including the amendments made by the Assembly which were suggested by the Council, without amendment.

32. KERANG AND KOONDROOK TRAMWAY 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.

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

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.

34. REVOCATION AND EXCISION OF CROWN RESERVATIONS BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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.

35. ADJOURNMENT.—The Honorable P. T. Byrnes moved, by leave, That the Council, at its rising, adjourn until Friday, the 9th instant, at half-past Four o'clock.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at fourteen minutes past Three o'clock in the morning, adjourned until Friday, the 9th instant.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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SESSION 1950–51.

BILLS ASSENTED TO AFTER THE FINAL ADJOURNMENT OF BOTH HOUSES AND BEFORE THE PROROGATION.

The following Message from His Excellency the Governor was 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. :—

Latrobe Valley Drainage Act 1951.
Grace Joel Scholarship Act 1951.
Building Operations and Building Materials Control (Extension) Act 1951.
Benefit Associations Act 1951.
Public Account Act 1951.
University Act 1951.
Prices Regulation (Amendment) Act 1951.
Stamps (Duties) Act 1951.
Gippsland Railway (Duplication and Regrading) Extension Act 1951.
Motor Car (Registration Fees) Act 1951.
Licensing (Fees) Act 1951.
Land (Development Leases) Act 1951.
Parliamentary Salaries Act 1951.
Parliamentary Contributory Retirement Fund Act 1951.
State Forests Loan Application Act 1951.
Water Supply Loan Application Act 1951.
Administration and Probate (Estates) Act 1951.
Kerang and Koondrook Tramway Act 1951.
Ballaarat Gas Company's Act 1951.
Revocation and Excision of Crown Reservations Act 1951.

The Governor's Office,
Melbourne, 7th November, 1951.

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SESSION 1950–51.

QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO.

* Question asked without notice.

QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO—*continued.*

Name of Member and Subject-matter.	Number of Notice-Paper. (Question.)	Page in *Hansard* (Reply).
LUDBROOK, Hon. H. C.—		
Langi Kal Kal Training Farm	12	1298
Under-privileged Children—Report by Brotherhood of St. Laurence	6	647
McDONALD, Hon. A. E.—		
Metropolitan Fire Brigades Board—Strike of firemen	*	1085
RANKIN, Hon. R. C.—		
Railways Department—Maintenance and repair of permanent way	39	4559
THOMAS, Hon. F. M.—		
Landlord and Tenant Act—Evictions in Fitzroy and Collingwood	22	2431
WARNER, Hon. A. G.—		
Agriculture Department—Inspection of dairy farms—Fees	32	3763
Capital Expenditure Commitments of Government Departments and Instrumentalities	50	5612
Council of Adult Education—Annual Grant	45	5158
Gas and Fuel Corporation—Acquisition of land at Morwell—Housing project ..	36	4084
Housing Commission—Building operations—Acquisition of land—Shop tenancies	45	5158
Price Control—Primary produce	50	5611

* Question asked without notice.

[7223]

VICTORIA
GOVERNMENT GAZETTE.

Published by Authority.

[*Registered at the General Post Office, Melbourne, for transmission by post as a newspaper.*]

No. 1042] **WEDNESDAY, NOVEMBER 7.** **[1951**

PROROGUING PARLIAMENT AND FIXING THE TIME FOR HOLDING THE SECOND SESSION OF THE THIRTY-EIGHTH PARLIAMENT OF VICTORIA.

PROCLAMATION

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

WHEREAS the Parliament of Victoria stands adjourned until Friday, the ninth day of November, 1951. Now I, the Governor of the State of Victoria, in the Commonwealth of Australia, do by this my Proclamation prorogue the said Parliament of Victoria until Tuesday, the thirteenth day of November, 1951, and I do hereby fix Tuesday, the thirteenth day of November, 1951, aforesaid, at the hour of half-past Ten o'clock in the forenoon, as the time for the commencement and holding of the next Session of the said Parliament of Victoria, for the despatch of business, in the Parliament Houses, situate in Spring-street, in the City of Melbourne; And the Honorable the Members of the Legislative Council and the Members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

Given under my Hand and the Seal of the State of Victoria aforesaid, at Melbourne, this seventh day of November, in the year of our Lord One thousand nine hundred and fifty-one, and in the fifteenth year of the reign of His Majesty King George VI.

(L.S.) DALLAS BROOKS.

By His Excellency's Command,

JOHN G. B. McDONALD,
Premier.

GOD SAVE THE KING!

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

No. 1042.—10687/51.

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SELECT COMMITTEES

APPOINTED DURING THE SESSION 1950-51.

No. 1.—ELECTIONS AND QUALIFICATIONS.

Appointed (by Mr. President's Warrant) 20th June, 1950.

The Hon. W. J. Beckett	The Hon. P. J. Kennelly
G. L. Chandler	G. S. McArthur
P. P. Inchbold	A. E. McDonald.
Sir James Kennedy	

No. 2.—STANDING ORDERS.

Appointed 27th June, 1950.

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.

No. 3.—HOUSE (JOINT).

Appointed 27th June, 1950, under Act No. 3660, s. 367.

The Hon. the President (*ex officio*)	The Hon. Sir Frank Clarke
Sir William Angliss	P. Jones
P. T. Byrnes	G. J. Tuckett.

No. 4.—LIBRARY (JOINT).

Appointed 27th June, 1950.

The Hon. the President	The Hon. R. C. Rankin
P. L. Coleman	W. Slater.
P. P. Inchbold	

* Hon. J. H. Lienhop resigned as a Member of the Legislative Council on 19th January, 1951.

SELECT COMMITTEES—*continued.*

No. 5.—PRINTING.

Appointed 27th June, 1950.

The Hon. the President
G. L. Chandler
J. W. Galbally
C. E. Isaac
J. F. Kittson
The Hon. Colonel Sir George Lansell
W. MacAulay
C. E. McNally
R. C. Rankin
F. M. Thomas.

No. 6.—STATUTE LAW REVISION.

Appointed 20th June, 1950.

(*See Act No.* 5285, *Sections* 2 *and* 11.)

The Hon. P. T. Byrnes
A. M. Fraser
G. S. McArthur
The Hon. A. E. McDonald
F. M. Thomas
D. J. Walters.

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1950.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 1.

WEDNESDAY MORNING, 1ST NOVEMBER, 1950.

No. 1.—GAS AND FUEL CORPORATION BILL.—Clause 4—

4. It is hereby declared that on the twenty-fifth day of August One thousand nine hundred and fifty—

(*a*) the members of The Metropolitan Gas Company; and

(*b*) the members of The Brighton Gas Company Limited—

respectively approved the Agreement by resolutions in general meetings.

—(*Hon. P. T. Byrnes.*)

Question—That clause 4 stand part of the Bill—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 15.	Noes, 9.
The Hon. W. J. Beckett, P. T. Byrnes, P. L. Coleman (*Teller*), T. Harvey, P. P. Inchbold, C. E. Isaac, P. Jones, P. J. Kennelly (*Teller*), J. H. Lienhop, W. MacAulay, W. Slater, I. A. Swinburne, F. M. Thomas, G. J. Tuckett, D. J. Walters.	The Hon. E. P. Cameron, G. L. Chandler, C. P. Gartside (*Teller*), Sir James Kennedy, J. F. Kittson, G. S. McArthur, A. E. McDonald (*Teller*), H. V. MacLeod, A. G. Warner.

And so it was resolved in the affirmative.

No. 2.—Gas and Fuel Corporation Bill.—Clause 5—

5. The Agreement is hereby approved validated and ratified, and shall have the force of law.

—(*Hon. P. T. Byrnes.*)

Amendment proposed—That the following words be inserted at the end of the clause :—

"Provided that the objects and powers (other than objects and powers in relation to the production distribution and supply of gas and by-products arising from such production and objects and powers incidental to the last-mentioned objects and powers) granted to or conferred on the corporation in or by the memorandum of association shall have effect and be exercised only with the prior approval of the Governor in Council."

—(*Hon. Sir James Kennedy.*)

Question—That the words proposed to be inserted be so inserted—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 10.	Noes, 14.
The Hon. E. P. Cameron (*Teller*),	The Hon. W. J. Beckett,
G. L. Chandler,	P. T. Byrnes,
C. P. Gartside,	P. L. Coleman,
C. E. Isaac,	T. Harvey,
Sir James Kennedy,	P. P. Inchbold,
J. F. Kittson,	P. Jones,
G. S. McArthur,	P. J. Kennelly,
A. E. McDonald,	J. H. Lienhop (*Teller*),
H. V. MacLeod (*Teller*),	W. MacAulay,
A. G. Warner.	W. Slater (*Teller*),
	I. A. Swinburne,
	F. M. Thomas,
	G. J. Tuckett,
	D. J. Walters.

And so it passed in the negative.

No. 3.—Gas and Fuel Corporation Bill.—Clause 28—

28. (1) Subject to such terms as Parliament hereafter provides or approves validates and ratifies, the Corporation may by agreement or compulsorily acquire in whole or in part the gas undertaking and business of any undertaker or all or any of the stock or shares of or in any company carrying on a gas undertaking but such terms shall, so far as practicable, be on a basis not more favourable to the undertaker or the members thereof than the basis upon which stock or shares in, and the gas undertakings and businesses of, The Metropolitan Gas Company and The Brighton Gas Company Limited are exchanged transferred to and vested in the Corporation under this Act.

(2) The provisions of section ten of this Act so far as applicable and with such modifications as are necessary shall in the case of any such acquisition by the Corporation apply to and with respect to persons employed by the undertaker or company concerned.

—(*Hon. P. T. Byrnes.*)

Amendment proposed—That the words "(subject to the provisions of the *Arbitration Act* 1928 in the event of disagreement as to terms and conditions of acquisition)" be inserted after the word "compulsorily".

—(*Hon. A. G. Warner.*)

Question—That the words proposed to be inserted be so inserted—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 10.	Noes, 14.
The Hon. E. P. Cameron,	The Hon. W. J. Beckett,
G. L. Chandler (*Teller*),	P. T. Byrnes,
C. P. Gartside,	P. L. Coleman,
C. E. Isaac (*Teller*),	T. Harvey,
Sir James Kennedy,	P. P. Inchbold,
J. F. Kittson,	P. Jones,
G. S. McArthur,	P. J. Kennelly,
A. E. McDonald,	J. H. Lienhop,
H. V. MacLeod,	W. MacAulay (*Teller*),
A. G. Warner.	W. Slater,
	I. A. Swinburne,
	F. M. Thomas,
	G. J. Tuckett,
	D. J. Walters (*Teller*).

And so it passed in the negative.

No. 4.—Gas and Fuel Corporation Bill.—Clause 28—

[*For this clause, see Division No. 3 above.*]

—(*Hon. P. T. Byrnes.*)

Question—That clause 28 stand part of the Bill—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 14.	Noes, 10.
The Hon. W. J. Beckett,	The Hon. E. P. Cameron,
P. T. Byrnes,	G. L. Chandler,
P. L. Coleman,	C. P. Gartside,
T. Harvey,	C. E. Isaac,
P. P. Inchbold,	Sir James Kennedy,
P. Jones,	J. F. Kittson (*Teller*),
P. J. Kennelly (*Teller*),	G. S. McArthur,
J. H. Lienhop,	A. E. McDonald,
W. MacAulay,	H. V. MacLeod (*Teller*),
W. Slater (*Teller*),	A. G. Warner.
I. A. Swinburne,	
F. M. Thomas,	
G. J. Tuckett,	
D. J. Walters.	

And so it was resolved in the affirmative.

WEDNESDAY, 1st NOVEMBER, 1950.

No. 5.—Agricultural Colleges (Amendment) Bill.—Clause 2—

2. At the end of section five of the Principal Act as amended by any Act there shall be inserted the following paragraph:—

"(*d*) Notwithstanding anything in the last preceding paragraph where any land is subject to a demise referred to in that paragraph and in the opinion of the Board of Land and Works—

such land constitutes or forms an essential part of the farm of the lessee; or

portion of such land is essential to the farming operations of the lessee—

the Governor in Council, notwithstanding anything in the Land Acts but subject to this paragraph, may, on the recommendation of the Board, dispose of such land or portion to the lessee either by purchase lease at a rental determined by the Board or by grant in fee simple at a price determined by the Board:

Provided that—

(i) no such recommendation shall be made if in the opinion of the Board the disposal of such land or portion would result in an undesirable aggregation of holdings by the lessee or by the lessee and his spouse;

* * * * * * * * *

—(*Hon. T. Harvey.*)

Amendment proposed—That the following sub-paragraph be inserted to follow the words "Provided that—":—

"( ) every grant in fee simple under this paragraph shall be subject to the condition that no contract for the re-sale of the land shall be entered into for a period of seven years".

—(*Hon. C. E. Isaac.*)

Question—That the sub-paragraph proposed to be inserted be so inserted—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 8.	Noes, 12.
The Hon. Sir Frank Beaurepaire,	The Hon. W. J. Beckett,
E. P. Cameron,	P. T. Byrnes,
G. L. Chandler,	P. L. Coleman,
C. P. Gartside (*Teller*),	J. W. Galbally,
C. E. Isaac,	T. Harvey,
Sir James Kennedy,	P. P. Inchbold,
A. E. McDonald,	P. Jones,
A. G. Warner (*Teller*).	P. J. Kennelly (*Teller*),
	J. H. Lienhop (*Teller*),
	W. MacAulay,
	I. A. Swinburne,
	D. J. Walters.

And so it passed in the negative.

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

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VICTORIA.

LEGISLATIVE COUNCIL

SESSION 1950.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 2.

WEDNESDAY, 29TH NOVEMBER, 1950.

No. 1.—POLICE OFFENCES (ANIMALS) BILL.—Proposed new clause A—

A. At the end of section fifty-nine of the Principal Act there shall be inserted the following sub-section :—

"(2) (*a*) No person whether as principal or agent shall sell or offer for sale any calf—

(i) unless such calf has been properly and sufficiently fed daily from birth ; or

(ii) if the calf appears to be unfit by reason of weakness to be driven or conveyed away.

(*b*) For the purposes of this sub-section the act of any person placing any calf at or adjacent to any entrance to his land or premises or in any customary place (whether on his own land or premises or not) at which calves are exposed for sale shall be deemed to be an offer to sell such calf.

(*c*) No person whether as principal or agent shall purchase or drive or convey any calf which appears to be unfit by reason of weakness to be driven or conveyed to its intended destination.

(*d*) Where a servant or agent commits an offence against this sub-section his employer or principal shall be deemed also to have committed such offence."

—(*Hon. E. P. Cameron.*)

Motion made and question put—That new clause A be added to the Bill.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 11.	Noes, 18.
The Hon. Sir William Angliss,	The Hon. W. J. Beckett,
Sir Frank Beaurepaire,	P. T. Byrnes,
E. P. Cameron,	P. L. Coleman (*Teller*),
C. P. Gartside,	A. M. Fraser,
Sir James Kennedy,	J. W. Galbally,
J. F. Kittson (*Teller*),	T. Harvey,
H. C. Ludbrook (*Teller*),	P. P. Inchbold,
G. S. McArthur,	P. Jones,
A. E. McDonald,	P. J. Kennelly,
H. V. MacLeod,	Col. G. V. Lansell,
A. G. Warner.	J. H. Lienhop,
	W. MacAulay,
	C. E. McNally (*Teller*),
	W. Slater,
	I. A. Swinburne,
	F. M. Thomas,
	G. J. Tuckett,
	D. J. Walters.

And so it passed in the negative.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1950-51.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 3.

TUESDAY, 7TH AUGUST, 1951.

No. 1.—PUBLIC SERVICE BILL.—Clause 1—

1. This Act may be cited as the *Public Service Act* 1951 and shall be read and construed as one with the *Public Service Act* 1946 (hereinafter called the Principal Act) which Act and the enactment amending the same and this Act may be cited together as the Public Service Acts.

—(*Hon. P. T. Byrnes.*)

Amendment proposed—That the following new sub-clause be added to the clause:—

"(2) This Act shall be deemed to have come into operation on the seventeenth day of July One thousand nine hundred and fifty-one."

—(*Hon. P. T. Byrnes.*)

Further amendment proposed—That the word "seventeenth" be omitted from the proposed amendment with the view of inserting in place thereof the word "first".

—(*Hon. A. G. Warner.*)

Question—That the word proposed to be omitted stand part of the proposed amendment—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 12.	Noes, 8.
The Hon. W. J. Beckett, P. T. Byrnes, P. L. Coleman (*Teller*), T. Harvey, P. P. Inchbold, P. Jones, P. J. Kennelly (*Teller*), Sir George Lansell, W. MacAulay, I. A. Swinburne, F. M. Thomas, G. J. Tuckett.	The Hon. E. P. Cameron (*Teller*), C. P. Gartside, T. H. Grigg (*Teller*), C. E. Isaac, Sir James Kennedy, J. F. Kittson, G. S. McArthur, A. G. Warner.

And so it was resolved in the affirmative.

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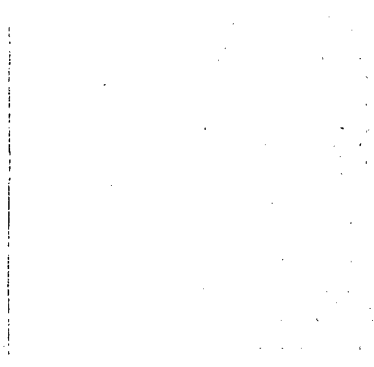

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1950-51.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 4.

WEDNESDAY, 22ND AUGUST, 1951.

No. 1.—RAILWAYS (FURLOUGH) BILL.—Clause 1—

1. (1) This Act may be cited as the *Railways (Furlough) Act* 1951 and shall be read and construed as one with the *Railways Act* 1928 (hereinafter called the Principal Act) and any Act and enactment amending the same all of which Acts and enactments and this Act may be cited together as the Railways Acts.

(2) This Act shall be deemed to have come into operation on the seventeenth day of July One thousand nine hundred and fifty-one.

—(*Hon. P. P. Inchbold.*)

Amendment proposed—That the word "seventeenth" be omitted with the view of inserting in place thereof the word "first".

—(*Hon. J. F. Kittson.*)

Question—That the word proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. R. C. Rankin in the chair.

Ayes, 15.	Noes, 11.
The Hon. W. J. Beckett,	The Hon. Sir Frank Beaurepaire,
P. T. Byrnes,	E. P. Cameron,
P. L. Coleman,	G. L. Chandler,
J. W. Galbally,	C. P. Gartside,
T. Harvey,	T. H. Grigg,
P. P. Inchbold,	C. E. Isaac (*Teller*),
P. Jones,	Sir James Kennedy,
P. J. Kennelly,	J. F. Kittson,
W. MacAulay,	G. S. McArthur,
C. E. McNally (*Teller*),	H. V. MacLeod (*Teller*),
W. Slater,	A. G. Warner.
I. A. Swinburne,	
F. M. Thomas (*Teller*),	
G. J. Tuckett,	
D. J. Walters.	

And so it was resolved in the affirmative.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1950-51.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 5.

TUESDAY, 2ND OCTOBER, 1951.

No. 1.—TRANSPORT BILL.—Clause 4—

4. (1) For the purpose of securing the improvement development and better co-ordination of railway tramway road and air transport in Victoria there shall be a Ministry of Transport under a Minister of Transport who shall be a responsible Minister of the Crown.

(2) The Ministry of Transport shall consist of—

(*a*) the Minister of Transport;
(*b*) the Co-ordinator of Transport;
(*c*) such officers and employés as are deemed necessary.

—(*Hon. P. T. Byrnes.*)

Amendment proposed—That the following new paragraph be inserted to follow paragraph (*a*) :—

"( ) two other responsible Ministers of the Crown who shall assist the Minister of Transport."

—(*Hon. C. E. Isaac.*)

Question—That the new paragraph proposed to be inserted be so inserted—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 12.	Noes, 14.
The Hon. E. P. Cameron (*Teller*),	The Hon. W. J. Beckett,
G. L. Chandler,	P. T. Byrnes,
C. P. Gartside,	P. L. Coleman,
T. H. Grigg (*Teller*),	A. M. Fraser,
C. E. Isaac,	J. W. Galbally,
Sir James Kennedy,	T. Harvey,
J. F. Kittson,	P. P. Inchbold,
Sir George Lansell,	P. J. Kennelly,
H. C. Ludbrook,	W. MacAulay (*Teller*),
G. S. McArthur,	C. E. McNally,
H. V. MacLeod,	W. Slater,
A. G. Warner.	I. A. Swinburne,
	F. M. Thomas,
	D. J. Walters (*Teller*).

And so it passed in the negative.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1950-51.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 6.

TUESDAY, 16TH OCTOBER, 1951.

No. 1.—BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL (EXTENSION) BILL.—Clause 2—

2. In sub-section (1) of section twenty-three of the Principal Act as amended by any Act for the words " One thousand nine hundred and fifty-one " there shall be substituted the words " One thousand nine hundred and fifty-two ".

—(*Hon. I. A. Swinburne.*)

Amendment proposed—That the words " ' One thousand nine hundred and fifty-one ' there shall be substituted the words ' One thousand nine hundred and fifty-two ' " be omitted with the view of inserting in place thereof the words " ' thirty-first day of December, One thousand nine hundred and fifty-one ' there shall be substituted the words ' thirtieth day of June, One thousand nine hundred and fifty-two ' ".

—(*Hon. A. G. Warner.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 15.	Noes, 13.
The Hon. W. J. Beckett,	The Hon. Sir William Angliss,
P. T. Byrnes,	Sir Frank Beaurepaire,
P. L. Coleman (*Teller*),	E. P. Cameron,
A. M. Fraser (*Teller*),	G. L. Chandler,
J. W. Galbally,	C. P. Gartside,
T. Harvey,	T. H. Grigg (*Teller*),
P. P. Inchbold,	C. E. Isaac (*Teller*),
P. Jones,	Sir James Kennedy,
P. J. Kennelly,	J. F. Kittson,
W. MacAulay,	H. C. Ludbrook,
C. E. McNally,	G. S. McArthur,
W. Slater,	H. V. MacLeod,
I. A. Swinburne,	A. G. Warner.
F. M. Thomas,	
D. J. Walters.	

And so it was resolved in the affirmative.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1950-51.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 7.

WEDNESDAY, 31ST OCTOBER, 1951.

No. 1.—PRICES REGULATION (AMENDMENT) BILL.—Clause 3—

3. For sub-section (1) of section fifty-seven of the Principal Act as amended by any Act there shall be substituted the following sub-section :—

"(1) This Act shall remain in force until the thirty-first day of December One thousand nine hundred and fifty-three".

—(*Hon. I. A. Swinburne.*)

Amendment proposed—That the words "thirty-first day of December One thousand nine hundred and fifty-three" be omitted with the view of inserting in place thereof the words "thirtieth day of June One thousand nine hundred and fifty-two".

—(*Hon. A. G. Warner.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. R. C. Rankin in the Chair.

Ayes, 16.	Noes, 12.
The Hon. W. J. Beckett,	The Hon. Sir William Angliss,
P. T. Byrnes,	Sir Frank Beaurepaire,
P. L. Coleman (*Teller*),	E. P. Cameron,
A. M. Fraser,	G. L. Chandler,
J. W. Galbally (*Teller*),	C. P. Gartside,
T. Harvey,	T. H. Grigg (*Teller*),
P. P. Inchbold,	C. E. Isaac,
P. Jones,	Sir James Kennedy,
P. J. Kennelly,	J. F. Kittson,
W. MacAulay,	H. C. Ludbrook,
C. E. McNally,	H. V. MacLeod,
W. Slater,	A. G. Warner (*Teller*).
I. A. Swinburne,	
F. M. Thomas,	
G. J. Tuckett,	
D. J. Walters.	

And so it was resolved in the affirmative.

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

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1950.

VICTORIA.

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

LIMITATION OF ACTIONS

TOGETHER WITH

AN APPENDIX AND MINUTES OF EVIDENCE.

Ordered by the Legislative Council *to be printed, 25th October,* 1950.

By Authority:
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D.—No. 1—[2s. 3d.]—7660/50.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

TUESDAY, 20TH JUNE, 1950.

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

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 28TH JUNE, 1950.

23. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barry, Mr. Crean, Mr. Mitchell, Mr. Oldham, Mr. Reid, and Mr. Rylah be appointed members of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—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, pursuant to the powers conferred upon it to examine anomalies in the law, have given consideration to certain anomalies existing in the law relating to limitation of actions. Bills to consolidate and amend the law relating to the limitation of time for commencing actions and arbitrations were introduced into the Legislative Assembly in 1947, 1948, and 1949, but none of the Bills was passed into law. The 1947 Bill was prepared as the result of a Report by a special sub-committee of the Chief Justice's Committee on Law Reform, and an inquiry into its provisions was commenced by the Statute Law Revision Committee. This Bill proposed the equation of the rights of public authorities with those of other defendants, but the 1948 Bill substantially retained the special protections for public authorities, usually a short period of limitation within which an action can be commenced and, in some cases, the requirement of serving a notice in statutory form within a very short time after the cause of action arose.

2. The Statute Law Revision Committee submitted to both Houses of Parliament on 5th April, 1949, a Report approving the 1948 Bill, subject to certain amendments of which the principal one was that the plaintiff would be required to give notice of an action to a public authority within six months from the date on which the cause of action accrued. In 1949, a Bill identical with the 1948 Bill was introduced into the Legislative Assembly, but did not proceed beyond the Attorney-General's explanation of the Bill at the second reading stage.

3. The Committee, this year, had before them a copy of a Report on Limitation of Actions by the Lord Chancellor's Committee presented to the British Parliament in July, 1949, and substantial extracts from this Report and the Summary of Recommendations are printed in the Minutes of Evidence appended hereto at pages 35 and 36. His Honor Mr. Justice O'Bryan, Chairman of the Chief Justice's Sub-committee on Law Reform, Mr. Andrew Garran, Assistant Parliamentary Draftsman, and Mr. Frank A. Jenkins, Secretary of the Municipal Association, appeared before the Committee and their evidence is appended to this Report.

4. The Committee are of the opinion that special protection for public authorities should not be retained. In coming to this decision the Committee were more concerned with injustices to the individual which had occurred and will occur from protecting public authorities, as pointed out in the report of the Chief Justice's Committee (see Appendix to Report D. No. 1—Victorian Parliamentary Papers of 1949) and in the report of the Lord Chancellor's Committee (referred to above), than with the disadvantages which possibly may be experienced by public authorities if the protection is removed, as pointed out by Mr. Jenkins. The Committee recommend, with respect to public authorities, that the terms of the 1947 Bill should be adopted ; namely, that a public authority should be placed in exactly the same position as any other defendant and that the amendment for a modified form of notice, recommended by the Statute Law Revision Committee in 1949, be not proceeded with.

5. The Committee have also considered the effect of Clause 5, sub-clause (6) of the 1949 Bill—" No action for defamation of character and no action for personal injuries or damage to property founded on tort or breach of a statutory duty shall be brought after the expiration of three years after the cause of action accrued ". In view of the suggestion in the Report of the Lord Chancellor's Committee that the phrase " personal injuries " might require statutory definition, this question was discussed with Mr. Justice O'Bryan. The Committee recommend that the phrase be altered to " physical injuries to the person ". This will leave the period for other personal actions such as trespass to the person, false imprisonment, and malicious prosecution at six years.

6. The Committee have also considered the special limitation of time for commencing an action under Part III. of the *Wrongs Act* 1928 (Lord Campbell's Act) and recommend that the time be extended from one year to two years. This extension of time conforms with the finding of the Lord Chancellor's Committee.

7. The attention of the Committee has been drawn to the anomaly created by section 3 of the *Survival of Actions Act* 1942 in amending sections 12 and 14 of the *Motor Car (Third-Party Insurance) Act* 1939. Section 2 of the *Survival of Actions Act* 1942 provides that no proceedings shall be maintainable unless either (*a*) proceedings were pending at the date of death ; or (*b*) the cause of action arose not earlier than six months before the death. In the case stated to the Committee, the writ not having been issued at the death of the defendant (which occurred more than six months after the accident), the plaintiff lost his right of action by the operation of the amendments referred to, apart from which there would still have been time to commence the action. The Committee recommend that the provision referred to in the *Survival of Actions Act* 1942 be amended to extend the time after the cause of action arose to twelve months.

8. Your Committee approve the changes proposed in the existing law by the 1949 Bill, subject to the recommendations set out above, and the recommendation contained in paragraph 6 of the Report of the Statute Law Revision Committee in 1949. A draft Bill to give effect to these recommendations is appended to this Report, and your Committee recommend that it be passed into law.

Committee Room,

25th October, 1950.

APPENDIX.

LIMITATION OF ACTIONS BILL.

A BILL

To consolidate and amend the Law relating to the Limitation of Time for commencing Actions and Arbitrations.

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):—

Short title and commencement.

1. (1) This Act may be cited as the *Limitation of Actions Act* 1950 and shall come into operation on the first day of January One thousand nine hundred and fifty-two.

(2) This Act is divided into Parts as follows:—

Part I.—Periods of Limitation for Different Classes of Action.

Part II.—Extension of Limitation Periods in Case of Disability, Acknowledgment, Part Payment, Fraud and Mistake.

Part III.—General.

2. The

Amendments. Schedule.

2. The enactments specified in the Schedule to this Act to the extent to which they are therein expressed to be repealed or amended are hereby repealed and amended accordingly.

Interpretation. Comp. 2 & 3. Geo. VI. c. 21 s. 31; No. 3754 s. 274.

3. (1) In this Act unless inconsistent with the context or subject-matter—

"Action."

"Action" includes any proceeding in a court of law.

"Land."

"Land" includes corporeal hereditaments and rentcharges and any legal or equitable estate or interest therein including an interest in the proceeds of the sale of land held upon trust for sale, but save as aforesaid does not include any incorporeal hereditament.

"Personal estate." "Personal property."

"Personal estate" and "personal property" do not include chattels real.

"Rent."

"Rent" includes a rentcharge and a rentservice.

"Rentcharge."

"Rentcharge" means any annuity or periodical sum of money charged upon or payable out of land, except a rent service or interest on a mortgage on land.

"Settled land." "Statutory owner." "Tenant for life." "Term of years absolute."

"Settled land" "statutory owner" "tenant for life" and "term of years absolute" have the same meanings respectively as in the *Settled Land Act* 1928.

"Submission."

"Submission" has the same meaning as in the *Arbitration Act* 1928.

"Trust." "Trustee." "Trust for sale."

"Trust" "trustee" and "trust for sale" have the same meanings respectively as in the *Trustee Act* 1928.

Persons under disability.

(2) For the purposes of this Act a person shall be deemed to be under a disability while he is an infant or of unsound mind.

(3) For the purposes of the last preceding sub-section but without affecting the generality thereof a person shall be conclusively presumed to be of unsound mind while he is—

(*a*) a lunatic patient within the meaning of the *Mental Hygiene Act* 1928;

(*b*) a voluntary boarder under section one hundred and five of the *Mental Hygiene Act* 1928; or

(*c*) an

(*c*) an infirm person within the meaning of the *Public Trustee Act* 1939.

Person claiming through another.

(4) A person shall be deemed to claim through another person if he became entitled by, through, under, or by the act of that other person to the right claimed; and any person whose estate or interest might have been barred by a person entitled to an entailed interest in possession shall be deemed to claim through the person so entitled:

Provided that a person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointor.

Right of action to recover land.

(5) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land or, in the case of rentcharges, to distrain for arrears of rent; and references to the bringing of such an action shall include references to the making of such an entry or distress.

Possession of land.

(6) References in this Act to the possession of land shall, in the case of rentcharges, be construed as references to the receipt of the rent; and references to the date of dispossession or discontinuance of possession of land shall, in the case of rentcharges, be construed as references to the date of the last receipt of rent.

Accrual of right of action.

(7) In Part II. of this Act references to a right of action shall include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of a deceased person; and references to the date of the accrual of a right of action shall—

(*a*) in the case of an action for an account be construed as references to the date on which an account is claimed;

(*b*) in the case of an action upon a judgment be construed as references to the date on which the judgment became enforceable;

(*c*) in the case of an action to recover arrears of rent or interest or damages in respect thereof be construed as references to the date on which the rent or interest became due.

Part I.—Periods of Limitation for Different Classes of Action.

Application of Act. Comp. 2 & 3 Geo. VI. c. 21 s. 1.

4. The provisions of this Part of this Act shall have effect subject to the provisions of Part II. of this Act which provide for the extension of the period of limitation in the case of disability, acknowledgment, part payment, fraud and mistake.

Actions of Contract, Tort &c.

Contracts & torts. Comp. Ib. s. 2; No. 3783 ss. 81, 82, 83.

5. (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued:—

(*a*) Actions founded on simple contract (including contracts implied in law) or founded on tort (except actions referred to in sub-section (6) of this section) including actions for damages for breach of a statutory duty;

(*b*) Actions to enforce a recognisance;

(*c*) Actions to enforce an award, where the submission is not by an instrument under seal;

(*d*) Actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.

Accounts.

(2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.

Specialties.

(3) An action upon a bond or other specialty shall not be brought after the expiration of fifteen years from the date on which the cause of action accrued:

Provided that this sub-section shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.

Judgments.

(4) An action shall not be brought upon any judgment after the expiration of fifteen years from the date on which the judgment became enforceable.

Penalties.

(5) (*a*) An action to recover any penalty or forfeiture or sum by way of penalty or forfeiture recoverable by virtue of any enactment shall not be brought after the expiration of two years from the date on which the cause of action accrued.

(*b*) In

(*b*) In this sub-section "penalty" does not include a fine to which any person is liable on conviction of a criminal offence.

Certain torts, &c.

(6) No action for defamation of character and no action for physical injuries to the person or damage to property founded on tort or breach of a statutory duty shall be brought after the expiration of three years after the cause of action accrued.

Interest.

(7) Save as otherwise expressly provided an action shall not be brought to recover any arrears of interest in respect of any sum of money and whether payable in respect of a specialty, judgment, legacy, mortgage or otherwise, or any damages in respect of such arrears, after the expiration of six years after the same became due.

Equitable rules excepted.

(8) This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the Court by analogy in like manner as the corresponding enactment repealed by this Act has heretofore been applied.

Successive conversions of goods. Comp. 2 & 3 Geo. VI. c. 21 s. 3.

6. (1) Where—

(*a*) any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person; and

(*b*) before he recovers possession of the chattel, a further conversion or wrongful detention takes place—

no action shall be brought in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention.

Extinction of title to goods.

(2) Where—

(*a*) any such cause of action has accrued to any person; and

(*b*) the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention as aforesaid has expired; and

(*c*) he

(*c*) he has not during that period recovered possession of the chattel—

his title to the chattel shall be extinguished.

Actions to recover Land and Rent.

No title by adverse possession against Crown. Comp. No. 3754 s. 275.

7. Notwithstanding any law or enactment now or heretofore in force in Victoria, the right title or interest of the Crown to or in any land shall not be and shall be deemed not to have been in any way affected by reason of any possession of such land adverse to the Crown, whether such possession has or has not exceeded sixty years.

Action to recover land. Comp. 2 & 3 Geo. VI. c. 21 s. 4 (3).

8. No action shall be brought by any person to recover any land after the expiration of fifteen years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person:

Provided that if the right of action first accrued to the Crown the action may be brought at any time before the expiration of fifteen years from the date on which the right of action accrued to some person other than the Crown.

Accrual of right of action in case of present interests in land. Comp. 2 & 3 Geo. VI. c. 21 s. 5; No. 3754 s. 277.

9. (1) Where the person bringing an action to recover land or some person through whom he claims—

(*a*) has been in possession thereof; and

(*b*) has while entitled thereto been dispossessed or discontinued his possession—

the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

(2) Where—

(*a*) any person brings an action to recover any land of a deceased person, whether under a will or on intestacy; and

(*b*) the deceased person was on the date of his death in possession of the land, or, in the case of a rentcharge created by will or taking effect upon his death, in possession of the land charged, and was the last person entitled to the land to be in possession thereof—

the

the right of action shall be deemed to have accrued on the date of his death.

(3) Where—

(*a*) any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him or to some person through whom he claims by a person who at the date when the assurance took effect was in possession of the land or, in the case of a rentcharge created by the assurance, in possession of the land charged; and

(*b*) no person has been in possession of the land by virtue of the assurance—

the right of action shall be deemed to have accrued on the date when the assurance took effect.

Accrual of right of action in case of future interests. Comp. 2 & 3 Geo. VI. c. 21 s. 6; No. 3754 ss. 277, 279, 292–4.

10. (1) Subject as hereafter in this section provided, the right of action to recover land shall, in a case where—

(*a*) the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest; and

(*b*) no person has taken possession of the land by virtue of the estate or interest claimed—

be deemed to have accrued on the date on which the estate or interest became an estate or interest in possession.

(2) If the person entitled to the preceding estate or interest, not being a term of years absolute, was not in possession of the land on the date of the determination thereof, no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of fifteen years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

(3) The foregoing provisions of this section shall not apply to any estate or interest which falls into possession on the determination of an entailed interest and which might have been barred by the person entitled to the entailed interest.

(4) No

(4) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

(5) Where any person—

(*a*) is entitled to any estate or interest in land in possession; and

(*b*) while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act—

no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

Provisions in case of settled land and land held on trust. Comp. 2 & 3 Geo. VI. c. 21 s. 7; No. 3754 s. 296.

11. (1) Subject to the provisions of sub-section (1) of section twenty-two of this Act, the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as they apply to legal estates; and accordingly a right of action to recover the land shall, for the purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

(2) Where the period prescribed by this Act has expired for the bringing of an action to recover land by a tenant for life or a statutory owner of settled land, his legal estate shall not be extinguished so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Act; and the legal estate shall accordingly remain vested in the tenant for life or statutory owner and shall devolve in accordance with the

Settled Land Act 1928; but when every such right of action as aforesaid has been barred by this Act the said legal estate shall be extinguished.

(3) Where—

(*a*) any land is held upon trust including a trust for sale; and

(*b*) the period prescribed by this Act for the bringing of an action to recover the land by the trustees has expired—

the estate of the trustees shall not be extinguished so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act; but when every such right of action has been so barred the estate of the trustees shall be extinguished.

(4) Where any settled land is vested in a statutory owner or any land is held upon trust including a trust for sale, an action to recover the land may be brought by the statutory owner or trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act notwithstanding that the right of action of the statutory owner or trustees would apart from this provision have been barred by this Act.

(5) Where any settled land or any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is vested as tenant for life, statutory owner or trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

Accrual of right of action in case of forfeiture or breach of condition. Comp. 2 & 3 Geo. VI. c. 21 s. 8; No. 3754 ss. 277, 278.

12. A right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken:

Provided that if such a right has accrued to a person entitled to an estate or interest in reversion or remainder

and

and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession as if no such forfeiture or breach of condition had occurred.

Accrual of right of action in case of certain tenancies. Comp. 2 & 3 Geo. VI. c. 21 s. 9; No. 3754 ss. 281–3.

13. (1) A tenancy at will shall for the purposes of this Act be deemed to be determined at the expiration of a period of one year from the commencement thereof unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

(2) A tenancy from year to year or other period without a lease in writing shall for the purposes of this Act be deemed to be determined at the expiration of the first year or other period; and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that where any rent has subsequently been received in respect of the tenancy the right of action shall be deemed to have accrued on the date of the last receipt of rent.

(3) Where—

(*a*) any person is in possession of land by virtue of a lease in writing by which a rent amounting to the yearly sum of not less than Twenty shillings is reserved; and

(*b*) the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease; and

(*c*) no rent is subsequently received by the person rightfully so entitled—

the right of action of the last-named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

14. (1) No

14. (1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as "adverse possession"); and where under the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date the right of action shall not be deemed to accrue until adverse possession is taken of the land.

Right of action not to accrue or continue unless there is adverse possession. Comp. 2 & 3 Geo. VI. c. 21 s. 10; No. 3754 s. 277.

(2) Where a right of action to recover the land has accrued and thereafter before the right is barred the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to accrue until the land is again taken into adverse possession.

(3) For the purposes of this section—

(*a*) possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be deemed to be adverse possession of the rentcharge; and

(*b*) receipt of rent under a lease by a person wrongfully claiming, in accordance with sub-section (3) of the last preceding section, the land in reversion shall be deemed to be adverse possession of the land.

(4) When any one or more of several persons entitled to any land or rent as coparceners joint tenants or tenants in common have been in possession or receipt of the entirety or more than his or their undivided share or shares of such land or of the profits thereof or of such rent for his or their own benefit or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them but shall be deemed to be adverse possession of the land.

Possession of one joint tenant, &c. not to be the possession of the others. Comp. No. 3754 s. 286.

15. Where—

Cure of defective disentailing assurance.
Comp. No. 3754 s. 295; 2 & 3 Geo. VI. c. 21 s. 11.

15. Where—

(*a*) a tenant in tail of any land has made an assurance thereof which does not operate to bar an estate or estates to take effect after or in defeasance of his estate tail and any person by virtue of such assurance at the time of the execution thereof or at any time afterwards is in possession or receipt of the profits of such land; and

(*b*) the same person or any other person whatsoever (other than some person entitled to such possession or receipt in respect of an estate which has taken effect after or in defeasance of the estate tail) continues to be in such possession for the period of fifteen years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail or the person who would have been entitled to his estate tail if such assurance had not been executed, would without the consent of any other person have operated to bar such estate or estates as aforesaid—

at the expiration of such period of fifteen years such assurance shall be and be deemed to have been effectual as against any person claiming any estate interest or right to take effect after or in defeasance of such estate tail.

Limitation of redemption actions.
Comp. 2 & 3 Geo. VI. c. 21 s. 12; No. 3754 s. 300.

16. When the mortgagee of land has been in possession of any of the mortgaged land for a period of fifteen years no action to redeem or to compel discharge of the mortgage of the land of which the mortgagee has been in possession shall thereafter be brought by the mortgagor or any person claiming through him.

No right of action to be preserved by formal entry or continual claim.
Comp. 2 & 3 Geo. VI. c. 21 s. 13; No. 3754 ss. 284, 285.

17. For the purposes of this Act no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right of action to recover the land.

18. For

18. For the purposes of the provisions of this Act relating to actions for the recovery of land an administrator of the estate of a deceased person shall be deemed to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration.

Administration to date back to death. Comp. 2 & 3 Geo. VI. c. 21 s. 15; No. 3754 s. 280.

19. Subject to the provisions of section eleven of this Act, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action or an action to compel discharge of a mortgage) the title of that person to the land shall be extinguished.

Extinction of title after expiration of period. Comp. 2 & 3 Geo. VI. c. 21 s. 16; No. 3754 s. 301.

20. No action shall be brought to recover arrears of rent or damages in respect thereof after the expiration of six years from the date on which the arrears became due.

Actions to recover rent. Comp. 2 & 3 Geo. VI. c. 21 s. 17; No. 3754 s. 305.

Actions to recover money secured by a mortgage or charge.

21. (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, after the expiration of fifteen years from the date when the right to receive the money accrued, notwithstanding that the money is by any Act or instrument expressed to be a charge until paid.

Actions to recover money secured by a mortgage or charge. Comp. 2 & 3 Geo. VI. c. 21 s. 18; No. 3754 s. 304.

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of fifteen years from the date on which the right to foreclose accrued:

Provided that if after that date the mortgagee was in possession of the mortgaged property the right to foreclose on the property which was in his possession shall not, for the purpose of this sub-section, be deemed to have accrued until the date on which his possession discontinued.

(3) The right to receive any principal sum of money secured by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.

(4) Nothing

(4) Nothing in this section shall apply to—

(*a*) a foreclosure action in respect of mortgaged land, but the provisions of this Act relating to actions to recover land shall apply to such an action; or

(*b*) the recovery by any statutory authority of any rates or other moneys which by any Act are and until paid remain a charge on land.

(5) Notwithstanding anything in sub-section (7) of section five of this Act—

(*a*) where a prior mortgagee or other incumbrancer has been in possession of the property charged and an action is brought within one year of the discontinuance of such possession by the subsequent incumbrancer, the subsequent incumbrancer may recover by that action all the arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof notwithstanding that the period exceeded six years; and

(*b*) where property subject to a mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

Actions in respect of trust property or the personal estate of deceased persons.

Limitation of actions in respect of trust property. Comp. 2 & 3 Geo. VI. c. 21 s. 19; No. 3792 s. 67; No. 3783 s. 62 (1).

22. (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

(*a*) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject

(2) Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

Actions claiming personal estate of a deceased person. Comp. 2 & 3 Geo. VI. c. 21 s. 20; No. 3754 s. 304.

23. Subject to the provisions of sub-section (1) of the last preceding section no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of fifteen years from the date when the right to receive the share or interest accrued.

Part II.—Extension of Limitation Periods in Case of Disability, Acknowledgment, Part Payment, Fraud and Mistake.

Disability.

Extension of limitation period in case of disability. Comp. 2 & 3 Geo. VI. c. 21 s. 22; No. 3754 ss. 289–291; No. 3783 s. 84.

24. (1) If on the date when any right of action accrued for which a period of limitation is prescribed by this Act the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years, or in the case of any action for which a less number of years is prescribed by this Act as the period of limitation then such less number of years, from the date when the person ceased to be under a disability or died whichever event first occurred notwithstanding that the period of limitation has expired:

Provided that—

(*a*) this sub-section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;

(*b*) when

(*b*) when a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person;

(*c*) no action to recover land or money charged on land shall be brought by virtue of this sub-section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims; and

(*d*) this sub-section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any enactment, except where the action is brought by an aggrieved party.

Disability by reason of war circumstances.

(2) Any time during which it was not reasonably practicable for a person to commence any action by reason of any war or circumstances arising out of any war in which the Commonwealth of Australia was engaged shall be excluded in computing the period prescribed by this Act for the commencement of that action; and the said period shall not be deemed to expire before the end of twelve months from the date when it became reasonably practicable to commence the action.

Acknowledgment and part payment.

Fresh accrual of action on acknowledgment or part payment.
Comp. 2 & 3 Geo. VI. c. 21 s. 23; No. 3754 ss. 288, 300.

25. (1) Where there has accrued any right of action (including a foreclosure action) to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and—

(*a*) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or

(*b*) in the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or the person liable for the mortgage debt

makes

makes any payment in respect thereof, whether of principal or interest—

the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.

(2) The foregoing sub-section shall apply to a right of action to recover land accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom time is running under section fifteen of this Act, and on the making of the acknowledgment that section shall cease to apply to the land.

(3) Where a mortgagee—

(*a*) is by virtue of the mortgage in possession of any mortgaged land; and

(*b*) either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor or his equity of redemption or right to discharge of the mortgage—

an action to redeem or to compel discharge of the mortgage of the land in his possession may be brought at any time before the expiration of fifteen years from the date of the payment or acknowledgment.

(4) Where—

(*a*) any right of action has accrued to recover any debt or other liquidated pecuniary claim or any claim to the personal estate of a deceased person or to any share or interest therein; and

(*b*) the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof—

the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment:

Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

26. (1) Every

Formal provisions as to acknowledgments and part payments. Comp. 2 & 3 Geo. VI. c. 21 s. 24; No. 3783 s. 88 (3); No. 3754 s. 288.

26. (1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment.

(2) Any such acknowledgment or payment as aforesaid may be made by the agent of the person by whom it is required to be made under the last preceding section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

Effect of acknowledgment or part payment on persons other than the maker or recipient. Comp. 2 & 3 Geo. VI. c. 21 s. 25; No. 3754 s. 300.

27. (1) An acknowledgment of the title to any land or mortgaged personalty by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.

(2) A payment in respect of a mortgage debt by the mortgagor or any person in possession of the mortgaged property shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption or right to discharge of the mortgage by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors; and where the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem or to compel discharge of the mortgage of that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

(4) Where there are two or more mortgagors and the title or right to redemption or to discharge of the mortgage of one of the mortgagors is acknowledged as aforesaid, the acknowledgment shall be deemed to have been made to all mortgagors.

(5) An

(5) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledgor and his successors but not any other person:

Provided that an acknowledgment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the acknowledgment.

(6) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof:

Provided that a payment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and his successors, and shall not bind any successor on whom the liability devolved on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

(7) An acknowledgment by one of several personal representatives of any claim to the personal estate of a deceased person or to any share or interest therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.

(8) In this section the expression "successor" in relation to any mortgagee or person liable in respect of any debt or claim means his personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

Fraud and mistake.

Postponement of limitation periods in case of fraud or mistake. Comp. 2 & 3 Geo. VI. c. 21 s. 26; No. 3754 s. 298.

28. Where, in the case of any action for which a period of limitation is prescribed by this Act, either—

(*a*) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or

(*b*) the

(*b*) the right of action is concealed by the fraud of any such person as aforesaid; or

(*c*) the action is for relief from the consequences of a mistake—

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it:

Provided that nothing in this section shall enable any action to be brought to recover or enforce any charge against or set aside any transaction affecting any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made by a person who did not know or have reason to believe that the mistake had been made.

PART III.—GENERAL.

Application of Act to arbitrations. Comp. 2 & 3 Geo. VI. c. 21 s. 27.

29. (1) This Act shall apply to arbitrations in like manner as it applies to actions.

(2) Notwithstanding any term in a submission to the effect that no cause of action shall accrue in respect of any matter required by the submission to be referred to arbitration until an award is made under the submission, the cause of action shall for the purpose of this Act (whether in its application to arbitrations or to other proceedings) be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the submission.

(3) For the purposes of this Act an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the

submission

submission provides that the reference shall be to a person named or designated in the submission, requiring him or them to submit the dispute to the person so named or designated.

(4) Any such notice as aforesaid may be served either—

(*a*) by delivering it to the person on whom it is to be served; or

(*b*) by leaving it at the usual or last-known place of abode of that person; or

(*c*) by sending it by post in a registered letter addressed to that person at his usual or last-known place of abode—

as well as in any other manner provided in the submission.

(5) Where a court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by this Act for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section shall apply to an arbitration under an Act of Parliament as well as to an arbitration pursuant to a submission, and sub-sections (3) and (4) hereof shall have effect in relation to an arbitration under an Act as if for the references to the submission there were substituted references to such of the provisions of the Act or of any order, scheme, rules, regulations or by-laws made thereunder as relate to the arbitration.

30. This Act shall apply to applications for foreclosure under the Transfer of Land Acts in like manner as it applies to foreclosure actions.

Applications for foreclosure under No. 3791 ss. 161–163.

31. For the purposes of this Act, any claim by way of set-off or counter claim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded.

Provisions as to set-off or counterclaim. Comp. 2 & 3 Geo. VI. c. 21 s. 28; No. 3783 s. 90.

32. Nothing in this Act shall effect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

Acquiescence. Comp. 2 & 3 Geo. VI. c. 21 s. 29; No. 3754 s. 299.

33. (1) Save

Application to the Crown. Comp. 2 & 3 Geo. VI. c. 21 s. 30.

33. (1) Save as in this Act otherwise expressly provided this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects; and for the purposes of this Act a proceeding by petition of right shall be deemed to be commenced on the date on which the petition is presented:

Provided that this Act shall not apply to any proceedings by the Crown for the recovery of any tax or duty or interest thereon.

(2) For the purposes of this section proceedings by or against the Crown shall include proceedings by or against any Government Department or any officer of the Crown as such or any person acting on behalf of the Crown.

Saving for other limitation enactments. Comp. 2 & 3 Geo. VI. c. 21 s. 32.

34. (1) The periods of limitation prescribed by this Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other enactment.

Amendment of No. 3632 s. 25 as amended by No. 4918 s. 2. Effect of death on certain actions.

(2) In paragraph (*b*) of sub-section (5) of section twenty-five of the *Administration and Probate Act* 1928 as amended by section two of the *Survival of Actions Act* 1942 for the words "six months" (wherever occurring) there shall be substituted the words "twelve months".

Amendment of No. 3807 s. 19. Wrongful act causing death.

(3) In section nineteen of the *Wrongs Act* 1928 for the words "twelve months" there shall be substituted the words "two years".

Provisions as to actions already barred and pending actions. Comp. 2 & 3 Geo. VI. c. 21 s. 33.

35. Nothing in this Act shall—

(*a*) enable any action (other than an action to which sub-section (2) of section twenty-four of this Act relates) to be brought which was barred before the commencement of this Act by an enactment repealed or amended by this Act, except in so far as the cause of action or right of action may be revived by acknowledgment or part payment made in accordance with the provisions of this Act; or

(*b*) affect any action arbitration or application commenced before the commencement of this Act or the title to any property which is the subject of any such action arbitration or application.

SCHEDULE.

SCHEDULE.

1. In section one hundred and seven of the Act intituled "*An Act to incorporate the Inhabitants of the Town of Melbourne*" passed in the sixth year of the reign of Queen Victoria the words "and unless such action be commenced within three calendar months after the cause of action or complaint shall have accrued" shall be repealed. 6 Vic. No. 7 s. 107.

2. In section ninety-five of the Act intituled "*An Act for regulating Buildings and Party Walls, and for preventing mischiefs by fire in the City of Melbourne*" passed in the thirteenth year of the reign of Queen Victoria— 13 Vic. No. 39 s. 95.

(*a*) the words "to the limitation thereof and to the notification thereof to the offending party and" shall be repealed;

(*b*) the words commencing "That after the expiration of six months" and ending "against any person in respect of any such Act; and" (where second occurring) shall be repealed;

(*c*) the words "or if it appear that such action or suit was brought before the expiration of twenty-one days after such notice given as aforesaid" shall be repealed; and

(*d*) the words "or if any such action or suit be not commenced within the time herein for that purpose limited" shall be repealed.

3. *The Ballaarat Gas Company's Act* 1857 shall be amended as follows:— 21 Vic. No. 27.

(*a*) In section fourteen for the expression "153" there shall be substituted the expression "154"; and S. 14.

(*b*) In section forty-two the words "but such penalty shall not be recoverable unless it be sued for during the continuance of the offence or within six months after it shall have ceased" shall be repealed. S. 42.

4. *The Geelong Gas Company's Act* 1858 shall be amended as follows:— 21 Vic. No. 57.

(*a*) In section nine for the expression "153" there shall be substituted the expression "154"; and S. 9.

(*b*) In section fifty the words "but such penalty shall not be recoverable unless it be sued for during the continuance of the offence or within six months after it shall have ceased" shall be repealed. S. 50.

5. The Act intituled "*An Act to incorporate a Company to be called 'The Castlemaine Gas Company', and for other purposes*" passed in the twenty-second year of the reign of Queen Victoria shall be amended as follows:— 22 Vic. No. 71.

(*a*) In section eight for the expression "153" there shall be substituted the expression "154"; and S. 8.

SCHEDULE—*continued.*

S. 49. (*b*) In section forty-nine the words "but such penalty shall not be recoverable unless it be sued for during the continuance of the offence or within six months after it shall have ceased" shall be repealed.

24 Vic. No. 102. 6. The Act intituled "*An Act to incorporate a Company to be called 'The Bendigo Gas Company' and for other purposes*" passed in the twenty-fourth year of the reign of Queen Victoria shall be amended as follows:—

S. 8. (*a*) In section eight for the expression "153" there shall be substituted the expression "154"; and

S. 50. (*b*) In section fifty the words "but such penalty shall not be recoverable unless it be sued for during the continuance of the offence or within six months after it shall have ceased" shall be repealed.

41 Vic. No. 586 s. 233. 7. In section two hundred and thirty-three of *The Metropolitan Gas Company's Act* 1878 the words "but such penalty shall not be recoverable unless it be sued for during the continuance of the offence or within six months after it shall have ceased" shall be repealed.

No. 1243. 8. *The Local Government Act* 1891 shall be amended as follows:—

S. 123. (*a*) Section one hundred and twenty-three shall be repealed;

S. 124. (*b*) In section one hundred and twenty-four for the words "Not less than one month after the service of notice of an action for any such cause as aforesaid an action for such cause" there shall be substituted the words "An action to recover damages against the city of Melbourne or the city of Geelong in respect of any loss or injury sustained by any person or property by reason of any accident upon or while using any highway street road bridge ferry or jetty in the municipal district or under the control of the council"; and

S. 125. (*c*) Section one hundred and twenty-five shall be repealed.

No. 3624 s. 24. 9. Section twenty-four of the *Banks and Currency Act* 1928 shall be repealed.

No. 3649 s. 31. 10. Section thirty-one of the *Carriages Act* 1928 shall be repealed.

No. 3662. 11. The *Country Roads Act* 1928 shall be amended as follows:—

S. 61. (*a*) Section sixty-one shall be repealed;

S. 62. (*b*) In sub-section (1) of section sixty-two for the words "Not less than one month after the service of notice of an action for any such cause as aforesaid an action for such cause" there shall be substituted the words "Any action against the Board to recover damages in respect of any loss or injury sustained by any person or property by reason of any accident upon or while using any main road";

S. 63. (*c*) Section sixty-three shall be repealed; and

S. 78. (*d*) In sub-section (2) of section seventy-eight—

(i) the words "of section sixty-one and" shall be repealed; and

(ii) the words "and of section sixty-three" shall be repealed.

SCHEDULE—*continued.*

12. The *County Court Act* 1928 shall be amended as follows:— No. 3663.

(*a*) Section thirty shall be repealed; and S. 30.

(*b*) In sub-section (1) of section thirty-one for the words "any such action" there shall be substituted the words "any action against any person for anything done under or in the execution of his office under this Act". S. 31.

13. Section four hundred and eighty-seven of the *Crimes Act* 1928 shall be amended as follows:— No. 3664 s. 487.

(*a*) Sub-section (1) shall be repealed; and

(*b*) In sub-section (2) for the words "any such action" there shall be substituted the words "any action against any person for anything done in pursuance of this Act".

14. Section fifty-nine of the *Fisheries Act* 1928 shall be repealed. No. 3683 s. 59.

15. Section forty-three of the *Game Act* 1928 and the heading above that section shall be repealed. No. 3689 s. 43.

16. Section eighteen of the *Geelong Harbor Trust Act* 1928 shall be amended as follows:— No. 3691 s. 18.

(*a*) Sub-sections (1) (2) and (3) shall be repealed; and

(*b*) In sub-section (4)—

(i) for the words "any such action" (where first occurring) there shall be substituted the words "any action against any person for anything done under this Act"; and

(ii) the words "or if any such action is brought after the time limited for bringing the same or such notice has not been given as aforesaid" shall be repealed.

17. Sub-sections (1) and (3) of section one hundred and fifty of the *Geelong Waterworks and Sewerage Act* 1928 shall be repealed. No. 3692 s. 150.

18. Section twenty-nine of the *Harbor Boards Act* 1928 shall be amended as follows:— No. 3695 s. 29.

(*a*) Sub-sections (1) (2) and (3) shall be repealed; and

(*b*) In sub-section (4)—

(i) for the words "any such action" there shall be substituted the words "any action against any person for anything done under this Act"; and

(ii) the words "or if the action is brought after the time limited for bringing the same or such notice has not been given as aforesaid" shall be repealed.

19. The *Hawkers and Pedlers Act* 1928 shall be amended as follows:— No. 3696.

(*a*) Section twenty-six shall be repealed; and S. 26.

(*b*) In section thirty-four for the word "twenty-six" there shall be substituted the word "twenty-five". S. 34.

20. Section three hundred and ninety-three of the *Health Act* 1928 shall be repealed. No. 3697 s. 393.

SCHEDULE—*continued.*

No. 3708. 21. The *Justices Act* 1928 shall be amended as follows:—

S. 174. (*a*) Section one hundred and seventy-four shall be repealed;

S. 179. (*b*) Sub-section (2) of section one hundred and seventy-nine shall be repealed; and

S. 210. (*c*) In section two hundred and ten the words commencing "and all complaints for a civil debt" and ending "and not afterwards" shall be repealed.

No. 3709. 22. The *Land Act* 1928 shall be amended as follows:—

S. 98. (*a*) In section ninety-eight the words "within twelve months from the time when the same was received" shall be repealed; and

S. 99. (*b*) In section ninety-nine the words "within twelve months from the time of the offer or proposal" shall be repealed.

No. 3713 s. 91. 23. Section ninety-one of the *Land Tax Act* 1928 shall be repealed.

No. 3721 s. 263. 24. The proviso to the first paragraph of section two hundred and sixty-three of the *Mental Hygiene Act* 1928 shall be repealed.

No. 3722 s. 24. 25. In section twenty-four of the *Maintenance Act* 1928 the words "and unless such action is commenced within three months after the cause of action has arisen" shall be repealed.

No. 3723 s. 254. 26. In section two hundred and fifty-four of the *Marine Act* 1928—

(*a*) for the words commencing "All actions to be brought" and ending "and the defendant in every such action" there shall be substituted the words "The defendant in any action brought for anything done under this Act"; and

(*b*) the words "or if any such action is brought after the time limited for bringing the same or such notice has not been given as aforesaid" shall be repealed.

No. 3730 s. 35. 27. Section thirty-five of the *Medical Act* 1928 shall be repealed.

No. 3731 ss. 218, 220. 28. Sections two hundred and eighteen and two hundred and twenty of the *Melbourne and Metropolitan Board of Works Act* 1928 shall be repealed.

No. 3732 s. 126. 29. Section one hundred and twenty-six of the *Melbourne and Metropolitan Tramways Act* 1928 shall be repealed.

No. 3733 s. 45. 30. Section forty-five of the *Melbourne Harbor Trust Act* 1928 shall be amended as follows:—

(*a*) Sub-sections (1) (2) and (3) shall be repealed; and

(*b*) In sub-section (4)—

(i) for the words "any such action" (where first occurring) there shall be substituted the words "any action against any person for anything done under this Act"; and

(ii) the words "or if any such action is brought after the time limited for bringing the same or such notice has not been given as aforesaid" shall be repealed.

SCHEDULE—*continued.*

31. The proviso to section forty-one of the *Pawnbrokers Act* 1928 shall be repealed. No. 3746 s. 41.

32. Sections eighty-four and one hundred and sixty-eight and sub-section (2) of section one hundred and eighty-three of the *Police Offences Act* 1928 shall be repealed. No. 3749 ss. 84, 168, 183 (2).

33. The *Property Law Act* 1928 shall be amended as follows:— No. 3754.

(*a*) In section one the expression "Part IX.—Limitation of Actions and Suits ss. 274–306" shall be repealed; and S. 1.

(*b*) Part IX. shall be repealed. Pt. IX.

34. Section two hundred of the *Railways Act* 1928 shall be amended as follows:— No. 3759 s. 200.

(*a*) Sub-sections (1) (2) and (3) shall be repealed; and

(*b*) In sub-section (4)—

(i) for the words "any such action" (where first occurring) there shall be substituted the expression "any action against any person for anything done under Parts II. and III. of this Act"; and

(ii) the words "or if any such action is brought after the time limited for bringing the same or if such notice has not been given as aforesaid" shall be repealed.

35. Sub-sections (1) (2) and (4) of section one hundred and eighty-one of the *Sewerage Districts Act* 1928 shall be repealed. No. 3772 s. 181.

36. The *Supreme Court Act* 1928 shall be amended as follows:— No. 3783.

(*a*) In section one the expression "Division 7.—Limitation of Time for Commencing Actions ss. 80–90" shall be repealed; S. 1.

(*b*) Paragraph (1) of section sixty-two shall be repealed; S. 62 (1).

(*c*) Division 7 of Part VII. shall be repealed; and Part VII. Div. 7.

(*d*) Section two hundred and two shall be repealed. S. 202.

37. In section twelve of the *Theatres Act* 1928 the words "and unless such action is commenced within three months next after the cause of action or complaint has arisen" shall be repealed. No. 3786 s. 12.

38. The *Trustee Act* 1928 shall be amended as follows:— No. 3792.

(*a*) In section one the expression "Part VI.—Limitation of Actions against Trustees s. 67" shall be repealed; and S. 1.

(*b*) Part VI. shall be repealed. Pt. VI.

39. Section twenty-two of the *Vegetation and Vine Diseases Act* 1928 shall be repealed. No. 3797 s. 22.

40. In section three hundred and twenty-one of the *Water Act* 1928 the words "at any time within three years after the making of the rate" shall be repealed. No. 3801 s. 321.

SCHEDULE—*continued.*

No. 4270 s. 48. 41. For section forty-eight of the *Grain Elevators Act* 1934 there shall be substituted the following section :—

"48. No plaintiff shall recover in any action against any person for anything done or omitted to be done under this Act if tender of sufficient amends has been made before such action is brought or if a sufficient sum of money has been paid into the court after the commencement of such action by or on behalf of the defendant."

No. 4568 s. 63. 42. Section sixty-three of the *Slum Reclamation and Housing Act* 1938 shall be repealed.

No. 5203. 43. The *Local Government Act* 1946 shall be amended as follows :—

S. 852. (*a*) Section eight hundred and fifty-two shall be repealed ;

S. 853. (*b*) In sub-section (1) of section eight hundred and fifty-three—

(i) for the words "Not less than one month after the service of notice of an action for any such cause as aforesaid an action for such cause" there shall be substituted the words "An action to recover damages against any municipality in respect of any loss or injury sustained by any person or property by reason of any accident upon or while using any highway street road bridge ferry or jetty in the municipal district or under the control of the council or upon or in or while using any baths or any land or building under the control of the council"; and

(ii) the words "and every such action shall be brought within twelve months after the date of the accident" shall be repealed ; and

S. 854. (*c*) Section eight hundred and fifty-four shall be repealed.

MINUTES OF EVIDENCE.

FRIDAY, 28TH JULY, 1950.

Members Present:

Mr. Oldham in the Chair;

Council:	*Assembly:*
The Hon. A. M. Fraser,	Mr. Crean,
The Hon. F. M. Thomas.	Mr. Rylah.

Mr. Andrew Garran, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—Mr. Garran has been asked to attend this meeting in order to deal with a point raised by Mr. Crean.

Mr. Crean.—The report of the original committee, as circulated and as I read it, recommended that no specific difference be made in dealing with public authorities. I want to point out that apparently the various differences made in favour of public authorities arose in this State because there is no Act similar to the English Public Authorities Protection Act. I wanted to know why the specific wording used in the amendment circulated was employed, particularly the words "in tort." I thought that might create some serious differences in future. I was speaking as a layman who did not understand the possible limitations of it. If you put in a limited period of action like twelve months I thought it possible that an individual who was injured might be deprived of his rights.

Mr. Garran.—My first remark is that this is more particularly a question for the Chief Justice's Law Reform Committee, and not for me. My second remark is that the provision was inserted at the direction of this committee. Public authority protection is the most difficult political question involved in the Bill. It was met to some extent by the committee suggesting that public authorities should be equated with ordinary individuals. There was also the proposal that the period of six years set out in the Bill should be reduced to three years for torts. That may have been because public authorities protection in Victoria, which is without rhyme or reason, relates mainly to matters of tort. The Local Government Act refers to cases of persons suffering injury. It was a compromise. Some members did not feel that they could go the whole way of equating public authorities with individuals.

I think I should at this stage say that at the end of last year, after this committee had finished its deliberations on this matter, I saw in one of the English periodicals that I read an announcement that there had been presented a new report on limitation of actions in England. I obtained copies of it, and I can leave one copy with the committee. It dealt with several matters, the most important of which was reconsideration of the question of public authorities. In England they have an Act which fixes a flat period of time, twelve months, for all public authorities. One difficulty is that public authorities there are those which are set out in some other Act, and it is difficult to determine which they are. That committee came to the conclusion, expressed in a strongly worded report, that public authorities should not be given any advantage over individuals. That is not so here. They also considered the question whether, if public authorities were equated with individuals, they should include provision for notice to be given by a claimant to a public authority. They turned it down flat.

By the Chairman.—Your references and arguments are not those of this committee?

Mr. Garran.—No.

By Mr. Fraser.—The arguments are similar to those in favour of retention?

Mr. Garran.—That is so.

By Mr. Crean.—Is not the putting in of a notice equivalent to limiting the action?

Mr. Garran.—If you say that notice must be given you do, in effect, limit the period. Our draft proposal is weaker.

Mr. Fraser.—The English committee also said there were many private concerns which were as diverse as public authorities, and they were in the same position as ordinary individuals.

Mr. Garran.—There has been a kind of interregnum owing to the new social enterprises undertaken. They considered the three-year limitation, which is a half-way house, but decided, "No." Let us have it on the same basis." Another point is that in regard to torts they said, "Let us have a period of two years." The Bill says three years.

By Mr. Fraser.—Does the report set out the personnel of the committee?

Mr. Garran.—Yes. It is: The Right Honorable Lord Justice Tucker (Chairman); N. R. Fox-Andrews, Esquire, K.C.; H. T. MacCalman, Esquire, B.L.; the Honorable Sir Albert Napier, K.C.B., K.C.; the Honorable H. L. Parker; G. Godfrey Phillips, Esquire, C.B.E.; Robert S. W. Pollard, Esquire; Sir Howard Roberts, C.B.E.; Professor E. C. S. Wade; James Walker, Esquire, K.C.; H. J. Willey, Esquire.

Mr. Fraser.—I suppose the public authorities were represented.

Mr. Garran.—They probably were. The committee took evidence from the Treasury Solicitor, the County Council Association, the Municipal Association, Law Societies, the Newspaper Proprietors' Association, the Trade Union Congress, and so on.

By Mr. Fraser.—Did our judicial committee make the same recommendations?

Mr. Garran.—Yes. The English committee said, "The difference of opinion amounts, we think, to this, that it is the great majority of the public authorities at present entitled to protection or those benefiting from that protection who alone consider that it should continue."

The Chairman.—That is the position here; we are arguing for the minority.

Mr. Rylah.—When the municipalities are told that they are trying to help the insurance companies, they take a poor view of it.

By Mr. Crean.—Does the effect of the amendment mean that where an action other than one founded on tort is brought the same periods of limitation will apply against public authorities?

Mr. Garran.—Without requirements for notice, yes.

By Mr. Crean.—In how many cases are actions founded on tort brought against these bodies?

Mr. Garran.—Probably there are more actions founded on tort than on contract. In some cases the borderline between tort and contract is hard to find, and a clever plaintiff can bring his action accordingly.

Mr. Rylah.—The present practice in regard to the Melbourne and Metropolitan Tramways Board seems to be for counsel, when settling the notice, to bring it on contract, tort, and breach of statutory duty. In practically every case two branches of the action are not barred and one may be.

The Chairman.—From my experience of the Board I should think that no great hardship would be caused by the abolition of the notice at present required under the Act.

By Mr. Thomas.—What length of period could that be?

The Chairman.—Any time at all, for the rest of the life of the prospective plaintiff. That is the position in regard to the Commonweatlh.

Mr. Garran.—I think the ordinary periods will run as set out in the Bill—that is, three years for most torts, and six years for contracts.

The Chairman.—Yes, that is so. I was indicating that public authorities will be in no different a position from an individual.

By Mr. Thomas.—Mr. Garran was the only one who was not in agreement on that point?

Mr. Garran.—I was trying to get something that would be satisfactory for the public authorities. I tried to cut everybody down to three years and get rid of the disability period. At present notice has to be given to, say, the City of Melbourne within ten days, but if everything is taken away and a child cuts its foot on a broken bottle in the City Baths it will have three years after reaching the age of 21 years within which to bring action. I thought that might be too much of an extension.

By Mr. Thomas.—There is provision made for the guardian to make the application?

Mr. Garran.—Yes. I am not trying to raise these matters again, because they have been thrashed out.

By Mr. Crean.—I read of a case recently where an action was brought against a municipality because a person was injured when coke was being carted to his back door. It was held that the municipality was not carting it in the normal course but was doing a favour and as such the action could not be sustained?

Mr. Garran.—Yes, but that is more a question of whether or not a municipality is liable for its servants.

Mr. Crean.—I agree, but I think the words "founded on tort" give a "shady" sort of protection in some cases.

Mr. Garran.—I do not think so. In that case the action would be tort.

By Mr. Crean.—Yes, but when there is a limitation of period as far as the public authorities are concerned the question then arises whether a municipality or an individual is liable? If an injured person does not take action against a public authority within the prescribed period he can only proceed against the individual who would have no protection whatever. Because of that I felt that there was a possibility of injury being done to a greater body of people less able to protect themselves than the public authorities.

Mr. Garran.—A certain number of actions have been thrown back against individuals. It is then a question of whether or not the public authority will stand behind the individual.

By Mr. Rylah.—Do you think an attempt should be made to define "judgment" in some way with a view to achieving what we really desire, which is that all judgments shall last for only fifteen years?

Mr. Garran.—What does Mr. Rylah think is covered that should not be, or is not covered that should be?

Mr. Rylah.—As the law stands at present the procedure of registering a judgment of the County Court in the Supreme Court enables a County Court judgment to last for 30 years. The right to sue upon a judgment in the Supreme Court itself would permit it to last for another fifteen years. There is some doubt as to whether or not an order on petty sessions is a judgment, but under certain circumstances, it appears to carry all the qualities of a judgment and in other circumstances it does not.

Mr. Garran.—If there is any doubt there is no reason why it should not be defined, but personally I do not think it is necessary. The registering of County Court judgments in the Supreme Court is done under the County Court rules. At present when a judgment is registered in the Supreme Court there is then a new judgment of the Supreme Court and if a person sues a Supreme Court judgment a new judgment is obtained. In that way you can sue to an extended period.

Mr. Rylah.—If Mr. Justice Sholl is correct in his opinion, if you register or sue a petty sessions order it creates a judgment of the superior court, but the new period does not commence then.

Mr. Garran.—Did he go as far as that?

Mr. Rylah.—I think so. It would meet my views at this stage if there was a definition that a judgment would or would not include an order of petty sessions. I feel that that matter is in a horrible mess as far as the law is concerned and we should come right out in the open and say whether or not a petty sessions order is a judgment.

Mr. Garran.—If you have any doubt I think that would be possible.

Mr. Rylah.—As a practising solicitor I feel that many members of the bar are in doubt. It is something that is frequently cropping up.

Mr. Garran.—It has been held that the Court of Petty Sessions is a court of record, has it not?

Mr. Rylah.—I think that is so.

By Mr. Thomas.—Do Courts of Petty Sessions keep records of their decisions?

Mr. Garran.—Yes.

Mr. Rylah.—They do; in fact I think the records of those courts are kept for a longer period than the records of the County Court.

Mr. Garran.—If there is any doubt there is no reason why a definition of "judgment" should not be included.

By the Chairman.—Has Mr. Rylah's question been settled?

Mr. Rylah.—Mr. Garran has apparently expressed the view that an order of a Court of Petty Sessions would be regarded as a record, but he agrees with me that if we feel there is any doubt about what "judgment" means, it may be wise to define the term so that it will include a petty sessions order.

By Mr. Thomas.—Is not the record mainly one of facts?

Mr. Garran.—Usually the judgment is a short one, ordering—for example—that the defendant pay the plaintiff £100, together with costs.

Mr. Crean.—There would still be the possibility of a stepping-up from one court to another, and so affecting the period of fifteen years.

Mr. Rylah.—From what Mr. Garran has said, I think he might agree that this does not in any way affect existing rights to register under other legislation.

Mr. Garran.—That is so.

By Mr. Crean.—The effect of the amendment is not to stop a person who obtains a petty sessions judgment from registering it in a higher court, whereupon the period of fifteen years would operate from the date of registration. Will that still apply?

Mr. Garran.—Yes, under the Rules of the County Court, but there is always the position that a judgment is a debt owing to the successful party, who can sue on it. So that if he cannot get satisfaction within a period, he can, generally speaking, bring another action. A new judgment is given on that, and so it starts again.

By Mr. Crean.—Do I understand that the purpose of the amendment is not to telescope all possible proceedings into the period of fifteen years?

Mr. Garran.—That question depends on outside matters.

The Chairman.—The report of the English committee in effect strengthens the recommendations previously made. The reference is so valuable that I think the following extracts should be published with the minutes of evidence:—

II. The Public Authorities Protection Act, 1893, *as amended.*

6. We approach the problem from the point of view that the special period of limitation and the special provisions as to the payment of costs which were fixed for the benefit of public authorities by the Act of 1893 are a curtailment of the rights of the individual and can only be justified if it is clearly established that there is a real likelihood of injustice on a considerable scale resulting in the event of the repeal of the Act.

7. That injustice often results to the individual at present is manifest and has been demonstrated from time to time in cases before the Courts where, by inadvertence, or as a result of negotiations, or as in the examples given below, a genuine claim has become barred.

8. It is also a matter of great difficulty to decide whether any particular act is within the protection afforded and a fine distinction has to be drawn between acts done in pursuance of duties and acts done in pursuance of incidental powers. Again, such persons as Service drivers, or persons employed by the Metropolitan Water Board are protected, whereas the employees of private pier and harbor companies and private coach companies are not, and it is difficult for an injured person to appreciate why, if he is injured by an employee of one body, he has six years to bring his action, whereas, if injured by the employee of another, the action must be brought within one year.

9. There is a considerable volume of case law on the interpretation of the provisions of the Act. Some of these cases appear to be conflicting, and it is necessary carefully to consider the facts of each case before it is possible to say whether the Act applies or not. In some circumstances, for instance, an action for damages for breach of contract will be within its provisions and in other circumstances it will not; see Compton *v.* West Ham County Borough Council (1939 3 All England Reports 193) where it was decided that the performance, or breach, of a contract which a public authority has the duty to make is within the protection, but that there is no protection where there is a power which enables, but does not require, the contract to be made. Other cases illustrating this are Clarke *v.* Lewisham Borough Council (1902 67 J.P. 195) and Mountain *v.* Bermondsey Borough Council (1941 3 All England Reports 498).

10. Unnecessary difficulties also arise with regard to contribution when joint tortfeasors are involved, one being a private individual and the other a public authority. In Merlihan *v.* A. C. Pope Ltd. and J. W. Hibbert (1945 2 All England Reports 449) it was held that when judgment is recovered against one joint tortfeasor for negligence and the defendant commences third-party proceedings against the other tortfeasor for contribution, the cause of action arises at the date of the negligence which causes the damage and if the third party is a public authority the claim for contribution will fail if twelve months have elapsed before the third-party proceedings are commenced.

11. The Act gives protection only if the authority is acting in pursuance or execution, or intended execution, of any Act of Parliament, or of any public duty or authority. Whereas in the case of a defendant who enjoys no special protection a plaintiff need only consider who is responsible for the injury which he has suffered, in a case which may be within the Public Authorities Protection Act the plaintiff must also ascertain not only whether the public body qualifies for the protection of the Act, but also whether the injury or damage was caused to him in the course of the performance of a public duty and not merely as an incident thereof. In the latter case, the Act will generally be found not to apply, but this is a difficult question which has been the subject of many conflicting decisions.

12. The reports contain numerous instances of injustice which has arisen as a result of the protection given by the Act. For example, in Freeborn *v.* Leeming [1926] 1 K.B. 160, a medical officer of health negligently failed to diagnose the injury suffered by the plaintiff and it was only correctly diagnosed after she had left the care of the medical officer for more than six months (the period then operating) and too late to effect her cure. The plaintiff's action was consequently barred.

Again, in Nelson *v.* Cookson [1940] 1 K.B. 100, the infant plaintiff was operated on by the defendants, who were assistant medical officers of a county hospital. After the operation, the second defendant placed a gag in the plaintiff's mouth to enable an examination of her throat to be made. The gag, which was taken from a sterilizer, was too hot and in consequence the girl suffered severe burning of her cheek, which resulted in a permanent scar. It was held that the defendants were performing a public duty on behalf of the county council and the action failed as the writ was not issued until over nine months after the operation, which took place before the period of limitation was extended from six to twelve months.

13. Public authorities generally take the view (and this has some judicial authority) that they have no discretion as to whether to rely on the Act or not and that they are bound to plead it when it applies. Some local authorities support this view by reference to their obligation to submit all their expenditure to audit and assert that no auditor will pass any item of expenditure which might have been avoided by pleading the Act. The Treasury Solicitor, on the other hand, informed us that he uses his discretion in cases where an individual in the service of the Crown is sued and his case is defended by the Department concerned. During the period of six months ending 31st December, 1947, 53 claims were made after the expiration of twelve months against Departments for which the Treasury Solicitor acts. In 40 of these cases the Treasury Solicitor decided, in the exercise of his discretion, not to rely on the Public Authorities Protection Act. We have no doubt that the Treasury Solicitor exercises his discretion wisely and judicially, but it seems to us undesirable that such a discretion should rest solely with the legal adviser of the proposed defendant. The fact that the Treasury Solicitor not infrequently finds it necessary to exercise his discretion in favour of the intending plaintiff would appear to indicate that there must be a not inconsiderable number of claims brought against local authorities—who have no discretion in the matter—only to be barred, whereas the just exercise of discretion would have permitted actions to be brought so that the claims could be decided on their merits.

14. Owing to the existence of this protection for public authorities for over 50 years, it is difficult to estimate the result of its withdrawal. At present the great majority of claims are made within the twelve months period. For example, the 53 cases referred to above, where the Treasury Solicitor had to deal with claims made out of time, formed a very small proportion of the total cases disposed of in the period in question, which numbered 12,064.

15. The representatives of public authorities naturally stress these figures as showing that it is practicable for the vast majority of cases to be brought within twelve months and that the cases where injustice may result form a very small proportion of the whole. On the other hand, is there any reason to suppose that the great majority of cases will not continue to be promptly brought if the protection is removed? In this connection, some statistics given us by the Scottish Motor Traction Co. Ltd. are informative. Under Scots law, there is only a 20-year period of prescription, but no six-year period of limitation applicable to actions brought against this company and others who are outside the scope of the Public Authorities Protection Act. Their experience over a period of five years shows that approximately 10 per cent. of actions brought against the company were raised within nine months of the accident, 50 per cent. between nine months and one year, 30 per cent. between one and two years, 9 per cent. between two and three years, and only 1 per cent. after more than three years. These figures confirm the view that we have formed that, save in exceptional circumstances, claims are made, and actions brought where necessary, with reasonable promptitude, irrespective of the existence of any special period of limitation.

16. The evidence we have heard relates almost entirely to claims for personal injuries and there can be no doubt that it is with regard to this class of case that public authorities are mainly apprehensive. While it is no doubt desirable that all actions should be brought and tried as speedily as possible, we feel that this applies particularly to personal injury cases. Public authorities may be in difficulties in some cases if claims are not promptly made, but we have heard no evidence which satisfies us that such difficulties, except possibly in the case of the Crown with respect to Service personnel, are peculiar to them in contrast to any other defendants. In fact, public bodies are often large concerns with efficient systems for the prompt reporting and investigation of accidents and accordingly better placed than many private employers. The fact that their servants may sometimes fail in their duty to report accidents, with consequent prejudice to their employers in dealing with claims made after the lapse of time, would not appear to be any justification for depriving persons who have been injured and have genuine claims from being heard in the Courts.

17. At the present time, many large commercial and industrial organizations have activities as multifarious and diverse as public authorities, but do not enjoy the privilege under discussion, although subject to the same difficulties and open to the same type of attack as those mentioned by the public authorities who have made representations to us. Moreover, public authorities engage to-day to an ever increasing extent in business in much the same way as the organizations above referred to, and do so for profit.

18. We see no reason to think that the system of reporting accidents and of the keeping of records by a public authority is less efficient than that of a commercial undertaking, or that such an authority is—in the absence of special protection—more vulnerable than a commercial undertaking in respect, for instance, of stale or bogus claims. Still less should it be in a position to rely upon this special protection to defeat honest claims.

19. We have given careful consideration to suggestions that have been made to us that the period of limitation in the case of all torts should be reduced to three years. On the whole, we have come to the conclusion that such a change is undesirable. No specific instance has been brought to our notice of any hardship or injustice arising under the present law in cases other than actions for personal injuries, except in the case of actions for libel brought against newspapers by convicted persons after serving sentences of imprisonment.

20. We are of opinion that the existing period of six years should be retained in the case of actions of simple contract. It is well known to the public, and the evidence adduced before us by those engaged in commerce and banking, in spite of some suggestions to the contrary made to us from other quarters, satisfies us that no change is required.

21. Having regard to the difficulty in many cases of distinguishing between actions founded on tort and actions founded on contract, it appears to us desirable that there should in general be uniformity between tort and contract with regard to the period of limitation.

22. We do, however, recommend a change in the period of limitation for actions for personal injuries. These, whether founded on contract or tort, ought generally to be brought within two years from the accrual of the cause of action, having regard to the desirability of such actions being brought to trial quickly, whilst evidence is fresh in the minds of the parties and witnesses. Provision should be made for exceptional cases by allowing applications to be made to a judge in chambers or to the judge of the court in which the action is proposed to be brought (if not the High Court), after notice to the intended defendant, for leave to bring such an action more than two years but not later than six years from the accrual of the cause of action. The judge should have a discretion to grant leave if satisfied that it is reasonable in all the circumstances so to do.

As already stated, the evidence before us showed that the great majority of claims are notified at an early date after the occurrence of the incident giving rise to the claim and that actions are in the main commenced reasonably promptly. Where there is great delay the probability therefore is that either there is good reason for the delay, or that the claim is not a bona fide one, and we are of opinion that whether the reason is the one or the other may be safely left to the decision of the court upon any application for leave to commence an action which would otherwise be out of time.

23. We consider that the period of limitation we have recommended should apply to all actions for personal injuries, whether the defendant is a public authority or not. We do not think it is necessary for us to define "personal injuries," although this may possibly be necessary if legislative effect is given to our recommendations. We wish, however, to make it clear that we do not include in that category actions for trespass to the person, false imprisonment, malicious prosecution, or defamation of character, but we do include such actions as claims for negligence against doctors.

24. This measure of protection available to all defendants should, we think, afford reasonable protection to public authorities from the consequences which they fear would result from the repeal of the Act of 1893, and at the same time ensure that persons are not debarred from pursuing their rights through lack of funds, illiteracy, want of knowledge that they have a cause of action or ignorance as to the extent of their damage or injury.

25. After full consideration, we think that, if the recommendations in paragraphs 22 and 23 are accepted, the Crown should, in respect of the period of limitation, stand on the same footing as a private individual.

III. The Coal Industry Nationalization, Transport, and Electricity Acts, and similar statutes setting up public corporations.

26. Since such legislation is so recent, no evidence is available regarding the working of the limitation provisions contained in these Acts, but after full consideration of the matter, we can see no reason why the Authorities set up by them should be treated differently from the general public or other public bodies. In this connection we would point out that such Authorities have been made generally subject to ordinary legal liability, except in regard to the limitation of actions.

Summary of Recommendations.

(1) *The Public Authorities Protection Act* 1893, as amended, should be wholly repealed (paras. 6-24, 31, 32).

(2) The period of limitation for actions in respect of personal injuries should be two years from the accrual of the cause of action, but the court should have a discretion to grant leave to bring an action after the expiration of that period, but not later than six years from the accrual of the cause of action (paras. 22 and 23).

(3) The period of limitation for actions founded upon contract or tort (other than actions for personal injuries) should remain at its present period of six years (paras. 19-21).

(4) The periods of limitation in respect of actions brought against the Crown and the public corporations set up by the Nationalization and similar Acts should be the same as the periods applicable to other public authorities and to private individuals (paras. 25 and 26).

(5) The period of limitation for actions under the *Fatal Accidents Act* 1846, should be two years from the death of the deceased. The dependants should have the same right to apply for an extension of the period of limitation applicable to the deceased's cause of action as he would himself have had (para. 27).

(6) The period of limitation contained in section 1 (3) of the *Law Reform (Miscellaneous Provisions) Act* 1934, in regard to causes of action in tort arising before a person's death should be two years. The court should have a discretion to extend the period to six years as in (2) above (para. 33).

(7) No alteration should be made in the periods of limitation prescribed by sections 2 and 3 of the *Limitation Act* 1939, beyond such alterations as may be necessary having regard to the above recommendations (para. 28).

The Chairman.—We come now to the question whether the proposed Bill binds the Crown.

Mr. Garran.—On the one hand clause 7 specifically states that the Bill will not give title by adverse possession as against the Crown. On the other, there are complications in clause 8, where the right of action first accrues to the Crown, and then passes to some person other than the Crown. But, as generally speaking, the Crown is not liable in tort, and in contract can be sued only by petition of right, the liability of the Crown does not arise directly in this Bill. I understand another Bill has been mooted in relation thereto.

The Committee adjourned.

FRIDAY, 4TH AUGUST, 1950.

Members Present:

Mr. Mitchell in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barry,
The Hon. A. M. Fraser,	Mr. Crean,
The Hon. F. M. Thomas.	Mr. Oldham,
	Mr. Rylah.

Mr. Frank A. Jenkins, Secretary of the Municipal Association of Victoria, was in attendance.

Mr. Oldham.—At the last meeting of the committee I was asked to go through a recent report on limitations to the Lord Chancellor of England and to summarize it with a view to the committee having the information before it, to Mr. Jenkins hearing the summary of it before giving his evidence, and as a guide to any questions we might ask. I have prepared a memorandum which summarizes the position so far as public authorities are concerned, to the extent of such ability as I have. If the committee desires me to do so, I shall read it—

In May, 1947, a Bill similar to the one before this committee was introduced into the Legislative Assembly by the Hon. William Slater, the then Attorney-General. It was referred to the then Statute Law Revision Committee, which heard evidence, but Parliament was prorogued before a report was presented. Consideration was given to the position of a number of public authorities in this State which have special protection in their statutes in relation to limitation of actions. These Acts generally contain provisions for—

(*a*) a very short period of limitation within which an action can be commenced; and

(*b*) a notice before action is commenced.

The Railways Act and the Local Government Act also impose special restrictions on plaintiffs as to courts and amounts recoverable. The Chief Justice's Committee was unanimously of the opinion that there was no reason why the position of these bodies should be any different from that of any other defendant, and it accordingly recommended the repeal of the provisions I have mentioned.

In the last Parliament the Statute Law Revision Committee again considered this matter and expressed general approval of the proposal that in respect of all public authorities which at present have any special rights of protection the period of limitation should be the same as that applying to other persons who are defendants, subject to a requirement that the plaintiff should within six months of the occurrence of the cause of action serve on the public authority a prescribed form of action. The committee presented its report to Parliament, but the matter was not further considered before prorogation.

The present committee has given further consideration to the matter, and I think I can say that there is a general feeling that such public authorities as at present enjoy special privileges should be placed on the same basis as any other defendant. In Victoria the authorities covered by special protection are—

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 employee theerof, 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 Diseases 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 or 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.

It is emphasized that the Commonwealth of Australia does not enjoy any special privileges. This question was considered by a committee appointed by the Lord Chancellor, which presented its report in July, 1949. Among the recommendations was that the Public Authorities Protection Act 1893 should be repealed. This is the Act which provides that actions and prosecutions against any person for any act done in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such act duty or authority must be commenced within twelve months after the act neglect or default complained of or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof. There is no similar Act in Victoria, but many Acts relating to public authorities contain a specific limitation varying roughly from fourteen days to two years, and some of these Acts also require notice of action to be given in a limited time.

Another recommendation relevant to the present discussion was that periods of limitation in respect of actions brought against public corporations recently nationalized in the United Kingdom should be the same as the period applicable to private authorities. This applies to the Coal Nationalization Act and similar Acts. There are no similar Acts in Victoria beyond those already mentioned. It was pointed out that—

(*a*) Special limitations fixed for the benefit of authorities are a curtailment of the rights of the individual.

(*b*) Injustice often results to the individual where by inadvertence, or as a result of negotiations, a genuine claim becomes barred.

(*c*) There is great difficulty in deciding whether any particular Act is within the protection afforded, and a fine distinction is drawn between acts done in pursuance of duties and acts done in pursuance of incidental powers.

(*d*) Such persons as drivers employed by authorities are protected whereas employees of private companies are not. (A local example of this would be drivers employed by the Tramways Board or the Railways and those employed by say, Myers.)

(*e*) Unnecessary difficulties arise in regard to joint tortfeasors, one being a private individual and the other a public authority.

(*f*) Questions arise as to whether actions lie in tort or contract with the attendant necessity of consideration as to whether the special protection applies.

(*g*) Protection may be given only if the authority is acting in pursuance of its powers under its Act and the question of the application of protection in these circumstances shows hardship upon plaintiffs. (That refers to the fact that the Act only empowers the authority to do the things it sets out. If the authority goes beyond those powers nice questions arise as to notice and things like that.)

(*h*) Reference is made in the report to numerous instances of injustice which have arisen as a result of the protection—e.g., a protected medical officer wrongly diagnosed an injury which was only correctly diagnosed after the protected period had expired.

(*i*) Public authorities generally take the view that they have no discretion as to whether to rely on the protection or not and that they are bound to plead it when it applies.

(*j*) Experience has shown that the great majority of claims are made within the limited period. There is no reason to suppose that this would not continue if the protection is removed. Statistics confirm the view that, save in exceptional circumstances, claims are made with reasonable promptitude, irrespective of any special period of limitation.

(*k*) Public authorities may be in difficulties in some cases if claims are not promptly made, but generally these are not peculiar to them in contrast to any other defendants. In fact, public authorities have efficient systems for reporting and investigating accidents. If their servants fail in their duty, that is no reason to hinder genuine claims by injured persons. Many large commercial and industrial organizations have activities as multifarious as public authorities and do not enjoy special privileges.

That is a summary of the relevant portions of the last report so far as public authorities are concerned. The report also deals with other matters relating to the general question of limitation. I think it would be advantageous to deal with these at another meeting of the committee.

Mr. Fraser.—Another illuminating thing is that the Treasury Solicitor in England has discretionary power to say whether or not the Act should be pleaded. The English Committee pointed out that it was wrong to have such a decision dependent on the discretion of the Treasury Solicitor.

Mr. Crean.—Has Mr. Oldham drawn attention to the recommendation that there should be a shorter limit in the case of personal injuries?

Mr. Oldham.—That was one of the matters I had in mind. One other matter which we have discussed is not mentioned in the report but it is, I think, relevant so far as public authorities are concerned. It is universally recognized that public authorities should take out public risk insurance policies.

Mr. Jenkins.—I do not think it is universal.

Mr. Oldham.—It should be. I do not think any one can suggest any reason why it should not be.

By Mr. Fraser.—Have you any idea of the relative protection taken by different municipalities?

Mr. Jenkins.—I cannot give the relative protection. Some councils doubt the wisdom of taking out public risk policies. Some of the policies are so tied up that the only time when they could be called into use would be when the council was not liable.

Mr. Fraser.—I thought the purpose of a policy was to indemnify the council against negligence.

Mr. Jenkins.—The policies I have seen would have no application when the council was guilty of negligence.

By Mr. Oldham.—What conditions are imposed in that respect?

Mr. Jenkins.—That night watchmen must be employed, that dangerous places must be lighted and protected by barriers, and so on.

Mr. Fraser.—That is what would be covered by the policy.

Mr. Jenkins.—Most of the policies I have seen do not cover negligence.

By Mr. Rylah.—Have the insurance companies been approached to produce a policy that would cover such cases?

Mr. Jenkins.—Not by us. When municipalities are taking out an insurance policy for the purpose we advise them to see that the conditions included afford some real protection in cases of negligence.

Mr. Fraser.—Most commercial undertakings in Melbourne carry public risk policies indemnifying them against negligence.

Mr. Oldham.—I have acted for the Myer Emporium Limited under a public risk policy. Innumerable claims have been decided on their merits, and so far as the Myer Emporium is concerned, there were no hurdles to jump. The company desired protection against such incidents.

Mr. Byrnes.—I think there is some conflict between a public risk policy and workers' compensation. On legal advice my council has extended its public risk policy.

Mr. Fraser.—In addition to the workers' compensation policy there is a public risk policy which covers the council against negligence.

Mr. Thomas.—Last week in Fitzroy some one knocked over a postal pillar box and the leg of a passer-by was injured. The question of negligence and public protection comes into this matter. At Collingwood it is compulsory for petrol bowsers to be placed on the footpath, but the bowser must be registered with the council, and if it is not registered then a claim cannot be sustained.

Mr. Oldham.—If a lorry knocked over a traffic signal standard the council would be covered by its public risk policy in case of injury occurring.

Mr. Barry.—What would happen in a case where a person was walking along the street and a tree fell on him?

Mr. Fraser.—If there was negligence the municipality would be liable.

Mr. Barry.—Surely the council's insurance policy would cover that. Is not that the reason why the insurance policy is taken out, to cover cases of that kind?

By Mr. Oldham.—Of the 198 municipalities in Victoria how many are not covered by public risk insurance?

Mr. Jenkins.—I could not tell you that as we have no records. Country municipalities have referred to us the question whether it is advisable to take out a public risk policy, and we have told them that should they do so they should be careful to see that the conditions of the policy are such that they afford real protection in cases of negligence, because they are liable only in such cases. In the case of a petrol pump being placed on the footpath by direction of the statutory authority, the mere fact that it is on the footpath and is there as a result of a licence issued by the council does not entitle any one to claim damages from the council in case of accident.

By Mr. Oldham.—That is not the point. Is it not possible to get a public risk policy that will fully protect the council, provided the proper premiums are paid?

Mr. Jenkins.—We always advise the municipal councils to make sure that they receive proper cover. The ordinary policies are hedged round with conditions to the extent that they do not afford real protection to the council.

By Mr. Oldham.—In my experience I have had actions against councils for negligence, and I know of no instance where the defence was not conducted by a representative of the insurance companies. Do you feel that the municipality should have these special protections introduced in order to save them the expense of insurance?

Mr. Jenkins.—No, it is not that. The liability is on the council to decide whether or not it should take out an insurance policy. If such policies are to cover greater risks and penalties, probably the premiums would be higher.

By Mr. Oldham.—Would that matter very much so long as it ensures that an individual can recover damages where he is entitled to them?

Mr. Jenkins.—Yes. We want to be protected against persons recovering damages where they are not entitled to them, but where failure to give the council notice has precluded the council from getting necessary evidence.

By Mr. Oldham.—If a pedestrian broke his leg as a result of falling over some hazard left by the council on a public footpath and was in hospital, he might not be conversant with the necessity of giving notice of the accident within fourteen days. Do you think it fair that he should be precluded from pursuing his claim simply because he has not directed attention of the council to the accident within that fourteen days?

Mr. Jenkins.—No. The Local Government Act provides that if he can show good reason why he has not given notice within the prescribed period he is not precluded from making the claim. It is only fair to the council that he should give notice that an action is pending so that it can obtain the necessary details while the matter is still fresh in the minds of its employees. A council should have the opportunity of collating necessary evidence to rebut the claim.

By Mr. Oldham.—Why should a municipality have any greater protection than has the Commonwealth of Australia?

Mr. Jenkins.—I am not suggesting that the council should. Possibly the Commonwealth of Australia should have similar protection. If some one meets with an accident it is unfair that he can take action against a public corporation some six months later. The injured person has had every opportunity to prepare his case, and if the council is not informed within a reasonable period, it has no possibility of getting evidence of the real facts.

By Mr. Oldham.—Why should a municipal council in these circumstances have greater protection than you personally enjoy?

Mr. Jenkins.—I think every person should have the protection of receiving early notice.

Mr. Oldham.—Under the established law they do not have it now. They do have the protection that a person must bring action within a certain period, but the municipality has greater protection.

Mr. Rylah.—This Committee has had the benefit of a report from the Chief Justices' Committee in Melbourne and the Lord Chancellor's Committee in England to the effect that people administering justice from the top feel that an injustice is done by affording this protection to local authorities and other bodies. If that thought comes from the people who are responsible for adminstering justice, are you prepared to modify what you have said with regard to this protection?

Mr. Jenkins.—No, I am not. After all, we have our point of view based on practical experience.

Mr. Fraser.—What you envisage would occur only in isolated cases. In a case of an accident occurring, or injury arising through the negligence of some municipal employee, either while driving machinery or a motor car, you immediately get a report from the employee concerned. The case you have in mind is where some one falls over an obstacle on the footpath, where there has been something wrong done by the council.

Mr. Jenkins.—Municipal works cover vast territories. Each municipality has some miles of streets, parks and gardens, swimming baths, and so on. Accidents can occur without the knowledge of the council or its employees, particularly at night when a person could fall into an excavation, or trip over a heap of metal on the road. There is no possibility of the council knowing anything of it unless it gets proper notice. It should have the opportunity of obtaining evidence, such as whether the excavation was properly lighted and protected.

By Mr. Fraser.—Is not a private individual in the same position?

Mr. Jenkins.—A private individual has not a vast territory under his control. The public have the right to use the roads or footpaths, or the parks and gardens, whereas the individual has only his own private premises, and if people have no business on those premises then they are trespassers. An individual has a better opportunity of hearing about something that happened on his private premises.

Mr. Fraser.—Mr. Justice O'Bryan gave an illustration on this point. He suggested that supposing because of the negligence on the part of an occupier the branches of a tree protruded over the footpath and a passing pedestrian was injured in consequence of that negligence, the occupier does not get notice of any proposed action until he receives the writ, which might be two years afterwards.

Mr. Jenkins.—Is there any hardship on a person being required to give notice immediately he meets with an accident out of which his claim arises?

Mr. Rylah.—In the opinion of Judges in England and in Victoria considerable hardship has been caused.

Mr. Oldham.—Probably every lawyer member of this Committee has had personal experience, mostly in the circumstances I have mentioned, of where the person is so injured that this short period of notice precludes him from making a claim within the statutory time. The injured persons can fall back to what you have said, but if they have to do that in every instance and satisfy the court on the reason for the delay, why have the protection?

Mr. Jenkins.—They can only take late action where they can show the court that there was good reason for delay, such as being in hospital.

By Mr. Oldham.—Does not that presuppose that an individual is a less important person than a municipal council?

Mr. Jenkins.—No, I think it gives the municipal council equal protection.

By Mr. Oldham.—The council does not have to give a ratepayer notice before it sues for arrears of rates?

Mr. Jenkins.—Yes, it does.

By Mr. Oldham.—Before you sue a person for negligence you do not have to give notice.

Mr. Jenkins.—I do not think there would be any hardship on the councils if they had to give notice. The point about it would be that it would give the person concerned an opportunity to prepare his case, obtain witnesses, and collate evidence while the matter was still fresh in mind.

By Mr. Oldham.—If some person injured the roadway in circumstances of negligence it might be some considerable time before the council traced who was responsible for the damage?

Mr. Jenkins.—That may be so.

By Mr. Oldham.—If a council had to give notice within fourteen days would not that involve hardship?

Mr. Jenkins.—The councils would have the same protection as is available to private individuals, of showing good cause why there had been delay.

Mr. Rylah.—In circular No. 17/49, issued by the Municipal Association of Victoria in April, 1949, you said, "Every council has had experience of having to pay claims made by members of the public for damages, not because the council admitted negligence but because it was unable to obtain evidence to rebut that of the claimant." That statement seems to me contrary to the views previously expressed to this Committee. Can you give us a specific example where that has happened?

Mr. Jenkins.—Many claims have been made. For instance, a person has made a claim because he tripped over a water stop box in the street, off which the cover had been removed. The claim has been for a small amount, and the council concerned has said, "We have no possibility of proving that the cover was not left off by one of our employees, and as the claim is only for a small amount, we shall meet it."

By Mr. Rylah.—You imply that the council did not bother to find out about the matter?

Mr. Jenkins.—It did not do so because it was satisfied that it could not obtain the necessary evidence.

By Mr. Rylah.—You made a sweeping statement; "Every council"—presumably you included the 198 councils in the State—"has had experience of having to pay claims made by members of the public for damages, not because the council admits negligence, but because it is unable to obtain evidence to rebut that of the claimant?"

Mr. Jenkins.—Possibly evidence in rebuttal has not been available. The only person knowing all about the matter would be the person who fell over the obstruction.

By Mr. Rylah.—Was your statement based on information given to your association?

Mr. Jenkins.—It was based upon information given by councils. Of course, a council would not pay a large claim in those circumstances.

By Mr. Byrnes.—Rather than go to court over a small matter a council will say, "It is difficult to obtain conclusive evidence and so we shall pay the amount?"

Mr. Jenkins.—It is a case of evidence being given by one side only, and the council says, "We cannot rebut the evidence."

By Mr. Barry.—Have many councils met claims under those circumstances?

Mr. Jenkins.—Yes. I think it is the general rule to deal in that way with small claims, involving only a few pounds.

By Mr. Rylah.—Would not councils meet small claims whether they had evidence or not in respect of them?

Mr. Jenkins.—Possibly they would do so.

By Mr. Thomas.—You mentioned an accident occurring because the cover has been left off a water stop box in the street. That is the property of the Melbourne and Metropolitan Board of Works?

Mr. Jenkins.—It is an obstruction in a footpath and has been put there with the permission of the council.

By Mr. Oldham.—In the case you have mentioned, the council has been given notice and has decided to meet the claim. Irrespective of whether notice was given or not, a similar position would arise.

Mr. Jenkins.—That is so.

By Mr. Rylah.—Have you made inquiries of councils as to their general practice respecting claims against them? In my experience, the average solicitor makes a demand almost immediately a matter is referred to him. If he does not do so, he leaves himself open to the criticism that he has allowed the matter to rest and has not given the other side an opportunity to ascertain whether it is liable or not. In practice, an early demand is made, whether it is or is not within the statutory period.

Mr. Jenkins.—I cannot comment on that aspect. Unless a borough council is given ten days' notice, the plaintiff is out of court.

By Mr. Rylah.—Your statement that councils have paid claims, not because they have been negligent, but because they have been unable to obtain evidence, implies, I think, that they have been obliged to pay claims in many cases after receiving notice within the prescribed period?

Mr. Jenkins.—That is so.

By Mr. Rylah.—Then, of what value is the notice?

Mr. Jenkins.—If the claim is for a substantial amount, the council would have an opportunity to collect evidence. The authorities should be given every opportunity to reconstruct the situation existing at the time of the accident.

By Mr. Fraser.—Surely the principle must not depend upon whether a claim is for a large or for a small amount?

Mr. Jenkins.—That is so. Small claims are paid by councils to avoid the trouble and expense of going to law about the matters.

By Mr. Fraser.—Will you give us your objections on behalf of the Municipal Association to the repeal of the notice?

Mr. Jenkins.—Our objection is to the waiving of the present requirement that a person must give notice. We are not so worried about when a plaintiff proceeds with his action, but we feel that he should be required to give us notice within a reasonable period to permit us to prepare evidence to meet the case. That is our principal objection to the proposal.

By Mr. Fraser.—As Mr. Oldham has pointed out, the Commonwealth of Australia has the whole of Australia to supervise in the matter of Army and military services and so on, but it is not afforded similar protection, and it has never suggested that it is suffering injustice?

Mr. Jenkins.—Apparently the provision was included in the Act for a good purpose, and we think it is only right that we should have the protection. The fact that similar protection is not afforded the Commonwealth of Australia does not alter our view that we are entitled to receive the present protection. Injustice is not done to any one in our asking for the protection to be continued, particularly as there is the saving provision that if a claimant can show reasonable cause why he was not able to give the notice in the specified time, the court can waive the provision.

By Mr. Fraser.—Can you give three illustrations of injustice having operated against councils in this matter?

Mr. Jenkins.—I cannot do so offhand, but I could obtain that information for you.

By Mr. Oldham.—You say that there is a right existing under the present law, and it must be presumed that there was good reason for its inclusion in the Act. That argument could be used against the amendment of any Act of Parliament?

Mr. Jenkins.—Yes, but I suggest that there must always be good reason for altering an Act.

By Mr. Oldham.—Would you consider that that requirement had not been complied with in the opinions expressed by the Committee appointed by the Chief Justice of Victoria, by a Committee of eminent gentlemen appointed by the Lord Chancellor of England, and by members of this Committee?

Mr. Jenkins.—We have great respect for the opinions of legal luminaries, but they look at matters from the legal point of view, not from the practical point of view of persons who have had experience of these questions.

By Mr. Oldham.—Leaving aside legal technicalities, would not that position be met by a properly drawn public-risk insurance policy?

Mr. Jenkins.—Of course, councils may take out public risk policies, but that is not a reason why they should meet these claims.

By Mr. Oldham.—Would not that comment apply as strongly to the question as to whether you should insure a town hall against fire?

Mr. Jenkins.—Insurance is intended as a protection against justifiable claims.

By Mr. Oldham.—None of the claims can be successful if it is not justifiable. In these cases, negligence must be proved?

Mr. Jenkins.—The verdict is dependent upon the evidence that is submitted.

By Mr. Crean.—Will you indicate the type of large claim as to which a council may have no prior knowledge of the pending action?

Mr. Jenkins.—If a large amount is involved, it is unlikely that the council will not have knowledge of the circumstances.

By Mr. Fraser.—As councils take out public risk insurance policies, this section is in the interests of insurance companies only?

Mr. Jenkins.—I do not think that is a fair statement. The insurance companies frame their scale of premiums according to the risks involved, and the liability comes back on to the insurers.

By Mr. Barry.—Do you recall the collapse of a tobacco factory in Melbourne some years ago?

Mr. Jenkins.—I do.

By Mr. Barry.—The building surveyor of the Melbourne City Council was in trouble over that matter, and a number of other men had to face serious charges. The victims of that accident were in hospital for some time. They were not worried about any action that they should take, but were trying to recover their health?

Mr. Jenkins.—They had the protection afforded by the Act.

By Mr. Crean.—I take it that you agree that a period should be prescribed for notice of action to be given, and I presume that you do not necessarily favour the present provision?

Mr. Jenkins.—That is so.

By Mr. Crean.—If an individual is out of time so far as action against an authority is concerned, he may have the right to proceed against the municipal employee who may be held to have been at fault. In that case, the plaintiff is not limited in time. For instance, the garbage man may knock some one down in the street. The injured person may not be aware of his legal rights until they are pointed out to him. If the notice of action is not given within the specified time, he cannot proceed against the authority, but he can sue the driver of the garbage cart, from whom it would be difficult to obtain heavy damages. Does not your main objection lie in the fact that cases of this type are for personal injuries, and you are not greatly worried about action being taken against a shire by some one whose property has been flooded as the outcome of some drainage fault. In such a case, doubtless notice would be given within the specified time?

Mr. Jenkins.—It might be difficult to draw a distinction. There should be no difficulty about the giving of notice in the more serious cases. For instance, if a man's property has been damaged by floods caused by a drainage defect, there is no reason why notice should not be given to the council within a reasonable time that the plaintiff intends to make a claim. We are not hard and fast on the period of ten days—perhaps it could be made one month—but we think notice should be given so that the council is put in the same position as the person making the claim. It is not a question of wishing to deprive an individual of his rights, but of ensuring that a council will have an opportunity of obtaining the true facts.

Mr. Oldham.—The reports to which reference has been made have directed attention to the fact that there is a substantial body of legal opinion and judicial decision to the effect that councils have to observe the provisions and cannot waive them, otherwise they are acting *ultra vires.*

Mr. Fraser.—The councillors would be personally liable for such sums as were paid.

Mr. Oldham.—Section 852 of the Local Government Act provides that no person is entitled to recover damages unless he has given ten days' notice in the case of a borough and twenty-one days in the case of a shire, or unless he can show sufficient reason why he was unable to give such notice. That reason would have to be shown to a court during the course of the action, and it appears that this discretion could not be used except in cases where failure to comply with the provision has occurred quite justifiably. For instance, a person may be unconscious for ten days, and he would certainly not be in a position to communicate with his lawyers and discuss the matter. In my opinion the difficulty could be overcome if the giving of notice was eliminated and councils were properly protected by an insurance cover. It may be that those councils which have settled claims have acted illegally.

By Mr. Crean.—You did not reply to the question I raised about the alternative action that might be brought against the council employee.

Mr. Jenkins.—Of course, dealing purely with the matter of notice, the council employee would not require any notice that an action was being brought against him for knocking a person down because he would know all about it. That does not deal with the question of the employee's liability or whether he should be liable.

By Mr. Crean.—I think you have missed my point. If a pedestrian were knocked down by a municipal garbage cart it would be an action arising out of the employment of the driver, and normally the employer would accept the liability. However, because the individual who was knocked down did not serve notice within ten days his only course of action would be to proceed against the driver of the garbage cart, not as a council employee but as a negligent person. You say that you represent the municipalities, but I suggest that you should also consider the point of view of the municipal employee?

Mr. Jenkins.—If it is the law that a person having not given the requisite notice to the council can then sue the employee as a private individual——

Mr. Oldham.—The plaintiff always has that right. For instance, the motorman of an electric tram is personally liable if he is involved in an accident.

Mr. Jenkins.—I do not think there would be any objection to an amendment of the law to permit the council to waive its objection to notice being given.

Mr. Fraser.—A matter such as this cannot be left to the discretion of any person.

Mr. Oldham.—It must be a matter of right. The Commonwealth has placed itself upon the same basis as the individual so far as these matters are concerned, but in Victoria the Crown is protected from any action. Because of that the curious position arises that if a member of the Police Force, acting in the course of his duty, commits an act of negligence he may be sued personally. It is quite a common practice for employees of the Victorian Government to be sued, and they have to depend on the Government of the day for mercy or otherwise. Mercy has sometimes been denied them, and for that reason the matter is to be considered, and probably an amendment of the present law will be made. The same position applies in regard to municipal employees.

Mr. Crean.—Except that under the Act the council has no right to be merciful towards its employees.

Mr. Rylah.—If the present provisions are left on the statute-book, I can visualize an unfortunate set of circumstances arising. For example, if the mayor and town clerk of the City of Kew invited half a dozen ratepayers to accompany them to inspect the section of the Outer Circle railway that has recently been purchased, and if a landslide occurred in which the ratepayers sustained broken legs or backs, and then failed to give notice of action within fourteen days, the situation would arise where the mayor and town clerk would be personally liable, because they invited the ratepayers on to unsafe council property.

Mr. Jenkins.—But they would still have a remedy. Although they are required to give notice of an action they are not precluded from taking it.

By Mr. Fraser.—When a plaintiff fails to give notice to a council within reasonable time there is no procedure under which he can obtain a speedy determination as to whether or not there is sufficient cause for not giving such notice. The plaintiff has to go to court, call witnesses, and establish the negligence on the part of the council. The council's evidence is heard in rebuttal, and then evidence is given in regard to the matter of whether there is sufficient cause for the lack of notice. At the conclusion the court might find that the council was negligent, but that not sufficient cause had been shown as to why notice was not given; therefore the decision would be given in favour of the defendant. In my opinion that position cannot be justified under any circumstances.

Mr. Jenkins.—Is a person justified in waiting for six months before bringing an action against a council at which time it would be practically impossible for rebutting evidence to be obtained?

Mr. Fraser.—That is the reason why the Statute of Limitations is in existence. It was recognized that some limitation of time must be imposed; therefore claims for simple contract debts must be made within six years, and actions for slander must be brought within two years. There is no reason why a public authority, a municipal council, or any other body should be in any different position from a private individual.

Mr. Jenkins.—It is agreed that there should be some limitation, but the question is what the period should be. With regard to a public authority like a municipal council, I suggest that they are particularly vulnerable. Their liability extends over a great length of streets and over large areas of parks and gardens which the public frequent and where accidents can happen without any possibility of the council knowing of them except by notice from the person injured. It is different with a private individual who would probably know of the accident and take steps to collect evidence.

Mr. Fraser.—My experience as a barrister over twenty years leads me to believe that the best prepared people in the courts have generally been the defendants, and they have always had some facilities for getting confidential information from police reports and other sources not open to the plaintiffs. I shudder to think of the injustices that were done before the introduction of third-party insurance.

Mr. Rylah.—I think it will be generally agreed that notice is given to the defendants as soon as possible irrespective of whether there is a statutory period.

Mr. Oldham.—It is always possible to advance a few exaggerated arguments, but we have to decide these points on the general trend. The great bulk of people want their redress as soon as possible. The courts regard with suspicion and carefully scrutinize claims brought in circumstances where some one lies low and makes no move until the council has lost the opportunity of inquiry. Such a claim would involve the court in the question of the bona fides of it.

Mr. Jenkins.—If the evidence is given and cannot be rebutted, the court might be suspicious, but could it give a decision against the evidence if the council could not produce rebutting evidence?

The Committee adjourned.

WEDNESDAY, 9TH AUGUST, 1950.

Members Present:

Mr. Mitchell in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Crean,
	Mr. Oldham,
	Mr. Rylah.

Mr. Andrew Garran, Assistant Parliamentary Draftsman, was in attendance.

Mr. Oldham.—The Committee has two or three questions to ask Mr. Garran, and that, I think, should conclude the evidence on this matter. There is no reason why the Committee should not then proceed to consider the report. If I remember correctly, Mr. Crean raised the question of a continuing cause of action.

Mr. Fraser.—A case in point would be wrongful detention in an asylum. I think the English Act contains a specific section. Mr. Crean was a little worried about the wording of the section in our Victorian Act relating to within two years of the cause of action. He was wondering whether it would be covered.

Mr. Garran.—This arises out of a memorandum of the Chief Justice's Law Reform Committee, and I think you have the wrong man here.

Mr. Oldham.—This point arose out of consideration of your memorandum of the 29th November in regard to the new report. This Committee has already considered the portion dealing with public authorities.

Mr. Rylah.—I think Mr. Crean pointed out there had been an amendment of the English Act, designed to overcome the difficulty in regard to the question of when time begins to run with a continuing cause of action. Apparently, that amendment had the opposite effect to what was intended. The court, in a case of a continuing cause of action, construed that time would run from the beginning of the cause of action, instead of from the last act in a continuing cause of action. I have not looked into it, but I think that was the way he put it.

Mr. Garran.—That does not help me at all. It depends on what provision they are working under and on the actual case.

By Mr. Fraser.—Sub-clause (6) of clause 5 has the limitation in respect of torts. There were two questions raised by Mr. Crean, firstly, as to the definition of "personal injuries" and, secondly, "after the cause of action accrued." The supposition was raised of a man being wrongfully detained in a lunatic asylum; he might be kept there for five years. Does the cause of action relate back to the original wrongful detention?

Mr. Garran.—In regard to the first point, I am not quite certain what is meant by "personal injuries." Of course, I have a general idea. I suppose that trespass to the person involves injury to the person. It has to be founded on tort. The Committee will remember I dissented in the report of the Chief Justice's Committee. I did not wish to create a different provision for torts and contracts here because I considered that division could not always be preserved; there would be always the possibility that some poor plaintiff would have to pay to find out what it meant.

By Mr. Fraser.—Did not the English Committee feel there might be difficulty in that?

Mr. Garran.—Yes.

Mr. Fraser.—In the absence of some definition.

Mr. Garran.—Yes. The English Committee seem to have followed the same course as the authorities here; members of that Committee desire to do something about the matter. They realize that a good job cannot be made unless the question of limitation of actions against public authorities is cleared up. They are up against vested interests then, and they are endeavouring to meet the public authorities on their particular ground at a lower level, without coming down to that level on other grounds. I do not like it. My own personal point of view is that everybody should be put on the same basis, and possibly the overall period could be cut down in all cases. However, as I say, I was a dissenter, and I really think Mr. Justice O'Bryan, chairman of the Chief Justice's Committee, should be asked to give his views. I might say something unfair to him or his Committee.

By Mr. Thomas.—Because you expressed an opinion in the minority?

Mr. Garran.—Yes, I was a minority all by myself; all the other members of the Committee thought otherwise.

Mr. Oldham.—You have been able to state what the majority thought.

Mr. Garran.—Yes, but I think they should be able to speak for themselves.

Mr. Oldham—The Committee has heard from them before.

Mr. Rylah.—Perhaps the definition of "personal injuries" could be left over.

Mr. Garran.—I do not know exactly what it means; I think I have a general idea, the same as members of this Committee.

By Mr. Oldham.—What is a continuing cause of action?

Mr. Fraser.—The English Committee states: "We do not think it is necessary for us to define 'personal injuries', although this may possibly be necessary if legislative effect is given to our recommendations."

Mr. Oldham.—That is the point raised by the Committee.

Mr. Fraser.—The report continues: "We wish, however, to make it clear that we do not include in that category actions for trespass to the person, false imprisonment, malicious prosecution, or defamation of character, but we do include such actions as claims for negligence against doctors."

Mr. Garran.—It would not mean quite that to me. I thought the ones first excluded were included; for instance, trespass to the person.

Mr. Fraser.—Yes, I would have thought that trespass to the person would be a personal injury.

Mr. Garran.—Also, false imprisonment.

Mr. Fraser.—Yes, and a person could suffer malicious prosecution.

Mr. Garran.—That is so, but not generally.

Mr. Fraser.—I think it will have to be elucidated.

Mr. Garran.—Some plaintiff will pay for it.

Mr. Rylah.—If we accept the view of the English Committee in this matter, which I think we do, for the purposes of the section we should endeavour to define "personal injuries."

Mr. Garran.—The reason why the English Committee did not define it is that they found it a little difficult.

Mr. Rylah.—If the recommendations of the Committee are accepted, it may be necessary for the Legislature to define "personal injuries."

Mr. Fraser.—This matter comes prominently before our minds by virtue of the Lord High Chancellor's Committee in England.

Mr. Garran.—I think sub-clause (6) of clause 5 does raise it.

Mr. Fraser.—Yes, but its importance was not realized until the observations of this Committee were obtained. This is a matter upon which the Committee might ask Mr. Justice O'Bryan to comment.

By Mr. Rylah.—Mr. Garran, what is your view of the second aspect of the question?

Mr. Garran.—Really, two questions have been raised in one. Is it suggested that a person in a lunatic asylum is there because of a wrongly issued certificate?

Mr. Fraser.—No, the position was taken generally —wrongful where the original detention was wrongful, for whatever ground.

Mr. Garran.—There is the anomaly in the law, which I pointed out in my dissent, that at the moment if a lunatic suffers damage while he is in a lunatic asylum, no period of limitation runs against him. He has his period of three years, or whatever it may be, after he comes out. But, if he is wrongfully confined on a false certificate issued by a medical practitioner, the period runs against him. The doctor will be perfectly safe, provided he can keep the person in the institution for a sufficient period. That is because of the way in which the exemption of the statutory period is drafted. The certificate, once falsely granted, gives the cause of action—false imprisonment on that certificate.

By Mr. Fraser.—Supposing the person had an action for false imprisonment against some public authority, and he were detained in prison during the whole of the period, would the statute begin to run as soon as he was imprisoned?

Mr. Garran.—It would begin to run as soon as he was first falsely imprisoned.

By Mr. Fraser.—If he were confined long enough, would he lose his right of action?

Mr. Garran.—Yes. I invite attention to clause 6 of the Bill which deals with the problem arising from the conversion or wrongful detention of a chattel. For instance, if my car were held against me and driven by another person, a new act of conversion would be committed every day on which it was driven. Sub-clause (1) of clause 6 was inserted to provide that once conversion has been effected, there is always conversion, and the period commences to run from the original wrongful holding. That applies also to wrongful imprisonment. The right of action accrues when imprisonment commences, and continues to run from then.

By Mr. Fraser.—Has the English Act some saving clause in relation to that aspect?

Mr. Garran.—I could not say.

Mr. Fraser (to Mr. Crean).—At the last meeting of the Committee, when the question of a continuing wrong was under discussion, you read a section from the English Act. Can you give a reference to that section?

Mr. Crean.—Yes, section 21 of the Limitations Act of Great Britain, 1939, reads—

> No action shall be brought against any person for any act done in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority or in respect of any neglect or default in the execution of any such act, duty, or authority, unless it commenced before the expiration of one year from the date on which the cause of action accrued: Provided that, where the neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued for the purposes of this sub-section until the act, neglect, or default has ceased.

Mr. Fraser.—Yes, that is the matter to which reference was made earlier to-day.

By Mr. Crean.—Does section 21 follow the same pattern as the provision contained in the Public Authorities Protection Act of 1893?

Mr. Garran.—I believe so. The correct answer could probably be gleaned from the original report of the Chief Justice's Law Revision Committee. That is contained in this Committee's report of 1949. On page 12, under the fourth item, dealing with the Limitations Act, section 21, in relation to public authorities, is omitted with a note: "See paragraph 9 of this report." Paragraph 9 appears on page 8 and contains a lengthy reference to public authorities.

By Mr. Fraser.—Does the Committee say anything about this particular point?

Mr. Garran.—No.

By Mr. Crean.—I take it the reason being, as disclosed in the reading of the cases in English courts, that the additional proviso really gave no further protection?

Mr. Garran.—It is only a proviso on the Public Authorities section.

Mr. Crean.—Even so, the proviso did not seem to give any additional protection to the section because of the narrow way in which it was construed by the court.

Mr. Fraser.—That interpretation whittled it away to a large extent.

Mr. Crean.—That is true.

Mr. Fraser.—I think there is something in this. I do not see why a man should be prevented from taking action. Take false imprisonment, for instance, if the time commences to run as soon as the wrongful act is done occasioning imprisonment, the time is running against him while he is there. It is unlikely that such a thing will happen.

Mr. Garran.—The suggestion that in exceptional cases the court should have power to extend the time emanates from such a case. It is a proposition I do not like, but it is the extremely exceptional case which embarrasses one from time to time.

By Mr. Thomas.—Is it not possible for the Committee to delete any reference to it?

Mr. Garran.—This Committee can do anything it wishes.

Mr. Fraser.—Parliament can determine the matter.

Mr. Oldham.—The case for the removal of limitations generally should not be based on the extreme case for which, perhaps, some provision should be made.

Mr. Thomas.—I am speaking of the case mentioned by Mr. Garran, the isolated case.

Mr. Garran.—I know of no case of false imprisonment within a six-year period, where the period has been found too short.

Mr. Thomas.—Mr. Garran says he knows of no case within the period of six years. Has not there been a case before the court where a person was sentenced to ten years and a question of wrongful imprisonment arose?

Mr. Fraser.—Mr. Garran is saying whilst the period within which action must be brought is six years, he has never heard of a case in which the wrongful imprisonment has extended to such a length of time that the individual was barred because of the six years' provision.

By Mr. Oldham.—Wrongful imprisonment is where a person is detained *ultra vires,* perhaps because of some wrongful act of a doctor in certifying. I suppose there are cases of wrongful "imprisonment" other than in gaols?

Mr. Garran.—In one case there was a man who travelled from Manly to the other side of the harbor. There they would not let him pass out because he did not have a ticket. Fares were collected only on the one side. He could have gone back to Manly and obtained a ticket. That was false imprisonment because his liberty of movement was restricted.

Mr. Fraser.—A man can be imprisoned by closing a door upon him. I think Mr. Justice O'Bryan might have something to say upon the question of personal injuries. The Committee in England suggested it would probably have to be defined by legislation.

By Mr. Oldham.—On the question of false imprisonment, does that date from the first date of imprisonment or can it arise at any period?

Mr. Garran.—I should imagine that as soon as movement is so limited the cause of action arises.

Mr. Oldham.—You could not date it from the termination.

By Mr. Crean.—The Limitations Act 1939 says "the date on which the cause of action accrued." Would not the accrued date be the first date of imprisonment?

Mr. Garran.—Apart from the person who is wrongly or falsely certified to be a lunatic, I do not think false imprisonment is likely to last that long. When a man is put into gaol as the result of a decision of the court, it is practically impossible to say he is falsely imprisoned.

Mr. Fraser.—I am inclined to agree with that.

Mr. Rylah.—That is so. It is really the case of the lunatic that will cause worry.

Mr. Fraser.—I was thinking of Harnett's case. He escaped and was debarred.

Mr. Garran.—There was such a case, but I cannot recall the name.

By Mr. Crean.—I only raised the matter because I had in mind the words in the other Act, about continuing, and I wondered if there was any need to include a similar provision here. I suppose the occasions where the action is a continuing one are limited in number?

Mr. Garran.—I think they were afraid that the period of one year was too short, even in the case of public authorities. They put that in with the hope of it being extended but, apparently, the courts have been chary of extending it.

Mr. Fraser.—Arising out of this report, Mr. Garran will be charged with the duty of framing the Bill. With great respect to Mr. Oldham, the last Bill, instead of wiping out those limitations, was, in the schedule, keeping them alive. We have departed from that. We are not going to have notice, and we are putting all these authorities on the same plane. Therefore, all those in the Second Schedule will go.

Mr. Garran.—Three outstanding cases remain; the *actio personalis* rule, Lord Campbell's Act, and the Testator's Family Maintenance.

Mr. Oldham.—I think we agreed to leave those alone.

By Mr. Rylah.—Was there any special reason for the Chief Justice's Committee retaining the one-year period?

Mr. Garran.—It is a long time ago, but, from recollection, they just did not want to touch it.

Mr. Rylah.—The reason given in their report is that they feel deceased estates ought to be wound up quickly.

Mr. Garran.—Yes, but they go against that in other cases.

Mr. Rylah.—To me, it seems wrong that in the case of Lord Campbell actions there is a period of only twelve months in which to take action, while in others less important matters there is a three-year period.

Mr. Fraser.—I do not see why the defendant who has caused personal injury to *X*, occasioning his death, should be placed in a more favoured position in regard to *X* than he would be in regard to an individual who, while in the same accident, suffered personal injuries but did not die.

Mr. Oldham.—In England, the party in a Lord Campbell action has two years, has he not?

Mr. Crean.—That is the term set out in the report.

Mr. Garran.—It is a suggestion by the recent Lord Chancellor's Committee.

Mr. Oldham.—Can we ascertain if they give any reasons for that?

Mr. Fraser.—What they say is it should be two years from the death of the deceased—"In order that the deceased's cause of action may, if a proper case, be kept alive for the benefit of his dependants, we recommend that the dependants should have the same right to apply for leave to bring the action as the deceased himself would have had, had he lived, i.e., more than two years but not later than six years from the accrual of the cause of action."

Mr. Garran.—They are equating that with their two-year period for tort, which makes it easy.

Mr. Fraser.—Here, too, it could be made easy by providing for a period of three years.

Mr. Garran. —That is so.

Mr. Rylah.—I would be strongly in favour of that. I think different considerations are involved in the Testator's Family Maintenance.

Mr. Fraser.—I do not think we should interfere with that at all.

Mr. Oldham.—For the sake of uniformity, I should be quite happy to agree to that.

Mr. Garran.—In my report, I wanted to bring all these into line and make it easy for the layman to follow. I think Mr. Justice O'Bryan should be asked for his views on the matter.

Mr. Oldham.—The Committee has Mr. Garran's comments upon them. I think the present feeling of the Committee is that uniformity should be obtained.

By Mr. Rylah.—To achieve that object, would it be necessary to take out the second part of section 19 of the Wrongful Imprisonment Act?

Mr. Garran.—That is so. If the decision of the Committee were along those lines, a corresponding amendment would be required.

Mr. Fraser.—It should be out altogether.

Mr. Garran.—One would have to be certain it was a personal injury. That is where the problem would arise; the period might be running into six years.

Mr. Fraser.—Instead of putting it in the Limitations Act at all, in order to make it uniform, it could be made three years instead of twelve months.

Mr. Garran.—I have sought to have these limitations set out in the Act where one looks for them, instead of having cross references.

Mr. Oldham.—I think those are the points members of the Committee desired to put to Mr. Garran. Arrangements should now be made to consult Mr. Justice O'Bryan.

Mr. Garran.—Before withdrawing, may I just state that I made one mistake in my statement when I was last before this Committee. When asked about the application of the Bill to the Crown, I overlooked clause 32, which provides: "Save as in this Act otherwise expressly provided, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects; and for the purposes of this Act a proceeding by petition of right shall be deemed to be commenced on the date on which the petition is presented, provided that this Act shall not apply to any proceedings by the Crown for the recovery of any tax or duty or interest thereon."

Mr. Oldham.—There are really three questions left for discussion with Mr. Justice O'Bryan—

(1) Alteration of the period of one year so far as Lord Campbell's Act is concerned;

(2) Definition of "personal injuries;"

(3) Desirability of a saving clause for a continuing cause of action.

The Committee adjourned.

MONDAY, 14TH AUGUST, 1950.

Members Present:

Mr. Mitchell in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barry,
The Hon. A. M. Fraser,	Mr. Crean,
The Hon. F. M. Thomas.	Mr. Oldham,
	Mr. Rylah.

His Honour Mr. Justice O'Bryan was in attendance.

The Chairman.—Mr. Justice O'Bryan does not wish to present any new points, but is quite prepared to answer questions.

Mr. Oldham.—Three points have emerged during recent discussions, and it was proposed to ask Mr. Justice O'Bryan's views on them. The first related to sub-clause (6) of clause 5, which is the saving clause in the case of wrongful imprisonment and detention in a lunatic asylum. The second matter was with regard to the alteration of the period of limitation in Part III. of the Wrongs Act—Lord Campbell's Act. The third point was the definition of "personal injuries" in sub-clause (6) of clause 5 of the Bill under discussion, in reference to the comment contained in the report of the Lord Chancellor's Committee.

Mr. Justice O'Bryan.—I understand that it is proposed to increase the time within which a person may bring an action under Lord Campbell's Act. At present one year is the limit, and it is suggested that it should be increased to two years. In my experience, both at the Bar and on the Bench, I have not come across any cases where people have been hurt by the present limitation. I see no reason, however, why a longer period should not be given, and, indeed, I am inclined to favour the idea that a longer time than twelve months from the death of the injured person should be given to the relatives within which they may commence their action.

It is different from a claim against an estate. In claims against the estate of a deceased person the limit is either six or twelve months. It is very desirable that action should be brought promptly after the death of the person who has allegedly done the injury, otherwise the estate cannot be wound up and distributed, and executors would be placed in an awkward position if an action might be brought against the estate a long time after the testator's death. However, in the case about which we are speaking the claim would not be against a deceased's estate, but against a living person. The widow and the children are given rights in respect of the death of their deceased husband or father, and to say that action must be brought within a year of death is, I think, an unduly short time. I would agree with the extension to two years as being a useful and good amendment of the law.

The second point is in regard to the meaning of the expression "personal injuries." In England the point has been raised as to what is covered by "personal injuries." I assisted to draft the Bill which the Committee is now considering, and I am quite sure what I had in mind was "injuries to the person"—that is, physical damage done to the person. In England it is thought that is probably what the term means, although it is suggested that it might cover the case of false imprisonment where there has been no damage to the person, but simply deprivation of liberty, or defamation where there has been, in one sense, injury to the person, in the sense of damage to his reputation, although it is not damage to the person. I think I know what was in the minds of the other members of the Chief Justice's Committee, viz., that it was limited to physical injury to the person. It is used in sub-clause (6) in conjunction with the words damage to property. The words are "personal injuries or damage to property." I think in that phrase the words are plainly limited to injuries to the person, and probably it is the meaning which the courts would place on it.

Now that the question has been raised, however, I suggest that it may be better if the phrase "injury to the person" were used. I think that would be a clearer phrase, because in law injury is sometimes used in the sense of something that is done contrary to right. The word "injury" comes from the Latin words *in iuria*—against one's rights. In some cases it is said that there must be both damage and injury. That is some damage or loss inflicted contrary to right or law. It is for that reason that I think the English Committee raised the question as to whether personal injuries might not be given a very much wider meaning than "damage to the person." To make it clearer, it might be better if the phrase used in sub-clause (6) were "injury to the person or damage to property"—by using that phrase you would make it clearer that the period of limitation for such actions as malicious prosecution and false imprisonment were not barred at the end of three years; I think it would be better to leave the period for such actions at six years. The period of limitation in respect of libel and defamation is specially dealt with.

Mr. Fraser.—The Lord Chancellor's Committee stated that trespass to the person is not covered. It occurred to me that that was strange because trespass to the person could be by just a tap, in one sense. That is a physical injury in law.

Mr. Justice O'Bryan.—I think what was meant by that was that some trespass to the person would definitely be covered. For instance, assault which covers gross personal bodily injury would certainly be covered, but a mere trespass to the person, such as a tap, would not be covered. I do not think that would amount to personal injury.

Mr. Fraser.—You are now getting to the matter of degree.

Mr. Justice O'Bryan.—That is always the case. No matter what phrase is used, there will always be something which nearly comes within it, and something which just comes within it. I suggest that there is always a tendency by people in drafting legislation to try to cover every possible case one can think of instead of using more general terms. It is much more difficult to try to visualize every possible case that can occur within the next 25 years than it is for a Judge to deal with it when it arises. If the legislative intention is expressed plainly enough, it will be found that it works out pretty well in the end.

I would not try to define in the statute the term "personal injuries." Probably if that is attempted the Committe will get itself in a worse position than if a general phrase is used. However, now that this discussion has arisen it does give rise to the desirability of using a slightly different phrase.

Mr. Rylah.—If your suggestion is accepted with regard to false imprisonment and malicious prosecution another sub-clause will have to be inserted.

Mr. Justice O'Bryan.—That is if you wish to reduce the period of limitation in respect of those two matters. They are already covered by paragraph (*a*) of sub-clause (1) of clause 5.

Mr. Fraser.—If the words "damage to the person or property" are used, the period of action so far as malicious prosecutions are concerned is limited.

Mr. Justice O'Bryan.—I do not think a malicious prosecution would be covered by it, because that is not damage to the person.

Mr. Fraser—I was using the word "damage" in the wider sense, as distinct from injury to the person. I preferred your original phrase—injury to the person or damage to property. That draws a clear distinction between damage in the wide sense and the injury. If that phrase were used that would retain the period of six years.

Mr. Justice O'Bryan.—What about the term "physical injury to the person or damage to property?"

Mr. Byrnes.—Is not that what you intended?

Mr. Justice O'Bryan.—Yes.

Mr. Fraser.—Of course, as you say, once we start playing around with words we are in difficulties. I think the phrase "injury to the person or damage to property" brings into bold relief the distinction between the nature of the wrong or the damage in the personal sense and the property sense.

Mr. Byrnes.—I think physical injury is meant.

Mr. Justice O'Bryan.—Do you think the word "physical" should be inserted?

Mr. Byrnes.—Yes.

Mr. Justice O'Bryan.—I do not think there would be any harm in saying "physical injury to the person or damage to property."

Mr. Fraser.—That would assist, because the law is not being altered in any sense; the time within which an action may be brought is being fixed. Those words will make it clear that certain torts will last six years.

By Mr. Thomas.—Does the limitation of period cover both personal injuries and damage to property?

Mr. Justice O'Bryan.—Yes. With the insertion of the words I have suggested sub-clause (6) of clause 5 will read—

> No action for defamation of character and no action for physical injury to the person or damage to property founded on tort or breach of a statutory duty shall be brought after the expiration of three years after the cause of the action accrued.

The last question raised by Mr. Oldham is the most difficult. First of all, I am asked a question of law which I am not prepared to answer at present. I have been asked if a person is imprisoned for, say, five years, from when does the cause of action arise—in other words, when does time start to run against him. I am inclined to say that there is a fresh imprisonment every minute, that there is a continuing trespass. There is a trespass against the person when he is arrested, there is a trespass against him when he is put in prison, and there is a trespass running all the time he is kept there. Therefore, right up to the time he is released there is a cause of action accruing, and he would have six years from the time of his release to bring an action. There would be a limit as to the damage which he could recover. That is to say, the damage may be only for the six years prior to the bringing of the action. However, as I am not certain about this matter, I should like to study it and forward my views in writing to the Attorney-General.

Mr. Oldham.—If you should reach the conclusion that the cause of action arose at the time of the giving of a wrong certificate——

Mr. Justice O'Bryan.—I was not dealing with lunatics but with an ordinary case of trespass to the person, such as false imprisonment. I was coming to deal with the wrongful detention of the supposed lunatic. A person is put into an asylum on a certificate of two doctors. Let us suppose that the person is sane and that the certificates are wrongly given and that there is an action against the doctors. It has been suggested to me, and maybe rightly so, that the only responsibility of a doctor is in respect of his certificate and that the cause of action against him would arise at the time he gave his certificate. In such a case a person might be kept in an asylum for a great number of years and not have a real opportunity of bringing an action until he was released. He might then find himself barred from taking any action.

That situation might also apply where a person is put into an internment camp on the certificate of a Minister or some other person who has authority to give such a certificate. In that case there is no right of action for false imprisonment, unless there is a gross case in which the Minister or the person acting for the Minister has not really exercised his statutory power but has done something quite outside it. For instance, a person could be interned because of malice, and the Minister would not be exercising his statutory powers at all. The only way in which such a case could be dealt with effectively, I suggest, is to include a separate clause in the Bill, providing that where a person is kept in confinement or is imprisoned on the certificate of another his cause of action shall be deemed to commence when he is first released from such confiinement. It must be understood that I am not attempting to draft a clase, but something on those lines would be required.

Mr. Fraser directed my attention to a case that occurred in England many years ago. A man named Harnett was imprisoned for nine years or more, and when he was released he wanted to bring an action against certain doctors, because he alleged there was negligence in their signing of the certificates. However, he found that he was barred from taking that action. That was an unusual cause of action, but it could be covered if the Committee thought it desirable so to do.

Mr. Thomas.—Did not that case arise out of the war?

Mr. Justice O'Bryan.—No. It was the case of a man who was certified as being insane and was kept in an asylum for a number of years. When he came out he wanted to allege that he had been committed as a result of the negligence of the doctor who signed the certificate. However, his cause of action was barred. Under the Lunacy Act a person in an asylum has the right to write to Supreme Court Judges and also the Attorney-General. From time to time all members of the Bench have received communications from asylum patients. In a great number of instances the letters indicate that the writers are suffering from some form of derangement of the mind. When I receive such a letter I send it to the Secretary of the Law Department, asking him to have inquiries made. I recall a case which occurred when I first went on to the Bench. I knew the writer and I think it was more of a personal than an official appeal. She was released in a short time. The patient was not insane but had been committed to a receiving home for her own protection until she could be sent to a suitable place where she would be well cared for. Under our Lunacy Act there is little danger of a person being wrongfully kept in an asylum for any length of time.

Mr. Thomas.—There is this possibility: A medical man makes an examination and the evidence shows that the patient is insane. However, after being detained in an asylum for six months, the patient recovers and then the question arises as to damages. A doubt is created as to the circumstances existing when the doctor gave his certificate because a patient makes a quick recovery.

Mr. Justice O'Bryan.—We now have a safeguard which did not exist previously. I refer to the appointment of the Public Trustee, who is the guardian of the affairs of patients.

Mr. Barry.—When I was Minister of Health I used to receive letters from patients, and often the communications themselves suggested that the writers had deranged minds.

Mr. Justice O'Bryan.—The point that must be considered is whether the safeguards of the Lunacy Act are sufficient to make it unnecessary to include a special provision extending the time limit. That is a matter as to which I feel unable to assist the Committee, except to say that my experience shows that the Act protects patients.

Mr. Fraser.—Section 21 of the English Limitation of Actions Act of 1939 makes provision for cases of continuing wrongs.

Mr. Justice O'Bryan.—That refers to actions against public authorities with which the Chief Justice's Law Reform Committee dealt in a different way. There are two sides to the question of limitation of actions. One reason why the time is limited is to protect a person who may be the defendant in a case. In regard to "running down" cases, it is thought that it is difficult to obtain witnesses to meet such a claim after three years. After 18 or 19 years it might be difficult for a doctor to produce evidence to meet a claim for wrongly certifying a person as being insane, and he may have given his certificate for a number of reasons. In the meantime he may have examined hundreds of other patients. It may be thought unfair to say, "No matter for how long a person has been in an asylum, he can take action against you for wrongful certification within a specified period after leaving the institution." Medical men are entitled to protection as well as their patients. I am doubtful about the wisdom of extending indefinitely the period within which action may be taken in such cases.

Mr. Fraser.—Your suggested phrase of "physical injury to the person" makes the period six years in cases of wrongful detention.

Mr. Justice O'Bryan.—Yes. Ex-patients will have six years in which to bring an action. I am pleased to hear that it is not proposed to reduce the period for certain torts to two years, as was suggested in England. I also think it would be wrong in these matters to give a discretion to a Judge to extend the time, as is proposed in England. In the case of personal injury and damage to property, the Lord Chancellor's Committee suggested that the period should be two years and that the Judge should be given power to extend it to six years. In my opinion that is wrong, as it would introduce uncertainty into the law. People will not know whether they have the right to make a claim; the Judge will not know upon what grounds he should exercise his discretion. I contend that it is better to determine the period in the Act.

Mr. Fraser.—Doubtless you will be pleased to learn that this Committee agrees with the Chief Justice's Committee that there should be no special notice in relation to actions against public authorities.

Mr. Justice O'Bryan.—It is unnecessary for me to say that I agree with that view. From my knowledge the present requirements have resulted in injustice being done to persons who have lost their right of action through no real fault of their own.

The Committee adjourned.

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

1950

VICTORIA.

SECOND PROGRESS REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

TRANSFER OF LAND BILL

TOGETHER WITH

MINUTES OF EVIDENCE

Ordered by the Legislative Assembly *to be printed, 29th November*, 1950.

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

TUESDAY, 20TH JUNE, 1950.

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

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 28TH JUNE, 1950.

23. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barry, Mr. Crean, Mr. Mitchell, Mr. Oldham, Mr. Reid, and Mr. Rylah be appointed members of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—put and agreed to.

SECOND PROGRESS REPORT

THE STATUTE LAW REVISION COMMITTEE appointed pursuant to the provisions of the *Statute Law Revision Committee Act* 1948, have the honour to report as follows :—

1. On the 20th September, 1949, the Committee presented to both Houses of Parliament a Progress Report on the Transfer of Land Bill—a Bill to amend and consolidate the Law relating to 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. Certain evidence given by Mr. H. D. Wiseman, of Counsel, who was a member of the Chief Justice's Law Reform sub-committee on this Bill, was appended to the Progress Report (Report D. No. 3—Victorian Parliamentary Papers of 1949).

2. Since presenting the Progress Report, the Committee have heard evidence in Melbourne from—

Mr. D. Mackinnon, representing the Law Institute of Victoria ;
Mr. H. S. McComb, Past-President of the Victorian Institute of Surveyors and member of the Surveyors Board ;
Mr. F. W. W. Betts, then Commissioner of Titles ;
Mr. A. P. Sutherland, Registrar of Titles ;
Mr. F. W. Arter, Surveyor and Chief Draughtsman, Titles Office ;
Mr. H. D. Wiseman, of Counsel ;
Mr. E. S. Vance, Master of the Supreme Court and formerly Registrar of Titles ;
The Hon. R. J. Rudall, LL.B., B.Litt., M.L.C., Attorney-General and Minister of Education of South Australia ; and
Mr. C. F. Knight, Secretary to the Law Department.

Pursuant to Resolutions of the Legislative Council and the Legislative Assembly, the Committee visited Adelaide, inspected the South Australian Lands Titles Office, and heard evidence from—

Mr. M. C. Kriewaldt, representing the South Australian Law Society ;
Mr. P. B. Cirvosso, representing the Real Estate Institute of South Australia ;
Mr. G. E. Cresswell, Searcher, Lands Titles Office, Adelaide ;
Mr. D. F. Collins, Searcher, Lands Titles Office, Adelaide ; and
Mr. G. A. Jessup, Registrar-General of Deeds for South Australia.

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 Second Progress Report, to which is appended the evidence given by the witnesses mentioned in paragraph 2 above, in order that this evidence may be made available for the information of Honorable Members.

Committee Room,
29th November, 1950.

5

TRANSFER OF LAND BILL.

MINUTES OF EVIDENCE.

[Note.—Evidence given prior to 25th July, 1950, was heard by the Committee appointed during the 1949 Session.]

TUESDAY, 27TH SEPTEMBER, 1949.

Members Present:

The Hon. A. M. Fraser in the Chair;

Council:	*Assembly:*
The Hon. P. T. Byrnes,	Mr. Bailey,
The Hon. G. S. McArthur,	Mr. Barry,
The Hon. A. E. McDonald,	Mr. Merrifield,
The Hon. F. M. Thomas,	Mr. Reid,
The Hon. D. J. Walters.	Mr. Schilling.

Mr. Duncan Mackinnon, representing the Law Institute of Victoria, was in attendance.

The Chairman.—The Committee is prepared to receive your submissions.

Mr. Mackinnon.—The Institute has a legislation committee which considers various matters coming before Parliament. It examined the Bill and made a report to the Council of the Institute, which submitted proposals to this Committee. The Council appointed a sub-committee—consisting of Mr. Arthur Pearce, a member of the Chief Justice's Sub-Committee that dealt with the Bill, Mr. P. Moerlin Fox, a lecturer in conveyancing at the university and myself—and it gave consideration to the first questions with which I shall deal.

At the outset, I wish to thank the members of the Committee for permitting me to appear to elaborate our representations. From a perusal of the transcript of the proceedings, it is clear that members are taking a keen interest in the Bill. The desire of the Institute is to add something constructive to discussion of the measure which is good but which, we think, can be improved in parts. A number of matters were placed before the Committee by way of correspondence, and after discussing those questions, I trust I shall have the opportunity of commenting on other important issues which have been mentioned in the course of the Committee's discussions but which have not been referred specifically to the Institute. The first letter from the Institute is dated the 30th of June, and proposal (*a*) is in the following terms:

Division 8 of Part VII. of the Bill establishes the principle that any statutory body which acquires land or a charge over land shall be required to protect its interest by the lodging of a caveat. Section 241 provides that, except in the case of fraud, any person dealing for value with the registered proprietor shall upon lodging a caveat or his dealing be entitled to priority over all estates or interests not at the time of lodging appearing in the Register Book or protected by a caveat, with the exception of certain specified interests referred to in section 104 of the Bill or capable of being ascertained by search at the Titles Office. Sub-section 3 of this section provides that nothing in that section shall affect any right acquired by an acquiring authority under Division 8 referred to above. It is considered that sub-section 3 is contrary to the principle established by Division 8 and should be deleted.

The Institute is seeking the deletion of sub-clause (3) of clause 240 (referred to as "Section 241"). It is the desire of the profession to have on the register book everything affecting land, which can conveniently be included. The Bill says and I am paraphrasing "Caveats shall be lodged in respect of charges of Governmental and semi-Governmental authorities and the acquisition of land. If caveats are not lodged, the right to the charge or acquisition is lost." It then says "In regard to 'acquiring authorities,' we are not prepared to go so far. We do not think that they should lose their right altogether. The land owners should not be harmed so we will compensate them but a Governmental authority should have its acquisition just the same." The Institute contends that that is wrong as it destroys the principle of the Bill. If sub-clause (3) of clause 240 is deleted, everyone will be placed upon an equal footing with no preference to any Governmental authority or acquiring authority—the latter being defined in clause 218. It is a question of what is required. It is suggested that if the Bill were made uniform it would be of greater service to the community. If you agree the sub-clause will be omitted. On the other hand, if it is thought Governmental bodies should receive preferential treatment, you will allow the sub-clause to remain.

By Mr. Byrnes.—I raised that point previously. A town planning authority, the Housing Commission, or a municipality may obtain an interim order over an area; the order may run for many years, and eventually not be used. Even if such an order were not registered, it would prevent land transactions. Is that what you have in mind?

Mr. Mackinnon.—No; that goes further. The Bill says that when an authority acquires land, it should lodge a caveat to protect its interest. We say that that does not go far enough. The legislation ought to require an authority to lodge a caveat when it serves notice to treat which is only preparatory to acquisition. If for example land is to be acquired for the Education Department, notice to treat is given, but the land may not vest in the Department for some months. Then there is the question of interim orders issued under the Town and Country Planning Act; that aspect needs deep consideration. We have not suggested what provision would be sufficient to cover that situation. The point we make is that these people should lodge a caveat; if they do not do so, they should lose their right. That is the principle sought to be established by the Bill. However, it is being departed from in a vital manner in sub-clause (3) which, we contend, should be deleted.

By Mr. Schilling.—I do not see the point. A Governmental authority serves notice to treat, and you say that if it does not lodge a caveat it should lose its right. How can it do so?

By Mr. McDonald.—The State could not prevent the Commonwealth from acquiring property?

Mr. Mackinnon.—The Commonwealth is in a special position, and its co-operation would be necessary.

By Mr. Schilling.—The Victorian Parliament could not bind the Commonwealth Parliament as to the acquisition of land?

Mr. Mackinnon.—I agree, but that is not my point. Governmental authorities, municipalities, the Housing Commission, and so on, are controlled by the State Government. If the legislation provides that they will lose their rights if they do not lodge caveats, they will do so.

By Mr. Schilling.—What rights will they lose? They will still have the power to acquire property.

Mr. Mackinnon.—They will lose their turn in the queue.

By Mr. Schilling.—Despite their position in the queue, they could still acquire property?

Mr. Mackinnon.—That is true. That is an additional reason why the sub-clause should be omitted. The authority is protected by the nature of its constitution. If the Housing Commission needs a certain area, it will obtain it. What we are trying to do is to make the position clear upon examination of the title certificate. If the amendment is agreed to, a person desiring to buy a block of land will know exactly where he stands. He will say, "The title is clear and I can buy the land. I may not hold it for any length of time if the Housing Commission requires it, but my dealing is certain." That is the aim of the Bill.

Mr. Merrifield.—It might protect the acquiring authority by precluding the owner from transferring to someone else.

Mr. Mackinnon.—I can quote a recent illustration to which, perhaps, I should not refer because it might be asserted that I had not done my job, as I agree I did not. I was acting for the purchaser of a block of land and did not ask the Housing Commission if it had established any orders against it. The dealing passed through the Titles Office and my client was issued with a title. Eventually he learnt that the Housing Commission had acquired the property two years previously. The vendor of the land answered my requisition as to orders by any authorities by saying "Not so far as I am aware." Fortunately, my client has been well treated by the Commission; he has been provided with another block and is well satisfied. The position, shortly stated, was that after the property was transferred from *A.* to *B.*, *B.* discovered that the Housing Commission had owned it for two years. That could not happen under this new Bill.

By the Chairman.—In other words, it will not affect any right; it more or less ensures notice?

Mr. Mackinnon.—That is all. It makes more certain that people know what they are taking or what they are not able to take. I have indicated the first amendment; a consequential amendment follows.

By Mr. Thomas.—What is actually conveyed by the expression "dealing for value"?

The Chairman.—It means dealing for a good consideration.

Mr. Mackinnon.—Normally, it would refer to money.

By Mr. Bailey.—"Value" would imply money, but what about "dealing"?

Mr. Mackinnon.—That suggests the acquisition of property.

By Mr. Thomas.—Spencer Jackson buys an estate, eventually subdivides it and resells to the public. Would that be dealing for value?

The Chairman.—It could be for money or for the exchange of one property, with a cash adjustment, for another.

Mr. Mackinnon.—It certainly includes an ordinary transaction of dealing in land for money but it would not be limited to that. It might include, also, the acquisition of land in exchange for other rights. Sub-clause (1) of clause 224 provides that in the event of any resumption or acquisition &c., the officer in charge has to lodge a caveat. If sub-clause (3) of clause 240 is deleted, sub-clause (1) of clause 224 should end at the words "as the case may be."

The Chairman.—That is what Mr. Wiseman suggested.

Mr. Mackinnon.—I understand that reference has already been made to the matter.

The next proposal is dealt with in paragraph (*b*) of the Institute's letter. Section 72 of the *Transfer of Land Act* 1928 makes a certificate of title subject, *inter alia,* to the interest of any tenant where possession is not adverse. This exception has been omitted from clause 104 of the Bill—the corresponding provision to section 72—and the Law Institute strongly recommends that the exception should be restored. The relevant part of section 72 reads:—

and also where the possession is not adverse to the interest of any tenant of the land. . . . . .

In a sense, the proposal for the restoration of the exception is a reversal of my previous contention in respect of another clause. A few moments ago I submitted that we desired to put everything on the register. Now, when we have a chance to make these tenants place themselves on the register we are saying the opposite. The reason is that we do not think it would be wise that every tenancy should have to be entered in the register. Every person who took a house on a weekly tenancy would have to lodge a caveat in the Titles Office or he might lose his right. If the owner of a property transferred to another person who obtained a title, and the tenant had omitted to lodge a caveat stating that he was a weekly tenant, it might be that he would lose the present special rights afforded him by the present Landlord and Tenant Act. However, that is only by the way. The substantive point we make is that people in possession as tenants should be protected as they have been in the past. The majority would not be aware that they would have to lodge a caveat; if they failed to do so, they would lose their interest, and we do not think that is right.

By Mr. Walters.—What interest would they lose in a weekly tenancy?

Mr. Mackinnon.—At the moment it is a valuable interest, whereas in normal times it is not so valuable because plenty of houses are available, and the landlord has the right to remove the tenant on a week's notice anyway.

Br Mr. Walters.—It is wise to make provision to meet a position which may not obtain, say, two years hence?

Mr. Mackinnon.—No.

The Chairman.—The legislation will not go out of existence.

Mr. Walters.—I am referring to the present housing position.

Mr. Mackinnon.—I do not think either this proposal or the amendment we suggest has direct reference to the special conditions at present obtaining. This Bill can be considered quite apart from those special conditions.

By Mr. Schilling.—The Committee considered the clause, and it has been suggested that a tenant, even though only on a weekly basis, should be entitled—if he so desired—to lodge a caveat to protect his interest. He would not be bound to do so, but if his tenancy was on a weekly basis, he might have a very valuable asset, more especially under present conditions, and he might desire to protect that asset. Can Mr. Mackinnon see any objection to persons being able to lodge a caveat if they so desire?

Mr. Mackinnon.—None whatever. Under this Bill they will be entitled, and will always be at liberty, to do so. By omitting the expression in question, the Bill will compel them to lodge a caveat. If they do not lodge one, they might lose something.

Mr. Schilling.—I think all members of this Committee agreed that was not wise, but we thought it might be desirable to protect tenants by giving them the option of lodging a caveat.

Mr. Mackinnon.—I have no objection to that.

By Mr. Bailey.—Suppose a person sold a property and the tenant did not lodge a caveat. Would not the tenant still be protected under the law? He could not be ejected.

Mr. Mackinnon.—That is so under the existing law, but the Bill in its present form will permit of his being dispossessed. Under the law as it stands a tenant—including one who is purchasing under a contract of sale—cannot be dispossessed; but this Bill omits the provision which is his protection and says, in effect, "If you do not lodge a caveat to conserve your interest, you will have no rights at all."

Mr. Bailey.—To get rid of a tenant to-day, all that an owner has to do is to sell the property.

Mr. Mackinnon.—That is the question Mr. Byrnes raised but is related to special conditions, whereas this Bill, when it becomes law, will last a long time.

By Mr. Thomas.—What is the period in which a caveat must be lodged?

Mr. Mackinnon.—A caveat can be lodged at any time.

By Mr. Thomas.—So that if I were a tenant desiring to purchase and everything was in line for the sale, if I did not lodge a caveat there would be a possibility of my being dispossessed of my right to remain the tenant?

Mr. Mackinnon.—There would be that possibility, but that consideration is in the category of "special." Undue importance should not be attached to it simply because it applies to-day. As a weekly tenant a person has special rights under the Landlord and Tenant Act. A few years hence those rights will not obtain.

Mr. Walters.—I cannot see that there would be a great advantage to a tenant when once the Landlord and Tenant Act did not apply.

By the Chairman.—This proposition is being debated on the basis that houses will become more plentiful, and that a tenant will be able to move from one house to another. As long as there is a scarcity, will not the regulations, as to relative hardship and so forth, continue to apply?

Mr. Mackinnon.—The proposal applies to all tenancies—not merely those on a weekly basis. The time may arrive when a weekly tenancy is not of great moment because houses are easy to obtain. But the right to occupy a house for 12 months could be lost.

By Mr. McDonald.—Why should not a tenant protect his position if he so desires? Take the point of view of a purchaser, to whom a title does not disclose a tenancy, but who subsequently discovers that there is one on a year to year basis. He then might have a right of action against the vendor. Unless there is a caveat, the tenant is still in a difficult position in relation to the title. What is the objection to a tenant—whether on a weekly, yearly or any other basis—lodging a caveat if he wants to protect his interest? If he does not, it is his own fault.

Mr. Mackinnon.—Solicitors would make the normal requisition as to occupancy and the vendor would be to some extent liable if he misrepresented the position. Normally, a purchaser would determine that question before settlement, but he may have signed a contract taking over whatever tenancies there were, without knowing their nature. I do not see any objection to the right to lodge a caveat, but the Law Institute contends that it is wrong to compel the tenant to lodge one.

The Chairman.—I should not like a weekly tenant to lose his rights because he had failed to lodge a caveat. There are a large number of weekly tenancies in industrial suburbs. I thought the Landlord and Tenant Act was of limited duration, but I found the other day that there is no limitation of time. The Act may continue for many years and take the place of the old section which says "unless reasonable cause is shown." I think it is desirable in monthly, quarterly, or yearly tenancies that there should be notice, but I would not like to have it made compulsory for weekly tenancies.

Mr. Mackinnon.—I think there should be some decision by the Committee as to whether this or that should be done. At the present time the only proposals there are are in the Bill. Our proposal is that tenants should all be protected without lodging a caveat, as they used to be. That is the determination the Law Institute has reached. I could tell you of an alternative mid-way between the two. My Institute was concerned about cluttering up the register with innumerable, small, unimportant tenancies. That was the objection they had to people having to lodge caveats. They did not consider in any detail any alternative or any breaking down. I should like to refer the Committee to an article which appeared in the *Annual Law Review* of the University of Western Australia, Vol. 1, No. 1, dated December 1948. The article is by Mr. P. R. Adams, who is a Perth solicitor and lecturer on the law of real property in the University of Western Australia. I mention this because I presume that legal men and the draftsmen concerned with this measure may be interested. It is worth investigation.

When the Law Institute in 1938 prepared a memorandum on the *Transfer of Land Act* 1928 and sent the proposals forward for consideration, they did not recommend the deletion of the words altogether, nor that they be kept in entirely. They recommended that there should be an exception with regard to short-term tenancies. That is one of the things of which Mr. Adams speaks in his article, which states—

> After registration a purchaser in New South Wales, Queensland or South Australia obtains a title paramount to that of the person in possession (except short term tenancies). This is not so, however, in Western Australia, nor in Victoria or Tasmania.

He goes on to enumerate as one of the suggested changes of the Transfer of Land Act in his own State, the necessity for excluding from protection by possession all tenants except those with short term tenancies which he would define as those not exceeding three years. There is a man who puts an alternative before you. He is an experienced man interested in this work. He says, "That is what you should do—protect all tenancies up to three years without caveat, but not protect any tenancy above that unless it is registered. If a man has an important interest and he has not lodged a caveat he should take the consequences." I put that to you as something for consideration if you are not in agreement that tenancies should be excluded entirely or left in wholly. I do not put it forward as the view of the Institute. The Institute might support it if it gave it further consideration. I cannot say.

By Mr. Byrnes.—Would a caveat have to be lodged to protect a share-farming agreement?

Mr. Mackinnon.—I think not. The share-farming agreement is an agreement between one man who provides the land and another who provides labour for the purpose of growing a crop.

Mr. Bailey.—Parliament would never agree to a proposal that every small tenant should be compelled to lodge a caveat to protect his interests. Personally I think the law is all right as it stands. The purchaser can requisition as to who is in possession.

By Mr. Reid.—You mean in accordance with the Act?

Mr. Bailey.—Yes.

Mr. Reid.—I think there is a good deal to be said for Mr. Mackinnon's point of view. We can aim at making things too easy for the purchaser. Surely it is up to

him to make inquiries about the property, who is on it, and who is in possession. I think we are rather attempting the impossible if we are aiming at a state of things where a man can search a title and say "This is all right for me to buy" without his being under the obligation to make other inquiries. Mr. Mackinnon's suggestion is a reasonable one.

Mr. McDonald.—Section 131 of the existing Act states—

> The proprietor of any freehold land under the operation of this Act may lease the same for any term exceeding three years.

Under clause 160 of the Bill "The proprietor of any freehold land under the operation of this Act may lease the same for any term."

Mr. Reid.—It is perfectly open for a man to register his lease and for a man with a weekly tenancy to lodge a caveat. He can do that if he thinks it will make it secure for him to let the world know that he has a lease.

Mr. Mackinnon.—To put that in concrete form we should insert in clause 104, if you agree with the contention I put to you, an additional paragraph—"(*f*) to the interest of any tenant of the land where the possession is not adverse." It seems that in New South Wales, under paragraph (*d*) of section 42 of the *Real Property Act* 1900, a person with a tenancy up to three years is protected without the necessity of lodging a caveat or registering.

By the Chairman.—Have you any wording to cover your alternative proposition?

Mr. Mackinnon.—I have not. In South Australia, under section 69 (viii) of the *Real Property Act* 1886-1936 they protect leases up to one year. I have not had the time to frame an amendment covering the alternative proposition but in each case it seems to me that all they have done has been to insert a paragraph such as I suggest.

Mr. Byrnes.—I think there should be some limit to the period. If a man has a long lease surely he should take some steps to protect his own interests.

Mr. Bailey.—He could do that by registering his lease.

Mr. Mackinnon.—Perhaps the draftsmen would have to take into account other things. There are purchases under contract of sale, there are options to purchase in leases, and there are options to renew leases which might take them beyond the term of one or three years.

By Mr. McDonald.—All periodical leases except week-to-week leases are in writing. Why exclude those that are week to week?

Mr. Mackinnon.—You might have a month-to-month tenancy. With the South Australian exemption of one year, and the New South Wales exemption of three years, they must have had a lot of experience to show how a limited tenure has operated.

By Mr. McDonald.—The month-to-month tenancy could run for longer than a year?

Mr. Mackinnon.—In normal circumstances, action could be taken at the end of the first month. A caveat should be lodged to protect certain special interests, which may be included in a lease for a period of less than three years. If a man had a lease for two years with an option to purchase the property, that would be an important matter which should be brought to the notice of a probable purchaser. It might be better to do it by way of caveat.

By Mr. Walters.—Could an owner sell property on which he has already given an option?

Mr. Mackinnon.—Yes, but I think it would be subject to the option.

By Mr. Bailey.—The lessee could protect his interest by registering the lease?

Mr. Mackinnon.—He could. A lessee with a special interest would be expected to register his lease, even if it were for less than three years.

By Mr. McDonald.—An option to purchase differs from a lease. It could be a separate document or it could appear in a clause of the lease. You do not want to exclude the necessity of registering an option?

Mr. Mackinnon.—No.

I shall now discuss item (*c*) in the Institute's letter. It states—

> Section 182 should be amended so as to give a mortgagee power to pay into Court any surplus moneys upon the lines of section 377 of the Local Government Act 1946.

The Committee suggested that amendments should be prepared and submitted for consideration, and I propose that the words "or other person appearing by the register book to be entitled thereto" be omitted from paragraph (*a*) with the view of inserting the words "or the person then registered as proprietor." The matter would have to be considered by the Parliamentary Draftsman. Under the present wording, I do not know to whom the money should be paid.

By Mr. McDonald.—Is not this the object: *A* mortgages his land and sells it subject to the mortgage, *B.* becoming the registered proprietor subject to the mortgage. There is default, and the mortgagee sells the land, and there is a surplus. That should not go to the mortgagor, and so *B* is the "other person appearing by the register book to be entitled thereto."

Mr. Mackinnon.—I am merely substituting the words "or the person then registered as proprietor." They will cover the case mentioned by Mr. McDonald. There should be a further paragraph to follow paragraph (*a*), providing—

> In case the mortgagor or the then subsequent registered proprietor (as the case may be) cannot be found or is dead and no legal personal representative has obtained a grant of probate or letters of administration or in case there is doubt as to who is entitled the surplus shall be paid into the Supreme Court under the provisions so far as they are applicable of section 63 of the *Trustee Act* 1928 and the rules thereunder.

That is an adaptation of section 377 of the Local Government Act. I have a case at present where a property was sold some years ago and there was a surplus of £50. I do not know to whom I should pay that money. The mortgagor died shortly after the sale and left a will which the executrix did not prove. I approached the Public Trustee and said to him, "Here is a will that has never been proved, a sum of money is lying idle and no one wants to claim it." He did not think he should take action. I had the amount in my trust account. It is now in a trust account in the State Savings Bank earning interest, and I do not know for how long it will remain there, as there is no specific legislative enactment under which I can get rid of it. The Bill should provide for such a case.

By the Chairman.—The Committee was unanimously of the opinion that provision should be made on the lines you have suggested.

By Mr. Bailey.—If the money is paid into Court, the claimant will have to satisfy the Supreme Court on the matter?

Mr. Mackinnon.—Yes. There is an additional paragraph which appears in the Local Government Act, which the draftsman may consider including with my proposed amendment of paragraph (*a*). Mr. Merrifield raised this question, "You spoke about paying money into the Treasury and now you speak about paying it into the Supreme Court." The two cases are different. The money is paid into the Treasury when a

man wants to repay a mortgage and the mortgagee is not available to accept the money. In the other case, the mortgagee sells the property. Under proposal (*d*) the Law Institute claims that, in sub-clause (1) of clause 224, provision should be made obliging an "acquiring authority" to lodge a caveat immediately it notifies its intention to resume or acquire land under the relevant statute.

By the Chairman.—Does that follow on the proposal to delete sub-clause (3) of clause 240?

Mr. Mackinnon.—No. At present when land is resumed or acquired a caveat is required to be lodged. The Institute submits that public authorities should be required to act similarly when notices to treat have been served, and it is suggested that at the end of sub-clause (1) (*a*) of clause 224 the words "or any notice to treat preliminary to resumption or acquisition" be added; that after the word "acquisition" in line 5 on page 67, the words "or notice to treat" be inserted; that after the word "acquired" in line 7 the words "or treated for" be inserted; that after the word "acquisition" in line 9, the words "notice to treat" be inserted, and that after the word "acquired" in line 10 the words "treated for" be inserted. Those are all consequential.

By Mr. Merrifield.—The Committee has occasionally discussed that point, especially in the case of the Housing Commission which places a blanket order over an area but sometimes does not proceed with the notice to treat. In that event, it would be necessary at some stage to have the notice removed?

Mr. Mackinnon.—There is provision in the Act for the removal of caveats where they are no longer effective.

By Mr. Bailey.—Is there any limitation as to time?

Mr. Mackinnon.—No.

By Mr. McDonald.—Are you satisfied that the blanket order is notice to treat or is the notice to treat something that may follow the blanket order?

Mr. Mackinnon.—It is possible that the legal language is not accurate. Notices published in the press may mean actual acquisition.

The Chairman.—I think that under blanket orders the Housing Commission regard the areas as having been acquired.

Mr. Barry.—Some blocks may subsequently be released.

The Chairman.—The lands vest in the Commission from the date of the publication in the local newspaper.

The Committee adjourned.

TUESDAY, 11TH OCTOBER, 1949.

Members present:

The Hon. A. M. Fraser in the Chair;

Council.	*Assembly.*
The Hon. G. S. McArthur,	Mr. Bailey,
The Hon. A. E. McDonald,	Mr. Merrifield,
The Hon. F. M. Thomas,	Mr. Reid,
The Hon. D. J. Walters.	Mr. Schilling.

Mr. Duncan Mackinnon, representing the Law Institute of Victoria, was in attendance.

By the Chairman.—At the last sitting you had completed your remarks on paragraph (*d*) of the letter from the Law Institute of Victoria?

Mr. Mackinnon.—Yes, that is in regard to the amendment to clause 224. The next proposal is in paragraph (*e*) of the letter in the following terms:—

"(*e*) Under the present Titles Office practice the Commissioner dispenses with the signature of a directing party where he is satisfied that the purchase money has been paid to that party. It is recommended that a provision should be inserted in the Bill authorizing the Commissioner of Titles, or, in the event of a refusal, the Court to dispense with the execution of an instrument of transfer by any party if the Commissioner or the Court is satisfied that the party would not be prejudiced.

I have drafted what I suggest should be added to clause 282. That clause covers a case where the whole of the purchase money has been paid, the purchaser is in possession but he has never obtained a transfer, and the Commissioner has the right to make a vesting order. We do not desire to alter that provision, but we wish to add the following sub-clause:—

Should the signature of any party to an instrument be unobtainable or procurable only with difficulty, the Commissioner, and, in the event of his refusal, the Court, shall be empowered to dispense with such execution provided the Commissioner or the Court as the case may be is satisfied that the party concerned will not be prejudiced.

In direction transfers the Commissioner in appropriate cases dispenses with signatures. Sometimes the directing party cannot be found, or his signature cannot be obtained and the Commissioner in fact dispenses with his signature as a matter of practice. That is in line with the provisions of clause 282.

By Mr. Schilling.—Does he want proof of that, or does he merely want duty paid on the appropriate document?

Mr. Mackinnon.—The necessary direction has to go into the transfer and duty has to be paid on it. The Commissioner dispenses with the signature.

By Mr. Bailey.—The man directing has received his money from the transferee?

Mr. Mackinnon.—Yes.

By Mr. Schilling.—Going through my office at present is a case in which there have been a number of assignments of equity of redemption. Some of the directing parties are now dead, and the Registrar has told my office that we must produce their probate, and there is no way out of it. That is why I am surprised to hear you say that it is a matter of practice at present, that he will dispense with the directing party.

Mr. Mackinnon.—He will dispense with the directing party's signature at present, provided he has produced to him an assignment of the directing party's interest in the property. *A* sells to *B*, *B* having paid a portion of the purchase money, and then resells to *C*. *B* gets out, collects all the money coming to him, and *C* takes over the liability to *A*, i.e. the responsibility for the balance of the purchase money owing to *A*. *B* is no longer interested; he dies, or goes interstate, having already assigned his contract to *C*. On proof of those circumstances the Commissioner would dispense with the signature.

Mr. Schilling.—We have tried, but the Commissioner has told us that we must obtain the signature of the parties, or produce their probate. That means that I have to endeavour to get somebody now disinterested in the estate, at our expense, to apply for probate of a will in which the person is no longer interested, purely to make the signature to the transfer.

By the Chairman.—What is the reason for the distinction in those two cases? Why if he is dispensing with signatures in certain circumstances does he not dispense with them in the case mentioned by Mr. Schilling?

Mr. Mackinnon.—The position is that Mr. Schilling is not able to produce the assignment of the interest of the person who has gone.

Mr. Schilling.—We cannot produce the assignment, but we have paid duty on it.

Mr. Mackinnon.—You will find in Currey's Manual of Titles Office Practice a statement of what the Commissioner will do in such circumstances.

By Mr. Schilling.—I am raising the matter to see whether the proposed amendment goes far enough. It seems to me that, if possible, it should be made wider to stop the type of practice to which I have referred and which, as far as I can see, serves no good purpose. It is obstructive and creates a lot of trouble and expense. This is our opportunity to eliminate it. I was wondering if you could make your amendment wider to meet cases where considerable trouble would be caused?

Mr. Mackinnon.—The use of the words "unobtainable or procurable only with difficulty" seems to cover it.

By Mr. Schilling.—Who is to say that it is difficult? The Office of Titles may say that it is not difficult to get probate, that you have only to make application, and that is easy. In fact, often it is not easy and, if it is, it is expensive.

The Chairman.—It is difficult to see how we could widen it. "Only procurable with difficulty" is an expression somewhat similar to that used in the evidentiary section in connection with divorce proceedings.

Mr. Schilling.—Perhaps we could say "difficulty or great expense."

Mr. Mackinnon.—Clause 282 is very valuable and is used in a case such as this: A man has sold on terms to a purchaser; the purchaser has paid in full over a period of years but does not take out the transfer immediately. Before he takes out the transfer, the owner dies. The deceased has no estate or has left no will and his wife is not interested in taking out administration. Without this provision the purchaser is lost. We think the extension of clause 282 to cover the ordinary case of directions in transfers where it is not easy and sometimes impossible to obtain signatures would be very valuable. We suggest the additional words as sub-clause (3) of clause 282.

The Chairman.—Probably that would be more appropriate in clause 283 than in clause 282. However, we can look closer at it.

By Mr. Schilling.—Do you think we should give the Commisisoner the discretion to refuse and thus compel parties to go to Court? Why should he refuse?

Mr. Mackinnon.—There might be a case when it would not be wise or proper to dispense with signatures. It might be that the Commissioner has had some indication that the directing party has not been paid.

By Mr. Schilling.—It would be hardly likely, in those circumstances, that a Court would make an order?

Mr. Mackinnon.—I agree.

The Chairman.—Clause 282 commences with the words:—"If it is proved to the satisfaction of the Commissioner." If he is satisfied on certain facts, then instead of discretion being used he has to make the order.

Mr. Schilling.—If we leave discretion in the Commissioner we get back to the present position. The Court could tell you what he proposes to do, and you have no answer. You might claim that it is unreasonable, but you cannot do anything about it. I think we should get away from that position.

Mr. Mackinnon.—I do not think you would be any further ahead. If it has to be proved to the satisfaction of the Commissioner, all he need say is "It is not proved to my satisfaction." We see no objection to clause 282 as it stands and I think it works all right in practice.

By Mr. Schilling.—"The Court" there means a hearing by a Judge in Chambers?

Mr. Mackinnon.—Yes.

The Chairman.—At any rate, that is a step.

Mr. Mackinnon.—It is our proposal. The next proposal is in relation to clause 68 (1) (*a*). I refer to the letter of the 4th of August from the Law Institute, in which reference is made to the difficulty concerning surveys.

By the Chairman.—You suggest that certain words should be added to paragraph (*a*) of sub-clause (1) of clause 68?

Mr. Mackinnon.—That was the suggestion but I desire to withdraw the proposal and to submit it in another form so that it will apply generally. I mention for your consideration a case in which there are three adjoining blocks of land, say "A," "B," and "C"—"B" being the centre allotment. Blocks "A" and "C" are brought under the Act, and "B" remains under the general law. The solicitor of the owner of the centre property is asked to produce a survey of that block. It is considered that that should be unnecessary by reason of the submission of surveys in respect of blocks "A" and "C," which have automatically determined the boundaries of the centre block "B." In the country there are many blocks still under the general law, which are not of great value, but which it is desired to bring under the Act. It is considered that the production of a survey in respect of such a block would entail an unnecessary expense. We suggest that the survey information already in the Titles Office should be used in a case of that kind.

By Mr. Thomas.—What would be the position if the title of blocks "A" and "C" both encroached, say, six inches over the boundary of block "B"?

Mr. Mackinnon.—The owners of blocks "A" and "C" would have been granted their titles according to their fences; their cases would have been dealt with by the Titles Office and completed. If the fence of one block encroached six inches over the boundary of the adjoining block, and if the fence had been there long enough, the adjoining owner would lose to that extent. If that did not happen he would at least get his title measurements.

By Mr. Schilling.—In any case, an owner would have been given notice by the Titles Office of its intention to register the title of an adjoining block and he would have had an opportunity to object?

Mr. Mackinnon.—That is so. We suggest that our proposal should apply also in connection with the amendment of the title of the centre block in a case such as that which I have mentioned. If the titles of blocks "A" and "C" are amended, the title of the centre block is adjusted automatically. At present, the Commissioner contends that he is not able to use the information in the Titles Office for the purpose of fixing the measurements of the centre block.

Mr. Schilling.—When this matter was discussed previously, there were questions raised as to why the point should apply only to clause 68 (1) (*a*).

Mr. Mackinnon.—I agree that is a pertinent question. The proposed amendment should apply generally. I suggest that you look at clause 253, under Part XI., "Surveys, Plans, Parcels and Boundaries." The first

part is really sub-clause (1), although the "(1)" does not appear in print. My first suggestion is that sub-clause (1) be amended as follows:—

In the first line, after the words "under this Act" the words "or on compulsory registration of land by the Commissioner" should be inserted.

Then, an additional paragraph should be added to sub-clause (1)—it should come before sub-clause (2)—as follows:—

Provided that if sufficient survey information is already lodged in the Office of Titles in respect of adjoining lands correctly defining the land affected, no survey shall be called for.

If the proposal were brought into this part of the Act relating to surveys, it would be referable to all matters in which surveys are required, and individual amendments to clauses 68 (1) (*a*) and 271 become unnecessary. Our letter inadvertently referred to clause 72. The proposal under paragraph (3) in our letter relates to a matter which should be dealt with by rules.

By the Chairman.—In other words, your suggested amendment to clause 253 would cover both positions?

Mr. Mackinnon.—Yes. Moreover the letter is misleading, because by a typing error it refers to clause 72 which was not intended.

By Mr. Thomas.—The latter part of sub-clause (1) of clause 253 refers to buildings "of stone or brick." How would the proposal apply in regard to any area which is not a brick or stone area?

The Chairman.—I think the provision is meant to apply only in the case of a "stone or brick area."

Mr. Merrifield.—I should like a copy of Mr. Mackinnon's suggested amendments to be made available to the Surveyors' Institute, because I anticipate some objections being raised to them. It can be realized that one owner would have to pay for a survey, and another owner could have his land brought under the Act by virtue of the work done for somebody else.

The second point of objection is that an owner desiring to have his property brought under the Act could apply to the surveyor who had made the survey of the adjoining property, and he could apply for a plan based on the same survey already lodged in the Titles Office. Mr. Mackinnon does not mention any lapse of time. The time factor is vital, because at the date of a new application the previous occupier might not still be in possession. The ruling of the Titles Office is that a survey becomes "stale" after two years, and it may be necessary for a surveyor to re-survey the abuttals and so forth and bring the orginal plan up to date. I suggest that at this stage Mr. Mackinnon's proposals be submitted to the Institute of Surveyors for their views.

Mr. Mackinnon.—I have no objection.

By the Chairman.—You suggest that the proposal in paragraph (3) of your letter should be effected by rules?

Mr. Mackinnon.—Yes. I do not think the amount of the fees need be put in the Act.

The Chairman.—The next matter relates to caveats.

Mr. Mackinnon.—Yes. Paragraph (*g*) of the Law Institute's letter is as follows:—

A caveat already lodged in the Titles Office should not be affected by any application to register executors of a deceased person or new trustees. The caveat should be lodged in duplicate, and, after registration, one copy should be returned to the person lodging in the same way as a duplicate mortgage.

Clause 239 reads—

"Where a caveat has been lodged by or on behalf of a beneficiary claiming under a will or settlement . . . . ."

The suggestion of the Law Institute is that the words "by or on behalf of a beneficiary claiming under a will or settlement" should be deleted, and that in the fourth last line before the words "will or settlement" the word "relevant" be inserted. Consider, for instance, a case in which a person buys a block of land on terms from, say, Mr. Jones. Before the purchase is completed, Mr. Jones dies and his executor has to make an application to be registered as the proprietor of the land. That is necessary before the purchaser can eventually get a transfer. When a transmission application is lodged in the Titles Office, a notice is sent out to the caveator and unless something is done—and I do not know what can be done—the caveat lapses and the caveator is then unprotected. We suggest that the caveat should not lapse merely by reason of the application of an executor to be registered. In connection with a settlement, where there are trustees and one trustee dies and another man is appointed in his place, it is necessary to have the title put into the names of the new trustees. On a transfer to them the caveat lapses similarly. If clause 239 is enlarged, by the omission of the words I have mentioned, where a transfer of the kind I have spoken of is effected, the caveat will not lapse.

By the Chairman.—In your illustration the caveat was not lodged by a beneficiary claiming under a settlement, but by a person having an interest by way of a contract of sale?

Mr. Mackinnon.—That is so. Clause 239 provides only for beneficiaries lodging caveats, but a man who is not a beneficiary may lodge a caveat. I wish to widen the clause to make it apply not only to beneficiaries, but to all people who lodge caveats.

The Chairman.—That seems to have the approval of the Committee.

Mr. Mackinnon.—Our next proposal under this clause is that caveats should be lodged in duplicate. At present when a caveat is lodged, the caveator has no written evidence of the lodgment. If through some mischance the caveat is not registered, under the provisions of this Bill it will be a serious matter for the person concerned. Under the present Act such an error can be serious enough but under the proposed Bill the failure to lodge may be disastrous. If a person with interests does not lodge a caveat and thus fails to give notice, someone with no knowledge of that man's rights may come in and secure a title that will exclude those rights altogether. The suggestion is that when a caveat is lodged, it should be registered and numbered, as it is at present, but that in future the duplicate copy be returned to the person lodging it so that he may place it with his contract of sale. I do not know of any instance where any trouble has arisen because by inadvertence a caveat has not been registered when it should have been, but it could happen.

By Mr. McDonald.—The actual practice is that the Titles Office clerk keeps inquiring until he is informed that the caveat has been registered and that its number is so and so?

Mr. Mackinnon.—In my experience that would be a perfect Titles Office clerk. I endeavour to get my staff to do that. It should be done, but I fear that in many instances it is not.

By Mr. Schilling.—The same effect would be obtained if the Titles Office forwarded a letter in the form of a certificate stating that the caveat had been registered on a certain day and its number was so and so?

Mr. Mackinnon.—I think that would prove difficult. It would take more time than merely registering the extra copy of the document and putting it in the solicitor's box for return to him. Of course, if it were lodged by post the copy would have to be returned by post.

By Mr. McDonald.—You suggest that there should be a notification to the caveator that the caveat had been registered?

Mr. Mackinnon.—Yes.

By the Chairman.—The document would be kept with all other relevant documents relating to the land?

Mr. Mackinnon.—That is my suggestion.

By the Chairman.—What do the members of the Committee think of that proposal?

Mr. McDonald.—I have no objection to the caveator being notified.

Mr. Reid.—It seems to me to be a sound suggestion.

Mr. Mackinnon.—The next proposal relates to subclause (2) of clause 250, which grants a stay of registration for forty-eight hours.

The Chairman.—We have agreed to substitute seven days for forty-eight hours.

Mr. Mackinnon.—That is all I desired to raise on that clause. That concludes all the matters that have been raised by the Law Institute. I understand that the secretary was to have written with regard to a proposal that was made just the other day.

The Chairman.—No further proposals have been received from the secretary of the Law Institute.

Mr. Mackinnon.—Probably it has to go before the Council before it is forwarded to you. That covers all the proposals that have been made so far by the institute for amendment of the Bill. However, I have gone through the transcript and have noticed other matters on which I should like to address the Committee.

The Chairman.—We should be delighted to hear your views.

Mr. Mackinnon.—Clause 206 invoked a lot of discussion among the members of the committee. A question was raised, whether it compelled a mortgagee to transfer. I think the clause is right as it is framed, but in order to make doubly certain the following words should be added:—

"and the mortgagee receiving payment shall transfer accordingly."

I think that is implied in the clause, but to make absolutely sure those words should be inserted. The passage to which I am directing attention is "the mortgagee requiring such payment."

By Mr. McDonald.—That is what the discussion was on?

Mr. Mackinnon.—Yes.

By Mr. McDonald.—On which page of the transcript is that discussion recorded?

Mr. Mackinnon.—It is referred to in the transcript of the 10th of August, 1949. Mr. McDonald raised the question why should a person wait until the mortgagee requires payment; and why should not the puisne mortgagee be able to pay out the first mortgagee whether the first mortgagee wishes it or not. I consider that the puisne mortgagee should not have that right. To give an illustration: Mr. McDonald has a first mortgage for £1,000 for three years. There is also a second mortgage for £200, although the amount is unimportant. When the term of three years is up, Mr. McDonald may say "This is a good security. I do not want my £1,000; I would not know what to do with it if I had it. Because good securities are difficult to get nowadays, I am quite content that this mortgage should run on." If the words "the mortgagee requiring such payment" were deleted from the clause, the second mortgagee would be able to come along and say "This is a nice security, I do not mind holding the second and the first mortgages. I shall ask Mr. McDonald to give up his first mortgage security. Although he does not like to do so, that does not matter; he should give it up to me." I suggest that is all wrong. If the first mortgagee is satisfied with his security he does not want to call in his money, even if it is due, but is content to let it run on. No compulsion should be exercised over him and he should be allowed to so act.

Mr. McDonald.—I agree with that comment where the security is satisfactory, from the point of view of both mortgagees. Let us consider a case where the security is not satisfactory because times have changed. The second mortgagee made an advance, knowing that the first mortgage was due on a certain date. Your suggestion is to permit the first mortgagee and the mortgagor to make another contract without consulting subsequent mortgagees. There is a contract; in the light of that contract the second mortgagee examines the security and the contract ahead of him. The first mortgagee and the mortgagor could get their heads together, even when the security is not a good one, and make out a new contract without consulting the second mortgagee. The position is worse when the value of the security has deteriorated. If we provide that a new contract cannot be entered into without the second mortgagee being consulted, you might completely defeat that possibility. The second mortgagee has the right to have his contract carried out. He could say "I loaned money on mortgage knowing that the first mortgage fell due on a certain date. I was aware of the value of the security then offered, and understood the contract I entered into. The first mortgage having fallen due, I require to be in the position of a first mortgagee and, if necessary, I am prepared to buy him out."

By Mr. McArthur.—Against the wishes of the first mortgagee?

Mr. McDonald.—It may be. The wishes of the first mortgagee are expressed in the contract he made—that the mortgagor shall repay the money on a certain date. The mortgage shows that it shall be repaid on a certain date and because that is specifically in the document the second mortgagee says "In the light of that contract I am prepared to lend money."

By Mr. Walters.—Could he not insert that in the contract when entering into the second mortgage?

Mr. McDonald.—No, because the first mortgagee then controls it and can say "I do not want my money now."

Mr. Walters.—He has to be bought out? He could make a contract with the mortgagor. Say I wanted to get a second mortgage and you have a first mortgage on the property. Your mortgage is due next year, and I could make a contract and say that when your mortgage is due I will take over the first mortgage. I could make that contract with the mortgagee.

Mr. McDonald.—You cannot if the word "required" is retained in the clause. That would be possible if that word were deleted.

The Chairman.—Mr. Bailey suggested that the word "required" should be omitted and the words "with the consent of the mortgagor" should be included. The mortgagor has to consent.

Mr. Schilling.—Is not that the risk that the second mortgagee takes? If he wants to lend on second mortgage, must he not take all the risk involved?

Mr. McDonald.—Does he not consider the risk ahead of him, which is a specific contract on certain specified and definite terms, one being that it shall be repaid on a specified date?

Mr. Schilling.—It is the inherent risk that a second mortgagee takes. If you know that a block of land has a first mortgage on it and you are prepared to lend on second mortgage, it is an inherent risk that the first mortgagee shall control that security.

Mr. McDonald.—During the term of his loan.

Mr. Schilling.—Or during any extension of it—until he is paid.

Mr. McDonald.—But the first mortgagee should not have the right to come in and make a new contract. You might have a mortgage for five years; it is extended for ten years, and the second mortgagee is forced to wait fifteen years, although when he lent it it was intended to be for a period of only five years.

Mr. Schilling.—Then the answer is, do not lend on second mortgage. If you do, you must take the risk of the mortgage ahead of you.

The Chairman.—The second mortgagee has the right to get his money on the due date, subject to the rights of the first mortgagee.

Mr. McDonald.—He might wish to recover his money because the security is becoming difficult. He has more chance of getting it if he can get full control in his own hands.

By Mr. Schilling.—I can see that in some cases hardship would be involved. Could it be met by providing that the first mortgagee shall have the option of either accepting his money or, alternatively, of taking over the second mortgage?

Mr. Mackinnon.—I think you would get into further trouble in that way.

Mr. Walters.—A second mortgagee usually gets a higher rate of interest and takes the risk.

Mr. Schilling.—It does not always follow. Because a person decides to lend on second mortgage, it does not follow that he is doing that purely as a matter of usury, or because he is getting a higher rate of interest.

Mr. Walters.—Generally that is the reason, but in a great number of cases it does not necessarily follow. As Mr. McDonald has said, the first mortgage might be extended from year to year, and it might go on for a long time.

Mr. Mackinnon.—If you could only govern the financial condition of the country, all would be well. When things are good no mortgagee wants his money; when things are bad, every mortgagee wants repayment whether he is a first or second mortgagee.

Mr. Schilling.—I think it would impose a hardship on the first mortgagee to compel him to accept his money back when he has the security there and is satisfied with it.

Mr. Bailey.—Does the mere fact that there is a second mortgage in existence prevent the first mortgagee and the mortgagor from coming to an agreement on an extension?

Mr. McDonald.—There is nothing to prevent it now, but I say there should be. The position should be carefully watched.

Mr. Walters.—Your desire is to protect the second mortgagee?

Mr. McDonald.—In effect, yes. I think a second mortgagee should not be continually pushed off. Fortunately it does not affect me personally in my practice, because I will not lend on second mortgage.

Mr. Mackinnon.—A second mortgagee might not be financially capable of taking over the first mortgage.

Mr. McDonald.—It would not be mandatory, but, if he wants to, he may do so.

By the Chairman.—What words do you suggest should be added to clause 206?

Mr. Mackinnon.—I think the words "and the mortgagee, receiving payment, shall transfer accordingly" should be added.

Mr. Reid.—I think we are going a little beyond the functions of this Committee on this question. We are examining a Transfer of Land Bill and are not dealing with the class of transaction that has been debated. It seems that we are getting on to general principles, altogether outside the scope of the Bill, which is to amend and consolidate the law relating to the simplification of title.

The Chairman.—This Bill goes a long way further than that.

Mr. Reid.—We are getting on to controversial subjects.

The Chairman.—We are making some radical changes in the Act.

Mr. Mackinnon.—It looks as if this matter would still have to be further considered by the Committee.

By Mr. Schilling.—What is your suggestion?

Mr. Mackinnon.—Our view is that the clause is correct as it stands, that the first mortgagee should be requiring payment before you ask him to hand over his security. There should be no compulsion on him. That would be quite wrong.

By Mr. Walters.—Is it not lawful to do that now?

Mr. Mackinnon.—No; this is a new provision that is adopted from the South Australian legislation.

The Chairman.—All Mr. Wiseman said was that the question should be looked into.

Mr. Mackinnon.—I should like next to deal with clause 209: (Clause read). I am not dealing with section 91 of the *Property Law Act* 1928, because that is beyond me. I should like to deal with section 95, which is somewhat along the same lines as the clause to which we have just been referring. Sub-section (1) of section 95 of the Property Law Act provides—

> Where a mortgagor is entitled to redeem, then subject to compliance with the terms on compliance with which he would be entitled to require a reconveyance or surrender, he shall be entitled to require the mortgagee instead of reconveying or surrendering, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly.

There are three other sub-sections which I do not think we need consider. It would be wise to bring in the whole of that clause, with any consequential amendments necessary to suit the Transfer of Land Bill, and not have it merely stated in the way it appears in clause 209 The clause could immediately succeed clause 206 to which it is somewhat alike. A recent experience of mine indicates what I have in mind. One of the building societies held a mortgage which provided an interest rate of 5½ per cent. The mortgagor said that the interest was too high and should be reduced to 4½ per cent., but the society disagreed. The mortgagor said "Well, I have the right to pay off my mortgage; I will pay it off." The society said "Very well." The mortgagor then said, "Instead of discharging the mortgage, thus necessitating my going to the expense of taking out a new one, I should like you to transfer your mortgage to a person whom I am going to name." The building society said it would not do any such thing. The attention of the society was drawn to section 95 of the Property Law Act, and the society's solicitor said "Yes, but that applies only to land under the general law. If this were such a property you could require the society to do that, but this land is under the Transfer of Land

Act, and you cannot do it." Therefore, there was no alternative but to agree. That seems a foolish situation. The proposal to apply section 45 of the Property Law Act differs from the proposal in clause 206. There the mortgagor did not desire to repay. Here he does. He has the right to redeem, and wishes to exercise this right. In this case the borrower wants to repay, and says, "Don't put me to the expense of taking out a new mortgage following a discharge; just transfer the existing mortgage." I think that is proper. I suggest that section 95 he reprinted in full immediately following clause 206.

Clause 235 reads—

(1) Where the caveat has lapsed the caveator may, if otherwise entitled under section two hundred and thirty-one of this Act; renew such caveat to protect the interest originally protected by the lapsed caveat, but the renewal of any caveat shall date only as from the time of lodging such renewal and not as from the time of lodging the original caveat, and the interest sought to be protected by such renewed caveat shall be postponed to any interest protected by a caveat lodged before the date of such renewal.

It is suggested that this is not a case of the renewal of a caveat, but the lodging of a fresh caveat, and that fact ought to be clearly stated. The amendments proposed are as follows:—

In the third line, delete the words "renew such", and insert the words "lodge a fresh";

Commencing in the fourth line, delete the words "renewal of any caveat shall date only as from the time of lodging such renewal and not as from the time of lodging the original caveat and the".

In the seventh line, delete the word "renewed" and insert the word "fresh."

In the last line, before the word "such" insert the words "the lodging of"; also that the last word of the sub-clause "renewal" be deleted and the words "fresh caveat" be inserted.

The sub-clause would then read—

(1) Where the caveat has lapsed the caveator may, if otherwise entitled under section two hundred and thirty-one of this Act, lodge a fresh caveat to protect the interest originally protected by the lapsed caveat, but the interest sought to be protected by such fresh caveat shall be postponed to any interest protected by a caveat lodged before the date of the lodging of such fresh caveat.

By Mr. McDonald.—In view of your suggestions, is the clause necessary?

Mr. Mackinnon.—I do not know that its retention would be necessary, unless it is desired to make clear that no benefit is to be gained from the caveat, once it has gone.

Mr. Bailey.—It is apparent that once the caveat has expired, a person's rights under it have also expired.

Mr. Mackinnon.—My proposal is to alter the verbiage to show that it is, in fact, a fresh caveat.

By Mr. McDonald.—If there is power in a previous clause to lodge a caveat, this one would be unnecessary?

Mr. Schilling.—I have wondered why it was put in the Bill.

Mr. Mackinnon.—Mr. Wiseman made some reference to it on the 23rd of August.

By Mr. Thomas.—If a caveat is renewed, it is necessary to lodge a facsimile of the original, but if the words "fresh caveat" are substituted, the caveat could be altered from the original wording.

Mr. Mackinnon.—I do not know why a person should not be entitled to lodge a caveat in different terms from the original if it is desired to do so.

The Committee adjourned.

WEDNESDAY, 19TH OCTOBER, 1949.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Bailey,
The Hon. A. M. Fraser,	Mr. Reid.
The Hon. A. E. McDonald,	
The Hon. F. M. Thomas,	
The Hon. D. J. Walters.	

Mr. Duncan Mackinnon, representing the Law Institute of Victoria was in attendance.

Mr. Mackinnon.—Discussion has taken place regarding the need to show on certificates of titles reservations and exceptions contained in Crown grants, *vide* clause 104. Some were shown in the past but the practice was discontinued. I refer the committee to section 73 of the *Transfer of Land Act* 1915, which required the Registrar to endorse as an encumbrance upon future certificates of title any special building condition or conditions giving the Crown power to resume land for railway purposes, and so on. The power had appeared in the Act for many years, but it was not until Mr. Guest became Commissioner of Titles that it was realised the office was not doing what the Act required: that is to say, to endorse on the certificate an encumbrance such as a special railway condition. Mr. Guest decided that he would do the right thing and for years many new titles were endorsed with special conditions. This caused a tremendous volume of work in the office, and was of no practical value. In 1916, section 5 of the Transfer of Land Act repealed that portion of section 73 of the principal Act to which I have referred.

If the committee is thinking of bringing on to future certificates of title prepared in the Titles Office such matters as special railway conditions and other conditions in the original Crown grants, members should remember that the procedure has already been considered and was abandoned after trial. It is of no practical importance, and the few cases in which it would occur would not justify the committee in reverting to the previous practice.

By Mr. Bailey.—The Railway Department would have the right to resume land that it required?

Mr. Mackinnon.—That is the position.

By Mr. Thomas.—Some of the reservations, I presume, would be extensive?

Mr. Mackinnon.—I do not think large areas are involved. One member of the committee referred to a building condition on a title, but I have never seen one.

Mr. Reid.—Some years ago, a solicitor pointed out that there was a building restriction on land in South Melbourne.

Mr. Mackinnon.—Many solicitors would not search back to the original grant.

By Mr. Bailey.—When a certificate is issued under this legislation, will not the conditions of the original grant go by the board?

Mr. Mackinnon.—I think most of the conditions appear on titles that were not issued under the old law; they are contained in comparatively recent Crown grants.

By Mr. Reid.—What is your interpretation of a special railway condition?

Mr. Mackinnon.— It would be a condition that the Crown has the right to resume land for railway purposes.

By Mr. Reid.—With or without the payment of compensation?

Mr. Mackinnon.—I should think compensation would be paid. This matter has not been discussed by the Council of the Law Institute; it was considered by my colleagues on the sub-committee, and they agree with my comments.

By Mr. Thomas.—Experience proved that the system was unnecessary?

Mr. Mackinnon.—That it was not of much practical importance. I thought members would like to know how it came to be abandoned. Of course, its adoption would affect the Registrar of Titles more than practitioners.

By Mr. Bailey.—All such conditions could be ascertained by a search?

Mr. Mackinnon.—That is true. That would be done by a prudent solicitor.

Mr. Reid.—My point is that it is all subject to the exception. Under this legislation, the onus will be placed upon the purchaser's solicitor to go back to the Crown grant to ascertain whether there are any special conditions. If a solicitor fails to do that, and his client is placed in a difficult position, he will be liable for negligence.

Mr. Mackinnon.—That will be so, but it will occur probably only in one case out of every thousand. This is really a matter of Government policy. I should think the Government could not be expected to delete the provision to make the reservations not apply unless there were means of bringing them forward on the certificate of title.

By Mr. Reid.—That is my point. Should we not consider the reasons that applied in 1916?

Mr. Mackinnon.—The procedure would involve a tremendous amount of work. I now pass to clause 150; the form of the transfer is given in the Eighth schedule. It has been said by some members of the Institute that there is no need to put any consideration in a transfer. There has been trouble in recent years because the Registrar was expected to state a true consideration, and the Collector of Imposts was required to do likewise. They did not always see eye to eye. I suggest that it is desirable to put a monetary consideration in a transfer, if it is the consideration. It is said that that is important from the point of view of purchasers, but I do not think it is. Values have changed so much in recent years that it does not matter what land brought in 1920 or 1930. However, I have heard it stated that some men have put in a false consideration with the view of misleading future purchasers.

I suggest that the committee should consider including alternative considerations in the 8th schedule —for instance, "in consideration of", "in pursuance of", and "for valuable consideration." It is desirable to state the monetary consideration as it is of consequence to the Titles Office, for registration fees are charged according to the value expressed in the transfer. Under the heading "in consideration of" all the monetary consideration could appear. Under the heading "in pursuance of" could appear a devise under a will or a transfer authorized by a settlement, and under "for valuable consideration" could be shown those considerations to which the two preceding headings are not applicable.

In this connection, the committee discussed transfers between people of the same name. If a man named McDonald, wants to transfer to another man, named McDonald, the Collector requires proof as to the value of the property. If the two McDonalds were not related, the Controller of Stamps would accept a letter from the Solicitor saying so. He would then treat the transfer as an ordinary sale. If they were related, the question would arise whether the true consideration had been shown and proof would be required as to value. Without this information a man with £1,000 worth of property might transfer it to his son for £200, and duty would be collected on only £200 at the sale rate of 16s. per cent., whereas, in fact, there was a gift as to £800. The Collector of Imposts is not put on his guard when a man named Smith makes a transfer to a married daughter named Jones, although similar facts exist.

By Mr. Thomas.—Would it not be necessary to file a deed of gift?

Mr. Mackinnon.—No. The transfer itself is a deed of gift; there could be a deed of gift and a transfer following. Suppose a man transfers to one of his children a block of land for a consideration of £200. He is asked for proof as to value and he says that it is worth £1,000. The Collector of Imposts will require the transaction to be expressed in this way: "In consideration of the sum of £200 paid, and of the natural love and affection borne towards my son . . . ." but it is important to note that he would charge duty rate not on the £800 but on the £1,000. That is a peculiar position under the Stamps Act which should be given grave consideration by this Committee, although it does not come directly under the Transfer of Land Act. I would refer the Committee to the case of the *Collector of Imposts* v. *Cuming Campbell Investments Pty. Ltd.*, 1940 *Argus Law Reports,* page 246, which concerned the transfer of land to a company followed by the issue of a large amount of scrip for his sons. The sale price for the land was £50,000, although its value was £90,000. When it was actually transferred the value of the land had increased to over £100,000. The case was contested before the High Court and Mr. Cuming Campbell's legal personal representatives "got away with it" on the lower consideration. In that particular case the Crown would have earned a great deal more duty if the Stamps Act had been amended. Although the Chief Justice, Sir John Latham, was a dissenting Judge, I am submitting that what he said should be followed. Division IX. of the Stamps Act relates to "deed of settlement or gift," and the Chief Justice explains that it was evidently based upon the English *Stamp Duties Act* 1870, chapter 97, which was incorporated in the New Zealand Stamp Act. The basis of the English Act, the adaptation in the New Zealand Act and then the introduction into the legislation of Victoria, have produced a polyglot result. Consequently, it has been very difficult for Courts to determine what the relevant schedule means. If a transfer is not for bona fide adequate pecuniary consideration, the whole property transferred is regarded as a gift, but that is a ridiculous result. Suppose that a man has property worth £1,000 and says, "I am selling it to my son but I do not want the full price. I will let him have it for £500." In that case, gift duty has to be paid on the £1,000.

Mr. Fraser.—That seems absurd.

Mr. Mackinnon.—The whole transaction is treated as a gift because it is not for bona fide adequate pecuniary consideration. That is the point covered by the Chief Justice, who was prepared to decide that duty should be paid in the Cuming Campbell case on the pecuniary amount at the appropriate rate—16s. per cent. in Victoria—and that the duty on the balance should be at the gift rate. That seems only proper and the Chief Justice described it as fair. He pointed out that in section 2 of the Queensland *Gift Duty Act* 1926 it is provided that if a disposition of property is made for a consideration in money or

money's worth, which consideration is determined by the Commissioner, or on appeal, to be inadequate, the disposition shall be deemed to be a gift to the extent of that inadequacy, and gift duty is assessable accordingly. In the Victorian case I mentioned the Chief Justice was prepared—without that special direction from the Act, as in Queensland—to say that that would be a fair and proper interpretation of the Victorian legislation; but all his colleagues on the High Court bench were against him. The Chief Justice sets out his contention with his usual clarity and in a way that can be understood by all. In small properties, where only a little duty is involved, the point is of not much consequence, but if a farm worth £10,000 is being transferred—the owner selling it for £8,000 to his son—under the proposed amendment the £8,000 would carry duty at 16s. per cent. and the £2,000 would carry the gift rate of 30s. per cent. It is a different matter when the whole £10,000 is dutiable at its gift rate of £2 per cent.

By Mr. McDonald.—At an earlier stage were you not suggesting an amendment of the forms of transfer in the schedule?

Mr. Mackinnon.—Possibly I did not make my point clear. I suggest that the expressions I outlined should be inserted, with accompanying asterisks, and a note in the margin " Strike out that which is inapplicable."

I pass now to clause 207 (Indorsements on mortgages), which has been taken from the New South Wales Act and which, I submit, will not be used very much. Mr. Wiseman said that some similar proposition was contained in an earlier Act but was abandoned after some years because it had not been operated to any extent. In my view, the clause is not of much importance. It is undesirable, too, that the wording should be different from that in other clauses dealing with similar matters. It provides, for example, that the mortgage debt may be discharged; later, it sets out that the discharge shall " vacate the mortgage debt ", and those are new words. In this clause there is no reference to witnesses. Sub-clause (1) of clause 195 provides that—

> upon production of a memorandum signed by the mortgagee or annuitant or his transferees and attested by a witness discharging the land from the whole or part of the moneys or annuity secured or discharging any part of the land from the whole of such moneys or annuity—

the Registrar shall make an entry upon the relevant documents. There must be a witness and the memorandum must discharge the land. A receipt is not sufficient for that purpose.

By Mr. Bailey.—Does not the Titles Office accept a receipt?

Mr. Mackinnon.—No. The receipt must proceed to set out that the land is discharged. The proposal in clause 207 is that these documents should be indorsed on the mortgage. I do not see much advantage in that. The State Savings Bank and other banks have such documents indorsed on their mortgages but, in any case, a discharge of mortgage is a short document. I point out that clause 207 does not say whether the indorsement is to be witnessed or whether it has to be a discharge. The provisions are different from those in clause 195 which is the old section. Again, let us consider clause 150 which was discussed earlier and which, in sub-clause (1), provides that the proprietor of land or of a lease, mortgage, or charge, or of any estate or interest therein respectively, may transfer the same by a transfer in one of the forms in the Eighth Schedule. Sub-clause (2) sets out that upon the registration of the transfer the transferee shall become the proprietor—

> and while continuing such shall be subject to and liable for all and every the same requirements and liabilities

. . . .

Those are conditions consequent upon a transfer, but clause 207 makes no such references. I do not think any benefit will be gained from that clause. It should not be left in its present form. Under the present practice the holder of a mortgage registers it. When an extension is required there is a deed of renewal, which is not registered. A discharge is generally a separate document and there is no advantage in having it endorsed.

By Mr. Reid.—Does not clause 207 appear to be a provision which has operated more in relation to the general law of mortgages than to the Transfer of Land Act?

Mr. Mackinnon.—That might be so. One of my colleagues on the sub-committee puts the matter in this way: In New South Wales there have grown up certain methods of doing conveyancing work, achieving the same result as do the different methods in Victoria. Clause 207 tries to import the New South Wales methods into ours, and they just do not mix.

(*Mr. Oldham being called away, Mr. Fraser was appointed to the chair.*)

The Chairman.—Sub-clause (2) states that it may be in one of the forms prescribed or to the effect thereof.

Mr. Mackinnon.—The only case where it occurs to me that the above might be an advantage is where there is a mortgage for £1,000 and a further advance of £100 is desired. You could register it by some endorsed document to be prescribed. That, however, is of no consequence because you could always register an additional mortgage.

By Mr. McDonald.—Suppose there is a first mortgage and a second mortgage, and the second mortgage lent further money. By endorsing that on an existing mortgage, would that give priority over the second mortgagee?

Mr. Mackinnon.—I do not think it would. It can only be done " by a memorandum endorsed on or annexed to the mortgage, and signed by the persons to be bound thereby (including any puisne incumbrancer adversely affected)."

I now pass to clause 243, which deals with the old section 191 relating to the witnessing of documents. The *Evidence Act* 1941 has been referred to. This is an Act prescribing persons before whom declarations may be made in matters dealt with by Departments of the State. In that Act persons are mentioned who can take declarations but who do not appear to be included as persons who can witness transfers. I refer to paragraphs (*e*), (*f*), (*g*), (*n*), and (*o*), of sub-section (1) of section (2), which cover any Member of the Parliament of Victoria or the Parliament of the Commonwealth, any legally qualified medical practitioner, any councillor of any municipality, any member of the Police Force, and the station master or person acting as station master of any railway station. I do not offer any comment on that.

By Mr. McDonald.—Why should there be only a limited number of witnesses within Victoria? Why not include everybody in Victoria?

Mr. Mackinnon.—I have heard members of my council say that under the general law no particular witness is required, so why should it be otherwise under the Transfer of Land Act? Under the general law the authenticity of the document is the responsibility of the person accepting the title. Under the Transfer of Land Act it could be said that there is less likelihood of forgery if a person has to go before a specified witness and sign the documents. The list,

however, is so large, especially if you bring in the others under the Evidence Act, that there would be very little difficulty in finding a witness under one of the headings. I do want to suggest that without the limits of Victoria, however, you might enlarge the list a little. Paragraph (*b*) provides for a Commissioner of the Supreme Court of Victoria to take affidavits. I think you might cut out the words "of the Supreme Court of Victoria" and make it only "a Commissioner for Taking Affidavits." You could include a barrister or solicitor of any State or any dominion, or of the United Kingdom, or any clerk to a barrister or solicitor.

I should like to bring under notice a matter which I did not realize myself until the last few days, and that is that land under the general law can be subdivided and sold as a subdivision. I know that you will find old conveyances of pieces of land which have been made out of a parent title, and that is done by description, of course, but I did not realize that a subdivision within 10 or 12 miles of Melbourne could be cut up into 72 lots and that they could be sold to purchasers who take individual conveyances of those lots and will some time or other have to have them brought under the Transfer of Land Act. I think that is almost wicked.

By Mr. McDonald.—Do they not have to obtain the consent of the municipality?

Mr. Mackinnon.—They have the consent of the municipality, and hold the original plan with the consent endorsed. My impression was that it would have been necessary to bring the land under the Act before subdividing it into so many allotments within such a short distance of Melbourne, but apparently that is not the case. In the instance cited, you will have 72 different people with titles under the general law where formerly there was one, and the subdividers have created easements of right-of-way and drainage.

By Mr. McDonald.—What is the procedure?

Mr. Mackinnon.—They have a printed form of conveyance with a plan on the back page of the document, and they convey "all that piece of land being lot so-and-so coloured red on the plan." The description is quite definite. The only point I raise is the undesirability of the practice of selling 72 allotments of land and putting those 72 poor devils under the obligation in the future of bringing their titles under the Act. I have not thought how to express a prohibition of it, but it appears undesirable from the public point of view.

Mr. Reid.—They do it with their eyes open.

Mr. Mackinnon.—Without advice they would probably not know the land was under the general law. I acted for one of the purchasers, and he had paid up the whole of the purchase money before coming into my office, which was several months later.

Mr. McDonald.—It is a good title.

Mr. Mackinnon.—It is a good title. There is nothing reprehensible in it except from the public point of view. As regards the new provisions requiring the Commissioner of Titles to bring all land under the Act, they seem to me to be very desirable. I infer from the Bill that the Commissioner will take a certain area and find that there are perhaps twenty people who own particular pieces of land spotted here and there over the plan. He will decide to bring them under the Act. He will issue limited certificates of title. No one will have an ordinary certificate unless he produces a survey. The limited certificate will have a volume and folio and can be transferred as a certificate under the Act, and in laymen's language it will have a note attached to it saying what there is yet to be done to make it a full certificate of title. I think that is a great advantage. The Commissioner will bring under the Act specified allotments of land belonging to particular owners. It will take some time and I should imagine will mean a large increase in the searching staff and the examining staff of the Titles Office. When the Commissioner notifies the owner he is about to issue a limited certificate the owner may think it advisable to cure the defects in his title and supply a survey and thus secure an ordinary certificate at an early date.

By Mr. Bailey.—Would that not deter a prospective buyer?

Mr. Mackinnon.—No. People become used to old law titles, but practitioners who are not familiar with them find them difficult to handle. When some intending purchasers hear that an old title is involved, they do not buy. At present a purchaser buying under an old title has to rely on his solicitor to tell him the state of the title. In future, the man will not have to rely upon his solicitor, but upon the Commissioner. If I were buying property that was not the subject of an ordinary certificate of title, I would prefer a limited certificate of title with minutes setting out what was needed to be done to make it a perfect certificate, as I think that would be an advantage.

By Mr. McDonald.—A limited certificate would be no worse than an old law title, as, in thirty years, any technicalities would disappear?

Mr. Mackinnon.—That is the position.

By Mr. Fraser.—Do properties under old law titles realize less than similar properties with complete certificates of title?

Mr. Mackinnon.—They do. I deal mostly with transfers under the Transfer of Land Act, and a client will say, "This is an old law transaction. How much will it cost to bring the title under the Act?" When I tell him that the cost will be £50 or £60, he says, "The property is worth that much less to me." It all depends upon the state of the title, and if a title has been in one family for 50 or 60 years, there may be a difference. Generally speaking, an old title is worth less to a client, and that has been my advice. Many properties under the general law are of little value and probably it would not pay to bring the title under the Act.

By Mr. McDonald.—In my experience, values are not greatly affected. For instance, many buildings in Moorabool-street, Geelong, are under old law titles.

Mr. Mackinnon.—I repeat that people who are used to dealing with old law titles have no fears on the subject. The committee discussed foreclosures, of which I had experience during the depression years. Clause 193 contains a new provision. If a property is put up at auction, and the price offered is not equal to the mortgage, at a subsequent time the mortgagee can apply for a clear title. I think that is a sound proposition. If a man offers a property for sale and later enters into possession, and receives rents and profits, he has to account for them. If a rise in values occurs and the property becomes worth more, the owner has to receive the surplus.

By Mr. Thomas.—There were no increases in the depression years?

Mr. Mackinnon.—That is the only time when foreclosures occur.

By Mr. Bailey.—Is there any limit of time before a mortgagee in possession can foreclose?

Mr. Mackinnon.—I do not think he can foreclose for six months.

Mr. Bailey.—For years he can remain as mortgagee in possession?

Mr. Mackinnon.—Yes. If during a depression period a mortgagee cannot get his money back on offering a property, he can keep the property and account to the mortgagor for all receipts. Subsequently, when it is sold, he must pay over the surplus. He may say, "I do not want to be bothered with the accounting business, and I shall foreclose." He makes application for foreclosure and that cuts out the mortgagor. No one will permit a mortgagee to foreclose on a property worth more than the amount owing under the mortgage. For instance a mortgagee to whom £600 is owed may take over a property worth £450, and wait until prices rise and then sell. He will not then have to account to any one.

By Mr. Byrnes.—In some cases mortgagees have been in possession of properties for years, on which no rates have been paid.

Mr. Mackinnon.—Under the Local Government Act an occupier is liable for rates.

Mr. McDonald.—I think the point under discussion was that the foreclosure had to proceed two years after the auction sale.

Mr. Walters.—Otherwise the property would have to be put up for auction again.

Mr. Mackinnon.—The point was that if the property were put up for sale but the mortgagee waited for over two years and then desired to foreclose, he would have to re-offer the property at auction.

By Mr. Walters.—Do you think the period of two years is too long?

Mr. Mackinnon.—I think it is fair enough. When, at an earlier stage, I was discussing section 104 and exceptions contained in the Crown grant, I meant to refer to certain remarks of Mr. Schilling as to land being limited in depth. Mr. Schilling asked, "Why should some titles have no limitations as to depth while others had?" Section 330 of the *Mines Act* 1928 provides:—

(1) Gold and silver whether on or below the surface of all land in Victoria, whether alienated or not and if alienated whensoever alienated, shall be and remain the property of the Crown.

(2) All minerals other than silver whether on or below the surface of all land in Victoria not alienated on or before the 1st March, 1892, shall remain the property of the Crown.

Under section 294 of the *Land Act* 1928, all lands of the Crown shall be sold only as regards the surface and down to such depth below the surface as the Governor in Council may by order direct. An Order in Council passed under the *Land Act* 1891 provided that alienation of Crown lands, after the commencement of that Act, was limited to the surface and to a depth of 50 feet below the surface.

In the case of *Lawrence and Another* v. *Fordham* 1922 V.L.R., p. 705, it was decided that a vendor showed a good title by tendering, after a certain date, a Crown grant containing a limitation to 50 feet below the surface. So that, for some purpose connected with mining about which I am not altogether clear, the Crown said that in all future sales—that is, after 1892—there shall be a limitation of depth. All new Crown grants contain that limitation. If a certificate is issued to replace a Crown grant the limitation is carried forward. The only other matter remaining concerns the Twenty-fifth Schedule—Table A. Mr. Reid asked whether it should be brought up to date. Recently there was an article in the *Law Institute Journal* suggesting some alteration. The article was not official but was written to express the views of one person. I have examined the points made in the article and think they are to some extent controversial. At any rate, they have not been the subject of discussion by the council of the Law Institute or by the sub-committee. I would say, however, that if the Statute Law Revision Committee would like a considered opinion not only on the questions discussed by the article but also on matters with which I have not dealt, I should be pleased to submit such matters to the sub-committee and, subsequently, to the council of the Law Institute. If required, I could appear again before the Statute Law Revision Committee to convey the views of the council. I think I have touched upon all the questions specifically brought before this Committee by my Institute and also upon all other matters regarding which you indicated our views would be welcomed.

The Committee adjourned.

TUESDAY, 25TH OCTOBER, 1949.

Members present:

Mr. T. D. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. G. S. McArthur,	Mr. Barry,
The Hon. A. E. McDonald,	Mr. Merrifield,
The Hon. F. M. Thomas,	Mr. Reid,
The Hon. D. J. Walters.	Mr. Schilling.

Mr. Howard Spencer McComb, past president of the Victorian Institute of Surveyors and member of the Surveyors Board, was in attendance.

The Chairman.—The Committee will be glad to have your comments in relation to this Bill.

Mr. McComb.—The use of surveys in defining boundaries of land dates back to an early period. I do not propose to trace the history, because it is claimed that the practice dates back to 5540 B.C. It is interesting to study the science through Egypt, Greece, Rome, and England in the feudal days, from where much of our procedure emanated. Coming to more recent times, I think I should give the Committee an outline of events which have led to the present position. It seems necessary to realize where the trouble has arisen in the past if we are to set about rectifying some of the deficiencies and so make improvements for the future. In 1836, when Victoria was part of New South Wales, the first instructions relating to the definition of boundaries and registration of titles were excellent. Surveyors had to define the legal description for the purposes of registration. The Governor, Sir Richard Bourke, who was also a lawyer, issued a proclamation that no land was to be sold at Port Phillip until it had first been surveyed and marked out on the ground and had been submitted for public auction. That principle still exists in regard to Crown lands. Later, pressure was placed on the Governor, as people rushed to get settled, and Government instruction forced the Surveyor General to sacrifice accuracy for speed. That was the commencement of our trouble, because surveys were hurried and the descriptions were bad. Many of the definitions did not tally with the occupations on the ground.

In 1858 an attempt was made through a geodetic survey to rectify the position but it lapsed in 1871, mainly because the authorities were pressing for speed. These chaotic conditions of survey existed in Victoria when the first Transfer of Land Act came into operation in Victoria in 1866. The Act implemented the Torrens system and was designed to

control private subdivision of land. It was not compulsory to bring land under the Act, which may or may not have been an advantage when we realize that a good system of title has been linked to a bad system of survey. Attempts have been made from time to time to retrieve the position but the treatment has never really dealt with the root of the trouble—namely survey—as will be seen from a review of past legislation.

The preamble to the *Transfer of Land Act* 1928 reads, *inter alia*—

> Whereas it is expedient to give certainty to the title in estates in land, and to facilitate the proof thereof, and also to render dealings with land more simple and less expensive . . .

The purpose of the Act can be looked upon as being three-fold. First, to give certainty to the title to estates in land; secondly, to facilitate proof thereof; and, thirdly, to render dealings more simple and less expensive. Looking at the matter generally one would say that the degree of certainty, so far as surveys are concerned, is far from satisfactory, that surveys should be made greater use of as proof, and that many dealings are expensive and far from simple. The first Transfer of Land Act in 1866 contained the same preamble as the 1928 Act, but it gave little consideration to improving the bad system of survey then existing. A new section—section 134—dealing with surveys was introduced at that time. It remedied the weakness of allowing private subdividers to transfer lots without a survey. It provided that plans had to be submitted; that those plans had to be prepared by a licensed surveyor, and that no person could practise as a surveyor unless he was specially licensed for that purpose by the Surveyor-General. In effect, this was applying the Governor's principle to private subdivisions—that is, the land had first to be surveyed and marked on the ground before it was sold. The furnishing of the plans of subdivision was not mandatory, but was at the discretion of the Commissioner. The employment of a licensed surveyor was compulsory. It might have been better to have followed the Governor's principle in its entirety and made plans compulsory in all cases.

In 1885 an amending Act was passed, and it included clauses dealing with surveyors. Apparently the need had been felt for more surveys, as this Act provided that the Commissioner could ask for plans of survey by a licensed surveyor when bringing land under the Act or when amending a title. This was an extension of the plan of subdivision principle, but it suffered from the same weakness, that it was not made compulsory. The fallacy of isolated surveys must have also been realized, for section 3 of Act No. 872 gave the Commissioner power to require the accuracy of survey to be verified by having it connected to any general or local survey. The legislation suffered from the same defect, that the survey was not made compulsory, for how can surveys be co-ordinated if all surveys are not tied? Although this provision is contained in section 202 of the 1928 Act, the Office of Titles has never exercised its powers.

Remedies to overcome some of the difficulties in the old unco-ordinated Crown surveys were introduced in the 1885 Act, as it contained sections providing that the excess in any Crown subdivision could be apportioned between different owners or proprietors. This is now virtually section 204 of the 1928 Act.

It must be remembered that when surveys were not made compulsory, registrations were still required under the Transfer of Land Act. Some registrations were based on the old Crown surveys and some on no survey at all. Properties were simply registered by deed; therefore, discrepancies arose later. There was an attempt to deal with that problem in 1885, as the 1885 Act introduced the principle that abuttals could be used in description of land in certificates. The objects which may constitute abuttals were set out. Apparently this was used to try to overcome a weakness in re-defining the surveyed boundaries. The provisions still exist in sections 213 and 214 of the 1928 Act.

While the Act refers in several places to " erroneous measurements in the original Crown surveys " or " errors in survey or other mis-description ", it should be remembered that, while some of the differences were due to different methods of survey, many more were due to errors in fencing the boundaries as marked and when those boundaries were subsequently re-fenced the old landmarks were not preserved sufficiently. This has been going on all the time. As will be seen later, the whole of the work of the Surveyor and the Office of Titles could be nullified by a careless fencer or builder.

In 1885 the Survey Boundaries Act was brought in, because of the discrepancies between the boundaries of land as marked on the ground and the description of the land as given in the title deeds. It established that the Crown survey boundaries as marked on the ground were deemed to be the true boundaries, also for Crown grants and Crown leases. It provided as to aliquot parts of Crown Sections having excess of area, how survey boundaries may be proved in the absence of survey marks, and for the margin of error allowed in description of boundaries. Under these provisions the dimensions on the title were to be read as " a little more or a little less " within the limit of error prescribed. The fixing of a limit of error can point to one thing only—that the title could not be re-established on the ground to the same degree of accuracy as that to which it was issued. The Office of Titles, although it had the power, failed to lay down a proper system of survey, which might have made a limit of error unnecessary.

Towards the end of 1887 a further amending Act was passed. This changed the limit of error from 1 in 1,000 to 1 in 500, and extended its application from titles to amendments of certificates and adjustment of boundaries. The amending Act also provided that an excess of land may be apportioned between different owners or proprietors, that is, the principle adopted with Crown subdivision had been applied to private subdivision. Thus, after 22 years, it had been found necessary to adjust subdivisions carried out under the provisions of the first Transfer of Land Act.

The 1887 amending measure also contained important clauses regarding adverse claims. Where a right of way had been adversely occupied for 30 years, and where an encroachment on a road in the cities of Melbourne and Geelong had existed for fifteen years, a title could be granted. These provisions are now sections 271 and 272 of the 1928 Act. Obviously the granting of the adverse claims was an admission that the original street boundaries could not be accurately re-established. The Commissioner was also given power to determine doubtful boundaries of old subdivisions, and the procedure was set out. This is now included in sections 205 to 210 of the 1928 Act.

In 1890 another amending Act was passed, whereby it was made mandatory that a plan of survey with field notes by a licensed surveyor should accompany the application to a title by possession. In the 1928 consolidation is was also made compulsory that an application for amendment of title should be accompanied by a plan of survey by a licensed surveyor. It is difficult to understand why these two were made mandatory, yet with plans of subdivision it was still left with the Commissioner to decide.

Two consequential amendments were made to the Transfer of Land Act in 1928 consolidation by the late Mr. Justice Cussen. Because of the provisions of section 7 of the Land Surveyors Act, Mr. Justice Cussen amended the section of the Transfer of Land Act which authorized the Commissioner to have plans of survey made by persons other than licensed surveyors. Section 201 now reads that all surveys required by the Commissioner shall be made and certified by a licensed surveyor. The second amendment was a section from the original Act in 1866 stipulating that plans of subdivision had to be certified to in the form of a statutory declaration. This was probably necessary when the first Act came into operation, but when the Land Surveyors Act became law the surveyor had to make a sworn declaration on taking out his licence, hence the 1928 consolidation made the ordinary certificate as to accuracy cover the plan of subdivision.

This brief review shows that—

1. The initial Crown system was to base title upon survey.
2. The demand for surveys as a basis of title has been increasing.
3. It has been found necessary to make it compulsory to supply surveys.
4. A great deal of the amending legislation dealing with boundaries has been necessary because of the hurried and unco-ordinated surveys of early days, and because of our failure in the past to provide an adequate system of survey.

I shall now deal briefly wish some of the legislation which has been passed since 1928, and will show that some faults have been remedied or machinery has been provided whereby we shall be able to overcome some of the defects of the past. We have been working on these matters for a considerable time, and my brief review will give this Committee an outline of the position.

The *Survey Co-ordination Act* 1940, No. 4732, was an attempt by the State to lay down a proper survey system not only for Victoria but also, in co-operation with the Commonwealth, for the whole of Australia. The Victorian Act was copied in its entirety by Tasmania, and other States are now introducing similar legislation. That Act, in effect, provides machinery whereby all surveys, and not only title surveys, by all Departments, and any surveys carried on both by the State and the Commonwealth authorities, will be properly co-ordinated and be available. The Survey Co-ordination Act works in conjunction with the Commonwealth legislation and it can only be extended gradually as reliable information becomes available.

I do not wish to weary the Committee with details but sub-section (2) of section 12 of the Act is important. The Surveyor-General is empowered to act when sufficient information is available on any particular area. He operates in conjunction with the Commonwealth, and when he considers that there is sufficient survey information on an area the Governor in Council can then proclaim it a " proclaimed survey area ". That is where we can make a start to put titles in proper order, to have surveys for the definition of titles, and all other surveys properly co-ordinated and related. I should mention in passing that it would include all surveys and all information that comes in from all Government Departments, private surveyors, the Titles Office and so on. This will all go into a central plan room and there become available to the Commnowealth and State Departments for the purpose of keeping their maps up to date. This is important from a national point of view, because we all know the difficulty that confronted the Commonwealth Government during the recent war in obtaining plans. We had to scratch here and there to get even a rough plan in some instances. In future we shall be in a much better position, because of the Survey Co-ordination Act.

Sub-section (3) of section 12 of a Survey Co-ordination Act contains another important provision, in these terms—

> . . . . no plan of any such survey shall be lodged with or accepted or otherwise used by any department or public authority or be of any validity whatever for any purpose under any Act unless it shows such connection as aforesaid certified by a surveyor who carried out the survey or is accompanied by a sketch plan showing such connection so certified.

It means that the whole thing is to be tied up properly in the " proclaimed survey area ", otherwise it will not be valid.

In 1940 the *Melbourne (Widening of Streets) Act,* No. 4760, was passed, and later amended in 1943 by Act No. 4991. The Act affected the titles of land in connection with the widening of the " Little " streets in the City of Melbourne. It contains a provision that the Melbourne City Council is to provide a plan of the proposed alignment and I am pleased to say all such plans in this connection are made and certified to by licensed surveyors.

In 1941 an amendment was made in the Local Government Act which has now been incorporated in section 535 of the *Local Government Act* 1946. It is provided that all municipal councils when constructing new streets or roads, shall have the alignments fixed by a licensed surveyor and adequately connected to standard survey marks. This will ensure the continuity of the alignment as originally marked on the ground, and will safeguard against the pegs being removed by the constructing authority before a record is taken. We found that valuable evidence on such areas was being lost. After the Surveyor and the Titles Office had dealt with the area, the contractor working for the municipal council would come along to make the road and rip out all the pegs. The evidence was then gone, and could only be replaced at considerable cost. It then depended on the scope of the survey on how closely to the original it could be re-established. That was the reason for that provision in the *Local Government Act* 1941. It provides that before a municipal council makes a street it must get a record of the original marks for allotments in the street, all tied up properly so that they can be reproduced. In that way the evidence is not lost.

In 1942 there was passed a Consolidation of the Lands Surveyors Act. (The first Land Surveyors Act was enacted in 1895 and before that surveyors were operating under the State Land Act.) The *Land Surveyors Act* 1942 defined " survey " and " title survey " and furnished a proper link between " plan " and " survey ". It provides legal protection to survey marks and gives licensed surveyors the legal right to enter upon land, without trespassing, for the purpose of making surveys. It tightens up the law against non-licensed persons effecting title surveys, and strengthens the Surveyors Board's position in regard to taking action against licensed surveyors who do faulty surveys. I am a member of the Board and it recently took action against a surveyor who had no licence and had done faulty work which he hoped to get through the Titles Office. The practice of non-licensed surveyors doing this work leads to many complications later, and there is a lot of that work going on. I heard of a case the other day in connection with a big estate, where a young returned soldier wished to build. He got his friend, who was not a licensed surveyor but had had some preliminary training in the work, to assist him. He measured off the allotment and

marked it out. They started to put up the fences, and before they had erected it, the adjoining farmer came along ploughing, and knocked the pegs out. The pegs were put back in what was thought to be their original position. Finally it was necessary to re-measure the boundaries of 30 allotments, which had been measured from the fencing on the first block, and all that entailed added expense. In some cases the new houses were on to the next allotment, all because of the first faulty layout.

The powers of the Board were also widened to make regulations governing the making of title surveys. It should be remembered that in making such regulations the Surveyors Board is virtually stipulating the requirements of the Lands Department and of the Titles Office in regard to title surveys. The Titles Office has an ex-officio member on the Board, but it has no power to make a regulation governing a survey. The latter has to be done by the Surveyors Board.

The latest regulations which the Board made were approved by the Governor-in-Council on the 8th of July, 1947. In drafting those regulations the Board had in mind four matters—

(1) It endeavoured to state as clearly and as explicitly as possible the full requirements of both the Department of Lands and the Titles Office regarding surveys, so that surveyors would know exactly what was required and be able to supply it, and to enable requisitions to be reduced to a minimum, thereby avoiding delays which occur at present. The Board desired to speed up the work as much as possible from the survey side, so that dealings through the Titles Office would be accelerated.

(2) The Board also aimed at securing better and more accurate surveys, thereby making examination and comparison easier, thus giving greater certainty to titles and so reducing the time taken in examining the dealings.

(3) It also tried to provide machinery so that surveys affecting titles, when carried out by unqualified men, could be readily detected and appropriate action taken. Too many dealings in regard to amendment of titles can be traced directly to bad surveys by non-licensed persons, either in making title surveys, or in the remarking of title boundaries on the ground.

(4) Further, the Board desired to make every endeavour to ensure that the surveys shall be capable of being re-established on the ground to the same degree of accuracy as that to which they were made.

The idea behind all this was, of course, the desire to ensure better surveys, because it was considered that that would reduce the time taken in having dealings through the Titles Office completed; also it would considerably reduce costs.

I might mention—because it serves to show how the survey system is tied up—that in 1945 a big step forward was taken when the Commonwealth and the States agreed to set up a National Mapping Council for the whole of Australia. We are now working on a co-ordinated system for the survey and mapping of the whole of Australia, and Victoria, through the Survey Co-ordination Act, is contributing its part to this work of national mapping. A big step forward in national mapping and in the development of the country has thus been taken by implementing the system of aerial and photographic survey. It fulfils a very valuable purpose in regard to the development of Victoria and mapping generally.

In 1947 the Local Government Act was consolidated and that dealt with subdivisions of private lands, which have to be submitted for the approval of the municipal council. In our opinion, there is a slight conflict in regard to plans. A plan which has to be submitted to a Council showing the proposed subdivision does not necessarily, according to the Act, have to be done by a licensed surveyor, but we think it would be better if it were compulsory that the plan should be made by a licensed person. A Council might pass a plan, but when it is submitted for registration under the Transfer of Land Act the Titles Office requires a plan of survey by a licensed surveyor. I think greater protection for the public would be ensured and inspection facilitated if the plan submitted to the Council was made by a licensed surveyor.

By Mr. Reid.—Do many instances occur of plans being submitted by unlicensed surveyors?

Mr. McComb.—I do not know the exact number. Some municipalities now insist that the plan be signed by a licensed surveyor. They have found that complications and variations in title have not been adequately provided for by non-licensed men. Surveying is a specialist's work in titles, boundaries and all related matters, especially with regard to what is on the ground. The purpose of the plan—considering it from a public point of view—is to ensure that the land is there, and the necessary provision must be made to achieve that end.

Mr. Fraser.—A person proposing to implement a subdivision would be foolish not to employ a licensed surveyor, because, to the same end, he may incur double the expense later, provided he was under the obligation of paying the non-licensed man.

Mr. McComb.—Under the wording of the Act at present, it would appear that any person could submit a proposed scheme of subdivision to a council and it might be approved. It would then have to be lodged with the Titles Office, which would ask for a plan of subdivision by a licensed surveyor to ensure that everything necessary had been marked on the plan.

By Mr. Bailey.—You instanced a case in which a person obtained a survey by a friend who put in the pegs. Later, the adjoining orchardist ploughed them in or knocked them out of position. Are you suggesting that if a person has a block of land of 100 feet and he wants to sell 50 feet of it, the employment of a licensed surveyor to survey the land would be necessary?

Mr. McComb.—No. In the case of the transfer of a part of the title, the Titles Office has power to deal with it.

By Mr. Bailey.—If the pegs were in, would it matter whether the measurements were taken by a surveyor or not?

Mr. McComb.—On occasions there may be grave doubt whether the measurements were pegged properly in the first place. In some cases a survey has revealed a very bad position. In one instance the house on the land in one title was actually on the land specified in the title of another allotment.

By Mr. McDonald.—Is there any established practice in the Titles Office as to what is regarded as a "subdivision"?

Mr. McComb.—Yes, two or more lots.

By Mr. McDonald.—Does the Titles Office require a survey in the case of two or more lots?

Mr. McComb.—The Transfer of Land Act specifies two or more lots; also, a subdivision has to be submitted to the council concerned.

By Mr. McDonald.—If a person owned a block of land with a frontage of 100 feet, he would not be compelled to employ a surveyor to divide his block into two 50-feet parts?

Mr. McComb.—That would rest with the Titles Office.

By Mr. McDonald.—Is not some practice followed in the Titles Office concerning cases involving not more than five blocks?

Mr. McComb.—I think they interpret those matters mostly according to the survey.

By Mr. McDonald.—I was under the impression that it was the practice that in cases up to five blocks, it was not necessary to lodge a plan of subdivision.

Mr. McComb.—There might be an unwritten practice.

By Mr. McDonald.—That is what I have in mind. Suppose a person owns a block having a frontage of 250 feet in a straight street, and he desires to cut that land into five blocks each of 50 feet. Why would it be necessary to incur the expense of employing a licensed surveyor to prepare a plan of subdivision in a case of that kind? What would be the advantage?

Mr. McComb.—In the first place, how would any one be certain that the title agreed with what was on the ground? There actually might not be enough land to provide five 50-feet blocks. There might be an adverse claim on the title.

By Mr. McDonald.—Take the case of a corner block. The owner might measure it and be satisfied that it had a frontage of 250 feet. Why would it be necessary to engage a licensed surveyor in that case?

Mr. McComb.—His starting point might not be right. That has happened; it has been ascertained, in somewhat similar cases, that there has not actually been enough land to agree with the area it was desired to transfer.

Mr. McDonald.—The owner could measure from the fence on one side of his block, down to the corner, and be satisfied that he had 250 feet.

Mr. Fraser.—And he might have been in possession of the block for 50 years.

By Mr. McDonald.—And have had the land fenced. Why would it be necessary to have the block cut into five allotments by a licensed surveyor, either for the municipality or the Titles Office?

Mr. McComb.—If it were a diagonal block, or if there was some peculiarity about the alignment, he might not be sure of his measurements.

Mr. McDonald.—I am speaking of a case in which there would be a straight frontage of 250 feet. I cannot see any necessity for the services of a licensed surveyor. There may be a reason for the employment of a licensed person, but I do not know it.

Mr. McComb.—First, the owner may not have the full frontage he thinks he has. He may have a title to a certain area, but it may be encroaching on the adjoining title.

Mr. McDonald.—The owner might measure the land, and find that the required land existed.

Mr. McComb.—One could not tell unless a proper title survey were made. The question of drainage and easements also arises. The whole of the land might drain towards the back, and the owner might have obtained an easement in order to provide the facilities for drainage.

Mr. McDonald.—Let us take the simplest case—one in which no easements either for drainage or carriage way are involved.

Mr. Bailey.—There would be a plan of the allotment on the title.

Mr. McDonald.—Yes. Take the case of a straight 250-feet frontage, with streets on two, three, or even four sides.

Mr. McComb.—The Titles Office would have to decide whether in that case they would waive the survey.

By Mr. McDonald.—But why should they require one?

Mr. McComb.—It is at their discretion; it is not mandatory that a plan of subdivision be lodged.

By Mr. McDonald.—Can you state a reason why a plan should have to be lodged?

Mr. McComb.—My view is that it should be marked out, otherwise there is no guarantee to the purchaser that the land is there.

By Mr. McDonald.—What would it cost to have the land surveyed and pegs put in by a licensed surveyor?

Mr. McComb.—That would depend on the survey and the work invloved.

Mr. McDonald.—At one time we used to get what was known as an identification survey. The surveyor would go out with the title and put the pegs in. That would cost three guineas.

Mr. McComb.—A check survey.

Mr. McDonald.—Yes; now the cost is not less than nine guineas.

Mr. Walters.—Mr. McDonald spoke of a very simple case, and raised the question whether an exception should be made in those circumstances. But there would be all degrees of cases, ranging up to very complicated ones; and the question would arise: Where would you draw the line?

Mr. McDonald.—I agree with the desirability of proper surveys in complicated cases.

Mr. Walters.—If an exception is to be made in simple cases, or in certain cases, a special provision exempting them would have to be included in the Act.

Mr. Merrifield.—The question of the protection of a new purchaser also arises. He might not find out until after he had completed his purchase that the wall of a building on his property encroached on the adjoining block, and he might be ordered to pull down a wall. That could involve him in a big expense. To a great degree surveys represent an insurance.

Mr. McDonald.—I have in mind a block on which there would be no buildings, and with a street on each side.

Mr. Merrifield.—You are quoting the simplest of cases.

Mr. McComb.—Consider it from the Government point of view. A person is not issued with a Crown grant unless it is based on a survey; it is a guarantee that the land is there. The trouble in the past has been that titles have been issued in respect of areas of land which might not have corresponded with the land that really existed. In future if the Government is going to guarantee titles and issue new titles, it should be satisfied that the land is there. A plan of subdivision is a guarantee that the land is there. If the original title is wrong, under your proposed scheme five titles may have to be amended.

By Mr. McDonald.—Over a period of 50 years there may be ten new fences erected, and on each occasion they may encroach a foot. Under those circumstances where is the guarantee that the land is there?

Mr. McComb.—That is only possible at present because of the existing law which allows titles to be amended by adverse possession. I do not think it was ever intended that the amendment should go on and on. The purpose of the 1885 Act was to bring the titles up to date. When survey areas are proclaimed there should be an attempt to make a title indefeasible. There will be no necessity for further amendments as the survey will be accurate enough to re-establish the title boundary. At present the title has no guarantee in perpetuity, it has a tenure of only fifteen years.

By Mr. Thomas.—How does that apply in the case of the Melbourne and Metropolitan Board of Works easements?

Mr. McComb.—The Board has all its works surveyed by a licensed surveyor. If an easement affects a title, it has to be fitted in.

By Mr. Thomas.—It has to be approved?

Mr. McComb.—Yes.

By Mr. McDonald.—A guarantee that the land is there can never be given because the erectoin of fences cannot be controlled.

Mr. McComb.—If the title boundary can be established it does not matter about the fences. It can be proved whether or not there is any encroachment.

By Mr. McDonald.—If the boundary were marked out and then on each occasion a fence was constructed it was shifted a foot, where is the guarantee that the title is for the land in possession?

Mr. McComb.—From a survey the boundaries of the title can be re-established.

By Mr. McDonald.—It can be re-established, but possession cannot be regained.

Mr. McComb.—Why not, if the title is indefeasible? It would be possible to claim by title.

Mr. Fraser.—A person may claim by possession after a certain number of years.

By Mr. McDonald.—There could be no guarantee that the title was for the land in possession.

Mr. McComb.—I shall suggest later, when we come to the question of proclaimed survey areas, that the title should be indefeasible.

By Mr. Walters.—It could not be altered even by adverse possession?

Mr. McComb.—I do not think it should be. I think the Government should guarantee the title when it is possible to re-establish the boundaries.

By Mr. McDonald.—You would take away the right of adverse possession altogether?

Mr. McComb.—I would. Once it is possible to re-establish the title and define the boundary it can be determined whether or not encroachment is taking place. That has been the difficulty in the past, and it has been due to hurried surveys. It cannot be said that there is any encroachment until the boundary can definitely be established, and that has not been possible in the past. In the report of the Royal Commission in 1885 the question of amendment of title was raised. It was proposed to deal with the matter both in a legal and a survey way so that the titles could be rectified, but unfortunately the surveyors did not carry out their task. They were supposed to lay down the framework and do their part of the work so that the titles could be re-established, but that was never done. It was never attempted until the survey co-ordination legislation was passed in 1940. We would sooner see small survey areas proclaimed so that they could be dealt with gradually. In that way the whole State would ultimately be covered.

By Mr. McDonald.—You contend that the adverse possession right should go altogether?

Mr. McComb.—Only in a proclaimed survey area.

By Mr. McDonald.—Once the whole State was proclaimed adverse possession would go altogether?

Mr. McComb.—The proclaimed areas would gradually extend. The whole State cannot be proclaimed at once.

By Mr. McDonald.—You do not agree with the rectification of titles?

Mr. McComb.—I would allow the rectification of surveys under the present system, but once a title was rectified in a proclaimed area to agree with the occupation I would say that it should be indefeasible.

By Mr. McDonald.—You are working on the assumption that there will be no errors in the present-day surveys?

Mr. McComb.—Yes.

By Mr. Fraser.—You take the view that once the title is indefeasible there will be no right to adverse possession?

Mr. McComb.—That is so. A fence is a different proposition from a building, because it has to be a party fence and has to be erected somewhere.

By Mr. Walters.—Would the right of adverse possession apply in the case of a man who squatted on a piece of land for 30 years?

Mr. McComb.—Not if it was in a proclaimed area.

By Mr. McDonald.—The rectification of titles has two purposes. First, to bring the title into line with the possession; and, secondly, because of errors made in previous surveys?

Mr. McComb.—Yes. It may be an error in the fencing, or in the survey. I know of one case in which the survey was correct, and the survey pegs were shifted by one owner over a sufficiently long line to add another five acres. After fifteen years an amendment to the title was asked for. The error is not always due to survey.

By Mr. McDonald.—You are assuming that there will be no errors of survey from now on?

Mr. McComb.—Not in the proclaimed areas.

By Mr. McDonald.—If there is an error there will be no way of rectifying it?

Mr. McComb.—I would make provision for that. I should allow an amendment in a proclaimed survey area only on the certificate of the Surveyor-General or the Surveyor and Chief Draughtsman that the title could not be re-defined to the same degree of accuracy. Unforeseen circumstances must be provided for. To avoid any trouble there should be a right of appeal to the Surveyors Board, to decide whether the title could be re-defined to the same degree of accuracy.

By Mr. Fraser.—Do not you think it is a little Utopian to suggest we shall ever achieve the end where there will be a master survey in a proclaimed area, and there will be complete accuracy from then on? Adverse possession immediately strikes at the root of that proposition. A title must be altered to accord with the occupation.

Mr. McComb.—Once a survey area was proclaimed the titles within that area would be amended to agree with occupation, but thereafter there would be no further amendment unless it could be shown by the Surveyor-General or the Surveyor and Chief Draughtsman of the Office of Titles that the title could not be reproduced.

By Mr. McDonald.—Fifty years ago a building in Collins-street was built 1 foot over the boundary. If the area were proclaimed there would be a person in occupation for 50 years with no title?

Mr. McComb.—An owner should be careful not to encroach.

By Mr. McDonald.—If an honest mistake is made, under your proposition the title will never be rectified?

Mr. McComb.—The adjoining owner has to be protected also.

By Mr. McDonald.—But he has been in possession for 50 years?

Mr. McComb.—He should be careful where he erects the building.

By Mr. Fraser.—The person who is encroaching gets a title to so much of his land that does not encroach? That is the indefeasible title.

Mr. McComb.—When a survey area is proclaimed the titles are amended to agree with the occupations within that area, but thereafter they are not amended. Looking at it from another point of view, is it right that the Government should issue a title say to a man living in another country and then allow other people to encroach on the land in that title. In his absence from the locality what is the value of his title? There is no guarantee.

By Mr. McDonald.—I can refer you to a case that occurred 25 years ago, where a licensed surveyor made a mistake of either 106 or 130 feet.

Mr. McComb.—The Surveyors Board has been appointed to deal with cases of that description.

By Mr. McDonald.—What more can a man do than obtain the services of a licensed surveyor?

By Mr. Bailey.—It is no redress to the land owner to know that the surveyor made a mistake and a valuable building encroached on other land.

Mr. McComb.—My opinion is that if you make a mistake it is your moral obligation to pay for it.

Mr. McDonald.—Fortunately the mistake to which I have referred was discovered by the Titles Office before the actual acquisition. Another application was submitted about the same time and when that was being considered it was found that it was wrong. Assuming that there had not been two applications at the same time, that title would have been issued on the survey.

By Mr. Walters.—Would not such a mistake be obvious?

Mr. McComb.—I know of cases where the surveyor has marked out the boundary incorrectly, buildings and garages have been erected thereon, and he has had to pay. I had a case quite recently where both boundaries were marked out, but the builder put the building 1 foot the wrong way, and he had to pay for his mistake. We did not amend the title. They had just been given a title based on a good survey and the builder was wrong.

By Mr. McDonald.—Although that man had a survey made his building was 1 foot on land to which he has not a good title. Under your scheme he would never be able to get a good title for that 1 foot of land.

Mr. McComb.—He cannot get it now.

By Mr. McDonald.—He could, by adverse possession.

Mr. McComb.—But if the other owner says (within fifteen years) that he must take the garage away he must do so.

By Mr. McDonald.—What if he leaves it there and the other owner does not find out the mistake?

Mr. McComb.—The other owner could force him to take it away.

By Mr. Walters.—Why should one owner lose 1 foot of his land?

Mr. McDonald.—He could take civil action if he so deemed. Perhaps he would decide that he would not go to the expense of fighting to get back the 1 foot of land.

Mr. Fraser.—Under the present system the man who made the mistake could purchase the 1 foot of land and get an amendment of his title.

Mr. McDonald.—The other man might decide not to sell.

Mr. Fraser.—Under the witness's scheme he could not get a title to that 1 foot of land at any time.

Mr. McComb.—He should be more careful when he does the job. He would have to acquire it by agreement.

Mr. Bailey.—Surely he does get the title; the witness does not go that far. It would mean you could never alter the size of blocks.

Mr. McDonald.—Immediately you start to take 1 foot of an existing block you come back to the subdivision of the land.

Mr. McComb.—I should like the present system to continue, and do what I have suggested only in a proclaimed survey area. It will take a long time to extend over the whole State. I have shown where we have been in trouble. We have been in trouble for a long time and unless we make a start somewhere we will get nowhere.

Mr. Fraser.—It is a little wide of the Bill and a little academic at the moment.

Mr. McComb.—The machinery working in the Titles Office at present is good, and it could be kept going; but we should give the public something even better and we should make a start on it. This is something from which we can make a start, in a "proclaimed survey area."

The Transfer of Land (Acquisition) Bill was passed in 1948. This Act related to the registration of land compulsorily acquired by any Department or public authority. There is only one point I should mention. We thought at the time the measure was passed that it should be mandatory, when submitting an application, that a proper survey should be provided. Such a provision was not incorporated in the Act but the regulations made under it provided for a survey when required by the Office of Titles. I think that is wrong. It is a case where you could make it mandatory, because it is only statutory authorities that have power compulsorily to acquire, and a survey has to be made before the Department determines the land it is to acquire. It is not a hardship on the Department's survey staff to have to submit a proper plan of survey for the area for which the Department is seeking title. The principle operates under the Survey Co-ordination Act, and I think it should be made mandatory in this Bill.

By Mr. McDonald.—That all land compulsorily acquired should be surveyed?

Mr. McComb.—Yes; when they make application for registration at the Titles Office the application should be accompanied by a plan of survey. That is already provided in regulations but it should be included in the Bill.

By Mr. Merrifield.—Would not that be the position where a plan of re-subdivision was lodged? Take the case where the Housing Commission acquired a general area and then subdivided it.

Mr. McComb.—The Commission has to get a title first.

Mr. Merrifield.—It would then lodge a re-subdivision plan.

Mr. McComb.—It could be worked together. In that case the plan could go in with the re-subdivision. Other authorities are compulsorily acquiring land and there is no evidence of it in the Titles Office. I think the Departments should contribute towards a proper system.

By Mr. McDonald.—If a municipality has decided to acquire land it has a separate certificate of title, why should we make it mandatory for the council to have a survey made of that area?

Mr. McComb.—The council now has to submit a plan to the Minister, and by virtue of the Land Survey Act a survey must be undertaken by a licensed surveyor.

By Mr. McDonald.—The plan is on the title; why have a survey when one is not necessary?

Mr. McComb.—I think the Departments should assist the Titles Office in this system, and should put their houses in order by getting an up-to-date title.

By Mr. McDonald.—Take a block of land that has streets on four sides and there is a certificate of title to the property. If the council decided to acquire it as a park, why should it be compelled to have a survey made of the area?

Mr. McComb.—Do you mean, just because it is a park?

Mr. McDonald.—It has a certificate of title and there are streets on the four sides.

Mr. McComb.—The certificate of title might not accord with the roads there.

By Mr. McDonald.—What could you do about altering the roads? Why do you want a survey in that instance?

Mr. McComb.—Only to assist the Titles Office.

Mr. McDonald.—A title could issue in the council's name for that area.

Mr. Bailey.—It might have been part of a subdivision and the plan would have been lodged with the Titles Office.

Mr. McDonald.—There would be a plan on the title. Take a case where the municipality voluntarily acquired an area and had not compulsorily acquired it; in that case you would not require another survey.

Mr. McComb.—That would rest with the Titles Office. I am only dealing with land compulsorily acquired.

Mr. McDonald.—If the municipality were transferring the whole block of land it would not need a survey. It would be transferring from "A" to "B" under voluntary acquisition. Why, because it is being compulsorily acquired, should we require a survey to be made there?

By Mr. Thomas.—What is the position if a firm takes over a street in a block purchase; would a resurvey be necessary in that instance?

Mr. McComb.—It would depend on whether it was a private street.

Mr. Thomas.—That happened at Collingwood, where the firm of Davies Coop Limited took over a street in conjunction with other property it purchased.

Mr. McComb.—If it was done under the Transfer of Land Act the firm could close the street, if it owned the land on the three sides and could satisfy the Titles Office.

By Mr. Merrifield.—Mr. McComb, will you consider, first, providing a sketch plan for new titles under the compulsory section and whether that would be possible at the Titles Office? Secondly, where an old reserve 1 foot wide exists and that acts as an obstruction between the free exchange of rights of carriage way, so as to open up through roads and so on, whether any machinery should be provided to overcome such bottle-necks?

Mr. McComb.—I shall give these matters consideration.

The Committee adjourned.

FRIDAY, 17TH FEBRUARY, 1950.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. F. M. Thomas.	Mr. Barry,
	Mr. Merrifield.

Mr. Francis William Watkins Betts, Commissioner of Titles, was in attendance.

The Chairman.—The procedure adopted by the Committee, Mr. Betts, is to call various persons who are in a position to give expert evidence on this Bill. I do not know whether you have read the transcript of the evidence already taken.

Mr. Betts.—I have not seen it.

The Chairman.—Perhaps that will be an advantage, as you will be able to tell us your views independently of opinion offered by any other person. We will, of course, make the previous evidence available to you. I understand that you are one of the authors of the Bill, and you were chairman of the committee which drafted it?

Mr. Betts.—That is so; I was the convenor of the committee.

The Chairman.—As Commissioner of Titles, you are in a very special judicial position in connection with the administration of the Transfer of Land Act, and I am sure your evidence will be valuable. We shall be pleased to hear any views that you may wish to put before the Committee.

By Mr. Merrifield.—Mr. Betts realizes that this discussion is quite informal?

The Chairman.—Yes. Doubtless, Mr. Betts, you may wish to present some views as to the respective spheres of the Registrar and the Commissioner of Titles—that matter has already been discussed by the Committee—and you may give us your opinions quite frankly. There are no personalities in the matter. The only question for consideration is whether there should be two offices. Your views will be used only for our own information and guidance.

Mr. Betts.—In reference to the question whether there should be two offices—those of Registrar and of Commissioner of Titles—I cannot see any reason at the moment for a change. The Registrar's duties do not conflict in any way with those of the Commissioner. The Commissioner is virtually the legal head of the Department. The Registrar may be a layman, and therefore—with respect—would not have the legal knowledge possessed by the Commissioner, who must be a person fully qualified in law. The Registrar deals with the administrative side of the office, including staff matters and promotions, and attends before the Public Service Board. The Commissioner has nothing to do with that work. The Registrar also deals with registrations under the Act. If he has a doubt about any case, he submits it to the Commissioner. If it were not an involved problem, the Commissioner would dispose of it, but if it required say—an examination of marriage settlements and the like, he would refer it to one of the examiners on his staff—not the staff of the Registrar—for his advice. The examiners on that staff are admitted men. That examiner would go into the matter and submit his requisitions to the Commissioner who may approve of them, or disallow them and direct registration. If the Commissioner allowed the requisitions, a solicitor may see him on appeal, but he would not see the Registrar, because the matter

had been referred by him to the Commissioner. There is also the right of appeal to the Commissioner against any requisition made by the Registrar or his staff.

The volume of work which goes through the office is very large. Most of it consists of what may be termed simple cases, and they are dealt with by the Registrar's staff—not the Commissioner's. Cases involving legal difficulties would be submitted by the Registrar to the Commissioner for advice. If the Registrar is a layman, I do not think he would be qualified to deal with many of the legal problems, particularly in relation to " home-made " wills, which at times are difficult.

By Mr. Bailey.—As they affect land transfers?

Mr. Betts.—Yes. It could not be expected that a Registrar, who is not a legally qualified man, would be able to decide whether a transfer in many such cases should be registered. He would submit wills difficult to construe, to the Commissioner. That has been the practice in past years, and I do not see that any useful purpose would be served by dispensing with one of the positions. If one of the offices was to be abolished, I assume that it would have to be that of the Registrar. The Government could hardly dispense with the position of Commissioner of Titles, who is the legal man, unless it was decided that the Registrar should be qualified in law. Even then, he could not deal with all the legal problems that arise. There is, of course, the work in connection with applications to bring land under the Act, which is peculiarly the task of an admitted man. At present that work is dealt with by the Commissioner's staff; the Registrar's staff has nothing to do with those cases. The Commissioner's examiners report on the titles, and I make a final decision. The only thing the Registrar would do in such cases would be, perhaps, to issue the certificate of title, which is the final act.

By Mr. Bailey.—Do those cases go from the examiners direct to you?

Mr. Betts.—Yes, that is, the general law cases. I would then go through the sketch of title made by the examiner and consider the requisitions. If I was of opinion that the requisition should not be made, I would strike it out. If I though a requisition had been omitted, I would include it. Interviews by solicitors would naturally follow if the requisitions were not agreed to. They would sometimes see the examiner, but more often than not they would interview me, because an examiner would have no power to waive it. So, there is a good deal of work which only the Commissioner—not the Registrar—can do. At the moment, I cannot see any point in having only one office.

By Mr. Bailey.—Prior to appointment to your present position, were you an officer of the Department?

Mr. Betts.—Yes. After 25 years' experience in law offices I went into the Titles Office as an examiner of titles. I worked in that capacity for about ten years. Then I was appointed Registrar, which position I held for three years. The senior examiner said that he did not wish to go down into the hurly-burly of the Registrar's chair, and I was appointed to the position by the present Prime Minister when he was State Attorney-General. Later, when the Commissioner of Titles retired, I was appointed to that office which I have held for fourteen years.

By Mr. Bailey.—You referred to old title dealings and said that any legal problems which arose were referred to you by the examiners. In other dealings under the Transfer of Land Act, is it mandatory for the Registrar to refer certain matters to you?

Mr. Betts.—Yes. There are a number of sections of the Act requiring the Commissioner's direction and some where his descretion is to be exercised, for example, vesting orders similar to those made by the Supreme Court, the appointment of new trustees, and amendment and rectification of titles.

By the Chairman.—Have you any general comments to offer on the Bill?

Mr. Fraser.—Up to date, Mr. Betts has been dealing with the administrative work of the Department.

The Chairman.—Yes. He takes the view that the two offices of Registrar and Commissioner of Titles, having independent spheres, should be maintained at this stage.

Mr. Betts.—I think so.

By Mr. Bailey.—Your main objection to an amalgamation of the two offices would be that the occupant of one of the positions is not a legal man. Assuming the positions were amalgamated and it was required that the person appointed to the position should be qualified in law, would you then have any objection?

Mr. Betts.—That point would arise as to which title would be assigned to the position, because the duties of the two posts are quite separate and distinct. I do not think one man could handle the administrative section of the work as well as the simple dealings. More than 150,000 dealings under the Act went through last year, but only a small proportion would be handled by the Commissioner.

By Mr. Fraser.—Suppose a bottleneck occurs, and it has to be remedied: Do you take any steps, or does the Registrar?

Mr. Betts.—To what bottleneck does Mr. Fraser refer—in the Transfer of Land Act work, or applications under the general law?

By Mr. Fraser.—I shall include both classes of work. There is much complaint that titles are not coming through. Whose job is it to see to that?

Mr. Betts.—I would say that, primarily, dealings under the Transfer of Land Act would be the responsibility of the Registrar, and that cases under the general law would be my concern. The staff available for work under the Transfer of Land Act as well as the general law is very much depleted. Complaints of delay as to dealings are due solely to shortage of staff. Formerly, as Commissioner, I had six examiners; now I have only three. The Law Department took two—one in connection with housing, and the other for soldier settlement work. We can now only do the best we can with the remaining staff.

By Mr. Fraser.—Does it not seem to you that there is some form of divided control at present?

Mr. Betts.—It is not delaying matters. As I have said, my control over general law work has nothing to do with the duties of the Registrar. The Registrar's work in connection with difficult matters and those which the Act requires me to deal with would come to me. At the moment, I cannot see how dual control is responsible for any delay.

The Chairman.—I suggest it would be a good idea to ask Mr. Betts to read the transcript to date and to meet us later and express his views on anything in general and this matter in particular.

Mr. Betts.—Do I understand that the divided control—if there is divided control, which I do not think there is—is thought to be responsible for the delay?

The Chairman.—That is not the real point. It was felt that the Titles Office should in the ultimate have only one head. He would not necessarily have to

carry out all the duties of the present Commissioner and the Registrar. It would be a kind of amalgamation of the two offices.

By Mr. Merrifield.—If the compulsory provisions of the Transfer of Land Act are made operative the work of your general law side will taper down and the work of the registration side will increase. Do you think that might need some reorientation of the two jurisdictions?

Mr. Betts.—I do not think Mr. Merrifield is quite right if he suggests that if the compulsory provisions come in the work on the general law side will taper down. It will increase considerably.

By Mr. Bailey.—Applications go to the Registrar?

Mr. Betts.—General law applications go to the Commissioner and those dealings which the Act puts under the control of the Commissioner. The great majority of Transfer of Land Act dealings go to the Registrar. If he wants legal advice on any, he takes them to the Commissioner each day and discusses them.

By Mr. Fraser.—That is a matter he himself decides. May he not decide that he has a better idea of interpretating a will than any one else has?

Mr. Betts.—He may. There is always an appeal from the Registrar to the Commissioner open to any one who objects to a requisition of the Registrar.

By Mr. Fraser.—Up to that stage he is the law in his own domain?

Mr. Betts.—Yes, in the great majority of cases. If he were a legal man he could take the responsibility of passing a transfer in pursuance of a will.

By Mr. Fraser.—And if he were not a legal man?

Mr. Betts.—He should not do it.

By Mr. Fraser.—Is there anything to stop him?

Mr. Betts.—It would be very unwise in the interests of the profession, the people, and the Government for a man to interpret a will if he had no legal knowledge.

By Mr. Fraser.—I saw some rules of interpretation in connection with wills. They were prepared, were they not, for the guidance of the Registrar?

Mr. Betts.—I do not think Mr. Fraser saw rules of interpretation. They were not prepared by me.

Mr. Fraser.—They were a long list of canons of construction.

Mr. Betts.—I have not seen them. They may have been prepared years ago by the then Commissioner for the help of the Registrar.

By Mr. Fraser.—On the present set-up, if you have a Registrar who is not qualified but who feels he is competent to interpret a will, and he possesses the canons of construction, there is no obligation on him to refer to you, and if the parties are dissatisfied they have a right of appeal to you?

Mr. Betts.—Yes. I think he passes quite a number of cases relating to wills. It is only in difficult cases that he refers to me. I would not say that all will cases come to me.

By Mr. Fraser.—To a large extent may it not depend on the harmony that exists between the Commissioner and the Registrar?

Mr. Betts.—I cannot follow that.

By Mr. Bailey.—Dealings under the general law by way of conveyance are sent to the Registrar. Are they compared with the will?

Mr. Betts.—The Registrar-General's office will register anything that is put in.

By Mr. Thomas.—If it has no standing in law?

Mr. Betts.—It may have none. One could put a chapter of the Bible in a deed and have it registered. It is only when the documents come to the examining staff of the Commissioner, when the land is being brought under the Transfer of Land Act, that we examine them. Registration under the general law is not worth much. When it comes to a question as between two conveyances, the one on the register would have priority, but it does not mean that because a conveyance of land is registered under the general law a good title is obtained.

By Mr. Bailey.—Regarding a conveyance of land devised to a person, would it be registered without checking to see whether it agreed with the will?

Mr. Betts.—Yes. Frequently the will is not registered in the Registrar-General's office. There may be a chain of title down to A. The next dealing, you would expect, would be from A., but it may be a conveyance from C., and he turns out later to be executor of A's will. There may be nothing in the conveyance to disclose that or in the memorial of it in the office. It is only when that land is being brought under the Act that the omission in the deed is found and probate called for. This observation applies to every case where there is a break in the chain of title.

Mr. Fraser.—It might not come for 60 years.

By Mr. Bailey.—Does that not prove the desirability of having land brought under the Transfer of Land Act, when all deficiencies would be checked and discovered?

Mr. Betts.—Yes. There may be a flaw, but in 99 cases out of 100 possession of the land cures it. If a man can prove that he and his predecessors have been in possession for 30 years, the flaw that may exist in his title is as a general rule cured.

By Mr. Bailey.—What about the case of a man who has accepted a title and wishes to dispose of the land, and then a flaw is discovered?

Mr. Betts.—It would be the fault of the solicitor. He should search the title, get an abstract, call for the production of the deeds, and check the deeds to find if there is a flaw. With great respect, I say solicitors do not do that. The Titles Office has become, as Sir Harry Lawson said, a hospital for sick titles, and, he added, "You make them well." I had to tell him that some deed titles were so decomposed that they were beyond hope. I think solicitors rely a lot on the Titles Office in general law cases to put the title right.

Mr. Fraser.—The old type of solicitor, who was an expert in these matters, has gone. The young fellows, these days, do not get any training.

Mr. Betts.—Too many cases are left to juniors in solicitors' offices.

Mr. Bailey.—The great weakness is that the Titles Office accepts everything without submitting it to an examiner.

Mr. Betts.—We say it is the duty of the solicitor to investigate the old title, and he should be satisfied before he accepts a new title. That is his job, and he ought to do it.

By Mr. Bailey.—I think he does it in most cases, but are you going to take it for granted that he has done it in all cases?

Mr. Betts.—I do not think you can expect the system of general law registrations to be the same as the system under the Transfer of Land Act. Mr. Bailey seems to suggest that title under the general

law should be investigated by the office when a general law deed is lodged for registration and a good title ensured at that time. You can not get that under the general law.

Mr. Bailey.—I am not submitting these questions for the purpose of upholding the present system. I am trying to point out some of the weaknesses of the general law practice.

By Mr. Fraser.—It will be many years before this proposal comes to fruition. Additional examiners will be required to see that there is some nexus between the individuals A. and C., for instance, in the filing of the documents?

Mr. Betts.—To do that the clerk who received the conveyance would have to search the old law title to see that A. was the last registered owner.

By Mr. Fraser.—Why? When a dealing under the Transfer of Land Act is put in and accepted, the clerk at the counter sends it on to the examiner; he does not make the search?

Mr. Betts.—At some time later then the clerk would have to search under the general law. I think it is difficult to guarantee that the title is a good general law title at the time that the general law dealing is lodged over the counter, or within the same time as it takes to register a Transfer of Land Act dealing. I think it would be too difficult and expensive, because legal men would have to be employed to ascertain whether the conveyance and the earlier chain of title showed a good or bad title. Also, we would not have the earlier deeds which would be in the hands of the vendor and possibly his predecessors in title; all we would have would be the memorials lodged in the office. To give effect to the suggestion would be to do what is now done by the office on an application to bring that land under the Act.

By Mr. Merrifield.—What is your personal opinion of the advisability of the compulsory clauses of the Bill? There is provision for the first applications to be made within a period of five years of enactment, and probably applications will occur within the next 35 years. In your opinion what chances are there of maintaining the staff to carry out the work?

Mr. Betts.—If the compulsory provisions are enacted we would require more examiners. At present, we are just about keeping up with current work lodged by solicitors. The time taken in bringing all the land in Victoria under the provisions of the Act will depend on the number of staff. Five years will not see all the land under the Act, but fixing a period may act as an urge to provide more staff to get the work done. That period was contained in the New Zealand and South Australian legislation, and it took 25 years in New Zealand, where the work is nearly completed. There is a little land at Auckland still to be dealt with. However, I do not think the dealings in New Zealand are as voluminous as they are in Victoria.

By Mr. Merrifield.—When you say that the work in New Zealand is nearly completed, do you mean the interim titles only or the final ones?

Mr. Betts.—I would not know whether they are interim or ordinary titles, but title to land is nearly all away from general law. It would not matter whether it was an interim or an ordinary title, a certificate would be issued under the Act. Land ceases to be under the general law, and subsequent dealings will be under the Act.

By Mr. Merrifield.—Even if the interim titles are issued before the ordinary ones there will probably be an extra volume of work, and I was wondering whether the staff could be maintained to do the work? Extra staff would be required, especially examiners?

Mr. Betts.—Yes, the staff would have to be increased. As the number of titles to general law land diminished, there would be more dealings under the Transfer of Land Act.

By Mr. Merrifield.—What are your chances of maintaining an increased staff, or, if this Act is passed within a reasonable time, what possibility is there of securing staff to commence the operation?

Mr. Betts.—I suppose quite a number of solicitors in the State would be glad to come into the service of the Government on that work.

By Mr. Fraser.—At an appropriate rate of salary?

Mr. Betts.—Certainly.

By the Chairman.—With an adjustment of salary I do not think there will be any difficulty in getting professional men. From my experience of the university, I should say that in a year or two there will be many legal men who will be only too pleased to get a job. Good positions will be offering for this work. Does that answer your point, Mr. Fraser?

Mr. Fraser.—Yes.

By Mr. Merrifield.—What is your opinion on the advisability of the compulsory clauses?

Mr. Betts.—I think it is a good thing for the State to have all land under the Transfer of Land Act. In short, it will mean a cheaper form of conveying in place of the expensive form under the general law. Transactions will be effected by registration under the Act, and an owner of land will benefit, possibly by getting a better price than if the land were under the general law. However, I think there can be just as good a title under the general law as under the Transfer of Land Act.

By Mr. Fraser.—Many people will not touch an old law title, or alternatively, if they are purchasing land that is held under an old law title, they want some discount on the purchase price. Is not that so?

Mr. Betts.—Yes.

The Chairman.—During the years I was dealing with those matters, if there was an old law title there would be a discount of 10 per cent. on the purchase price for the cost of bringing the land under the Act.

Mr. Bailey.—That might apply to districts where most of the land is held under the Transfer of Land Act, but in areas where many titles are under the general law there is no hesitation in accepting those titles.

Mr. Merrifield.—That may be so where reasonable tracts of land are held under the old law titles and the position is fairly clear, but in places such as Portland, where there is so much adverse possession, that is not the case.

Mr. Betts.—There is always a question with regard to the difference between an old law title and a title under the Act for, say, a city property where a matter of an inch is worth several hundred pounds. If there is a certificate of title a person knows that all the land is there, because it has been surveyed. However, it does not follow that all the land is there under a general law title; that will only be shewn by a survey. Of course, there may be more land than the general law title shews. With great respect to the legal profession, some solicitors do not know the difference between a general law title and a title under the Act. I have been informed that a country solicitor wrote to a city firm asking what the difference was.

By Mr. Merrifield.—Have you any proposals to vary the compulsory clauses of the Bill?

Mr. Betts.—No. That part is framed on the lines of the New Zealand and South Australian legislation. It more closely follows the South Australian Act because South Australia profited by the experience of New Zealand.

By Mr. Fraser.—Have you received any advice from South Australia on how their Act is operating?

Mr. Betts.—I have communicated with the authorities in that State. Their trouble is that they cannot get surveyors for the work. We will be in the same position in Victoria.

Mr. Bailey.—It will take almost as long to get a title as it will to get a survey through the Survey Office.

Mr. Betts.—Under the compulsory provisions we could bring a title to land under the Act without a survey.

By the Chairman.—Block surveys would take less time than would individual surveys?

Mr. Betts.—That is so.

By Mr. Bailey.—Would not land on both sides of the property under consideration have to be under the Transfer of Land Act, if there was a general law title on the adjoining property? The old land surveys were so much guess work, and the boundaries might overlap. I do not see how you could bring one piece of adjoining land with an old law title under the new title without a survey.

Mr. Betts.—Under the compulsory provisions, where we issued an interim title it could be issued without a survey. We would not guarantee the measurements under such a title. When the survey is made we would alter the interim title to a good title as to measurements.

By Mr. Bailey.—What would happen where there have been dealings in the interim title in the meantime? After the interim title is issued a purchaser gets no guarantee with the title.

Mr. Merrifield.—It is subject to the limitations noted in the registration book.

Mr. Betts.—If a person is going to buy land on an interim title, limited as to description, the first thing he should do is to have a survey made.

Mr. Bailey.—Complications would then arise.

Mr. Merrifield.—In the process of bringing the compulsory sections into being, by waiving the proclamation on survey districts, we could enforce the compulsory provisions only in respect of those districts as they become proclaimed survey districts. Survey areas are now being proclaimed under the Survey Co-ordination Act, and until that is done generally there will be no guarantee as to further surveys. There is a feeling that perhaps we should only operate the compulsory sections of this Bill at the stage where we are prepared to bring that land and surrounding areas in the district under the Survey Co-ordination Act, as a proclaimed district. The next matter I should like Mr. Betts to consider has reference to the assurance fund. There should be about £120,000 or £130,000 in that fund after the inroads that have been made into it are taken into account. Is there any way the assurance fund could be used more liberally to the advantage of the compulsory provisions?

The Chairman.—Mr. Merrifield has asked important questions which Mr. Betts would probably desire to consider before he submits answers. In the circumstances, I think this is an appropriate stage to adjourn.

The Committee adjourned.

MONDAY, 20TH FEBRUARY, 1950.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. A. E. McDonald,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Merrifield,
	Mr. Schilling.

Mr. Howard Spencer McComb, past president of the Victorian Institute of Surveyors and member of the Surveyors Board, was in attendance.

By The Chairman.—Mr. McComb, will you now proceed with your evidence.

Mr. McComb.—Continuing from where I left off on the 25th of October, 1949, I wish to refer to the *Local Government (Streets) Act* 1948, which was primarily concerned with the realigning and widening of streets, and provided that plans of survey must be made by a licensed surveyor and be correctly related to permanent marks. The Act endeavours to ensure that the new "declared alignment" will be capable of being re-established in the future. This is a valuable piece of legislation, especially in relation to titles.

A review of legislation passed since 1940 reveals—

(1) The demand for survey as a basis for or in connexion with title is still increasing.

(2) It has been found necessary to continue to make it compulsory to supply surveys by licensed surveyors.

(3) The machinery has been provided whereby a better system of basic survey will be available. Most of the faults of the past can now be gradually overcome.

(4) That under the new system, in a "proclaimed survey area", surveys will be capable of being reproduced to the same degree of accuracy as that to which they were originally made.

(5) That streets can now be re-aligned if the original alignment cannot be reproduced.

Coming now to the Bill, I take it that the principal aim and object of the Government is to give the people the best title possible, to expedite dealings, and to reduce costs.

If the provisions of the Bill, as it now stands, are insisted upon, will the titles be any better? So far as the description is concerned, my answer to that question would be, No.

If people are compelled to bring their land under the Act, as provided in the Bill, will the title be any better? My answer to that question would be, No. It would not be any better than can be obtained under the voluntary system, so far as description is concerned.

In my introductory remarks I indicated where improvements could be made by having additional surveys. I am of the opinion, however, that we are not going to achieve very much if we just try adding to the present system, knowing that it has certain basic faults.

I propose that the Titles Office should continue as at present except in a "proclaimed survey area" wherein a start should be made towards establishing better titles. This will be possible because there will be a sound, accurate survey basis from which to work. An area of 1,000 acres has already been proclaimed at Maryborough. The scheme will be extended gradually, but what is done will be done well. It will have the advantage of clearing up a definite area at a time, instead of bobbing about all over the State, as

applications are received on a voluntary basis. Instead of isolated and unco-ordinated surveys there will be co-ordinated surveys in a consolidated block.

In lieu of applying compulsory powers to the owners of parcels of land scattered here, there and everywhere, as provided in the Bill, it would be better to confine the compulsory powers to a "proclaimed survey area" alone. I shall enumerate my proposals in general terms first, and then deal with each in detail.

My proposals are—

(1) Remove the compulsory powers from Part III. That is the Part dealing with "compulsory registration of land."

(2) Merge Part III. with Part II. so that "Bringing land under the Act on application" will have the benefit of both a "limited" and an "ordinary" certificate.

There is a further point arising from this proposal which I shall explain later. My proposals continue—

(3) The Surveyors Board should be given the authority to prescribe various types of "title surveys" and define the information to be supplied under each type of survey.

(4) Draft a new Part making it compulsory to bring land under the Act, and/or to amend titles in a "Proclaimed Survey Area" only.

(5) All plans which are based upon levels should be by a licensed surveyor.

(6) All requisitions in relation to surveys should be limited to the making of the survey and/or the verification of that or any previous survey.

(7) The fee-simple of all private streets, when made public highways, should revert to the Crown.

(8) Reserve strips should be overcome by allowing the Office of Titles or the municipal councils to compulsorily acquire them.

(9) Removal of restricting covenants should be authorized by the Commissioner, with the right of appeal to the Court.

(10) Land compulsorily acquired and not required by the authority concerned should not be sold without the consent of the Governor-in-Council. This proposal relates to a difficulty that emanates from one of the clauses of the Bill.

(11) Transfer all matters affecting surveys from the Commissioner to the Surveyor and Chief Draughtsman of the Office of Titles.

(12) Alter the power and duties of the Commissioner and the Registrar.

(13) The Surveyor and Chief Draughtsman to be a member of the Rules Committee.

That concludes my proposed recommendations and I shall now deal with each in detail. The second proposal is to merge Parts II. and III. of the Bill. In the merging of these two parts, there would still be the limited title and the ordinary title, but it would continue on a voluntary basis. I suggest that a "limited" certificate should be merged with any "ordinary" certificate so that people will not be delayed if they still want to continue under the voluntary basis. In the merging there is one other matter that should receive consideration. It is in the Bill and deals with the issuing of titles under the *Drainage of Land Act* 1928.

By Mr. Fraser.—When you suggest merging Parts II. and III. of the Bill, do you mean in a "proclaimed area" only that has been finally surveyed? Landholders there would have interim certificates, whereas on a voluntary basis they could get an absolute title immediately after the completion of the survey.

Mr. McComb.—They could continue on a voluntary basis until the area is proclaimed, and then the titles within that area would be amended compulsorily, and land under the general law brought under the Act compulsorily.

By Mr. Fraser.—In the meantime, they could get interim or "limited" titles?

Mr. McComb.—Yes, under the voluntary system. I shall explain that further as I go along. Before the Commissioner decides whether he shall grant an "ordinary" or a "limited" title, he should have before him evidence that the land actually exists, otherwise he may be registering "land" that does not exist. The proposal would simplify the matter, and avoid perpetuating the old system. It is essential that a form of chain-location survey should be mandatory at this stage, the scope and information of such survey to be prescribed by regulation under the *Land Surveyors Act* 1942. As the survey affects the title, it will need to be made by a licensed surveyor by virtue of the Act.

The point is that when an application is made, there is nothing to indicate where the land is situated. I think a simple and fairly cheap type of survey could be introduced for the purpose of giving the Titles Office an indication of the location of the land, which it is hard to ascertain from titles under the old law. One does not need a final survey as provided by clause 68, but a general indication so as to be able to say "There is the land." It could be merely a check survey. We have reached the stage where the Surveyors Board should prescribe various types of title surveys. As present, all that the Titles Office can ask for is a detailed title survey, whereas surveys are necessary in regard to transfers, alignments, identifications, delimitations, subdivisions, amendments, party wall, easements, &c. The more specific we are about the requirements in these surveys, the quicker they will be effected and costs reduced. The wrong type of information means delay.

I shall now comment on proposal No. 4—

> Draft a new Part making it compulsory to bring land under the Act and/or to amend titles in a "Proclaimed Survey Area" only.

On any area being proclaimed a "Survey Area" under section 12 of the *Survey Co-ordination Act* 1940, the Titles Office shall as soon thereafter as is practicable proceed as follows within such proclaimed area:—

(*a*) Have the streets therein re-aligned in accordance with the *Local Government (Streets) Act* 1948.

(*b*) Carry out or have carried out a survey of all existing occupations.

(*c*) Amend all certificates of title within the area to conform to the occupation then existing as defined by the surveys in item (*b*), and also bring under the Act all parcels of land within such proclaimed area that are under the old general law. The Chief Surveyor should be given authority to avoid slight bends in streets and to make alignments as straight as possible.

(*d*) Distribute the cost of items (*a*), (*b*) and (*c*) among the registered proprietors of land within the proclaimed area, similar to the provisions of clause 262 of the Bill. Some part of this cost should be borne by the assurance fund, as recommended by the Royal Commission of 1885.

By Mr. McDonald.—Do you mean that the cost of the survey should be distributed?

Mr. McComb.—Yes.

By Mr. McDonald.—A title certificate might not need amendment, or only a slight amendment, yet the holder would have to pay his portion of the cost of re-surveying the whole area?

Mr. McComb.—That charge should be met from the assurance fund, as the re-survey would not be the fault of the holder of the title. Better surveys will reduce the likelihood of claims upon the fund. A title consists of two parts; that is to say, the survey part and the legal part. The assurance fund is a guarantee against both of them. It should be divided into two parts and the interest on one part should be used to finance these surveys, and the cost apportioned according to the benefits received.

By Mr. Fraser.—Do you suggest that someone should divide the expense proportionately?

Mr. McComb.—That is provided under clause 262 of the Bill.

By Mr. Schilling.—Is the assurance fund sufficiently wealthy to meet the cost of the surveys?

Mr. McComb.—Yes. If it is not so used, a Government may take part of it. One reason why it has accumulated is that the Titles Office would not take any risks. It would say "Do this or that." In order to get a dealing completed, one had to obey or enter into a long legal argument. The fund should be used to improve the system.

By Mr. Schilling.—You contend that the surveyors should have limited discretion to straighten boundaries and make alignments as straight as practicable. Would not that involve an amendment of a title?

Mr. McComb.—Yes, but it would only be in the proclaimed area, where I am proposing that title be amended to agree with occupation as revealed by the survey. When the block was re-surveyed, the streets would be re-aligned in accordance with the Act. If when fixing the occupational boundaries from the survey there are slight bends in a fence, a degree of tolerance should be allowed in order to straighten the boundaries.

By Mr. Schilling.—If titles were involved, they would have to be amended?

Mr. McComb.—It is in connexion with compulsory amendment of title in a proclaimed area that the tolerance is suggested.

By Mr. Schilling.—Would that involve compensation to the owners?

Mr. McComb.—No, because the alteration would be so small that owners would not suffer loss.

By Mr. Schilling.—A title might have to be amended because an area has been deleted?

Mr. McComb.—That aspect is dealt with in the *Local Government (Streets) Act* 1948. A slight bend in a fence may be straightened and I shall deal with that later.

By Mr. Thomas.—Is the proclaimed area at Maryborough a new area?

Mr. McComb.—It has been proclaimed a survey area, and a basis has been laid down for all surveys. I then suggest that—

(*e*) All certificates of title issued under item (*c*) shall be deemed to be indefeasible and shall remain indefeasible.

(*f*) A certificate of title issued under item (*c*) shall thereafter be amended only if the Surveyor and Chief Draughtsman of the Titles Office certifies that the title cannot be re-established to the same degree of accuracy as that to which it was issued.

The right of appeal to the Surveyors Board should be given to see whether the survey can be re-established. That is a safeguard, as through flood or earthquake, vital reference points may be lost. In low-lying areas, ground is liable to shift. I then suggest—

(*g*) All further dealings as to part of a title issued under item (*c*) shall be based upon survey.

Having established a good survey and title, let us make the part as good as the whole. The work, cost and time will be considerably reduced. The Surveyors Board could prescribe by regulation different types of survey, and then the Surveyor and the Chief Draughtsman of the Titles Office could say which one was required, according to the type of dealing. As I explained before, we should try to separate our various types of surveys which vary as to degrees of accuracy and the information supplied. Different information is required for various types of dealings. Cheaper surveys might serve in many cases instead of a detailed survey.

This would mean that once a title had been based upon a good survey, and was capable of being reproduced on the ground, the title would be indefeasible. I shall continue my suggestions—

(*h*) No legal action shall be allowed in regard to a dividing fence if the title boundary comes within the dividing fence structure, or if by agreement the dividing fence is placed in any special location.

The same thing to a limited degree could apply in regard to a party wall.

By Mr. McDonald.—What do you mean by "no legal action?"

Mr. McComb.—Perhaps, if I finish my statement, the point may be clearer. It may also be advisable, in the case of walls purporting to be along the title boundary, to fix a margin of, say, two inches to overcome the practical problems of the slight irregularities in building.

You know how irregular bluestone buildings may be, parts of which jut out, and it is sometimes very hard to say what is actually part of the wall. Frivolous legal actions should be avoided. That was the purpose of that section of the Act which prohibits a person from bringing a legal action on what is called a margin of error. "Error" is a bad word; "tolerance" would be much better.

Therefore, I suggest that when a survey is made within a proclaimed survey area, provided the structure comes within the title boundary, the exact position of the dividing fence does not matter very much as long as the two parties agree. The title boundary can always remain the same. I know of many cases in which the adjoining parties have agreed that the fence should be in a certain position. Although it is not on the title boundary, it suits the owners to have it where it is. It is a private arrangement and it is in order.

(*Mr. Oldham being called away, Mr. McDonald was appointed to the chair.*)

By the Chairman.—I do not quite follow your suggestion. The survey boundary would be correct. By agreement, fences or party walls are put in the wrong place. Yet, you suggest that no legal action should be allowed. What do you mean by that?

Mr. McComb.—I am referring to an indefeasible title within a proclaimed survey area. A title survey would be made and, as the title would be definitely fixed, its boundaries could be re-established on the ground. It might be found that the centre of the fence was a few inches, either way, from the title boundary or that the edge of the fence followed the

title boundary. In my opinion that should not be a sufficient reason for the adjoining owner to say, "You must shift the fence."

By Mr. Schilling.—Would it not have to be very limited in its application—only a matter of inches?

Mr. McComb.—Yes. The same thing could apply in regard to dividing walls, but to a more limited degree.

By the Chairman.—Why should the owners be prohibited from taking legal action; is not that the right of the parties? The original proprietors might have agreed to the fence being placed in the wrong position, but the proprietorship changes and there might not be any agreement between the existing owners.

Mr. McComb.—The suggestion is that the agreement between the original owners might not have been continued by the subsequent owners?

By Mr. Schilling.—The arrangement or agreement might have existed for a long time; is it not right that it should remain so?

The Chairman.—If Mr. McComb's idea were accepted, rights by adverse possession would have to be extinguished.

Mr. Merrifield.—After fifteen years, there would be a right by adverse possession.

Mr. Schilling.—Mr. McComb's point is that if the fence or wall had stood in a position agreed upon by all parties, and it was only a matter of inches, it should be allowed to remain in that position.

The Chairman.—It might not be known to all parties. The original proprietors who agreed upon the arrangement would know all about it, but perhaps persons who acquired the properties in later years would be unaware of the arrangement.

By Mr. Schilling.—Is not that a risk which a purchaser takes?

The Chairman.—A re-survey might disclose that a fence was in the wrong place. An owner might then desire that it be put in its right position.

Mr. Schilling.—And disturb the position in which it has stood for, perhaps, fifteen or twenty years. It could be a matter of inches only, and that could be mentioned when the property was being purchased.

Mr. McComb.—It is not always disclosed at the time of sale and it has lead to litigation. The vendor of a property might be in England, and it might not be possible for the purchaser to ascertain what private agreement had been made originally.

Mr. Barry.—A purchaser, when buying a property, purchases the title.

Mr. Bailey.—If that procedure were allowed, it would tend to depart from the right to exercise adverse possession.

Mr. Thomas.—A variation of inches in the position of a party wall in the city may be important.

The Chairman.—If the suggestion were agreed to, the right of a purchaser to claim compensation would be taken away. It a person bought a property and it was found later that the fence or the party wall was in the wrong place, the purchaser would not be able to get a title to a part of the property. In such circumstances, he may at present claim compensation. An outstanding case occurred in connexion with a property in Flinders-street, in which a dispute arose over about 6 inches of land.

Mr. Barry.—The Century building case was a matter of 4½ inches.

Mr. McComb.—Two inches, or perhaps less, would be all right.

The Chairman.—The question is, where would you draw the line—at 4 inches, 3 inches, or 2 inches; the principle would be the same.

Mr. Merrifield.—It seems to me that it is impossible to protect a person who will not try to protect himself. The person in occupation has the right to have a check survey made when a wall is being built, and a new purchaser has a similar right to satisfy himself before buying.

By the Chairman.—That is my point. It he has a check survey made and finds that the party wall is in the wrong place, and he cannot get possession because adverse possession has run against him, he should be entitled to compensation from the vendor. In many cases it may not be of any real importance, but inches in the city could be valuable. Why should those rights as between vendor and purchaser be taken away?

Mr. McComb.—I was only extending clause 255 of the Bill and section 271 of the *Property Law Act* 1928 which provide for a tolerance of two inches, to prevent frivolous litigation over errors of ¾″ or ½″ of land. I am only dealing with indefeasible titles in a proclaimed survey area which have already been amended to agree with occupation.

By Mr. Barry.—The trouble is, when you start to determine inches, where should you stop?

Mr. McComb.—From a practical point of view, some tolerance must be allowed. The survey may be accurate, but the building may not always be so accurate.

By the Chairman.—Does not that run counter to your proposal that the title survey shall be indefeasible. You would have a title, which would be contrary to the occupation, and you could not amend it? Your idea is that once the titles have been properly surveyed, there shall be no future amendment of the titles?

Mr. McComb.—That is so.

By the Chairman.—In that case, would you not eventually reach the stage when the titles would be contrary to the possession?

Mr. McComb.—My point is that when the title is fixed or amended, it should be brought up to the present position and then made indefeasible, but only in a proclaimed survey area.

By the Chairman.—From then on, the title could not be amended?

Mr. McComb.—No, you could get the title and could then enforce it.

By the Chairman.—That is the point on which it seems to me your suggestions are contradictory to an extent. Is not that so?

Mr. McComb.—I had in mind a tolerance in connexion with the fixing of a boundary for the purpose of giving an indefeasible title, and also a small difference between an indefeasible title and the occupation, within which no legal action could be taken to enforce the title.

By Mr. Schilling.—In a proclaimed area?

The Chairman.—It affects the outside boundaries only, not the boundaries between the properties.

Mr. McComb.—This applies more to the boundaries between the adjoining properties. I shall continue with my recommendations:

(*i*) All surveys carried out under this Part, by virtue of the *Land Surveyors Act* 1942, shall be made and certified by a licensed surveyor.

(*j*) It follows that under these proposals, Part V. —Title by Possession to Land under the Act—should not apply in a "Proclaimed Survey Area."

Proposal No. 5 that all plans which are based upon levels shall be by a licensed surveyor arises from clause 50 relating to the right to drain under the Drainage of Land Act. I could not understand why that was placed under the heading of "Bringing Land under the Act on Application." It may affect land already under the Act. Possibly, it would be more appropriately included in Part IV. of the Bill—Certificates of Title and Registration, and Easements. My proposal was to amend clause 50 by adding a third sub-clause, as follows:—

> All maps and plans, required under this section, also those required under the relevant sections of the *Drainange of Land Act* 1928, shall be made and certified to by a surveyor licensed under the *Land Surveyors Act* 1942.

These works affect title to land, hence the plans and maps must be by a licensed surveyor, by virtue of the *Land Surveyors Act* 1942. If we do not clarify this point, we will have two separate plans—one submitted to the court and one required by the Office of Titles.

The case of *Madden* v. *Coy,* Argus Law Reports, No. 14, 1944, makes this quite clear. Further, this case also shows the importance of accurate levels. Most drainage schemes are primarily dependent on levels, that is, measurement in the vertical plane. Surveyors are expert in that direction, because they are required to undergo practical tests in levelling, and measuring in the vertical and horizontal planes.

Mr. Merrifield.—In regard to your first point, you feel that an engineer or some other person might submit a plan to the court for the purpose of the hearing of a case in relation to an easement. The court might make a decision, based on that plan. Subsequently, that plan would be supposed to be identical with the copy lodged with the Titles Office, but it may not be. An engineer is not qualified in the same way as a surveyor. For that reason the plan presented to the court might not have the necessary information to enable the position of the easement to be placed accurately on the subservient title.

Mr. McComb.—It will be evident from the case to which I referred that it was a question of levels. The court fixed certain levels, and the trouble seemed to arise on account of the work being carried out from those levels.

By the Chairman.—In other words, you contend that nobody except a properly qualified surveyor is competent to do any surveying with respect to titles?

Mr. McComb.—Yes. The other point is that if a plan affects the title, the Office of Titles will want to know all about it. The Land Surveyors Act requires that it be prepared by a licensed surveyor.

By the Chairman.—You are, in effect, suggesting that the court shall have no regard to evidence of a plan other than that prepared by a licensed surveyor?

Mr. McComb.—That is the implication. The Drainage of Land Act is fairly old; apparently it was not reviewed when amending the Transfer of Land Act. I agree that a fair job has been done under the existing legislation, but I am suggesting a refinement.

By the Chairman.—Are municipal engineers licensed surveyors?

Mr. McComb.—Some hold the certificate, but some do not.

By the Chairman.—Is it the same with water engineers?

Mr. McComb.—Yes.

By the Chairman.—The effect of your suggestion would be that those officers would have to be licensed surveyors?

Mr. McComb.—Not under this Act.

Mr. Merrifield.—It would not prevent their doing work essentially of an engineering character, such as laying out lines of channels and so forth, but when it is desired to register the survey on the title it would have to be a survey by a licensed surveyor.

Mr. McComb.—The application in the case referred to was submitted by an engineer. When the court gave its ruling the easement should have been related to the title. Previously there was no compulsion to inform the Titles Office of the fact; it merely remained a fact on the ground. It could be registered voluntarily, but there was no compulsion. Now it is being made compulsory. The Titles Office will say, "We want that drain related to the title boundary."

By the Chairman.—And only a licensed surveyor can do it. Does it follow that every municipal engineer must be a licensed surveyor or the municipality must employ one?

Mr. McComb.—It is coming to that. Briefly, I propose that the Surveyors Board should specify by regulation what is required on the respective surveys so that the surveyor will know precisely what he has to do. Something should be done to restrict requisitions regarding surveys, such as confining them to the verification of the survey produced or to any previous surveys. That would prevent delays that occur at the present time. The Titles Office may want more and more information but the surveyor cannot go on the ground indefinitely, and so the proceedings drag on. I know that the existing practice has grown up in the Titles Office.

The Titles Office may need more facts to fit into a bigger scheme, or for verification, and it might be necessary to go back to the Crown grant. That would not be a fair charge on the proprietor. It might be rendered necessary by a faulty survey in the first place. The present method is expensive and causes delays. The Survey Co-ordination Act specifies in relation to surveys under that Act how far the surveyor has to go, and after that the Government meets the expense. The surveyor probably does not know until the situation is analyzed and the requisitions go in that any further facts are needed. I am aiming at expediting these dealings on the survey side. A surveyor may quote a price for a survey and at that time does not anticipate unusual difficulties. When the difficulties arise he may have to go back on the job several times for additional information, and by speeding through the work perhaps does it badly.

The next point arises under Part VI. of the Bill—Roads and Passages, &c. I suggest that the fee-simple of all private streets, when made public highways, should automatically revert to the Crown, then we would have only the Crown to deal with.

By Mr. Schilling.—Or some private owners?

Mr. McComb.—The abutting owners can make application to have the fee-simple vested in themselves under clauses 134-149 of the Bill.

By Mr. Schilling.—We have in Brighton many rights of way or lanes between major streets. They are unmade, unused, overgrown with weeds, and are dumping places for rubbish. They have become in recent times places where people misbehave. They are of no use to the municipality. Could they not be taken by adjoining owners thus removing a nuisance and improving the municipality aesthetically?

Mr. McComb.—They could revert to the Crown and be vested in the municipality.

By Mr. Schilling.—What is the good of vesting them in the municipality? All an adjoining owner would have to do would be to move his side fence.

Mr. McComb.—We should not encourage him to grab the land. The municipality could be given the power to sell it to adjoining owners.

Mr. Schilling.—I have a matter in mind at the moment. A client of mine has land alongside him which is used for drinking parties at night. When he attempts to acquire it he finds that the fee-simple was vested in the Curator of Intestate Estates, and that there is a right of carriage way over the land given to every resident of Bay-street. He has to go to every owner. It is difficult to find some of them. Some are in New South Wales. All these people have to agree to give up their rights of carriage way. Having gone to all that trouble he applies to the Public Trustee, who has taken over the Curator's office, and that official says, "We have no record of the title or of ever having taken it over. We know nothing about it." My client now has to apply on behalf of the Public Trustee for a new title.

Mr. McComb.—There is another angle I have come across in considering the community's interest. The fee-simple can be acquired, compulsorily in some cases, by certain departments, and the street closed without the municipality being approached.

By Mr. Barry.—Is that your proposal?

Mr. McComb.—No, that can be done under the present law where an authority is given power to compulsorily acquire and the owner of the fee-simple cannot be found.

By Mr. Schilling.—That is a municipality?

Mr. McComb.—No, it is a statutory body such as the Melbourne and Metropolitan Tramways Board or the Melbourne Harbor Trust. Of course, it can be done if all the people concerned are prepared to surrender their rights and the fee-simple is purchased from the owner. However, I think that is wrong because the authority having regard to the general public is not consulted.

Mr. Schilling.—In the case I mentioned, the Brighton Council was approached and we were informed that the Council would be only to glad to do anything to assist but that it had no power to do so.

Mr. McComb.—That is so.

Mr. Merrifield.—Take the case where a person subdivides a property and the natural line of development is to continue a street through the adjoining property. If the owner of that property cannot be found, bad planning may result or a delay in the development may occur.

Mr. McComb.—Later, I shall submit a proposal dealing with such a case, where the interests of the public must be paramount. Mr. Merrifield asked me to consider the question of reserves. That also falls into the category of public interest, and I propose to deal with it later.

Mr. Merrifield.—In the letter from the Law Institute dated the 4th of August, a proposition was submitted to the Committee concerning the issue of titles on survey plans and field notes done previously in respect of, perhaps, abutting or adjoining properties and the issue of a title based on possibly stale surveys. I should like to have a copy of that letter given to Mr. McComb so that he may consider that point and give an opinion.

Mr. McComb.—I made certain suggestions earlier this morning that might have some bearing on that matter. However, I shall deal with it and give the Committee my opinion at the next meeting.

The Committee adjourned.

TUESDAY, 21ST FEBRUARY, 1950.

Members Present:

Mr. Oldham in the Chair;

Council	*Assembly.*
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. A. E. McDonald,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Merrifield,
	Mr. Reid.

Mr. Howard Spencer McComb, past president of the Victorian Institute of Surveyors and member of the Surveyors Board, was in attendance.

By the Chairman.—Mr. McComb, will you now proceed.

Mr. McComb.—I shall now deal with Division 7 of Part VII. of the Bill which relates to covenants. One difficulty is that there is no one to police covenants, many of which are detrimental to general development. Covenants have to be removed either by the mutual consent of all concerned under clause 217 of the Bill or by the court under section 84 of the Property Law Act. In my opinion, a more simple way of dealing with covenants is needed, especially where they affect development. I should like to cite certain cases. For instance, under a restricting covenant on land at Brighton, houses could not be erected within 50 feet of the frontage. Who is to police that kind of covenant? It will be found that if a person desires to build another room on the front of his house he will construct it, irrespective of the covenant. Further, under the Uniform Building Regulations houses may be built within about 15 feet of the building alignment.

By Mr. Fraser.—The person who made the subdivision could always enforce the covenant if he wanted to bother about it?

Mr. McComb.—That is so. At one time I came across a peculiar covenant which stated that no noisy machinery should be used on any premises erected on the land. It so happened that the State Electricity Commission desired to use part of the area for an electrical sub-station. Of course, the covenant could have been overcome by obtaining the consent of all the people or going to court.

By Mr. McDonald.—Could not the State Electricity Commission acquire the land?

Mr. McComb.—The covenant would still remain. It is my intention to suggest a more simple way of removing the covenant where the public interest is affected. In another case, a man gave a block of land to a council, but the covenant restricted its use to a playground. A condition was inserted whereby the land would revert to the original proprietor if

it was not used or at any time ceased to be used for that purpose. The council used the land as a playground but what is the value of continuing such a covenant?

By Mr. Fraser.—Would the Titles Office register a covenant that the land must be used for a certain purpose and in default it would revert to the original proprietor?

Mr. McComb.—Yes. I am quoting from the Certificate of Title.

Mr. Merrifield.—There is the restrictive temperance covenant that prevents the sale or manufacture of spiritous liquors in practically the whole of Ascot Vale.

Mr. McComb.—I would say that it would be practically impossible to obtain the consent of all the people in that case. There is a restrictive covenant on certain subdivided land which forbids digging or excavating or the removal of soil except in connection with buildings to be erected thereon. Obviously that covenant was imposed with the idea of keeping the land for residential purposes. Certain land and roads have been acquired and it is proposed to construct a tramway depot. It is necessary that the land should be graded and some of the soil placed on adjoining land. The point may arise as to how far the covenant restricts that work.

By Mr. McDonald.—What simpler method do you propose?

Mr. McComb.—Where covenants are detrimental to community development I propose that the Commissioner should be given power to remove them, after having conducted a public inquiry, but with the right of appeal to the court.

By Mr. Fraser.—In effect, is not that the position now, that an application is made to the court?

Mr. Merrifield.—To the court, but not to the Commissioner.

By Mr. McDonald.—On whose motion would the Commissioner act?

Mr. McComb.—Application would be made to him.

By Mr. McDonald.—Why make two steps when you now have one? At present application can be made straight to the court.

Mr. Merrifield.—Probably many cases would be dealt with by the Commissioner without the court being approached. Application would be made to the court only in those cases where objection was raised.

Mr. Reid.—Judging by the bitterness of feeling among neighbours in these cases I do not think many people would be satisfied to leave the decision with the Commissioner; they would want to go as far as they possibly could.

Mr. Merrifield.—I think there ought to be a limit to which restricting covenants ought to go. No man should be permitted to impose his will on land after he has voluntarily disposed of it for a price. There are certain ways in which he might be permitted to protect himself.

Mr. Fraser.—I think there have been to many covenants of a restrictive nature, and there should be a limited class of subject to be covered by restrictive covenants.

Mr. McComb.—There is a further one being introduced under the Town and Country Planning Act and the interim development scheme. I do not know whether that is covered in the Bill.

Mr. Merrifield.—A restrictive covenant on land at Heidelberg is to the effect that the land shall not be used except for residential purposes, but the area is in the shopping centre. The covenant prevents the natural development of the shopping area.

Mr. Bailey.—A covenant on certain land in the City of Melbourne states that only one residence shall be built on one block of land, but in the interests of the people flats should be erected on the area.

By Mr. Merrifield.—How far does the operation of a restrictive covenant imposed individually on a title become inoperative or affect the operations of general law, such as the Town and Country Planning Act, which might affect an area generally?

Mr. Fraser.—That would depend upon the construction of the two statutes, and whether or not the later legislation either expressly or impliedly repealed or altered the former. It would become a very fine point of construction.

Mr. Merrifield.—Where a covenant is imposed to prevent the erection of premises within 50 feet of the street alignment it operates against the uniform building regulations which permit the building to be 15 feet from the alignment.

Mr. Fraser.—Not necessarily, but it could have that effect.

Mr. McComb.—The covenant affects the use an owner can make of his land.

Mr. McDonald.—The purpose of the uniform building requirement is to provide minimum requirements.

Mr. Merrifield.—That is true, but the building regulations envisage buildings within 15 feet of the alignment, but a restrictive covenant would prevent that.

Mr. McDonald.—If the purchaser does not want to take the land with the covenant, he need not buy it.

Mr. Merrifield.—That is true. Why should a dead man's hand be imposed detrimentally on the general community?

Mr. Fraser.—The right of an owner to use his land or his chattel as he desires has always been recognized, provided that in using it, he does not inflict injury on somebody else.

By Mr. Merrifield.—Does not Mr. Fraser consider that the law is so progressing that even the rights of owners are being qualified to an extent where they conflict with the public interest? I refer to the law on soil erosion, town and country planning and such matters.

Mr. Fraser.—It is a question whether, in such matters, the law should over-ride the rights of private individuals in the interests of the community.

Mr. McDonald.—I was wondering whether the position is quite safe now, and whether application could be made to the Supreme Court.

Mr. Fraser.—Except in that there is a tendency for the courts to continue to recognize the rights of the individual, and to take the view that, after all, the covenant is a contract.

Mr. Bailey.—The dead hand should not be the controlling factor.

Mr. Fraser.—The Committee will have to give some thought to that subject.

Mr. McComb.—The next point involves, perhaps, also a matter of policy, namely dealings in land and acquisition and resumption of land by statutory authorities. It is doubtful whether this is the appropriate part of the Bill in which it should be dealt with, but I do not know that it could be properly placed other than in Part VII., Division 8. There are a number of authorities which have power to compulsorily acquire land, and when the property is no longer required for the purpose for which it was originally bought, those authorities are entitled

to sell it. A lot of land is changing hands in that way. One Department may be acquiring or selling land in a certain area and another authority, acting independently, is doing likewise. Would it not be more desirable to control those activities? Before a public authority sold land, the consent of the Governor in Council should be obtained, because some other Department might be able to use the property to advantage?

Mr. McDonald.—I thought that practice obtained at present.

Mr. McComb.—Not generally in respect to the sale of land. Government authorities must obtain the consent of the Governor in Council to acquire land, but they are free to sell sites which they do not require. In some cases it would appear that the authorities are trading in land.

By Mr. Fraser.—Might not the land sold to outsiders by one public authority be valuable for the purpose of some other Department?

Mr. McComb.—Exactly. That sort of thing has led to friction between authorities.

Mr. Fraser.—It is similar to what happened when there was no co-ordination in the use of machinery and other equipment owned by different Departments.

Mr. McComb.—There is no co-ordination at present except in obtaining the consent of the Governor in Council for the acquisition of land.

Mr. McDonald.—It is a matter of interest to water trusts and municipalities.

Mr. McComb.—It is far-reaching in its effort. The powers of compulsory acquisition have been gradually extended, and the public is becoming incensed.

Mr. Bailey.—If land is acquired for a specific purpose, there should be some safeguard if later the property is to be used for another purpose.

Mr. Merrifield.—I have had the matter in mind for a long time. It seems to me that the State should have a Department, similar to the Commonwealth Department of the Interior, which would deal with all acquisitions of land for public purposes.

Mr. Fraser.—If land were wanted for the erection of a post office, the Commonwealth Department would acquire the land for the Postmaster-General's Department, but it would not be concerned with the policy of that Department. It would merely treat for the land and make the best deal so far as price is concerned.

Mr. Merrifield.—If a Department were set up to exercise that function, it would be a simple matter to indicate to other Government authorities requiring land that certain sites were available, and they could be asked whether the land would be suitable for their particular purpose.

Mr. Fraser.—If land is acquired by a Government Department, and is no longer required for the purpose for which it was originally bought, there should be some central authority to which notification should be sent. Other Departments requiring land could then be asked if the available land would be suitable in lieu of other blocks which they might be seeking to acquire compulsorily.

Mr. Bailey.—I think the person from whom the land was acquired should have priority to repurchase.

Mr. McComb.—That right is provided for in some Acts in which powers of compulsory acquisition are given.

By Mr. Reid.—Is this related to any particular clause of the Bill?

Mr. McComb.—I raised the point under Division 8 of Part VII.—Acquisition and Resumption of Land and Statutory Charges—because it seemed to me that that is the only place—most of the land would be freehold. It could not be put in the Lands Compensation Act, which merely provides power to acquire, and it could not be put in all the domestic Acts.

By Mr. Reid.—Would it apply to land not under the Transfer of Land Act?

Mr. McComb.—That could also be incorporated, because under the Bill various sections of the Property Law Act are brought in and the power to acquire applies whether the land is under the Act or not.

By Mr. McDonald.—Is this situation arising in the Departments to a greater extent than formerly?

Mr. McComb.—I think it is.

Mr. McDonald.—The reason why I mention it is that the Soldier Settlement Commission, for instance, might desire to acquire 1,200 acres of a 1,400-acre property, and in order to get the part desired it might have to buy the whole block. Then the Commission would sell the remaining 200 acres.

Mr. McComb.—That would be a wrong practice; the Commission would be exceeding its authority by using its power of acquisition to trade in land.

Mr. Thomas.—Sometimes it is compelled to buy the lot, or else it would not get the portion it wanted.

Mr. McComb.—It must be shown under the Lands Compensation Act that the whole area is required for a specific purpose. If the Department wants part of the property only, it must pay compensation. It might be possible to buy the whole lot more cheaply than the part. That is all right, if it is done by agreement, in which case a Department could buy as much land as it liked. During the war, there was a keen demand for space, and the Tramways Board sold a lot of property which might have been most valuable to other Departments.

Mr. Fraser.—The question raised by Mr. McComb seems to be outside the scope of the Transfer of Land Act, but it is important.

Mr. McComb.—It is a matter of Government policy. It seemed to me that this would be the right place to mention it.

By Mr. Fraser.—Your justification for bringing it up is the definition of "acquiring authority," which covers any person or body—State or Commonwealth—authorized by law compulsorily to acquire land?

Mr. McComb.—Yes. I was dealing with the provision relating to compulsory acquisition, where the Titles Office has to be notified when land is acquired. Formerly that was a weakness. If a person went to the Titles Office, it might be found that a property was registered in the name of a certain person, but later it would be discovered that the Commonwealth had acquired or was acquiring the land by notice published in the *Commonwealth Government Gazette*, of which interested persons might know nothing. I think the State's methods of compulsory acquisition are far better than those of the Commonwealth.

Mr. Merrifield.—The Commonwealth's procedure is so slow. The title is subsequently based on the acquisition, but it is often three or four years after the proclamation in the *Government Gazette* before the deal is completed. That is the trouble.

Mr. McComb.—The next matter to which I wish to refer is Part XI.—Surveys, Plans, Parcels, and Boundaries. I propose that all matters relating to surveys should be transferred from the Commissioner to the Surveyor and Chief Draughtsman. The original Act giving certain powers to the Commissioner was passed before the Surveyors Board was established

in 1895. Matters of survey should be handled by the Surveyor and Chief Draughtsman instead of the Commissioner.

Clause 253 of the Bill is peculiar in that certain things are mentioned, but not others. It might be better to give the Surveyor and Chief Draughtsman authority to call for a survey in any particular case. I have another proposal to submit later to deal with that. Safeguards must be provided. So far as surveyors generally are concerned, something should be included in the Act to expedite the dealings. I am suggesting that surveyors should be given a reasonable specified time in which to attend to requisitions. Failing an extension of time, if the work is not completed the head of the Survey Branch should report the surveyors concerned to the Surveyors Board, and the failure of the surveyor to take action should be an offence against the Land Surveyors Act. The Board would then have power to discipline them. That is necessary in order to expedite dealings, and the proprietor should not be delayed unduly by the surveyor, as often happens. The Surveyors Board at present has a case before it. The Titles Office made further requisitions, but could not get the licensed surveyor to attend to them. The solicitor acting for the client could not influence him, and he wrote to the Board. The Board has no authority to take action against him under the Act. It is necessary to give power to the Surveyors Board to deal with him, or to provide that the Titles Office may do the work and charge the man for it.

Mr. McDonald.—That raises a big principle. Sometimes solicitors are slow.

Mr. Fraser.—Provision might be made in their case too.

Mr. McDonald.—The Titles Office sometimes makes ridiculous requests, which account for much of the delay. When he receives such a request the surveyor or solicitor says, "What are they doing? They don't know their job." The Titles Office may ask, "How do you know a man's dead?" and you have to swear an affidavit that you attended his funeral and saw the coffin lowered into the grave.

The Committee adjourned.

WEDNESDAY, 22ND FEBRUARY, 1950.

Members Present:

The Hon. A. M. Fraser in the Chair;

Council:	*Assembly:*
The Hon. A. E. McDonald,	Mr. Bailey,
The Hon. F. M. Thomas.	Mr. Barry,
	Mr. Merrifield,
	Mr. Oldham,
	Mr. Schilling.

Mr. Howard Spencer McComb, past-president of the Victorian Institute of Surveyors and member of the Surveyors Board, was in attendance.

Mr. Oldham.—As I have to leave presently, I shall ask Mr. Fraser to take the Chair.

By the Chairman.—Mr. McComb, will you please proceed?

Mr. McComb.—I shall now comment on Part XIII. of the Bill which deals with special powers and duties of the Commissioner and Registrar. I think the powers and duties of the Commissioner and Registrar should be altered and that the duties of the Surveyor and Chief Draughtsman should be defined. I suggest that the Commissioner should be relieved of much of the routine of administration and should hear appeals and deal with certain matters affecting the public. Many of the duties of the Commissioner and certain duties of the Registrar would be transferred to the Chief Examiner.

I think there should be three branches in the Titles Office, one for registration, one for legal matters, and one for survey, under the Registrar, the Chief Examiner, and an officer I would prefer to call the Chief Surveyor, respectively. It seems to me that these men should be charged with definite responsibilities under the Act in order that the dealings might be expedited. When the requirements of the two specialized sections—the Survey Branch for descriptions and the Chief Examiner's Branch for the legal matters—are satisfied, the Registrar should be compelled to register the title that the Titles Office was prepared to give. If the applicant was not satisfied he could appeal to the Commissioner.

During examination the Registrar, the Chief Examiner, and the Chief Surveyor could submit any matter to the Commissioner for direction, and the registered proprietor should also have the right to appeal to the Commissioner against the decision of any of those three officers, and his right of appeal to the court against the decision of the Commissioner would be retained. I feel that simple cases would then proceed to registration more quickly, and the complicated cases also would be dealt with more expeditiously.

There are other matters of public interest with which, I think, the Commissioner should deal, as for instance, restrictive covenants, removing of encumbrances, and appeals against registration. When items of public interest were being dealt with the Commissioner could sit more in the form of an inquiry board. One such matter is the question of reserves in subdivisions. The council has the right to refuse to seal a plan of subdivision if a road is obstructed by reserves, but it can go no further in the interests of the public. Although there is a right of appeal to a magistrate he cannot override the decision because he has no power to enforce the acquisition of the one-foot strip. The matter just comes to a dead end as no further action can be taken.

By Mr. McDonald.—Do I understand that although the owner appeals and a magistrate upholds the appeal the Council can still refuse to seal the plan?

Mr. McComb.—Who is going to acquire the strip? The magistrate has no power to authorize compulsory acquisition of it.

By Mr. McDonald.—If the registered proprietor successfully appealed against the Council's refusal to seal a plan would not that affect the position?

Mr. McComb.—I do not know of any legal procedure by which the acquisition of that one-foot strip could be achieved.

By Mr. McDonald.—The Council could say that it would pass the plan but that it was not interested in the strip?

Mr. McComb.—Yes. It may be in the interests of the public for a road to be extended across the strip to join with another road. If the Commissioner had power to inquire into such a position he could advise the Governor in Council that in the circumstances the strip should be acquired, and who should carry out the acquisition. If the private subdivider was receiving some benefit he should make some contribution to the cost, and the Commissioner could determine this. The same position arises in regard to roads. Councils have power to refuse to seal a plan if roads do not connect properly. There may be a strip of

land in between two roads and private negotiations for connecting them may fail. I think the Commissioner should have power to inquire into any matter such as that. These technical matters become very involved and when the case comes to court it is sometimes very difficult for the magistrate to comprehend the exact position.

By Mr. McDonald.—In other words, the magistrates are not sufficiently qualified?

Mr. McComb.—The Commissioner is an expert and knows all the implications. All he requires is the community outlook to investigate these matters on behalf of the Governor in Council. In addition to settling appeals and disputes in the Titles Office, I can visualize many problems in connection with property that could be submitted by the Governor in Council to the Commissioner for investigation.

Similar problems arise under the Drainage of Land Act. A stipendiary magistrate probably knows the local difficulties, but where there are technical complications I feel that people would be more confident if there was an expert to whom they could appeal. At a previous meeting Mr. McDonald mentioned that councils have power to force owners to allow drainage through their properties. That is very necessary in the interests of the community, and, after all, the rights of the individual have to be subservient to the interests of the community. Those matters could also be investigated by the Commissioner, because they become very complicated in regard to titles.

By the Chairman.—Such matters not only require investigation but the right to enforce a decision. The covering of all those matters would involve practically a new part in this Bill to make a sort of code, because you are only giving illustrations?

Mr. McComb.—That is so.

By the Chairman.—All cases outside the illustrations you have given would have to be covered?

Mr. McComb.—Yes. It would require a little working out, but I am trying to deal with general principles. The Committee may or may not accept my suggestions. I have not gone through the Property Law Act, but I can visualize that certain sections of that legislation might very conveniently be referred to the Commissioner on appeal.

By Mr. McDonald.—Take the case of two people desiring to subdivide land and a third person owning land in between not wishing to do so; the Council might refuse to seal the plans of subdivision until such time as the two roads in the proposed subdivisions were connected. Would your scheme envisage that the Commissioner could compel the owner of the intermediate block to make land available for a connecting road?

Mr. McComb.—With planning schemes being dealt with under the Town and Country Planning Act I think there could be a public inquiry and evidence could be taken when such a case arose. That is an example of where in the interests of the public the road should go through.

By Mr. McDonald.—Would it be in the interests of the public or in the interests of the two subdividers that the road should go through the intermediate property?

Mr. McComb.—The Council might have a scheme in mind which would necessitate the road going through.

The Chairman.—I could imagine the land being acquired by the Council for a park or something like that, but not where the connecting road would enhance the value of land to the advantage of two subdividers.

Mr. McDonald.—That is so, and to the detriment of the other landholder.

Mr. McComb.—The Council has not power to enforce it, because most of the streets for private subdivision are 50 feet wide. Under the Local Government Act, a street cannot be opened by the Council unless it is 66 feet wide.

Mr. Schilling.—Probably the town planning authorities could be brought into such matters.

Mr. McComb.—We do not know to what extent or when town planning will be implemented. However, there would be no interference, because an expert authority would be functioning and evidence could be given at a public inquiry by the Town and Country Planning Board.

By the Chairman.—You envisage the Commissioner conducting an inquiry into those matters in much the same way as the Licensing Court inquires into applications for new licences, when it considers the public interest and the views of objectors?

Mr. McComb.—If a private subdivider is held up, he could appeal to the Commissioner to hold an inquiry and the Commissioner, after holding an inquiry and hearing all the evidence would advise the Governor in Council as to what action should be taken in the interests of the public. I consider that control should be kept with the Governor in Council. The Commissioner should not be allowed to have the final say. If the course I suggest were adopted, it would in my opinion keep the civil courts much freer. The courts are intended mainly for actions between individuals. For matters between Government Departments, the Governor in Council is really the court. In the cases I refer to, there is mixed interest, private and public, and if the Commissioner could inquire into matters of that kind, subject to the Governor in Council, a lot of litigation would be avoided.

By Mr. Bailey.—Would there be a right of appeal from the recommendation of the Commissioner before it reached the Governor in Council?

Mr. McComb.—Not in matters concerning the public, which the Government should decide. In my experience, the Governor in Council cannot handle all these matters; that is why I suggest a procedure to reduce the volume of work of the Governor in Council.

By Mr. McDonald.—But you would still favour the retention of the right of appeal to the ordinary courts in matters of law?

Mr. McComb.—Decidedly.

By the Chairman.—Which of the three branches would you make the head? Would you make the Commissioner the administrative and professional head?

Mr. McComb.—No, I think it would be advisable to keep him separate and free to deal with appeals.

By the Chairman.—Under your scheme, there would be the Registrar, the Chief Surveyor, and the Chief Examiner. Would there not have to be someone to co-ordinate the work of those officers?

Mr. McComb.—Virtually, it would come through the Registrar.

By the Chairman.—There would really be four officers concerned—the Commissioner, who would be more or less detached from the other three officers, would be occupying a judicial position dealing with legal matters referred to him by the other three officers. Whom would you make responsible for the work of the office?

Mr. McComb.—The Registrar.

By Mr. McDonald.—Would the Commissioner, with his wide powers, be subservient to the Registrar—or should he be?

Mr. McComb.—No. I suggest that he be set up separately—almost as a special court.

By Mr. McDonald.—Outside the Titles Office?

Mr. McComb.—Yes. There are special courts for the hearing of cases relating to insurance and other matters.

The Chairman.—He could not be set up completely independently, because that would be placing him outside the Act, whereas he is well and truly in it.

Mr. McComb.—That is so, but he could still sit separately from the three other branches.

By Mr. Schilling.—Is there not ample provision in the Act at present for a Supreme Court Judge sitting in chambers to deal with various matters that you envisage?

Mr. McComb.—No, I think this goes beyond the matters with which a Judge may deal.

Mr. McDonald.—A Judge in chambers would not deal with matters of policy. If the Commissioner, sitting as a sort of detached judicial officer, dealt with matters of policy, you would get back to the same position.

Mr. Merrifield.—That raises the question as to how far the type of case Mr. McComb has in mind should go. I agree with him that some officer might well be appointed to determine technicalities and rights and wrongs and where the obstruction caused by title rights is—one might say—very fine.

Mr. Schilling.—Machinery matters, as distinct from judicial matters?

Mr. Merrifield.—No. I am thinking in terms of a case where the ownership is theoretical rather than practical, for instance, a subdivision lying between two others. The ownership may be of a theoretical form, and I can visualize that that matter would be right outside the jurisdiction of the Commissioner. It would become more a matter of policy. I think the suggested power could well be granted in cases where the ownership is only theoretical.

The Chairman.—I do not know how you could run into matters of policy save and except in public matters, and public reserves and councils. The rights of a private individual under the Transfer of Land Act or the Lands Compensation Act could not be taken from him.

Mr. Merrifield.—I agree, but I contend that where the ownership is more theoretical, and obstructive to a degree, the Commissioner might well be authorized to exercise some power as a judicial officer.

The Chairman.—I do not quite follow the reference to "theoretical ownership." A title is, in fact, a title; it is not theoretical, and an owner may use his land as he likes, subject to the powers of some over-riding authority to compulsorily acquire it.

Mr. Merrifield.—That is a matter of fine debate. Take a case such as that mentioned by Mr. McComb where there is a reserve between subdivisions and there are no practical rights in respect of that ownership in any sense of the word. It is there only as a dead letter; it is only a hiatus between the adjoining blocks, and the owner cannot exercise any domination over a strip.

By Mr. Schilling.—The ownership is anti-social?

Mr. Merrifield.—Yes. Then there is the other case in which an owner wishes to develop a block and requires the right of access over other land. The owner of the subdivision may be in California, and he could not therefore be contacted with a request for access over the block. The other owner is therefore unable to do his developmental work. In cases of that kind, the Commissioner should have some power.

By Mr. McDonald.—In cases where there is, in fact, a road or where it is desired to make a road?

Mr. Merrifield.—I have in mind cases in which there would be a road on the old plan of subdivision, which has never been made, and therefore never taken over by the Council.

By the Chairman.—Could not the Council acquire it?

Mr. Merrifield.—No.

Mr. McDonald.—Once the road is made it is available to the public.

Mr. Merrifield.—Yes, but in many cases the road has not been made.

Mr. McComb.—The point which exercised my mind is that under the existing Act certain duties are vested in the Commissioner and others are undertaken by the Registrar. In the process of dealings, the applications go to the survey office, then to the Chief Examiner. Finally, the Commissioner has the over-riding authority. It seems to me that there is a certain amount of duplication. Why should dealings be examined by two legal experts? Under my proposal the Surveyor and Chief Draughtsman and Chief Examiner, would examine the case, and if both were satisfied that the Act was being complied with, the application could be passed to the Registrar and completed. If the applicant was not satisfied, he could appeal to the Commissioner.

By Mr. McDonald.—Why could a private reference not be made to the Commissioner by the Chief Examiner, who might say, "What do you think of this, Mr. Commissioner?" Would not that be better than the procedure of the Chief Examiner refusing the application, which would entail the process of an appeal by the applicant? I would think there would be a distinct advantage in having a top man who could finally decide these questions. The Registrar, the Chief Surveyor, the Chief Examiner or the examiner could have access to the Commissioner and place their view on a case before him. The Commissioner would then say what he thought, and finality could be reached. Why do away with that procedure, and appoint the Commissioner as an outside authority to hear cases only on appeal?

Mr. McComb.—I do not mind, but, if, as Mr. McDonald suggests, the Commissioner is placed in charge, the Chief Examiner cannot give a final decision. I suggest that if the Chief Examiner is satisfied, the application should be passed on to the Registrar.

By Mr. McDonald.—Cannot that be done now?

Mr. McComb.—No. Finally, it must go through the Commissioner. The Chief Examiner acts only in an advisory capacity. He has no statutory powers. Suppose a requisition is asked for, which the applicant considers to be more than necessery to comply with the Act, why should he at that stage not be entitled to appeal to the Commissioner for a decision? The Commissioner might say, "Yes, in my opinion, that complies with the Act," and he would pass it.

Mr. McDonald.—The act of the Chief Examiner is now, in fact, the act of the Commissioner.

Mr. McComb.—Yes, but not officially.

By Mr. Bailey.—Would not the Chief Examiner at the present time consult the Commissioner in respect of a technicality?

Mr. McComb.—I suppose he would.

Mr. Merrifield.—The Registrar deals with some matters without reference to the Commissioner.

Mr. McComb.—The Surveyor and Chief Draughtsman deals with requisitions. There can be hold-ups all along the line. There is a footnote in the statute saying that the object is to facilitate, not obstruct, the procedure.

By Mr. McDonald.—Suppose you made a survey requisition. The Registrar discusses it with you. You say, "No, I insist on my requisition for these reasons." Other reasons to the contrary are put to you, but you still insist. Could that be referred to the Commissioner, or does it end there?

Mr. McComb.—I have personally taken cases to the Commissioner.

By Mr. McDonald.—Suppose a registered proprietor said, "I am going to see the Commissioner." Could the Commissioner direct you not to proceed with your requisition?

Mr. McComb.—If he upholds the Titles Office against you that is the end of it.

Mr. Merrifield.—The surveyor comes into two classes of cases. If his survey, notes, or plan is inaccurate or incomplete it is usual for the Surveyors Branch or computing branch to refer it direct to the surveyor, calling upon him to rectify the omission or error. If the area defined by him overlaps the abutting title and the surveyor is required to cut back, the requisition should go through the applicant's solicitor, and the applicant ought to give his consent before the alteration is made. That is the only type of case that can be referred to the Commissioner.

Mr. McDonald.—That is the type of case I have in mind—where a specific requisition is made by the Survey Branch to the registered proprietor.

Mr. McComb.—I had a case in point. On the evidence submitted the Titles Office Surveyor said, "You will have to amend the title. You are encroaching on someone else's land." That was his recommendation to the Commissioner. We said, "It is based on wrong evidence." It concerned an old cable engine house, which was about the oldest landmark there. We said, "We are not satisfied and we want to go to the Commissioner." The Surveyor at that time—he is not there now—after hearing the evidence submitted to the Commissioner withdrew his requisition.

By Mr. McDonald.—Suppose the Commissioner had upheld the registered proprietor?

Mr. McComb.—I think he would have had to override the Survey Branch.

By Mr. McDonald.—Has he power to override the Survey Branch?

Mr. McComb.—I think so. There is nothing in the Act giving power to the Survey Branch. From my experience of the Titles Office conflicts occur with officers. Mr. McDonald said yesterday that silly requisitions were made. It is not only the head of the branch who handles these matters, but it may be some one lower down. They say, "carry out this requisition," and if you do not then the case will be held up. We have had a lot of experience in that sort of thing. Fortunately the Tramways Board had good counsel in its early days. On many matters we ran into difficulties with requisitions from the Titles Office. Sometimes they were beyond what might be regarded as the requirements of the Act. Instead of taking the case to court we would take counsel's opinion and present it to the Titles Office. In nearly every case they stepped down. That is not so bad in the case of public authorities, but delays of that kind are very serious to the public. I was wondering whether in some way the responsibilities of the officers could be defined in the Bill. If the Chief Examiner and the Chief Surveyor can say, "That complies with the requirements of the Act," they should issue a title.

One of the difficulties at the present time is that you can never find out what the Titles Office is prepared to give you by way of a title. A lot of trouble has arisen because if they think there is likely to be trouble with adjoining owners they take the attitude, "You will have to amend your application." I have definitely taken exception to a lot of that and said, "If you are not prepared to grant the title, set down in the margin what you are prepared to give us, and if we are not satisfied we will go to the court." But they will not do that. The say, "Cut this back and see there is no claim on this man." And when you are finished, what do you get? Perhaps not what you are entitled to. The registered proprietor is pressing to get the dealing through, and often has to accept a requisition for the sake of expediency.

The Chairman.—We have spent a lot of time on the legal aspect of the Act, but when we come to consider a better working scheme in the Titles Office, we run against difficulties. Mr. McComb's view is not accepted by certain witnesses, but we know by experience that something is wrong.

Mr. McComb.—My proposal may not solve the whole problem.

The Chairman.—The people at present there suggest that the arrangement is all right.

Mr. Merrifield.—Sometimes the officers are so close to the wood that they cannot see the trees.

Mr. McComb.—One thing I mentioned the other day in regard to requisitions is that the Titles Office seems to have an almost open cheque. The idea of the Surveyors Board is to try to limit that to certain aspects of survey. I cannot speak for the legal side, but something will have to be done. One difficulty is that you do not know what you are up against until you get to the Titles Office. A solicitor in the same position does not know how to advise his client as to what the Titles Office will require. I think some attempt will have to be made to restrict the scope of requisitions. Anything involving serious difficulty could be decided on appeal.

By the Chairman.—Under your proposal there would be three branches, but you have not faced up to the position that there must be some co-ordination?

Mr. McComb.—As I said earlier, it should be the Registrar. The logical thing would be to place the three branches under the Registrar, because all the work has to go through to him and come out from him. He should co-ordinate the work, but not override the two experts. If the legal questions were transferred from the Registrar to the Chief Examiner it would not be necessary to have a legal man in charge of registration, but a good business man or administrator. The other two branches would have experts to advise him. The Commissioner could deal with appeals; he should not have to deal with all the administrative details. Many dealings are more or less simple and he should not have to "O.K." them. Even if the Chief Examiner indicates that a case is all right and the Commissioner only has to initial the papers it takes time. I would give the Surveyor and the Chief Examiner more authority. You will get better results by compelling them to give decisions, instead of advising the Commissioner.

The Chairman.—You may be able to work out some scheme in practice for the simple working of the office, but the duties of the three officers have to be defined in an Act of Parliament, and that is the obligation of this Committee. It seems to me that under your scheme it will be necessary to include a new part in the Bill, in effect a code, dealing with certain specific powers of the Commissioner, and a sort of omnibus power to cover all the smaller cases.

Mr. McComb.—I now wish to comment on Part XVIII. which deals with Rules and Regulations. Clause 328 proposes the setting up of a "Rules Committee" consisting of the Commissioner, two barristers, and two solicitors. I think more use could be

made of the committee if there was better representation on it. In view of my proposals I suggest that the Registrar and the Surveyor or the Chief Examiner should also be members. Then there would be four representatives from outside and four with experience of the inside workings of the Titles Office. The committee could meet and review matters of working from time to time. For instance, I suggested that the Surveyors Board should proclaim various types of survey, and that the Chief Surveyor should be entitled to ask for any survey but a committee such as I have proposed could arrive at a decision as to what was the best type of survey, if one was required, and could prescribe accordingly.

The Chairman.—As there was no reference to any Chief Surveyor in the Bill I expect that he was not considered as a representative on the committee.

Mr. McComb.—That is because he has no statutory recognition; only the Commissioner is mentioned as being the co-ordinating and responsible authority. However, my suggestion is that the other officers should be given statutory authority, and that they should be brought on to the committee so that it would consist of representatives from outside and inside the Department. It is not a question of the Government dominating the individual or the individual representation having all the say; it is a matter of getting together to decide what is the best for all.

The Chairman.—I do not know that practising barristers would know very much about this problem.

Mr. McComb.—They will be on the committee that will prescribe the statutory rules for various procedures. It has been done previously under legislation dealing with compulsory acquisition. A committee was appointed and it established a rule stipulating that certain information had to be supplied, one item of which was a survey.

The only other matter to which I desire to refer is the letter dated the 4th of August last from the Law Institute to the Committee, on which I was asked to comment. I am not in favour of the proposal of the Law Institute because it would simply mean repeating the mistakes of the past, and giving registration on facts that may not be up to date or accurate. I would have no objection if the information was brought up to date. However, I know the difficulties. There is always a lag between the time the survey is made and the examination, and unless the information reveals the facts as they exist at the time of the application it is not of much use.

By Mr. Schilling.—You mean that there would be a check survey?

Mr. McComb.—Yes. It would not mean a complete survey.

By Mr. Thomas.—You mean that the surveyors of to-day have a suspicion of the work performed by surveyors in the past?

Mr. McComb.—No, it is a question of fact. I do not think the members of the legal profession can deal with it properly unless they first have the facts on the ground as revealed by survey. The survey might have been made twelve months ago and an alteration might have occurred since that time. The basic survey may be all right, but it should be brought up to date. To give an illustration, we do exactly the same thing in regard to accidents. Even if a surveyor made a survey of the scene of an accident only last week he would check it on the ground before he submitted it to the court, because the Council might have rounded off a corner and the plan would not be an actual representation of what existed on the ground. Something vital may be involved, and if the survey were not checked old information would be used, and the Court may be mislead.

By Mr. Schilling.—Would not that be a matter of only checking the field notes?

By Mr. Barry.—If there were any change the surveyor would make another survey?

Mr. McComb.—When the plan of survey of an accident is produced in a court the surveyor certifies that the features contained therein existed on a certain date. Recently a survey plan was submitted to the Coroner's Court, and now the case has been referred to the High Court. Additional plans were required, and when the survey was checked it was found that no features had changed; therefore the plan from the original survey was used. In some cases, however, altered features are found and a fresh survey and plan is required. The later survey takes only a short time, but the point is that the legal people have accurate information to work on. If different types of title surveys could be prescribed and used by the Titles Office, it would be much cheaper and more reliable.

In regard to the Law Institute's letter of 4th August, 1949, concerning clause 72 of the Bill, I would like to say that we have had several cases in which the question arose as to the acceptance of the title. How can it be decided whether a title can be enforced on a purchaser unless the facts of the survey on the ground, in relation to the title, are known? That is the essence of it. We would be taking a retrograde step in attempting to effect registration on data in the office, if it was doubtful whether that information was right. In that way trouble was experienced before. An attempt was made to effect registration on old Crown surveys. It was pointed out that what was on paper might not be worth much. It is what is on the ground that counts. I am desirous of obviating the mistakes of the past. If use could be made of what has been done before, let us use it, if it is correct. That would save time and money. That is being done in respect of the proclaimed area at Maryborough. The main survey was done for sewerage purposes. A survey was made under the Survey Co-ordination Act in such a way that, in addition to serving a specific purpose, the survey can be used by other State and Commonwealth authorities for other purposes. Formerly, all the money expended on a survey was for a result which would be of no use for any other purpose. Now, by the application of a few rules, future surveys will be satisfactory for title purposes. Under the old scheme, it would have taken a surveyor a couple of days to make a title survey of a single lot. When the new procedure is operating in a proclaimed survey area, it will be possible to do the same work in half a day or less. Also, it will result in more definiteness in regard to the title. I am opposed to the proposals of the Law Institute. That is all I have to say.

The Chairman.—On behalf of the Committee I thank you, Mr. McComb, for your evidence which has been valuable. You have performed a public service, and the Committee is indebted to you.

Mr. McComb.—I am pleased to have had the opportunity on behalf of the Victorian Institute of Surveyors and the Surveyors Board to place my views before the Committee. I assure you that if these organizations can do anything to assist the Committee or the Government to improve the legislation in the interests of the general public, we shall be only too pleased to do so.

The Committee adjourned.

THURSDAY, 23RD FEBRUARY, 1950.

Members Present:

The Hon. A. M. Fraser in the Chair;

Council:	*Assembly:*
The Hon. F. M. Thomas.	Mr. Barry, Mr. Merrifield, Mr. Reid, Mr. Schilling.

Mr. Alexander Philip Sutherland, Registrar of Titles, was in attendance.

By the Chairman.—Have you, Mr. Sutherland, read the transcript of the evidence already given on this subject?

Mr. Sutherland.—No.

By the Chairman.—Have you seen the Bill?

Mr. Sutherland.—Yes.

By the Chairman.—You have given some advice on its preparation?

Mr. Sutherland.—Yes, I have made suggestions.

By the Chairman.—Have you anything to add to those suggestions?

Mr. Sutherland.—No.

By the Chairman.—Do you think the compulsory provisions will work out all right?

Mr. Sutherland.—I certainly think so.

By the Chairman.—Have you any suggestions to make concerning the administrative side of the Titles Office to improve the present set-up?

Mr. Sutherland.—To get the dealings through more promptly?

By the Chairman.—Not only that, but to improve the working and secure more co-ordination between the Registrar's, the Examiners' and the Surveyors' branches?

Mr. Sutherland.—The examiners deal only with legal matters. The Commissioner has nothing to do with the administrative side.

By the Chairman.—The Registrar attends to administration?

Mr. Sutherland.—Yes.

By Mr. Schilling.—You have had the opportunity to read the proposed Act, as contained in the Bill?

Mr. Sutherland.—Yes.

By Mr. Schilling.—As Registrar, could you give the Committee your advice and help as to how the Act can be amended and how the Bill can be implemented?

Mr. Sutherland.—The new Act, especially the caveat and the compulsory provisions, will intensify the work. The provisions regarding caveats will almost double the amount of work to be done. Any one concerned in a transfer or mortgage will have to lodge a caveat to protect his interests. If the caveat provisions are used to the extent anticipated the number of dealings will go up by at least 75 per cent. The compulsory provisions will increase the Commissioner's work on the legal side.

By Mr. Schilling.—Do you agree with the framework of the Bill, particularly the compulsory provisions?

Mr. Sutherland.—I think it is excellent.

By Mr. Schilling.—Will it be in the interests of the community in general and of the Titles Office in particular?

Mr. Sutherland.—I think it should be done. It has been mooted previously, and was put into the Bill after due consideration.

By Mr. Merrifield.—Can you see difficulties which you will have to face in the next few years?

Mr. Sutherland.—We have not enough room for our present staff.

By the Chairman.—You do not feel that you have the number of square feet of floor space per man required by the Factories Acts?

Mr. Sutherland.—No, we have not.

By the Chairman.—You said that the caveat provisions would entail much extra work, and that every one who lodged a transfer or mortgage would have to caveat?

Mr. Sutherland.—Every one with an interest in the land. Before a transfer or mortgage could be signed the party concerned would have to be at the Titles Office with a caveat. It might take a week to get the parties together and the transaction settled, and in that time the risk of not having a caveat could not be taken.

By Mr. Schilling.—Would not your ordinary requisition be substantially sufficient?

Mr. Sutherland.—I asked a solicitor what he would do if a client came to him and said, "I want you to get a transfer of this land." He said, "I would immediately fill in a caveat and lodge it." I think that would not only be the correct thing, but the safe thing to do.

By the Chairman.—Will this proposed Act do any more so far as caveats are concerned than put an obligation on public authorities, debts adjustment boards, municipal councils, and all such bodies which have a lien, interest, or right over land, to lodge a caveat? I do not understand how any of these provisions will change the practice that has existed up to date when purchasers have not lodged caveats.

Mr. Sutherland.—They will have to do it now to protect their interests. If a mortgage went to the office before the transfer it would take priority.

By the Chairman.—Suppose I entered into a contract to sell you a block of land. Is there anything to prevent me from lodging a mortgage at the Titles Office between that date and the date of settlement?

Mr. Sutherland.—There is nothing.

By the Chairman.—That means that solicitors for years past, as soon as a contract is signed, should have lodged a caveat?

Mr. Sutherland.—Some of them have done so, but others have not. The difference now is that the man who lodges a caveat will have priority over every one else. If the second man got in first his equity would prevail.

By Mr. Schilling.—What is your opinion of priority of equities?

Mr. Sutherland.—I approve of it; it is safe. I have pointed out the effect on the administration side. I do not want you to think that if the Bill goes through with these provisions in it I can continue with the present staff.

By Mr. Reid.—At the present time, is the Titles Office short of staff and has it been short for some time?

Mr. Sutherland.—Yes. I though that question might be asked so I brough some figures with me. I took over in April, 1945, and in that year there were 81,000 dealings. They increased so considerably that by the end of 1946 they had increased by 53 per cent. In that time my staff remained the same. In September, 1946, I approached the Public Service Board for eighteen additional officers. Although my application went in in September I did not get before the Board until December. It was not until 1947 that I obtained the further staff, and then I commenced to reduce the arrears of work. By 1948 they had been reduced

considerably. However, in 1949 there was a further increase of 17½ per cent. in the number of dealings lodged. The figures for January, 1950 are 27½ per cent. higher than those of January, 1949. The present staff cannot cope with the incoming work. It is said that the work is getting behind, but it is impossible to keep up with it. The services of young men cannot be obtained and when officers are appointed they are temporary employees who are up in years. In the registration room there is a total of 22 men of whom 15 are temporary employees.

By the Chairman.—Have you any figures showing the dealings in January 1945 and January 1950?

Mr. Sutherland.—In January, 1945, there were 5,344 dealings lodged and in 1950, 11,741, an increase of more than 100 per cent.

By Mr. Barry.—On those figures you would now require twice the number of staff employed in 1945, and you would need more accommodation?

Mr. Sutherland.—I am in the process of preparing a case for presentation to the Public Service Board for the appointment of 17 more men as a minimum. A good case has to be made out because the Board's recommendation has to be approved by Cabinet.

By the Chairman.—Do the men appointed to your office need to be trained?

Mr. Sutherland.—They are untrained when they are appointed and they have to go through a period of training. I find that the majority of temporary employees have no incentive, because they know that they will never receive promotion. When I ask them to go to a room where the work is a little strenuous they say that they cannot stand up to it, and I have to put them back to where they were previously, otherwise I would lose them. Other organizations offer more attractive salaries to young men than they would receive in the Titles Office, and that creates a difficulty. I know there is a feeling among the legal profession that there is something wrong with the Titles Office because the work is not going out more promptly, but members of the profession do not realise the difficulty that has occurred owing to the increased dealings lodged and lack of staff.

By Mr. Reid.—A good proportion of the staff has been working overtime for many years?

Mr. Sutherland.—Yes, but the overtime is worked only to reduce arrears. In 1946 when the dealings increased by 53 per cent., the current cases went up from about 17,000 to 51,000.

By Mr. Schilling.—Apart from caveats, do you anticipate that any other provisions in the Bill will impose a greater burden upon you in regard to staff?

Mr. Sutherland.—No. The two provisions of the Bill that will give increased work and require additional staff are those which relate to the compulsory bringing of land under the Act, and caveats.

By the Chairman.—The compulsory provisions will lead to a lot more work?

Mr. Sutherland.—Yes, but it will come under the Commissioner of Titles. It will not affect the ordinary routine work, except that I will have to have more search clerks. It will mean the appointment of only an additional two or three men.

By Mr. Merrifield.—When caveats are received are they examined in any way to see whether there is any real basis for the claims made?

Mr. Sutherland.—Yes.

By Mr. Merrifield.—If it is deemed that there is no basis for the claim is the registration refused?

Mr. Sutherland.—We refuse registration, but it must be realized that while the caveat is there, even if it is unregistered, the caveator gets protection.

By Mr. Schilling.—If a person lodges a caveat claiming an interest in land do you think it is really the function of the Office of Titles to examine it. For instance, if a caveat is lodged by a wife who alleges that the husband is holding land as a trustee for her pursuant to some verbal agreement, the practice of the Office of Titles is to insist on a declaration, is it not?

Mr. Sutherland.—Yes.

By Mr. Schilling.—Do you think that is really your function?

Mr. Sutherland.—Do you not think the office should determine whether the caveator has a "caveatable" interest?

By Mr. Schilling.—No. Why is it the right of the Office of Titles to set itself up as a court to examine the rights of the parties? If a caveat is received why would the Office accept the burden of being satisfied that the claimant has a real title? If a wife, without any justification, makes some claim, the husband has his rights—it is a matter *inter parte*. When the Office of Titles is concerned, is not it accepting unnecessary worries and duties?

By the Chairman.—If a purchaser wanted to lodge a caveat he would simply claim that he had an interest in it by the purchase under contract of sale; in such circumstances you would not even require the production of the contract?

Mr. Sutherland.—No.

By the Chairman.—In certain other cases, such as where a wife claims an interest as a joint tenant of property in the name of the husband, he holding it as a trustee on behalf of both, that is required to be substantiated in some way by a declaration?

Mr. Sutherland.—Yes.

By the Chairman.—That is a matter of practice, I suppose?

Mr. Sutherland.—Yes.

By Mr. Schilling.—It seems to me that you are burdening yourself with many duties that you do not necessarily have to worry about?

Mr. Sutherland.—Do you not think the Office should be concerned with the likelihood of the registered proprietor being put in the position of having to go to court to get some frivolous caveat removed?

By Mr. Schilling.—I do not think the Office of Titles should be concerned; in my opinion that is the worry of the people concerned with the ownership of the land. If a frivolous caveat is lodged the court has power to order the payment of costs. Why should you burden yourself with that administrative work when it should not be your worry at all?

Mr. Sutherland.—Why should a caveat be registered unless we are satisfied that the caveator has a "caveatable" interest?

By the Chairman.—The caveat shows on the face that there is a "caveatable" interest, but in one case you accept it as it appears in the caveat, and in the other case, although it is shown on the face of the caveat, you require some substantiation?

Mr. Sutherland.—The Office takes the view that it does not show a "caveatable" interest unless it is supported by more than is shown on the face of the caveat.

By Mr. Schilling.—Is that your worry?

Mr. Sutherland.—It is office practice, which has been carried on ever since I have been associated with the Office of Titles.

By the Chairman.—If a wife lodges a caveat claiming an interest in land, on the basis that her husband held it as a trustee for herself and himself under a

deed duly executed on a certain day, is not that a comparable case with that of a person who claims an asset under a contract of sale by a contract dated a certain day. Yet in the one case you require some statutory declaration?

Mr. Sutherland.—We would not ask for a declaration but for the production of the deed, and if it showed a "caveatable" interest the caveat would go on.

Mr. Schilling.—I think you would save yourself a lot of work if you did not take up cudgels on behalf of one interest.

Mr. Sutherland.—It is a serious thing to put a frivolous caveat on a man's title and compel him to go to the court to have it removed.

By Mr. Schilling.—He has his remedy, has he not?

Mr. Sutherland.—He can go to the court, yes, but that is putting him to a lot of expense.

By Mr. Schilling.—His remedy should not concern you as the Registrar.

Mr. Sutherland.—I am just continuing the previous practice. This principle has been laid down over the years, not by the Registrar but by the Commissioner. No practice such as that would be carried out by the Registrar without first consulting the Commissioner.

By Mr. Schilling.—The present position is that the person who has lodged the caveat has to prove his or her title?

Mr. Sutherland.—Yes.

By Mr. Schilling.—You are really casting the onus upon the person who has lodged the caveat, and throwing no burden on the registered proprietor. Are you not saddling yourself with administrative duties which could be saved and which are, as far as I can see, unnecessary in any case?

Mr. Thomas.—The view taken is that the public rights should be protected.

Mr. Schilling.—Yes. I do not think the Office of Titles should set itself up as a court of equity.

By Mr. Reid.—I agree with the point raised by Mr. Schilling. In the past the Office of Titles has taken unto itself the duty of policing the maintenance of various Acts of Parliament. For example, under previous legislation in regard to the grant of the old age pension some form of declaration was required that a person selling land was not an old age pensioner?

Mr. Sutherland.—Yes, but it should be remembered that the transfer was null and void if it was found that the vendor was an old age pensioner. You would not expect the Registrar to issue a defeasible title. It is considered that he is there to issue an indefeasible title.

By Mr. Merrifield.—Was that a Commonwealth Act?

Mr. Sutherland.—Yes, but that has been repeated in State legislation. The Soldier Settlement Act contains a similar provision.

By Mr. Reid.—Under the Soldier Settlement Act the Office of Titles now insists on a declaration that certain land is not land within the meaning of the Act, or requires the production of the consent of the Minister of Lands?

Mr. Sutherland.—That is so.

By Mr. Reid.—Do you not consider all that sort of thing has increased the work of the Titles Office?

Mr. Sutherland.—Undoubtedly it has. Land controls have been a source of worry to me. Controls on the sale of suburban land were lifted on the 29th June and on country property on the 6th September, 1949. I asked whether I was required to police the regulations, and I was told, "Yes, you must have proof that the sale was made before the controls were lifted." What was the result? After controls were discontinued, I received scores of dealings without any proof whatever regarding the date of the sales, and I had to send out twenty or thirty requisitions a day for proofs. That will continue *ad infinitum*. I could not be certain when a sale was made merely by accepting the date of the instrument.

By Mr. Schilling.—It is something that you should not have to police. Responsibility should be thrown on the parties?

Mr. Sutherland.—Yes. Provision should be made in the legislation to preserve the indefeasibility of title.

Mr. Merrifield.—I cannot understand how, for instance, a Commonwealth Act in regard to old age pensions could have any effect on a State Act in a matter relating solely to the registration of a title. It should have no effect on the validity of the transfer, but should apply only in respect of any claim for recompense that the Commonwealth might have against the individual.

Mr. Sutherland.—At the time, we received a ruling from the Commissioner of Titles that, as the Act was in force, we could not take the risk of issuing a defeasible title. After all, the Registrar is there to certify to an indefeasible title. If safeguards were not taken to ensure that titles issued could not be defeated, the whole process of the issue of titles would become uncertain.

By the Chairman.—Does the Commonwealth Act do any more than make the transaction null and void, as between the parties, if its provisions are not complied with?

Mr. Sutherland.—If the transaction in my office is no good, surely the first party has a right to get a re-transfer.

By Mr. Merrifield.—The Commonwealth cannot force you to grant it a title in respect of property it seeks to acquire compulsorily until it satisfies all the processes of your own Act?

Mr. Sutherland.—That is the opinion of the legal head of the Department. It was also the opinion of most solicitors with whom I discussed the matter at the time—that if an Act, State or Federal, rendered a transaction void, and of no effect, a person could not be issued an indefeasible title.

By the Chairman.—The administration of all those Acts places an added burden on you?

Mr. Sutherland.—Yes. If the purpose of the land sales control legislation was not to prevent certain contracts being effectuated, what was the use of passing such legislation? It had to be implemented by some one and the only person in a position to do so was the Registrar of Titles.

By the Chairman.—If a contract was entered into in violation of the land sales control regulations, and an indefeasible title was issued under the Transfer of Land Act, the parties concerned might become liable to penalties under the Commonwealth legislation, but the transfer itself would be valid, would it not?

Mr. Sutherland.—I should say the transaction would not be all right.

By Mr. Reid.—I think the Commonwealth legislation and regulations provided penalties that could be imposed on any person who acted wrongly. There was also subsidiary legislation which provided that the Registrar or the appropriate State Officer could refuse to register a transfer. Was not that so?

Mr. Sutherland.—That aspect was raised by the Registrar, and he was given a direction by the Law Department—which, I understand, came from the then Premier—that we were to assist the Commonwealth in policing the regulations. We did write to Canberra,

and I understand that, as a result of representations, a clause was inserted providing that a transaction was not invalidated if, by chance, the thing was wrong. However, that did not excuse us from policing the regulations.

By the Chairman.—In connection with transfers, do you require information as to the date of sale so that you will know whether it took place before or after the lifting of controls?

Mr. Sutherland.—If the contract of sale is produced, no requisition is made, otherwise we pull it up.

By the Chairman.—That will go on for years?

Mr. Sutherland.—Yes.

Mr. Schilling.—It should be stopped.

Mr. Sutherland.—It is my intention to approach the Secretary of the Law Department for a direction as to whether we should continue to police it. We are dealing with scores of applications.

By Mr. Schilling.—It would assist you greatly if you did not have to continue to undertake those duties?

Mr. Sutherland.—Yes. There is a general opinion among the members of the legal profession that we should not have to police many of these matters, but we cannot avoid it if we are to act according to the direction we received to assist the Commonwealth in land sales control. The same thing is happening in regard to the Soldier Settlement legislation.

Mr. Schilling.—You should not have to do it. The onus should be on the parties.

The Chairman.—There could be two provisions under the Statute: one rendering the transaction of no effect, and another making the party or parties liable to punishment. If one provision goes to the very root of the transaction, it may affect the giving of an indefeasible title. In the other case the parties would be punished by fine or imprisonment. That would involve the construction of a particular statute.

Mr. Sutherland.—Once you get away from the fact that the Registrar can only issue an indefeasible title, it would be dangerous.

By Mr. Merrifield.—What proportion of the total work going through the Titles Office consists of applications to bring titles under the Act?

Mr. Sutherland.—Very few; probably there would not be more than 90 to 100 in a year.

By Mr. Merrifield.—What effect do you think the compulsory parts of this Bill would have on the work of the Titles Office?

Mr. Sutherland.—I do not think very many more applications than those at present being made would be lodged. The implementation of the compulsory provisions of the legislation would be done by the Titles Office. The number of cases that could be dealt with in a year would depend on the staff available.

By Mr. Merrifield.—The point I am coming to is: To what extent have the requisitions that the Titles Office has required in the past to protect itself delayed the volume of work? Do you think the assurance fund ought to be abolished, or that it could be used more to absolve the Titles Office of many fine risks in order to expedite dealings?

Mr. Sutherland.—That question ought to be put to the Commissioner, who is the custodian of the Assurance Fund. I have very little to do with it. Whenever I have any doubt about a title, I say to the Commissioner, "There is no chance of complying with that requisition; what about a small contribution to the assurance fund, on account of the risk in passing it?" Usually the amount determined is 10s. The most the Commissioner has ever asked for is £1. A nominal sum is fixed so as to record that we had some doubt.

The Committee adjourned.

MONDAY, 27TH FEBRUARY, 1950.

Members Present:

The Hon. A. M. Fraser in the Chair;

Council.	*Assembly.*
The Hon. F. M. Thomas.	Mr. Barry, Mr. Merrifield, Mr. Schilling.

Mr. Francis William Watkins Betts, Commissioner of Titles, was in attendance.

By the Chairman.—Would you like to continue, Mr. Betts, from where you left off the other day?

Mr. Betts.—Since I was last here I have read the transcript of the evidence given by Mr. Wiseman. There are one or two matters to which I think I should refer, and which might assist the Committee. The question of consideration for transfers has caused a good deal of trouble. I gather from Mr. Wiseman's evidence that he is of opinion that the form of transfer in the Act should be amended and the consideration shown as "for valuable consideration" where the sale is for other than a monetary consideration. He says that consideration is a matter which really does not affect the Titles Office. My view is that consideration concerns the Titles Office, not so much from the duty aspect as from the point of view of the validity of the instrument.

"Valuable consideration" does not necessarily mean money. In law "valuable consideration" may consist either in some right, interest, profit, or benefit accruing to one party or some forebearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. If, in fact, the true consideration for a transfer comes under one of those heads, though stated to be "for valuable consideration," the Comptroller of Stamps has to arrive at the value in money in order to assess duty. *A* may transfer to *B* "for valuable consideration." The Comptroller would ask, "What does this 'valuable consideration' mean?" If it meant a sum paid—and it is quite likely that some transfers will be prepared in that form—he would stamp it on the basis of that amount and would not require the consideration to be amended to show it was for a monetary consideration; but if, in fact, it consisted of something else which could come within the legal definition of "valuable consideration" he would have to arrive at the value and assess the duty on that value.

The Chairman.—I think Mr. Wiseman put it that the question of duty and the amount of it was no concern of yours, and that all you had to do was to register the transfer. The matter of duty, he thought, was for the Comptroller of Stamps and the papers would come to you showing the amount of duty assessed.

Mr. Betts.—That is not quite right. Every officer in the service is concerned, and the onus is on him to see that the correct duty is paid.

By Mr. Schilling.—Why is that?

Mr. Betts.—It is provided by section 37 of the Stamps Act, the object being to protect revenue.

By Mr. Schilling.—Should it be in the Act? If you are to be concerned with what is outside your province, you are giving yourself unnecessary work and interfering with the flow of documents through the office. Is it not the duty of the Comptroller to work out the duty?

Mr. Betts.—As the law stands I agree with you.

By Mr. Schilling.—We want to find out whether you agree with Mr. Wiseman that the Comptroller should be charged with an obligation of assessing the duty, and that the Registrar should not be concerned with that aspect. What is your view of that?

Mr. Betts.—So long as the correct duty is paid we are not concerned as to duty, but "valuable consideration" for a transfer does affect us, in that we must be satisfied that it justifies the right to transfer; in other words, we are concerned with the validity of the transfer. We give and guarantee an indefeasible title, and we are bound to satisfy ourselves that the consideration, whatever it may be, is sufficient in law to justify the transfer and to justify our issuing an indefeasible title. To illustrate the point, take a consideration of £5,000 to be paid, which is an executory consideration. Duty is assessed on £5,000, you may say, "The Titles Office has no need to inquire. Duty has been paid." If the money is not paid, my view is that if we register the transfer we thereby enable the purchaser to pass on an indefeasible title to a second purchaser if he had no notice that the £5,000 had not been paid. The vendor can recover his land while title remains in the first purchaser, but if the first purchaser has passed the title to a second purchaser without notice of the defect, the latter would get a good title and the assurance fund would be liable to recoup the vendor his loss, we having had notice of an outstanding equitable interest in him and also having allowed the position to arise where the second purchaser got an indefeasible title.

The Chairman.—If the purchaser fails to pay the vendor, the vendor has his remedy at law. If the purchaser has sold the land to some other party the vendor would be left to recoup himself out of whatever assets the purchaser had, but, nevertheless, it would be a good title.

Mr. Betts.—The second purchaser gets a good title; the first one does not. We have given an indefeasible title, if passed on, but the money has not been paid.

By Mr. Schilling.—Then it is merely a debt?

Mr. Betts.—No. He can recover the land by action.

By Mr. Schilling.—By issuing a writ for cancellation of contract?

Mr. Betts.—Yes. The vendor has transferred his land for an executory consideration that has failed, and we have guaranteed the title.

The Chairman.—I do not accept that view. You would have to show me some statutory provision that whittles away the title in those circumstances. I should think that if the £5,000 were not paid the vendor would have the right of action to recover the debt, and would have the ordinary remedies by way of execution.

Mr. Betts.—In that case the purchaser gets the land worth £5,000, and the vendor may get nothing but a judgment for the amount. If an executory consideration and "valuable consideration" are allowed without question by the office and we—the office, the assurance fund, and the Government—are exempt from payment in the event of any loss arising, I would have no objection and it would save work in our office, but I cannot help thinking there might be a lot of trouble and loss, and of course indefeasibility of title would cease to be. If executors are allowed to transfer "for valuable consideration" they could transfer to themselves or to a wife or husband. The Comptroller would not be concerned with the breach of trust, and would take the duty, but the Titles Office should not pass such a transfer when we know the law to be that an executor cannot purchase the trust property. We would also have to allow a transfer by an executor by way of gift, but we know that is not permitted by law. If we questioned either transfer the answer could be, "It is for 'valuable consideration' and duty has been paid. You must pass it." The first-mentioned transfer may even be for a sum of money named. I think such should be questioned by the office. Considerations are bound up with the validity of the dealing. A transfer signed by an attorney under power may be for monetary consideration and stamped, but it may not be within the power to do what is being attempted for the consideration. The office must be concerned with that.

By the Chairman.—So far as the assessment of duty is concerned, whether it be because there is a consideration of a stated amount or whether it be construed from documents—whether they be constituting a gift or under some other method of exchange—the quantum is a matter for the Comptroller. I think those other matters still rest with the Titles Office, not from the point of view of quantum, but from the point of view of seeing that there is a proper transfer?

Mr. Betts.—I do not think we concern ourselves so much about the quantum as about the validity of the transfer.

By Mr. Schilling.—The Titles Office concerns itself with duty?

Mr. Betts.—Because we are required to.

By Mr. Schilling.—As the Act now stands you do in fact concern yourself with duty?

Mr. Betts.—Yes. If a stamped transfer for "valuable consideration" is to be allowed without question, we would not be permitted to inquire into a transfer by an executor made in fact by way of gift. Only the documents from the Comptroller of Stamps may show that it is a gift, but he would not know that it was by a person acting in a fiduciary capacity. He would stamp the transfer with gift duty, yet it is desired that the legal officers attached to the Titles Office should not inquire. I cannot follow the reasoning of that.

Mr. Schilling.—It would be comparatively simple for a line of demarcation to be drawn between those transfers based on a monetary or other valuable consideration—that is, something in specie or in kind—and those which arise by implication of law. The Titles Office would still be entitled to control those transfers arising by implication of law for the purpose of ascertaining whether legal principles were being violated, but any transfer which arose purely as a monetary consideration would be assessed by the Comptroller of Stamps and would be outside the scope of the Titles Office.

Mr. Betts.—In many cases, yes. When going through the evidence I noticed that Mr. McDonald stated that the Titles Office had made a requisition that the stamp duty did not accord with the consideration. For instance, the consideration may be £5,000 and the transfer shows that stamp duty has been paid on £6,000. In such a case it would be found that the Comptroller would have valued the property at £5,000 and treated the £1,000 as a gift. At one time the office ruled in such a case that the consideration should be amended to show that £5,000 was paid, and as to the £1,000 that was for "natural love and affection." That practice was altered by me twelve years ago, since when such a requisition has not been made for such an amendment. When Mr. O'Dowd was Registrar and I was Commissioner the matter was referred to me as an old practice, and I said that I did not think it was right.

By Mr. Schilling.—It would appear to me that when the Comptroller took that action he considered that the method of understating the consideration could have readily been used for fraud between parties, and that there should be some Governmental action to prohibit parties from adopting any method which could be used as a subterfuge. It is true, of course, that *A* and *B* could say "We paid £10,000 for this property but we will say that it cost only £6,000." How is that position overcome at present?

Mr. Betts.—It is not overcome, but the true consideration having to be stated, parties to such a transfer would be liable to prosecution. That is the safeguard. Where the transfer is between parties of the same surname, however, it could not happen, as the Comptroller calls for evidence of value and duty is charged thereon despite what is stated in the transfer.

By Mr. Schilling.—It could happen, but in fact it does not.

Mr. Betts.—It might happen where other than relatives are parties, but the Comptroller could not take any action unless he were aware of the position. There is, I think, a provision in the Stamps Act under which he may raise the question in cases of transfers between parties of the same surname. Of course, it may turn out that they are not related.

By Mr. Schilling.—If there was a transfer between father and son there could readily be a method of fraud?

Mr. Betts.—Yes.

By Mr. Schilling.—How can that be overcome? If people make declarations I suppose you cannot very well go behind them, except on true value. It occurs to me that it might be appropriate for the Comptroller of Stamps to say "Having made inquiries from the Taxation Department or the Lands Department we find that the block of land which was transferred is worth £15,000 and not £10,000; therefore, whether it is a gift or not, duty on the true value has to be paid." Would you agree with that?

Mr. Betts.—I think that is right. At one time the Office of Titles required amendments of such transfers, but that position has not obtained for the last twelve years.

Reverting to the question of indefeasible title and considerations, this is the note which has the imprimatur of Mr. Guest. I quote from *Titles Office Practice* by Currey.

There are, however, many other instances of considerations that denote outstanding equitable interests in the transferrors and in such a case it is not possible to certify an unencumbered Certificate of Title to the transferee.

That is, where there is an outstanding equitable interest that we know of.

Perhaps the most common example of such an interest is that in which the transfer is in consideration of an agreement or undertaking to maintain the transferror during life.

That is quite common.

Such a transfer only confers on the transferee a title defeasible by breach of his undertaking and such a title finds no place under the Transfer of Land Act. If a Certificate of Title were granted, even though the transferror could possibly recover the land on breach of the agreement while the title remained in the name of the transferee under such transfer, it would place the new proprietor in the position to grant an indefeasible title by transfer to an innocent purchaser.

This was the position that arose in the case *R. v. Registrar of Titles; ex parte Moss*, (1928) V.L.R. 411 . . . . . It is submitted, with respect, that it is impossible for the Titles Office to accept the dictum in that case, against which, but for certain unfortunate events, appeal would have been made to the High Court.

From the practical point of view the difficulty may be avoided by the use of two agreements; one for the sale of the land for its value and the other for the payment of a like sum by the proprietor to the person giving the undertaking, in consideration of which sum the latter agrees to maintain, &c. Only the first of the agreements necessarily comes on the register.

This matter was dealt with at greater length in an article in the November, 1929 (page 87) issue of the *Law* Institute Journal, by W. Campbell Guest, K.C.

It was pointed out that it would have been a simple matter to make the two agreements in such a case—one in connection with the sale, and the other in regard to the undertaking to keep the person for life. The transfer would go through on the first executed consideration, and a good title would be granted. If the undertaking to keep that person for life was not fulfilled, it would not affect the title, and there could be a claim under the second agreement. The second agreement would not come on to the title in any way. That is the course suggested to overcome the difficulty of an executory consideration. We contend that an executory consideration is something in the future, and we therefore cannot grant an indefeasible title in respect of that. We have in some cases allowed executory considerations so long as the vender's lien, which we consider exists, is negatived. £5,000 to be paid at some future time is an executory consideration, which may never be paid. We take the view that if the lien is negatived, the purchaser can be granted an indefeasible title, and that if the vendor does not get his money, he has negatived any lien, so he has no claim against the Titles Office.

By Mr. Schilling.—In a case such as that to which you refer, the transfer is in defraud of the agreement; is not that what it means?

Mr. Betts.—If the suggestion were adopted, there would be two agreements—one for the sale, and the other to keep the person for life. There would be nothing wrong with that; there would be no fraud.

By Mr. Schilling.—If a transfer were made subsequently, it would be in breach of the agreement, would it not?

Mr. Betts.—No. The transfer said "in consideration of £500 paid". The land transaction was completed. If then the transferor, having got £500, repaid it for an undertaking to be kept for life, and he was not kept, that is where the claim would arise, but the transfer would be good and the transferee would get an indefeasible title.

By Mr. Schilling.—The person to whom the land was transferred might sell. The point you are making is that the original transferror would have been deprived of his title by the breach of the agreement by the transferee?

Mr. Betts.—Yes, but he gets his money.

By Mr. Schilling.—But he does not get the whole of his consideration?

Mr. Betts.—No, but we are not concerned with the second agreement; that is kept off the title.

By Mr. Schilling.—That type of case is far removed from cases involving a straight-out monetary consideration, is it not?

Mr. Betts.—Yes; this is only our suggestion to meet cases which arise outside the monetary consideration —and there are many of them.

By Mr. Schilling.—Cases which arise in equity?

Mr. Betts.—Yes. It is surprising what a number of considerations can be framed in the minds of some parties, and solicitors.

By Mr. Schilling.—Would you have any objection to a line of demarcation being drawn between these cases which arise in equity and those which are straight-out monetary considerations?

Mr. Betts.—No, but we do not question a transfer from the duty aspect if it is for a monetary consideration.

By Mr. Schilling.—Would there not be many cases in which it is not a straight-out cash payment; there are other aspects which are very much within the ambit of a monetary consideration?

Mr. Betts.—The Collector would not know about that, but we might.

Mr. Schilling.—That does not seem as easy as one would think it would be.

Mr. Betts.—It is not. This matter was argued at length when it was discussed by the Chief Justice's sub-committee, and I do not think the committee agreed to it. Everybody agrees that this question of consideration causes difficulty. We would like to be clear of it; but at the same time we desire to do the right thing.

By Mr. Schilling.—Did the committee reach any solution of the problem?

Mr. Betts.—Mr. Adam agreed with me that we had no alternative but to police it, so I do not know Mr. Wiseman's authority for his statement. Notes which I took at our meetings read as follows:—

Mr. Gubbins raised the question of the right of the Titles Office to question dealings which it thought was a breach of trust, and quoted his case of a transfer by an executor, followed by a mortgage back for the balance of the purchase money—say, transfer £1,000, and mortgage £900. He thought that the Titles Office could not say there was a breach of trust on the face of the documents. I disagreed, and Mr. Wiseman thought it difficult to see that the Titles Office was not entitled to an explanation. Mr. Gubbins said that the contract of sale might be ten years old and improvements might have been effected since, and therefore that the mortgage should not necessarily be for more than three-fifths—

That is trustee's margin.

He stated he got over the requisition by informing the Titles Office that the executor was the beneficial owner.

We since ascertained that the executor—who on the title appeared as executor—was in fact the beneficial owner. When he is the beneficial owner, there is no point in objecting to his mortgaging for any amount. Therefore, that was allowed to go through. However, the Titles Office is entitled to that explanation, because £900 was being lent on a property worth £1,000. On the face of it, that was a breach of trust, and we were right in stopping it. My notes continue:—

Discussion then veered to paragraph 13 dealing with protection of interests under trusts and settlements raised by Mr. Piesse and no decision was finalized, though Mr. Gubbins said he was prepared to leave the Titles Office practice as at present, that is, that the Titles Office police such transactions.

Further consideration was given to paragraph 13 as to the Titles Office protecting interests under trusts and settlements. Mr. Gubbins said that the Titles Office had no power to question dealings by executors, but Mr. Adam considered that the Titles Office must question a transfer pursuant to a devise, and therefore see the will. The point as to the Titles Office protecting such interests was fundamental. I said that the Titles Office would be saved a lot of work, but I doubted the wisdom of giving up that protection which was in the interests of persons entitled, and was of more importance than the work given solicitors in satisfying a few requisitions on that particular point. I informed Mr. Piesse later that the assurance fund would have to go if the Titles Office was not to give protection and was to register anything by an executor.

If an executor was to be treated as the registered proprietor, and have the same rights, he could give the testators property away—was it right to allow that."

That may not appear to be directly concerned with consideration, but in fact it is.

By Mr. Schilling.—It is an intricate question. If a person buys a motor car, or a pot plant, or a washing machine, or anything else, the maxim *caveat emptor* applies. If he finds that the motor car does not belong to the man who sold it to him, he has his rights in law. It is curious that, in regard to such matters, the maxim *caveat emptor* applies, but in regard to land, a Government instrumentality acts as a policeman to see that people do not do the wrong thing. It is rather anomalous.

Mr. Betts.—That is relished very much by some solicitors.

By the Chairman.—Perhaps on the basis that they save themselves from actions for negligence. I suppose difficulties are negligible where there is a monetary consideration.

Mr. Betts.—There is no trouble at all.

By Mr. Merrifield.—How would they measure up with problems where the consideration is other than specie?

Mr. Betts.—Of 88,000 transfers registered last year not more than 200 were stopped for amendment. Of these 200, about 50 show difference between consideration and duty.

The Chairman.—It is astonishing how many considerations can be stated that do not relate to cash.

Mr. Betts.—In many cases the consideration can be reduced to a monetary equivalent. The consideration might be, "I will keep you for life if you will transfer that land to me." What is to stop the person saying, "I have ten years to live. It will cost you £50 or £100 a year to keep me"? On that basis what is to prevent the parties saying "The land is worth £1,000"? The parties can do what they like. That is all we suggest.

By the Chairman.—In those cases would it be for the Comptroller to assess the duty?

Mr. Betts.—Yes. I think he would say, "What age are you?" The answer might be "I am 60." The Comptroller might say, "Actuarily you will live to be 75, and on the basis of £100 a year for your keep the land is worth £1,500 to you." He would have to do something like that to arrive at the duty. What is to prevent the parties saying, "We will put in £1,500 as the consideration?" If it is to be no concern of the Titles Office to question consideration, we would be perfectly happy about it, but we have to issue an indefeasible title, and if that fails you have to consider what the Government would be up for. If we are to be up for nothing, all right, but you will never get that through because you would be knocking away the value of the title—indefeasibility. If we are not to guarantee title, I agree with the proposal, but we cannot do that.

By Mr. Merrifield.—Has Mr. Betts any opinion on the question whether the Titles Office ought to pursue the rights and wrongs and the whys and wherefors of caveats before registering them?

Mr. Betts.—We consider that the caveator must show an interest in the land before he can put a caveat on the title. He can show that by a contract of sale. He cannot show it by a debt owing to him; that does not create an interest in land. We have refused to register such caveats. I do not think he has any right to plaster a title with a caveat unless he has a proprietary interest in the land.

By Mr. Thomas.—Would you register a caveat in the case of a gift?

Mr. Betts.—Yes. If I gave you a block of land and the duty is paid on the deed, although I have not completed the gift by a transfer you have acquired an interest in the land and could caveat.

By Mr. Merrifield.—Do you merely come to the academic point of saying "Yes, there is an interest. We will not pursue it any further, we will just register it"?

Mr. Betts.—The caveator must show a prima facie interest in land, and it is left to us to say whether or not it is an interest capable of supporting a caveat.

By Mr. Merrifield.—Take the case of a title in a husband's name and the wife claiming an interest. Do you pursue that in detail to the stage where you prove or disprove the wife's interest before you register the caveat?

Mr. Betts.—No, we would not attempt to disprove it. If a wife claimed an interest in her husband's land, and declared that he held it, as to half or the whole, as a trustee, she maybe having supplied the money, we would register the caveat that she forbid the registration of any transfer affecting her interest.

By Mr. Barry.—What proof does the wife give?

Mr. Betts.—All we want is a declaration.

By the Chairman.—At present the Office of Titles will not register a caveat in which a wife claims an equitable interest unless it is supported by a declaration?

Mr. Betts.—Yes. It is insufficient for anybody to say "I have an interest in certain land; here is a caveat." It is a serious matter to lodge a caveat against another's title, and, in view of the effect given to a caveat in this Bill, it becomes a very important matter as to priority of equities.

By the Chairman.—The Committee has been considering whether that is really a matter for the Office of Titles or a matter *inter parte*. For example, if a wife lodges a caveat alleging that she has an interest in her husband's land, the question arises as to whether the Office of Titles should have the right to call for proof by the wife; or whether it should decide that the caveat should not be registered because it is a matter between the husband and wife and not between the Office of Titles and the wife as to whether or not in fact she has an interest?

Mr. Betts.—We would not go beyond the declaration. We would not say to the wife "You allege that you provided half the money; where are your receipts, or your bank book, or the cheque butt?"

By Mr. Barry.—What happens when an application for transfer is lodged?

Mr. Betts.—The caveator may withdraw the caveat or it may lapse. If a transfer was lodged the caveator would be notified that a transfer had been lodged and unless court proceedings to uphold his claim were taken by the caveator within fourteen days the transfer would be registered.

The Committee adjourned.

TUESDAY, 28TH FEBRUARY, 1950.

Members Present:

The Hon. A. M. Fraser in the Chair;

Council.	*Assembly.*
The Hon. F. M. Thomas.	Mr. Bailey,
	Mr. Barry,
	Mr. Merrifield.

Mr. Frank William Arter, Surveyor and Chief Draughtsman, Titles Office, was in attendance.

By the Chairman.—Have you been supplied with a copy of the transcript of evidence already given on this subject?

Mr. Arter.—No, but I have seen a copy of the Bill.

By the Chairman.—We should like to hear your observations upon the Bill itself before you deal with the administrative side of the Office?

Mr. Arter.—First, I shall comment on the compulsory registration provisions of the Bill, because they deal with a matter which, I think, is of grave importance to the State. If the compulsory registration system is tackled properly I can visualize a properly co-ordinated system of survey and titles, which has never before been attempted in Victoria. However, I do not know whether that can be legislated for.

I have studied the system operating in South Australia. It is not my intention to go into the legal details, but from a practical point of view this Bill is mostly on the same lines as the South Australian legislation. In that State the work has been commenced in the far distant reaches, more or less as an experiment to try out the practicability of the Act. Although it is proceeding satisfactorily, the authorities are not altogether happy with it, particularly on the survey side.

It must be realized that in Victoria there is no such thing as a title survey system—that is, a properly co-ordinated system where titles must be linked to a system of permanent marks. That has been recognized throughout the history of the State. I think New Zealand is the only place where there is a proper survey system; in other places, it has just grown like "Topsy." In the olden days a title was based on a deed. An original Crown survey was made by the Lands Department on very rough measurements. Expert opinion during the inquiry of the 1883 Royal Commission was that the measurements varied from eight links to about 70 links in a mile—in fact, that pertains right throughout the Commonwealth. Obviously if such discrepancies occur the whole system of fitting a survey to a title is almost an impossibility. The haphazard growth of the survey system causes us a great deal of work which will be obviated if the compulsory registration system is introduced, on sound survey lines.

By Mr. Thomas.—Are you speaking of the whole of the State or only of areas outside a certain radius of the metropolitan district?

Mr. Arter.—I am speaking of the whole of the State.

By the Chairman.—According to evidence given before the Royal Commission in 1883 the same sort of thing applies right throughout the Commonwealth?

Mr. Arter.—Yes, definitely. I am not too sure of the authority because his name has been erased from the report in my possession, but I think the Surveyor-General of New Zealand made that statement. The original Crown grants were surveyed at the then standards of accuracy which varied according to the conditions but subsequent subdivision by private persons was generally without survey, without marks, and without marks being left; everybody hopped in for his cut and built up from that. That was the primary cause of the Royal Commission being set up in 1883-1885 and section 215 of the Transfer of Land Act 1928 was the outcome of that Commission. The reason for the advent of section 215 was to stabilize a man's title, having regard to the inaccuracies of survey in the past. Although it was advocated then that a properly defined system of permanent marks should be put down it was never carried out. At present, all we are trying to do is to stabilize titles on surveys which are connected to floating points. If it is possible, I should like to see that obviated in the new registration system.

Without considering the actual legal aspect, I am strongly of the opinion that a properly co-ordinated system of permanent marks must be evolved when the "limited" or interim titles pass to the "ordinary," that is to say, when requisitions as to ownership and description have been answered. That may be a long range view.

By Mr. Bailey.—What do you mean by permanent marks?

Mr. Arter.—They are permanent survey monuments laid down under the Survey Co-ordination Act. It is now compulsory for governmental and public authorities to carry out the provisions of that Act, but it is not compulsory for private practising surveyors. The Survey Co-Ordination Act has been in existence for about six years and permanent marks are being put in by the thousands by those Departments dealing with survey work. Private surveyors are tying their surveys on to those permanent marks. The best that has so far been achieved for the ordinary title survey is a series of spikes, which are not very satisfactory because they become covered by bitumen, or they are pulled out and the surveyor simply goes back to fences or buildings.

The Chief Examiner in South Australia concurs with my contention that the areas to be dealt with should be zoned so that some unified system of searching and description can be arrived at in order that the public money can be saved by non-duplication of investigation. From our point of view an investigation of a survey must involve duplication of work done somewhere else, because we have no system of permanent marks. After a survey of a property is made, the next surveyor who comes along perhaps in ten or fifteen years has to tie up with the physical features. We must go through his work in conjunction with the previous survey to see that the second survey is on the right marks. It is obvious that if he could tie up to permanent marks the whole thing would be more or less simple. One of the major causes of delays in the Titles Office in regard to subdivisions is that we have not got a proper survey system in Victoria to tie up to. We simply check and investigate the field notes, which are the copy of the direct observations made by the surveyor on the field and which show widths, corners, the distance between buildings and fences, and any other physical objects that may be in existence at the time. We have to try to read the mind of the surveyor, and we also inspect the area to see the features for ourselves. That all takes time. I do not want that practice to continue.

By the Chairman.—I suppose that it will be years before the permanent marks will be of any great assistance?

Mr. Arter.—I do not think so. Thousands of permanent marks are being put in by the Departments, but mainly in the country areas. For instance, Maryborough has recently been surveyed from an engineering point of view for a sewerage system, and more than 100 permanent marks have been put in. They are properly located and are so interlaced that surveys can be located and tied on to those permanent marks. Maryborough is now a proclaimed survey area under the Survey Co-ordination Act.

By Mr. Thomas.—Would you say that the Melbourne and Metropolitan Board of Works has gone about the work of surveying in a haphazard way?

Mr. Arter.—No. The Board has a very strong system of permanent marks. Portions of some have shifted a little, and unfortunately in the city and closely settled urban areas they are in an awkward position and not always convenient, but it is a splendid system of permanent marks. That system will shortly be investigated in regard to zoning or proclaiming survey areas around Melbourne.

By Mr. Bailey.—Is any dealing at Maryborough that is lodged under the Transfer of Land Act now checked with the permanent marks?

Mr. Arter.—Any piece of land that is surveyed at Maryborough will be tied to those permanent marks.

By Mr. Bailey.—Will any land coming under the Transfer of Land Act be checked?

Mr. Arter.—Yes, but a transfer may involve all the land under the title, and that would not be tied.

By Mr. Bailey.—What about the original survey under which the title was issued?

Mr. Arter.—It must be realized that thousands of pieces of land held under titles have never been surveyed. However, if the title is based on a survey and the occupation remains the same, having regard to the field notes of the major survey we can locate that survey to the permanent marks, but that takes a lot of investigation.

By the Chairman.—Are the trig. stations considered to be permanent?

Mr. Arter.—That is the key, and the permanent marks are subsidiary. They would be tied through three or four orders of survey. The idea of a permanent mark is something which will be covered by a trap, or a concrete or steel cover and branded "survey permanent mark." It would be located in the footpath or nature strip. That would be a starting point, and in that way it would be possible to couple up the whole fabric of survey. There are two schools of thought on the subject of permanent marks. The Surveyor-General in Hobart told me that he would not in any circumstances put down a system of permanent marks unless he could link them up by a standard traverse. The late Mr. Clark, who was Deputy Surveyor-General of Victoria, was of the opinion—and I completely agreed with him—that it would suit our purpose if anyone put in the marks and the linking-up was done afterwards. A survey might be connected to two main buildings which would be permanent enough. So long as the permanent marks remained, and future surveys were tied to them, the actual linking-up could be continued until Doomsday. The standard traverse—as we call it—between the two marks is essential for stability of title.

I shall try to put it another way. Suppose an area is subdivided into eight sections, and permanent marks put in. A detailed traverse would be made and linked up properly. Then the surveys would be made and tied to the permanent marks. If the next survey was tied to the one previously done it would—by an axiom in geometry—be related. Under the present method we are introducing a system of permanent marks.

By Mr. Barry.—Take, for instance, a block in the middle of a street—Bourke-street, perhaps—which it is desired to subdivide. There may be no permanent marks at either end, at Spring-street or at Spencer-street. What happens in regard to the block in the middle?

Mr. Arter.—That could be so, but if a Government or public authority were doing a survey for alignment purposes, it would be obliged to put in permanent marks as directed by the Surveyor-General.

Mr. Barry.—Some day you will probably be dealing with the streets in the City of Melbourne, particularly the "little" streets.

Mr. Arter.—The City of Melbourne is the least of our worries, because there are so many buildings that are really permanent.

By Mr. Barry.—The trouble could arise in areas where there are no permanent marks, could it not?

Mr. Arter.—Yes, and that is quite realized.

By Mr. Barry.—You would really have to start from the beginning, with re-surveys, wouldn't you?

Mr. Merrifield.—This is a re-beginning. Take a simple case in the metropolitan area where a block is bounded by post and wire fences. The centre of a post would be taken as the starting point, and you would relate a particular block to the two end fences at the two street corners. In fifteen years' time, those old posts could easily have shifted two inches in relation to each other. Then a survey might be made and it would be inaccurate to the extent of two inches to start with.

Mr. Arter.—I think if I spoke on the title system we would be on common ground. I have made some notes on the aspect of title, description, and location—not so much from the point of view of subdivision as from the aspect of survey and boundary description. From the point of view of location and description, titles are only as good as the information from which they are derived. In other words, if a title is based on a subdivision on paper, it is only as good as the information on the paper. That was fully realized at

the Royal Commission in 1885, when expert evidence was called from all available sources. During the investigations of the Commission, it was pointed out by one authority that the accepted standard of accuracy, according to the instruments, ranged from 70 links in the mile to 8 links in the mile, with a 5-inch theodolite. These factors were realized by the 1885 Royal Commission, and section 215 of the 1928 Act was the result. The legal authorities realized that they would have to stabilize the titles as they stood.

It was also pointed out that the actual pictorial diagram of such a survey must be of only secondary importance, when compared with the actual marks laid out by the surveyor in the field. That is another axiom of survey—that the original marks stand, notwithstanding the measurements on the title. These are definite principles, having regard to the title system and what is it proposed to do in regard to the compulsory registration.

Reverting to the matter of titles brought under the Transfer of Land Act by deed, that is, from the old paper subdivision, and without survey, that would have very little reliable value as to the exact location. A title 50 feet by 150 feet might have been issued but no survey ever made. It might be 400 feet from corner to corner. Someone else might have come along and taken the 50 feet by 150 feet in the middle of the section, measuring it with his wife's tape. That has been done frequently, and it is one of the main causes of amendments of title. A person might start to measure off in the middle of a street from a point not defined. He would not pay for a survey. The next person takes his measurements from the fence of that block. Other blocks are measured in the same way to the end of the street, where it is found that the corner allotment has too much or too little.

The Chairman.—In practice, in dealing with contracts of sale, solicitors will say to their client: "Go out and measure the block; it should be the fifth lot from the corner of the street."

By Mr. Thomas.—Is that, in practice, done by surveyors?

Mr. Arter.—No, a surveyor would be obliged to do the job properly.

The Chairman.—Is it not all based on the assumption that the starting point in a street is right?

Mr. Arter.—Yes.

By Mr. Barry.—The end of the street is generally taken by the public as being the correct starting point, is it not?

Mr. Arter.—Yes.

By Mr. Barry.—Under your proposals with regard to survey, would that not necessitate the calling in of hundreds of titles for amendment?

Mr. Arter.—Not yet.

By Mr. Barry.—But it would be necessary after you had done your survey?

Mr. Arter.—I have not reached that point yet. I was giving a few thoughts on title description, and I was leading up to other points. If a survey of a block were carried out with metriculous precision, properly pegged, and not related to other identifiable and reliable marks, and the pegs were subsequently moved, the value of that metriculous survey would be absolutely nil, because it could not be re-established. The same circumstances and conditions must and do apply to titles. A title based on a survey tied only to, say, post and wire fences which ultimately deteriorate or disappear, must then rely on old pegs, if they still exist or on its own or other occupation, and consequently approximation to some other variable degree must apply.

Mr. Barry.—I agree that there should be compulsory pegging.

Mr. Arter.—I am trying to convince the Committee of the necessity for a proper survey system before we start this compulsory registration.

The Committee adjourned.

WEDNESDAY, 1ST MARCH, 1950.

Members Present:

The Hon. A. M. Fraser in the Chair;

Council.	*Assembly.*
The Hon. A. E. McDonald,	Mr. Bailey,
The Hon. F. M. Thomas.	Mr. Barry,
	Mr. Merrifield,
	Mr. Oldham,
	Mr. Reid.

Mr. Hubert Dallas Wiseman, of counsel, and Mr. Eric Smith Vance, Master of the Supreme Court and formerly Registrar of Titles, were in attendance.

By the Chairman.—Will you proceed with your evidence, Mr. Wiseman?

Mr. Wiseman.—In response to the request made by this Committee, Mr. Vance, Mr. Knight, and I met in conference. Before we met, each of us had considered the problems we had to discuss and perhaps each of us had certain ideas. I had drafted out something which I thought accorded with my views, and possibly with the views of Mr. Vance, but at that time I did not know Mr. Knight's views. After a fairly thorough discussion we found that there were certain views which were held in common and which we thought would be of advantage in co-ordinating the work in the Titles Office. I have drafted what I believe to be the conclusions at which we arrived at that meeting, and on Monday afternoon last I submitted a copy of that draft to Mr. Knight with a request that if it did not represent his views he should communicate with me. I have not heard from Mr. Knight, and I therefore take it that the draft represents his views.

Mr. Vance and I think that what we suggest would be an improvement on the present system. Advantage would be gained by going very much further than has been set out in the clause in the Bill as drafted. Perhaps the most helpful thing for me to do at this stage is to indicate the common conclusions.

We discussed the matter fully, and it was pointed out by Mr. Knight that there were two sets of officers in the Titles Office who were making requisitions. They were being made by the Registrar and, I think, his staff, and by the Commissioner's staff—the examiners. We considered that was an unsatisfactory method of controlling the office, that it would be very much better if the requisitions were sent out by the one branch, and that they should go through the Commissioner's staff, and not through the Registrar's staff. The profession would then be dealing with the one branch and not with two branches. It is also probable that the requisitions would be sent out in one instalment and not at different times.

By Mr. Merrifield.—Would that also apply to the Survey Branch?

Mr. Wiseman.—We did not actually discuss the Survey Branch requisitions, but having read Mr. McComb's evidence it seemed to me that they would be making requisitions and I should think they would

come into the same channel. In other words, the idea would be to have one connecting authority with regard to requisitions instead of three as at present.

The Chairman.—Mr. Arter, of the Survey Branch, gave evidence yesterday, and I discussed with him the question of sending out two lists of requisitions. He seemed to think that could not be avoided. First, there is the ordinary requisition on the document itself, and then, when the document is otherwise in order, it goes out as to description of land and so on.

Mr. Wiseman.—I think it desirable to keep the fact clear that the title of land depends upon two things—the person to whom the title belongs and the description of the thing he owns. They are distinct and are dealt with in two distinct branches—the Survey Branch and the Commissioner's or Registrar's branch. As a matter of organization it might be desirable for the Survey Branch to communicate with the solicitor through the other channel, and then the requisitions would be sent out as one set of requisitions, dealing with survey, technical maters, perhaps office routine, and other questions on the actual title.

By Mr. Merrifield.—Is it not a fact that the dealing goes progressively through the Titles Office, through different parts of the office. It goes first through the Survey Branch, then the examiners through different rooms, and each section makes out a requisition as it gets the dealing. It may take a considerable time if there is only one requisition, and it is dealt with in one section before it gets to the next section. The dealing would have to go through all the rooms first and the requisitions would have to be added to be sent to the solicitor as a whole?

Mr. Wiseman.—Yes. The important question may be the way in which to organize the workings of the office. It might have something to do with the internal arrangement of the office. It is obvious that what Mr. Merrifield has said could occur, if that practice were continued.

Mr. Merrifield.—The survey staff could not send out a requisition as to description until the surveyor's note had been checked. It goes from the plotting room before it goes on to the application room. In that case they could not possibly check the description without having first had the survey fixed.

Mr. Wiseman.—It may depend on the way in which it is done. If I might leave the question of survey requisition for a moment, it seems desirable that so far as titles are concerned they should go through only one channel. That was the conclusion we arrived at. We did not go into the actual question of survey, but it is germane to the question and it might be required to be worked out in detail. To carry that out the main alteration suggested is the addition of a clause that the Governor in Council may make regulation for the Office of Titles and for determining the necessary qualifications of officers for appointment to any position in the office and for assigning the duties of the respective officers, and determining the acts which may be done by the Registrar or by an assistant Registrar or any other officer and for altering or adding to the official styles of the officers of the Office of Titles. In other words, it is suggested that there should be power in the Governor in Council to make regulations for controlling the work in the Office of Titles. Mr. Vance, Mr. Knight, and I agreed that that would be an improvement on Part I. as it stands at present because there is no provision made there for control. Our suggestions on this matter are as follows:—

> 5. There shall continue to be an office in Melbourne called the "Office of Titles."
>
> 6. (1) There shall be a Commissioner of Titles who shall receive such annual salary as is determined by the Governor in Council.
>
> (2) No person shall be appointed Commissioner of Titles unless he is a barrister and solicitor of the Court who at some time prior to his appointment has practised as a barrister or solicitor or as a barrister and solicitor for a period of not less than eight years.
>
> (3) The Governor in Council may upon any vacancy occurring in such office by death, resignation, or removal appoint a person to fill such vacancy and may remove any Commissioner of Titles whether by this Act appointed or hereafter to be appointed.
>
> 7. (1) There shall be a Chief Examiner of Titles.
>
> (2) Any person hereafter appointed as Chief Examiner in pursuance of this Act shall not be subject to the provisions of the Public Service Act.

It was considered that the position of Chief Examiner of Titles should be enhanced above its present status and that the person appointed, if suitable, might possibly be promoted to the position of Commissioner of Titles. It is not desired to have the position of Chief Examiner limited to persons in the Public Service because of the possibility of the appointment as Commissioner. It was thought that the position of Commissioner could be more suitably filled by a person who had had experience in the profession in regard to the actual working of the legal system rather than that it should be limited to a person who was a public official.

By Mr. Merrifield.—The removal of the position from the Public Service Act would also remove the age limitation?

Mr. Wiseman.—Yes. It is a fundamental change with regard to the hierarchy of the Office. In other words, it is suggested that the Commissioner should be acquainted with the trials and difficulties of the public and the practitioner in the conduct of his business, and that it may be desirable to appoint as Chief Examiner and ultimately Commissioner a person who is not already in the Public Service.

By the Chairman.—At present the Commissioner of Titles is excluded from the provisions of the Public Service Act?

Mr. Wiseman.—Yes, under section 3 of the Public Service Act.

By Mr. Barry.—Is it necessary now that the Commissioner should be a barrister and solicitor?

Mr. Wiseman.—At present there is no provision with regard to the Commissioner. Under this proposal an experienced member of the legal profession will be sought to occupy the position of Commissioner of Titles.

By the Chairman.—As the Bill is drafted it almost impliedly suggests that the examiners and Commissioners should be barristers and solicitors?

Mr. Wiseman.—Yes, by implication. In our suggestions there is also a provision with regard to the qualifications of the Chief Examiner, which reads—

> (3) No person shall be appointed Chief Examiner unless he is a barrister and solicitor of the court who at some time prior to his appointment has practised as a barrister or solicitor or as a barrister and solicitor for a period of not less than seven years or who being a barrister and solicitor of the court has had not less than ten years' experience as an Examiner or Assistant Examiner of Titles.

That is a year less than in the case of the Commissioner.

By the Chairman.—Would not the proposed "Rules Committee" have the power to prescribe duties and so forth by regulation?

Mr. Wiseman.—I am doubtful about that.

Mr. Vance.—It is not proposed that the "Rules Committee" should go so far as to prescribe the duties to be performed by individuals; it will be concerned more with the working of the Act itself, and deciding that certain forms and paper of a certain size must be used.

Mr. Wiseman.—The object of the latter part of the proposal is to give an examiner of titles who is admitted and has considerable experience an opportunity to gain appointment as Chief Examiner. However, it is still desired that in the main the Chief Examiner shall have had contact with the public in the practice of his profession.

By Mr. Reid.—Might not a problem also arise about the type of man who, for example, had been a legal officer for a public Department such as the Housing Commission? A person might have had considerable experience in connection with titles, but would it be said that he had practised as a barrister and solicitor if he had spent most of his career as an officer of a public Department?

The Chairman.—That is a live question at present.

Mr. Wiseman.—Yes. I understand that two Kings Counsel have submitted conflicting opinions.

By the Chairman.—I take it that such a person, within the words of the clause, is not practising as a barrister and solicitor?

Mr. Wiseman.—I agree. The point in that when the Transfer of Land Act is being dealt with there should be at the top a man who has experienced the difficulties and the troubles of the public. It is thought that such a man would know the real and substantial questions to be considered.

By Mr. Barry.—He might not be in any better position than an officer of a public Department engaged on this particular work?

Mr. Wiseman.—The real point is that the person who is in a public office gets or tends to get what one might describe as an official view, whereas solicitors and the general public tend to be, shall I say, more practical. The practical man should consider these matters from a rather realistic point of view.

Mr. Barry.—I do not think "practical" would be the right word.

Mr. Wiseman.—No, I shall withdraw it, and say a man who has had experience in dealing with these matters in the practice of his profession—an experienced lawyer.

By the Chairman.—You are proposing a longer term of practice than is required for the appointment of a Supreme Court Judge?

Mr. Wiseman.—The period for a Supreme Court Judge is eight years and for a County Court Judge seven years.

By the Chairman.—A qualified examiner has to occupy the position for 10 years before being eligible for appointment as Chief Examiner, whereas in the case of the outside practitioner the period is seven years?

Mr. Wiseman.—That is so.

By Mr. Merrifield.—Would an officer have to occupy the position of assistant examiner before being considered for appointment as Chief Examiner?

Mr. Wiseman.—Yes, before an officer could be appointed as Chief Examiner he would be required to have not less than ten years' experience as an examiner or assistant examiner of titles, unless he had practised for seven years as a barrister and solicitor.

By Mr. Bailey.—In such a case, he would need to have practised before joining the Department?

Mr. Wiseman.—If a person were appointed as an assistant examiner shortly after his admission, and occupied that position for five years and then was an examiner for five years, he would be qualified.

Mr. Merrifield.—A provision such as that will debar all the present examiners from promotion. They were appointed on the 28th of November, 1948, so that they will have to occupy their positions until 1958 before being eligible for promotion. However, Mr. Rasmussen, for instance, retires in 1955.

Mr. Vance.—Mr. Rasmussen has been an examiner for 25 years—he was appointed before 1928. Every examiner, except one, has had 10 years' service. There should be no difficulty about that matter.

Mr. Wiseman.—The next provision deals with the question of a vacancy—

> (4) The Governor in Council may upon any vacancy occurring in such office by death, resignation, or removal appoint a person to fill such vacancy and may remove any Chief Examiner whether by this Act appointed or hereafter to be appointed.

By the Chairman.—The remaining clauses are machinery provisions?

Mr. Wiseman.—Yes. Our proposed clauses 8 and 9 are—

> 8. There shall be a Registrar of Titles.
>
> 9. The Governor in Council may from time to time appoint such Examiner or Examiners of Titles and such Assistant Examiner or Examiners of Titles, Registrar of Titles, and such Assistant Registrar or Assistant Registrars of Titles and such other officers as may be necesary for carrying out the provisions of this Act and may remove any Examiner, Assistant Examiner, Registrar or Assistant Registrar, or any other officer, whether by this Act appointed, or hereafter to be appointed, and may fill any vacancy thereby or otherwise occurring.

By the Chairman.—In those provisions where is there a clause relating to the co-ordination of the work to see that there is smooth running in the office?

Mr. Wiseman.—I should like to put the joint view and my own view to the Committee. The joint view was that under clause 18 the Governor in Council would make regulations to direct what duties were to be performed by the various officers, and in those regulations there would be the co-ordinating power. My personal views are that these draft regulations do not go nearly far enough in the direction of co-ordinating the duties of the various officers in the Titles Office. Some person must be placed in control of the whole Department. At present there are three officers—the Commissioner of Titles, the Registrar, and the Chief Surveyor, each of whom performs certain functions. There is no co-ordinating provision. I do not know who will start off these regulations—the Commissioner, the Registrar, or some one else.

Another important officer—Mr. Knight—comes into this picture. I understand that he is in control of the personnel in the Titles Office. I made certain suggestions regarding the Commissioner of Titles being placed in complete control, and Mr. Knight's objection was that the Commissioner would then be

given control of staff. Mr. Knight thought—if I understood him correctly—that, ultimately, staff matters should be dealt with by him. That, of course, is linked with the general administration of the Public Service. My own view is that there should be a person in the Titles Office to whom all these questions—legal or administrative—could ultimately be referred. If they were administrative only, he could simply say, "I will leave this class of thing to the Registrar, but I want to know what is being done." He might pass it on to the Secretary of the Law Department.

The Chairman.—If the head of the Titles Office wanted extra staff, that could be referred to the permanent head of the Crown Law Department for approval, but the actual administration could be another matter.

Mr. Merrifield.—Unfortunately, it is not possible to dissociate administration entirely from the allocation of staff.

Mr. Wiseman.—At present the Commissioner of Titles performs certain work, and although he is not the titular head of the Titles Office, it appears that he is referred to as the head. Mr. Sutherland said that if he had any doubt about a dealing, he would submit the case to the Commissioner. There is nothing in the Act providing that the Registrar must obtain the Commissioner's advice. In any organization it is necessary to build to the top of the pyramid. If the Registrar made a submission to the Commissioner on any administrative matter, I should think that the Commissioner would say, "This is an administrative matter only, and it is your difficulty. I will initial it, and send it on." I think the Commissioner should be responsible for matters of principle leaving the details to be worked out by others.

By Mr. McDonald.—If the Commissioner of Titles referred matters to the Permanent Head—the Secretary to the Crown Law Department—might there not be a clash? The Commissioner might say, "I want extra staff in order to maintain efficiency," but the Secretary of the Law Department might decide—for certain reasons—"No, I cannot agree to recommend that." That is where the system would fail.

Mr. Barry.—Then the Public Service Board comes into the picture.

Mr. McDonald.—It could not disregard the recommendation of the Departmental head.

By the Chairman.—We do not want this to develop into something akin to what happened in the Water Supply Department. Could Mr. Vance tell me what system operates in South Australia?

Mr. Vance.—There is no Commissioner of Titles in South Australia—only a Registrar.

By the Chairman.—Does he perform both functions?

Mr. Vance.—He refers matters of law to the Crown Law office. The Crown Solicitor does what the Commissioner does here. In New South Wales the Chief Examiner is the number one man on the legal side. The top position is an executive office.

Mr. Wiseman.—My suggestion is that the Commissioner of Titles should be the head of the Department and that he should have direct access to the Attorney-General.

By Mr. Merrifield.—Mr. Wiseman suggests that the Commissioner of Titles be set up as the head of the Department, with access to the Attorney-General. Does not the Registrar perform functions—such as those relating to the registration of companies—which do not come under the Transfer of Land Act?

Mr. Wiseman.—I think there is a Registrar-General, who is the same person as the Registrar of Titles.

The Chairman.—It might be a good idea to divorce those functions, that is, by having a Registrar-General to deal with matters relating to the registration of companies, money lenders, estate agents, &c.

Mr. Vance.—That is a big thing.

The Chairman.—Then the Registrar of Titles could deal solely with matters relating to titles.

Mr. Wiseman.—I think so.

Mr. Merrifield.—If there was a Registrar-General under the Secretary to the Law Department, another person would have to be appointed to work under the Commissioner of Titles, with access direct to the Attorney-General. It would hardly be possible to have a man performing those two sets of functions—one reportable to the Secretary of the Law Department, and the other to the Attorney-General.

Mr. Bailey.—If the Chief Examiner is a qualified legal man, what necessity is there for a Commissioner at all? Why could not the Registrar of Titles be the head man?

Mr. Wiseman.—I think you must have, as the head man, a person who is a legally qualified person. A great many legal problems arise in the Titles Office, and it is desirable to have a person with sufficient experience and standing to give a ruling.

The Chairman.—Eventually, some person must take absolute control. For instance, I suppose in the Crown Law Department, there are a number of legally-qualified persons who are called upon to give legal opinions on various matters, but finally they go out over the signature of the Crown Solicitor who must take the responsibility.

Mr. Wiseman.—That is so.

Mr. Merrifield.—I think Mr. Bailey's point was that if the Chief Examiner has all the qualifications of a Commissioner of Titles why is there any necessity to have two officers.

Mr. Wiseman.—I think you must have different persons as Chief Examiner and Commissioner of Titles.

By Mr. Bailey.—Does not the Commissioner deal solely with titles dealings?

Mr. Vance.—He deals with legal points.

Mr. Wiseman.—My submission was that the Commissioner of Titles must be a fully-qualified lawyer.

The Chairman.—Mr. Bailey is pre-supposing that the Chief Examiner fulfils that requirement.

Mr. Vance.—That is the position in New South Wales. In that State the number one man is the Registrar-General, who has three lieutenants. The first is the Chief Examiner, who is supreme in the legal sphere; the second is the draftsman; and the third is the person who occupies a position similar to that of the Registrar of Titles in Victoria. He would deal also with staff matters. The best of these men could be promoted to the top.

By the Chairman.—The Registrar-General is not necessarily a legal man?

Mr. Vance.—No. The present occupant of the position is, but his predecessor was a draftsman.

Mr. Reid.—I suggest that those who will be reporting on these matters should study closely the system operating in South Australia, in which State the Torrens system was originated. Experienced practitioners have stated that in South Australia difficulties and complexities such as arise in Victoria do not occur. The South Australian system seems to be much simpler than ours in regard to this hierarchy of officials.

Mr. Merrifield.—In New South Wales and South Australia functions are not carried out similar to those undertaken in Victoria. For instance, the survey system in those States is nothing like the system in Victoria. It could easily be simpler in many directions, but not necessarily better. In New South Wales survey plans only are lodged showing the position of an allotment. Field notes are not submitted. In Victoria the lodging of field notes is essential.

By Mr. McDonald.—Has a system of survey been built up in Victoria which is not necessary?

Mr. Merrifield.—It would not be correct to say that.

By Mr. McDonald.—Then, how do New South Wales and South Australia carry on?

Mr. Merrifield.—One reason why certain difficulties have been overcome in New South Wales is that they have permanent marks, which has made their system simpler.

Mr. McDonald.—If New South Wales and South Australia can get rid of field notes and some of those things, why cannot we do the same in Victoria?

Mr. Merrifield.—Their claims on the assurance fund might be much higher than in Victoria.

The Chairman.—I suppose in New South Wales they would have as many dealings as we have in Victoria, but South Australia would have less.

Mr. Barry.—We should look at the control of the office and its general association with the Law Department.

Mr. Vance.—Mr. Wiseman put the position in this way, and I agree with him; the first difficulty at the Titles Office is delay in registration of dealings. We said that there was a shortage of staff and room. Mr. Knight replied "When I as permanent head of the Department can supply the staff and the room that will disappear". Before 1939 there was a period when I was in charge, when a person could lodge an ordinary dealing on the Monday and get it on the Saturday. For some years there had been complaints about delays in registration, but it was cleared up in three months, by getting to work and overcoming the bottlenecks. In the long line of communication the Registrar might have a man short in one room which slowed down everything. It was only a matter of overcoming such delays. On my wall I had a skeleton board with a disc for every person on the staff. When the officer was present his disc was showing white but when he was absent it was turned and disclosed a red disc. I had only to look at the wall and I could see instantly that in the caveat room perhaps one officer was on leave and another one sick. The whole procedure would slow down because there were only three men in that room instead of five. There would be a full staff in the next room with practically nothing to do. It would be decided to transfer one officer to the other room for a couple of days to keep the work flowing. When that was done we got things through in four or five days. That is the answer.

By the Chairman.—Were there any bottle-necks between 1942 and 1945?

Mr. Vance.—Yes, as the staff went to the war. There was a staff shortage problem then and that is the trouble now.

By the Chairman.—Although in those years there was a considerable falling off in dealings?

Mr. Vance.—With the call-up it dislocated everything. In the registration of titles, there are various departments with men doing certain jobs. There is a man examining dealings. An average officer would dispose of 250 dealings in a week. If there were 1,000 dealings there would be four officers necessary, but obviously if the number of dealings increased to 1,250 the work would fall behind unless another officer was switched in to help things along. I had what I called a relief gang that could follow the dealings through. They might be examining one week and go into another room and help along there in the following week. I do not think there is any difficulty in the Permanent Head of the Law Department continuing to administer as he has always done, through the Registrar, who is his deputy.

By Mr. Thomas.—Do you find that there are delays in the Survey Branch due to questions of interpretation?

Mr. Vance.—When staff and room is available, Mr. Knight can supply the officers necessary and everything would be straightened out.

By Mr. Barry.—Would there be considerable delay if Mr. Knight had to requisition the Public Service Board for additional staff?

Mr. Vance.—The Board cannot get the staff.

By the Chairman.—Suppose there is a hold-up, due to lack of staff or failure to organize the available staff, to whom would I go and ask "What is wrong?" Who would be the responsible officer to give the explanation?

Mr. Vance.—I take it, Mr. Knight.

By the Chairman.—What officer at the Titles Office would Mr. Knight approach?

Mr. Vance.—The Registrar. The Law Institute would approach the Permanent Head, or the Minister, and say that things were not going as well in the Titles Office as they should. The Permanent Head would communicate with the Registrar to find out what was the matter. It would be Mr. Knight's responsibility, as Permanent Head of the Law Department, if the Titles Office work breaks down. He would ask the Registrar, as his deputy, for the explanation.

By the Chairman.—It is the Registrar's job to see that his office is functioning effectively.

Mr. Vance.—It is the Registrar's job to see that the officers are working and all available resources are being used to the greatest advantage.

Mr. Merrifield.—Mr. Betts mentioned that there were six examiners of titles previously, but now he has only three. In addition, Mr. Sutherland said that dealings had gone up by something over 100 per cent. in the last eight years.

Mr. Vance.—If Mr. Knight could attract enough men to go into the Titles Office, and give them room to work, we would be able to return to dealing with a registration within a week.

By Mr. Barry.—Would Mr. Knight take up that matter of additional staff with the Public Service Board?

Mr. Vance.—He has to requisition for staff through the Public Service Board.

By Mr. McDonald.—Can you visualize a situation arising where there would be a clash between the Registrar and the Secretary of the Law Department over the staff requirements and qualifications?

Mr. Vance.—Two men can quarrel over anything. There is no question but that the Registrar is not a very highly placed official. He is subordinate to the Secretary of the Law Department who can rap him on the knuckles and say, "I consider you are not doing a good job and some change should take place."

By Mr. McDonald.—If the Registrar said, "I want so many officers on my staff" and the Secretary of the Law Department answered, "I have had a look and I do not recommend any additional staff," would not the Registrar be on a spot?

Mr. Vance.—The question would be who was right.

By Mr. McDonald.—Has the Registrar anyone to whom he can go and say, "I requisitioned for staff but the Secretary will not give me any." He might add, "I cannot carry on without additional staff."

Mr. Vance.—The Registrar would wait until the Law Institute complained and would then say, "I have not the staff available, and the Permanent Head has refused to recommend additional staff, therefore it is his responsibility."

By Mr. Merrifield.—Would it be true to say that the examining staff on the Survey and Commissioner's side consists of highly trained officers. It would be difficult to adjust the position rapidly, due to the number of dealings going through.

Mr. Vance.—You must not confine your attention to the examining staff. There are only about twenty on that staff out of a total of 250 officers. The Registrar deals with such matters as the destruction of rats, and all sorts of things. He deals with recreation and sick leave, rosters, binding of books and everything that happens there. He has a staff of 200 officers not concerned with the examination of titles. The examining staff is a small nucleus. That brings me to my second point that we have, at the moment, two sets of examiners at the Titles Office. There are legal examiners doing one side of the work and laymen examiners doing another type of work. We consider that they should be co-ordinated.

Mr. Wiseman.—I would certainly agree with that.

Mr. Vance.—There cannot be two bodies of men in watertight compartments, each with their own ideas. One trained staff under one head is desirable. Under regulated power, they would all be under the Commissioner.

By Mr. Thomas.—Has each set of examiners the same qualifications?

Mr. Vance.—No, one is a lay staff, called examining clerks, not examiners. The examiners are dealing with general law dealings. They are not searchers and they make requisitions. They look at the dealing and decide whether it is right or wrong. They are the men who send out the requisitions to solicitors.

By the Chairman.—Lay examiners examine under the Transfer of Land Act.

Mr. Vance.—Under the Torrens title scheme. The others are more highly qualified and deal with the general law. It is suggested that the highly qualified men should deal with the Torrens titles as well, that we should say that they should be in a higher position that the others who work under them, in that way, training a responsible body of examiners. At present, there are men working as examining clerks without qualifications, but they have had to be put on. How they learn the work no one knows, because there is no one to instruct them. They must rely on their associates and ask "What would you do in this case?" Each man has a practice notebook which he keeps in his own desk. He does not always tell the other fellow and help him to get ahead of him.

By the Chairman.—Their practices might vary?

Mr. Vance.—Yes. Before the war when there was adequate staff and ample room, there was only the problem of the examining and making of requisitions.

By Mr. Merrifield.—Mr. McComb's proposal was for the Chief Examiner or someone on the present examining staff to be made the head of that bay, the Chief Examiner to be responsible for its functioning. It could be co-ordinated under the Registrar, who would have over-riding authority. Mr. McComb set up the Commissioner as a quasi-judical officer and said that there were certain functions which he thought that he should carry on, thus relieving the Registrar of much responsibility. Can you envisage sufficient work of that character to warrant such an appointment?

By the Chairman.—If there was any dissatisfaction with the decision of the Chief Examiner it would be referred to the Commissioner, as the judicial officer, who would determine the matter. If that decision were not acceptable the right of appeal to the court could be exercised?

Mr. Vance.—That is the position we contemplate, the Chief Examiner will be at the top of the examining branch, and if there is dissatisfaction with his ruling it can be referred to the Commissioner.

By Mr. Merrifield.—At present that would be under the Commissioner and not under the Registrar?

Mr. Vance.—My opinion is that the Registrar has a full job and should not be concerned with the Chief Examiner or even the draftsman.

By Mr. Merrifield.—Do you think there should be someone to co-ordinate under one head all the clerical phases of registration similar to the New South Wales system?

Mr. Vance.—If the Registrar does his job properly he has no time to do any legal work.

By Mr. Merrifield.—It is Mr. McComb's idea that the Chief Examiner and the Chief Draftsman would be responsible for the final determinations in their respective spheres and that the Registrar would co-ordinate their activities and do the registrations.

Mr. Vance.—There is something to be said for that, except that it is not necessary to co-ordinate the activities of legal men. There are about fifteen to twenty who are giving opinions, and the only administration that is necesasry is to see that they are doing their work. I do not understand why they should be brought into the scheme of things at all. I contemplated that they would exist as a separate body, and all matters affecting requistions and legal points would be referred to them.

The Committee adjourned.

THURSDAY, 2ND MARCH, 1950.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. F. M. Thomas.	Mr. Barry,
	Mr. Merrifield,
	Mr. Reid.

Mr. Hubert Dallas Wiseman, of counsel, and Mr. Eric Smith Vance, Master of the Supreme Court and formerly Registrar of Titles, were in attendance.

Mr. Vance.—I suggest that the word "examining" is misleading. Examining clerks are really requisitioning authorities. If we regard them primarily as that you can see the importance of bringing them under one control. That is one of the weaknesses of the present system.

Mr. Fraser.—Requisition only comes when something is not in order. Requisitioning is really a matter incidental to examining.

Mr. Vance.—I should have indicated that the examiners are legal men. The professional examiners not only examine the dealings but they make requisitions and deal with the answers.

By Mr. Merrifield.—If a deal is out of order and more information is required, to whom does it go from the examining clerks?

Mr. Vance.—To the officer who sends out the notice intimating what is wrong with the dealing and what has to be done.

By Mr. Merrifield.—Where does the answer go?

Mr. Vance.—It does not go to the man who has made the stoppage, but to a senior man who decides whether the requisitions have been satisfactorily answered. It goes to one of four or five senior men in the office. It might go to the Registrar, Mr. Wiseman, and I feel that most of the difficulties at the Titles Office are due to one or two things. In the first place, delays are due to shortage of staff and, at the moment, to lack of accommodation. Those things are dependent on manpower and more supplies. Only time will cure that, and when men and supplies are available those delays will disappear. The second objection from the point of view of solicitors is that requests are in many cases held to be onerous, and are considered by some to be unnecessary and exacting, or that the answers that can be given are unacceptable to the Titles Office. If there were set up a purely examining branch, as in New South Wales, to which all matters of requisition would be referred, there would be much greater efficiency. We think that can be done by regulation in due course.

By Mr. Thomas.—Do delays occur on the legal side?

Mr. Vance.—There has to be a certain amount of delay. I do not think the public complain if the Commissioner or examiner takes time in considering a legal question.

Mr. Fraser.—They do complain that some of the requisitions not only cause much trouble, but also that they increase greatly the cost.

Mr. Vance.—In other words, they are too severe.

By Mr. Bailey.—The question is, are they necessary?

Mr. Vance.—That depends on the view of the Commissioner. I think some stupid requisitions are made, but the difficulty the Registrar or Commissioner would have in abolishing those requisitions might be that he would find that the other man would not follow him in the practice. When I was Registrar I was prepared to accept certain proofs as satisfactory, but I quite realize that the same declarations lodged with the Commissioner or with the other examiners might not be acceptable to them. I felt constrained, in the interests of consistency, to proceed with something about which I was not happy.

By the Chairman.—Do you think there is overzealousness in preventing use of the assurance fund?

Mr. Vance.—There is a feeling, and it has some foundation, that too many claims on the fund would be a reflection on the administration of the Commissioner.

Mr. Wiseman.—I think another view I have heard the Commissioner express along that line is that if the assurance fund was too freely available it might tend to a certain carelessness by the clerical staff.

Mr. Vance.—I think the fund should be there to be used if necessary. It is on record, and I have seen it in print, that one Treasurer or Premier outside living memory, in commenting on something at the Titles Office, said he himself would know how to deal with the Commissioner who allowed too many claims on the fund. I could mention a Premier and Treasurer who threw a fit one day when something was sent to him to sign in recognition of a claim. He regarded it as asking the Treasury to pay something because of a mistake by the Commissioner.

The Chairman.—The assurance fund was established because it was recognized that there would be circumstances when it would be impossible to give an absolutely undisputed title, and it would provide compensation if a claim was justified.

Mr. Vance.—I think there is undue consideration for the fund and reluctance to have too many claims.

The Chairman.—I think the Committee ought to consider whether the fund should be under the control of the Attorney-General.

Mr. Wiseman.—That is almost fundamental.

By the Chairman.—Has as much as £1,000,000 passed through the fund?

Mr. Vance.—I think so. Something at the University was built out of it.

By Mr. Thomas.—What is the disadvantage in the fund being under the control of the Treasurer?

The Chairman.—The disadvantage is in the tendency to regard it as a means of producing revenue rather than a fund for the purpose for which it really exists.

Mr. Vance.—Suppose you were running your own business, with a reserve fund of £180,000, and you wanted to get through your work quickly. I refer to a type of business in which everything could be assessed in terms of value. If you had a dealing affecting land to the value of £10, I do not think you would waste much time on that. You might make a small contribution to the assurance fund and complete the business, because at the most only £10 would be involved.

By Mr. Merrifield.—If an attempt were made to clarify these things to the point of exhaustion, the cost would be too great?

Mr. Vance.—Yes. If that dealing in respect of land worth £10 were pursued to the end, it might involve much more than £10 worth of labour. I shall never forget the amount of work and effort I expended in connexion with a small piece of land at the end of a blind lane in South Melbourne. The owner of the land at the end of the lane enclosed it and no one ever used it. Many years later the property was sold and an application was made for a title to the strip, but it was not worth more than £10. If it was land worth £100,000, it could be dealt with more carefully. In the case of the piece of land worth £10, I think the proper course would have been not even to put pen to paper. That would be the process of a business man.

By Mr. Bailey.—Is not the object eventually to issue, as far as possible, a good title?

Mr. Vance.—Yes.

By Mr. Bailey.—If it were known that the assurance fund could be dipped into, would there not be a tendency to waive certain requirements, and for the examining clerk to say, "I think this requisition ought to be sent out, but what does it matter?"

Mr. Vance.—No, the Commissioner would decide whether the thing was sufficiently important to merit further consideration. In the case I spoke of the owner of the land had been dead 70 years. The right of way had been laid out in the 1860's. The piece of land in the lane had been closed off for 40 or 50 years, and nobody could be affected. Instead of spending three weeks on it, it could have been disposed of in 10 minutes. In that way the assurance fund could be a great backstop.

Mr. Merrifield.—There are many cases at Portland where blocks have been enclosed, and people have continued to occupy them. Possibly, the dividing fences between the allotments have been pulled down and two pieces of land incorporated into one holding. Later, applications were made for a title to a part of

the land, but because the fences no longer existed, they could not get the applications through. There are cases in which no one else could have any claim.

Mr. Vance.—The land might have been enclosed for 20 or 25 years. A search might disclose that the last registered owner was John Smith in 1862. You would consider what would be the chance of a person coming along 88 years later and putting in a claim for land worth, perhaps, £20.

By Mr. Bailey.—How would that affect the compensation fund?

Mr. Merrifield.—Only if anyone else made an application for a title and subsequently proved his case. A person might have had only 25 years occupation, whereas 30 years is required, or alternatively the allotment might not have been closed right up. In such cases the dealings could not go through, but if the Commissioner of Titles took the risk it is likely that there would never be any claim against the fund.

By Mr. Thomas.—How is the value assessed for the purpose of the assurance fund?

Mr. Vance.—On municipal valuations.

By Mr. Merrifield.—When an application, accompanied by survey plans, for an amendment of title is received, are the survey plans sent to the Survey Branch and the rest of the application to the other section, for examination as to description on the one part and interest on the other, or is an examination made concurrently in the two branches?

Mr. Vance.—It would be done under section 215. I think those cases are dealt with in a separate branch of the Titles Office. Reference is made immediately to the Survey Branch to clear up the question of survey, and that having been determined, the case goes to the Chief Examiner. The Chief Examiner would not know where he stood until he had all the survey information right.

By Mr. Merrifield.—What is the process in dealing with applications for land to be brought under the Act; do they go to the one after the other?

Mr. Vance.—Yes, to the Examiner after the surveyors.

By Mr. Merrifield.—Would it not be possible to deal with them concurrently in the two sections?

Mr. Vance.—It would be rather premature for the Examiner to be dealing with boundaries which were not determined. The basis of the claim is that the land has been occupied within certain boundaries, which have to be defined.

By Mr. Merrifield.—Could not a copy of the plan be sent into the examining branch, so that a lot of the preliminary examination could be proceeded with?

Mr. Vance.—It might be hurried up. But it must be borne in mind that the example given by Mr. Merrifield is exceptional. Applications to amend titles would total not more than 20, 30, or perhaps 50 in a year, whereas the general dealings handled in the Titles Office would number about 150,000 a year. The relative importance and size of the various classes of work must be borne in mind. A practice could, perhaps, be instituted to expedite the section 215 dealings, but they would amount to about one-twentieth of one per cent. of the total number of dealings handled. If a particular section 215 case was sufficiently important, the Commissioner could make it urgent. There is always that opening.

By Mr. Fraser.—There are other ways in which probably the dealing could be simplified. For instance, there is a practice, according to the Commissioner, of requiring some proof of the facts of a caveat. If you claim under a contract of sale, the Titles Office does not require evidence, but if a claim is made as between husband and wife, as a verbal trust, they require a declaration. What is the reason for that? It does not seem to be the business of the Titles Office. Whether, in fact, the husband has the trust for himself and his wife would depend on proof before an appropriate tribunal. Why should the Commissioner require a declaration setting out some facts as to that interest when he does not require a declaration in many other interests?

Mr. Vance.—I think Mr. Fraser is right. I think the reason for the practice is that at one stage someone thought that it would be very easy for a husband or a wife to annoy the other by putting in a caveat, and they probably said, "We will stop that." But it is no business of the Titles Office. I have had cases in the courts in which the husband and wife have been separated. The wife, for instance, might get the "bee in her bonnet" that the property was hers and she would put in a caveat without any justification. Her husband might later be able to prove that she had no interest whatever in the property.

By Mr. Fraser.—It may be a little unfair to this extent: Suppose the husband claims that the wife is the trustee of the property for him, the property being in her name. Suddenly he hears that it is to be sold, and he puts in a caveat. If he went to his solicitor, he would have to set out the facts in a declaration. His claim would have to be carefully made. In a rush he might put in a declaration, but in the trial it might be found that there is a variation which prejudices his case. If proof of interest is not required under a contract of sale, or under a will, why should there be any such requirement in any other case?

Mr. Vance.—If all those things were under the Commissioner's control, they would receive consideration and they would be dealt with as you think they should be.

Mr. Wiseman.—After reading the evidence submitted by Mr. Betts I should say that confusion arises in the Titles Office about two entirely separate matters. One is the statement of consideration required in the transfer, and the other is the theory about policing dealings. I think I state the effect of the Commissioner's evidence correctly when I say that he desires to use the statement of consideration in a dealing for the purpose of disclosing equities, which he will then start to police. In other words, as the Titles Office is now organized the search is to run down loose equities.

The High Court has dealt with that matter in the case of *Templeton v. Leviathan* and has stated the duties of the Titles Office. In this Bill there has been an attempt to separate the question of consideration from that of policing, but I understand that Mr. Betts is critical because he feels that if the true consideration is not stated equities will not be disclosed and there will be trouble. It was always suspected that that was probably why the true consideration was required to be stated, but nobody really knew the reason; now it appears that that is so. The head note in the case I have mentioned puts the facts very briefly in the following words—

> Where the Registrar knows facts which show that an instrument proposed to be registered is a breach of trust although no copy of the trust document is lodged under section 55 or King's caveat lodged under section 233 he may refuse to register the instrument.

It is not stated that the Registrar must hunt down all the equities. In my opinion, the question of requiring a statement of consideration should be kept separate from the question of policing the Act and the question of requiring a statement of the true consideration should be settled before any question of

policing is raised. It may be said that if the consideration is not stated in detail the dealing cannot be policed, but those two matters should be treated separately.

By Mr. Barry.—I think too much emphasis is placed on the question of consideration. After all, if somebody commits a breach the court can deal with the matter?

Mr. Wiseman.—Yes. I should like to refer to the evidence submitted by Mr. Betts on the 27th of February when he dealt with a transaction in consideration of £5,000 to be paid. That is a perfectly simple transaction if you want to do it in that way. According to the transcript of evidence Mr. Betts stated—

"The vendor can recover his land while title remains in the first purchaser, but if the first purchaser has passed the title to a second purchaser without notice of the defect, the latter would get a good title and the assurance fund would be liable to recoup the vendor his loss, we having had notice of an outstanding equitable interest in him and also having allowed the position to arise where the second purchaser got an indefeasible title."

I join issue with him in that regard. Then he stated—

"The second purchaser gets a good title; the first one does not."

I again join issue with him. I should have thought that where a simple transaction like that took place what is known as a vendor's lien would arise. That is where there is a purely equitable interest, which is enforceable as an equity while it lasts. It can be lost or destroyed as any other equity can, and, as far as the title is concerned, it goes through to the legal owner. I would think that would be unarguable, but Mr. Betts stated, "I cannot help thinking there would be a lot of trouble."

The Committee adjourned.

FRIDAY, 3RD MARCH, 1950.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. F. M. Thomas.	Mr. Barry,
	Mr. Merrifield.

Mr. Hubert Dallas Wiseman, of counsel, and Mr. Eric Vance, Master of the Supreme Court and formerly Registrar of Titles, were in attendance.

Mr. Wiseman.—The Chairman yesterday referred to the assurance fund which is dealt with in clause 292 (clause read). I have drafted a new clause which contemplates some alterations. As drafted, the clause contemplates that in the assurance fund there is money in the hands of the Treasurer and also in Victorian Government securities. I do not know if they are bearer securities or not but they will have to be transferred into this fund.

The Chairman.—Some method of investment would have to be found even if the fund is under the control of the Department.

Mr. Fraser.—Are not all the investments in the Treasury Department? Is not that one of the reasons for that provision?

By the Chairman.—Have you drafted an alternative clause?

Mr. Wiseman.—I have, in these terms:

"292. All sums of money which are received by the Registrar as contributions to the assurance fund or in augmentation thereof and all sums of money held by the Treasurer of Victoria on account of the Assurance Fund pursuant to section 239 of the Transfer of Land Act 1928 shall be paid to the credit of an account called 'the assurance fund' which shall be under the control of the Attorney-General of Victoria who shall from time to time invest the same together with all dividends and profits arising therefrom in Victorian Government securities and the Victorian Government securities forming part of the assurance fund as provided by section 239 of the Transfer of Land Act 1928 shall be and the same are hereby transferred to the Attorney-General of Victoria and the whole of such moneys and securities above-mentioned shall constitute an accurance fund for the purposes hereinafter mentioned."

Mr. Barry.—What is the object of the alteration?

The Chairman.—If a claim is made on the fund, instead of the Titles Office following the line of conduct that has been pursued over the years, trying to be meticulous in the administration of the fund to the extent that no claims shall be made on it, it is suggested that we should depart from that practice and regard the fund as was originally intended—a fund to which people should have recourse in the event of any claim arising as a result of the operation of the Act. At present, any claim must go to the Treasury, where it is seriously viewed. It has been overlooked that it is an assurance fund to meet contingencies such as have been mentioned. It is now regarded as a revenue-producing fund from which various Treasurers have, from time to time, taken large sums.

Mr. Barry.—That has its advantages. What is the use of having large funds standing idle and no one able to use them.

The Chairman.—Taken in its right perspective, it is an assurance fund and not a revenue-producing fund. If the amounts accruing are too large then the premiums charged are too high and should be reduced.

Mr. Bailey.—The only difference in the re-drafted clause is that it transfers control to the Attorney-General from the Treasurer, but the Treasurer will know from time to time how much is in the fund and he can do as he does now. He can say, "There is a large amount in the assurance fund and we want £100,000 out of it." That is then provided in the Estimates.

The Chairman.—I think it is all wrong. It should be regarded solely as an assurance fund. I do not see why people who are indulging in land transactions should be indirectly taxed in this way. There is a proper way for the State to raise money and this assurance fund was never intended to be a revenue-producing fund.

Mr. Bailey.—I think there is a danger of the fund being too easily accessible and it might make the officers a little dilatory at the Titles Office. They would say, "We can get this money from the assurance fund."

Mr. Fraser.—Having in mind the history of past Treasurers I can visualize great difficulty in getting compensation from the fund even in legitimate cases. Some Treasurers viewed claims as taking money out of ordinary State revenue.

Mr. Merrifield.—Is there any logic in favour of the assurance fund being retained? There is almost £500,000 in the fund now and since its inception it has paid out in claims only £11,000, which seems an insignificant proportion of the amounts collected. Frankly, I would prefer to see the assurance fund used more constructively in various ways. As it is, the Government is merely taxing certain people now. I think the fund should be used to provide a greater degree of security in titles.

The Chairman.—It should be used as an assurance fund, not as a taxing fund.

Mr. Merrifield.—If it is not going to be used constructively, it should be abolished.

The Chairman.—Originally, it was contemplated that some risks would have to be taken and the assurance fund was provided to compensate for those risks in legitimate claims.

Mr. Fraser.—It probably goes back to the early days when the Torrens title system was in operation.

The Chairman.—The point taken by Mr. Vance yesterday was well taken, that the Torrens system might be re-orientated on the whole question particularly in regard to the innumerable small transactions and that greater risk could be taken. Where land has been purchased for £10 and there are flaws in the title, by putting £1 into the assurance fund the risk could be taken to let it go on.

Mr. Barry.—It is wrong to have funds in every Department, away from the control of the Treasurer.

The Chairman.—This is an assurance fund. Every time an officer finds a justifiable claim or he feels that he should administratively carry out some act which involves a small risk which can be insured against. he must have in mind that the Treasurer might have something to say about it. That would tend to make him over-cautious. It is definitely an insurance, in the same way as a person insures against fire, burglary, and so on, and the premiums should be regulated in accordance with the risk taken.

Mr. Bailey.—Have there been instances where the Treasurer has turned down a legitimate claim on the fund?

The Chairman.—Reference was made yesterday to Treasury policy. The fact that we have to go past the Minister administering the Act to the Treasurer in regard to this fund is wrong. It is entirely different from the ordinary Treasury control of finance. Money is paid into this assurance fund to insure the Crown against the contingency of a claim arising as a result of the administration of the Department by the Attorney-General. Administration of the Attorney-General and his officers in this Department would be more free and a policy of liberalization of method of treatment of applicants would be more readily followed if the control of the fund was similar to the control of all other aspects of this legislation.

Mr. Merrifield.—There is no one in the Treasury Department qualified to advise the Treasurer with respect to a claim which might be of a highly technical character. The only people qualified to advise the Treasurer would be officers at the Titles Office. Why should we go past them?

Mr. Barry.—I feel that the fund should be controlled by the Treasurer, as is the case with the Country Roads Board fund, the Licensing fund, and so on.

The Chairman.—I see no reason why this fund should be regarded as a source of revenue. It is an assurance fund and the Attorney-General has the power to fix fees. He can at any time alter the amounts to be paid into the fund by prescribing lower fees. If he has that power, it is logical to say that he should have full control. By his administration of the Act, he could wipe out the necessity for any payments by way of regulation through the Governor in Council.

Mr. Vance.—In the Titles Office there is definitely a fear of the Treasury Department's disapproval of claims against the fund. Whether it be the Commissioner or the Registrar he is a little scared of having to make claims on the fund and that makes him ultra-cautious. There should be some way out of it. The officer concerned should not feel unhappy about it, but in justifiable cases he might say, "I will adopt a liberal attitude." He might say, "I am prepared to regard it as fair that we pay out £5,000" which would be five times as much as previously. Some men might become nervous about that. The man who has confidence in himself would not worry but would merely say, "I have certified." Probably the Treasurer would pay and would think no worse of the Commissioner for it. It is rather that there is a class of transaction which is causing great difficulty and which could be disposed of quickly by saying, "Pay something into the fund and be done with it." A difficult matter arose in the past involving two big properties in Kyneton. The grandsons of the original owner, two young men, took over the whole of the family's properties including £20,000 to £30,000 worth of land. They wanted a clear title in their own names. We got this unusual position. If those two young men had died before some other elderly person, and if they had died without children—they were both married—it was quite conceivable that an interest of say, £1,000 would go to one of their elderly aunts who was nearly 70 years of age. We felt that we should ask for the aunt's consent. We found that the aunt, Mother Superior of a Catholic Mission, was a prisoner in Japan. We were told, "We have not heard of her for years, and we do not know whether we will hear of her again or whether she will survive the war. We are prepared to undertake, if such a thing occurs, that we will put the £1,000 aside. She is not likely to start family litigation by taking action in the Supreme Court." It would have been an easy and happy solution if we could have said, "Pay £20 into the assurance fund and we will lay the odds against all those things happening," I felt at the time that the old lady would probably not survive the war. She had to survive to keep living after two young men and their children had died.

By Mr. Barry.—Do you not think that any Treasurer would agree if the facts were put to him?

Mr. Vance.—There was no power to do that. I do not know how the Commissioner settled it.

The Chairman.—A silly feature of the present procedure is that there is no reference to the Treasurer before the risk is taken but only when the stage has been reached of making final certification of payment. That is only done after deliberation in the Titles Office and perhaps after a court decision. If the fund were controlled by the Attorney-General he would probably lay down in general terms that a more liberal policy should be followed. The Commissioner, in his discretion, would fix the amount. When a claim came to be finalized, it would be a question for the Attorney-General as to how much of his powers he would be prepared to delegate. There is a complete delegation of my powers under the Act, if I have any, at present.

Mr. Fraser.—The assurance fund contains a large sum of money and it has to be invested in certain securities. I think you will find under the Act that the Treasurer invests all funds.

The Chairman.—I do not mind if the Treasurer has to certify to the investment of funds. At present, the only control the Treasurer can have over the administration of the fund is a clogging control. If a claim has been properly certified by the Titles Office or by a court decision, I cannot conceive of a Treasurer turning it down, but he could say, "Do not bring too many of these things to me." That is what I am trying to visualize avoiding. If the fund is administered rigidly, it will continue to be an irritant.

Mr. Fraser.—The simplest remedy might be to burn the instructions from former Treasurers and lay down new regulations for liberalizing the administration of the fund.

Mr. Wiseman.—Under the Act that is being repealed, there is reference to "any person deprived of land or any estate or interest in land." That is the type of thing dealt with in earlier Acts. That provision has been altered in the Bill, in which these words are used. "Any person sustaining loss by reason of any of the matters hereinafter appearing shall be entitled to be indemnified out of the assurance fund." It is contemplated that the change will cause more numerous claims on the fund.

Mr. Vance.—It is jocularly said at the Titles Office that if every claim on the fund was resisted the Titles Office would succeed in every instance.

Mr. Wiseman.—It is almost impossible to prove that a person is deprived of land or his interest in land.

By Mr. Bailey.—Under the clause, would he only have to prove his loss?

Mr. Wiseman.—It might be a monetary loss.

By Mr. Bailey.—Could the Treasurer or the Attorney-General turn such a claim down?

Mr. Wiseman.—You would then have emphasized the point made by Mr. Vance. The Treasurer might say, "A vast number of claims are being made on the fund. You had better watch your step, Mr. Commissioner."

Mr. Vance.—If the Commissioner was a man without spirit, he would be scared, but if he was prepared to stick to his opinions and do the right thing, I do not think any Treasurer would argue the point with him.

By Mr. Barry.—Have Treasurers refused consideration of these things?

Mr. Vance.—I do not think they have refused or been obstructive, but it has been left in the mind of the Commissioner or the official concerned that it might affect his prospects.

Mr. Merrifield.—I have a conception which goes farther than that. Consider matters of survey. There is no certainty of title under the present survey system. If we are going to lay down permanent marks, purely for titles, that ought to be a charge against the titles system. At present the first owner has the survey made in an area and he has to pay for the survey marks. Subsequently, owners have the use of the permanent marks at two corners free of cost to them. To make it fair to all, the permanent marks, which are to give greater certainty to all titles, ought to be a charge against the assurance fund. We could, I think, improve the survey system tremendously, if the Titles Office were given some money to spend. At present, there is no power to pay sums of money out of the fund for that purpose, and the result is the work is not being done. There will be no certainty of title until we have a better survey system.

Mr. Vance.—That really raises another matter altogether. Rather than the question of the control of the assurance fund it relates to what charges should be made against it. It would be much better to set up a fund out of which the cost of the permanent marks would be paid and to transfer to it a specific amount from the assurance fund each year.

Mr. Merrifield.—At present the claims on the assurance fund relate to cases that would not occur if a system of permanent marks was in operation.

Mr. Vance.—That would be justification for raiding the assurance fund.

By Mr. Fraser.—As far as I can see, under clause 301 claims on the assurance fund will not be made any easier?

Mr. Wiseman.—It was felt that a person could not be allowed to say "I have sustained loss by dealing in land under the Act" and that would be the end of the matter. Consequently, the qualifying sub-clauses were included.

By Mr. Fraser.—I am not surprised that only £11,000 has been paid out of the fund.

Mr. Wiseman.—I am prepared to receive any suggested amendment to clause 301 which will make it easier.

Mr. Vance.—I think the illustration I gave of the dealing at Kyneton shows the type of case that could be expedited by a recognition of the fact that the assurance fund should be used. There was no deprivation of land in that case. The lady concerned might now come along and say "All those things have happened; where is my £1,000," and we will pay up quite cheerfully.

By Mr. Fraser.—Would she have a claim on the assurance fund under section 301 at present?

Mr. Vance.—I doubt it, because she has not been deprived of land. Under the new proposal she will be all right.

By Mr. Fraser.—Clause 301 relates to sustaining loss in certain limited cases?

Mr. Wiseman.—The case quoted might be covered under sub-clauses (*b*) or (*f*) of clause 301. I consider that the clause is really wider than sections 250 and 252. That was our intention and I think we accomplished something in that direction, but it was thought that we should not accomplish too much.

By Mr. Fraser.—If the Commissioner dealt with these matters sensibly and exercised his common sense there would be no difficulty at all?

Mr. Vance.—Of course, you are trying to legislate for the odd man who does not co-operate.

By Mr. Fraser.—If the present instructions were withdrawn and another set issued the difficulty might be overcome.

Mr. Vance.—A departmental cover could be given. In fact, I asked for that at the beginning of the war when Mr. Bailey was Attorney-General. We were faced with certain difficulties at that time because of staff being called up and the shifting of title records to the Beechworth Gaol. I was anxious to go ahead and get many things cleaned up and to waive formalities. I asked for and was given authority to do that, and many matters were expedited.

By the Chairman.—Is that practice still being followed?

Mr. Vance.—I think it was regarded as a war expediency, and I should say that the procedure has now been tightened up.

By Mr. Merrifield.—Are payments into the assurance fund only from applications to bring land under the Act?

Mr. Wiseman.—They come in when land is bought under the Act and under dealings. When there is some doubt about it, the office usually decided to register and asks that £1 or £2 should be paid into this fund.

By the Chairman.—Would it be possible for Mr. Vance and Mr. Wiseman to return on Monday for a further hearing on this matter?

Mr. Vance.—I should like to be excused from giving further evidence. We have submitted evidence regarding Part I. There is the Commissioner whose duties are defined. We contemplate that there will be a Chief Examiner—a man of experience and standing—and we emphasize the value we place on outside experience in this regard. We feel that it will give that officer a broader outlook. In my experience there were two men appointed as Chief Examiners who had had outside experience. They were the best we had; and the worst officer in that position had never been

outside the office. That is why we emphasize the value of experience in the outside world. Subject to that, we think it will work very well, if a co-operative team is appointed. It does not matter whether they are appointed under the present or the new Act; if they work together as a team difficulties will disappear. On the other hand if the wrong man reaches the top position, no matter how satisfactorily the new Act is designed, there will still be trouble. It comes down ultimately to securing a team of men who can work together. They exist and they can be found. Shortly, there will be a dual retirement. The Commissioner is at present on an extension and the Registrar is due to retire in about nine months' time. With the dual change-over the opportunity will arise to put in men who will continue to work together.

By Mr. Bailey.—You consider the retention of the position of Commissioner is advisable?

Mr. Vance.—I think so. It is necessary to have a Commissioner, a Chief Examiner, and a Register at the head of the three different classes of work.

Mr. Merrifield.—I think up to date Mr. Vance has been one of the most constructive witnesses we have heard and the Committee is indebted to him for the evidence he has given.

The Committee adjourned.

MONDAY, 6TH MARCH, 1950.

Members Present:

The Hon. A. M. Fraser in the Chair;

Council.	*Assembly.*
The Hon. F. M. Thomas.	Mr. Bailey,
	Mr. Barry,
	Mr. Merrifield.

Mr. Frank William Arter, Surveyor and Chief Draughtsman, Titles Office, was in attendance.

By the Chairman.—Will you proceed from the point you had reached when you last gave evidence?

Mr. Arter.—I think it is absolutely imperative for all of us to be seised of the idea of what a title really is, and from what it is derived. On the basis of that, we can deal with the rest of the Transfer of Land Act. Surveying is not an exact science. Too many physical disabilities exist to guarantee complete accuracy. There are variations in temperature, wind, and other climatic conditions, and in instruments, topography, and so on. They occur in any profession where more than one person is involved. Consequently we are governed by the conditions under which we work. That is realized in all forms of science. In testing machines and gauging and measuring for scientific instruments, there is always a tolerance of error. That is provided for in modern surveying. It is laid down by regulations under the Survey Co-ordination Act that a survey will vary in accuracy from 1 in 4,000 to 1 in 8,000. That is a considerably higher degree of accuracy than the one I quoted the other day; it represents the new standard of accuracy which is practically universal. Obviously, if the title has a connection of 1,000 feet to a street corner you may have a limit of error up to 3 or 4 inches by the highest grade of surveying, and that is not the commercial grade.

This is fully realized in the issue of Crown grants, which definitely state that the measurements shown are approximate. It is also realized in the Property Law Act and the Transfer of Land Act which provide for a limit of error. A fallacious impression or belief has grown, and is now generally held that the measurements of the title are absolutely accurate and the connection to the street corner equally so. The connection to a street corner and the measurements on a title have been regarded as sacrosanct. They are fixed to a certain point and on that connection depends the title position and the title next door. If this impression could be dissipated and a true evaluation gained from the impartial viewpoint of practical surveying, a great number of amendments of title and other irritations could be avoided. The measurements of the title should be considered as being reasonably accurate having regard to the normal practical differences in survey and the connection similarly regarded as a means of location, not precise fixation. The late Mr. Clark, Deputy Surveyor-General, expressed himself on similar lines, and I completely concur with the relevant remarks he made in his report on the Survey Branch some years ago. In fact, I assisted to make it.

I think at this stage I will leave the title description. I was going to make some contrasts between Victoria, New South Wales, and South Australia. I have studied the whole set-up in Hobart, Adelaide, and Sydney over long periods, and I think I can realize the disadvantages and advantages in the various States. In my opinion, Sydney is the only place that has a logical and practical application of survey—not that I altogether agree with the system. They have no set formulae. They have nothing similar to sections 233, 215, and 87 of the 1928 Act.

By the Chairman.—They would have provision for amendment?

Mr. Arter.—Yes. but a proprietor makes a survey and simply applies by letter to the Titles Office to have his title amended. He provides the survey. It is very difficult to make a contrast between the States, because, as I say again without prejudice Victoria is the State where we examine surveys properly. In New South Wales, they have no field notes. They do not use them in South Australia. Titles in New South Wales are sketchy affairs compared with ours. They show measurements but no bearings and no connections. They are simply pieces of land on pieces of paper with some abuttal if possible, but they are not the precise titles that we have in Victoria. Therefore, they are very much more flexible in their methods.

By the Chairman.—So that in checking location, you would have to obtain other information?

Mr. Arter.—Yes. In Victoria, we have a sketch on the back of the title on which we mark all the pieces of land transferred out. Any member of the public can tell what is left. There is no such thing in New South Wales or South Australia. In South Australia there is a book which marks off a lot on a plan of subdivision as it is sold. Before I went to New South Wales—and I take some credit for this—they had no ready means of telling what had gone out. You would have to search through the plan to find out the residue of the title. It is a long search. I think ours is long enough and could be shortened. The whole thing is complex and I am trying to create an orderly picture. I cannot help contrasting in my mind the methods in the various States. I have not seen the methods in Western Australia or Queensland although I have discussed them with their executive officers.

Outlining the principal points again, the title is derived from a Crown grant which primarily is based on survey of some varying degree of accuracy, and in the old days a very poor accuracy. In modern days a Crown grant would be within the bounds of practical survey differences. Prior to 1862 all grants were issued under the old system, and it is that land which is still remaining undealt with that we are dealing with in the compulsory portion of the Bill. After 1862, all the land granted by the Crown was freehold under the Torrens system. Certificates of title were brought

under the Torrens system by one of two methods. The first was by deed; that is to say, without survey. There are thousands of these titles to-day, and I contend that they are limited in the same spirit and description as in the present Act. They are limited titles. They are exactly the same measurements as we will show under the limited titles issued under the Bill. Consider land at Geelong and throughout the settled areas. These titles were subdivided according to information on paper. Apart from the major, or outer boundaries, in many cases no surveys at all were made. That is the first point.

The second point is that, generally speaking, land was brought under the Act, on the basis of survey, after 1885 or thereabouts. As I pointed out previously, the surveys were not tied to permanent marks. It can also be appreciated that in those days there was nothing or very little of a permanent or semi-permanent nature in the way of settlement, occupation, physical features, buildings or fences. Since then, various physical features such as fences and buildings, have been increased and extended, and further surveys have been made. It is our job to endeavour to relocate the original surveys, having regard to the physical features as they now exist and as we hoped they existed at the beginning.

That leads me to the statement which I made earlier, namely, that from the point of view of location and description, a title is only as good as the information from which it is derived. In other words, if it is derived from paper, it is only as reliable as the measurements on that paper. If it is derived from a survey, it is as reliable as the survey on which it is based and the extent to which that survey can be re-established. A survey might be made with absolute precision and four pegs driven in the ground, but if they were not or could not be related to some marks which could be picked up again, and the four pegs were lifted out of the ground, the value of the survey would be absolutely nil.

By Mr. Thomas.—You say that originally no permanent pegs were placed?

Mr. Arter.—Apart from the trig. stations, no permanent marks were put in by anybody. I am excluding the standard traverses laid down by the Melbourne and Metropolitan Board of Works. The railways put down permanent or semi-permanent posts and since the advent of the Survey Co-ordination Act about six years ago, permanent marks have recently been put in by Government Departments. It is now the function and responsibility of all Government and semi-Government Departments and other public organizations to put in permanent marks in conformity with that Act, whenever they carry out surveys. The big developmental bodies, such as the State Rivers and Water Supply Commission, the State Electricity Commission, the municipalities, the Melbourne Harbor Trust, or the Country Roads Board now put in these permanant marks when they make surveys in connexion with major works. Our Department does likewise if it does a resurvey of any size. Already thousands of permanent marks have been established.

By Mr. Bailey.—Did you say that a title based on survey was only as good as that survey?

Mr. Arter.—With regard to location.

By Mr. Bailey.—Then, if the pegs were pulled out and removed, the survey would be worthless?

Mr. Arter.—The survey would be worthless if it could not be re-established.

By Mr. Bailey.—Then, in what way has an owner security of title?

Mr. Merrifield.—That is the point; in those circumstances, he has none.

Mr. Arter.—Surveys made at present are tied to any physical features in the vicinity. If I made a survey in Spring-street, I would relate it to the kerbs and buildings in existence. In 1885 there would not have been very many permanent marks. What existed at that time might have since disappeared. All that would have been done at the time would be the issue of a title on survey. To prove the title, it would be necessary to re-establish the survey.

By Mr. Bailey.—If there are no permanent marks by which the original survey can be re-established, what is the position?

Mr. Arter.—It then becomes a matter of the surveyor's professional skill and experience in knowing the circumstances of the issue of the title, the land, the position of the land of one title in relation to that of another, and factors of that kind. The surveyor might have to go through several sections bounded by four streets—and that is a common occurrence—before he could locate or re-establish the survey with any degree of accuracy. One of the main functions of the Survey Branch of the Titles Office is to investigate the alignment of streets. Four licensed surveyors are engaged on that work. Surveyors will produce to the Survey Branch a complete set of field notes, and ask if we will or can redetermine the alignment of those streets. We make the investigation and try to get a link of surveys right through over a period of years. If necessary, we send out our own surveyors to get further information. That is a very advanced study on its own. It is a highly experienced position.

By Mr. Thomas.—Do you do that to get the correct starting points?

Mr. Arter.—Yes.

By Mr. Bailey.—If, as a result of that resurvey, the measurements conflict with those on which the original title was issued, the title would have to be amended?

Mr. Arter.—Yes. In most cases, fortunately, the lands have been laid out in excess. Generally speaking, there is more land than is required to satisfy the titles. That is our greatest help. It is when there is insufficient land to satisfy a title that we get our worst headaches.

Mr. Bailey.—It seems that liberal allowance was made in the country lands?

Mr. Arter.—Yes. In the last subdivision that was made at Elwood, the Crown deliberately made an allowance of ·1 per cent.

By Mr. Thomas.—How was the general plan made in the early days if there were no permanent marks whereby a survey could be re-established?

Mr. Arter.—The city of Melbourne was pegged, just as any subdivision would be pegged by a surveyor. I imagine that shortly after that subdivision buildings were erected. In every city block there is consistently an excess in every section varying up to 1 ft. 10 in. That has been gradually absorbed by amendments of title and surveys in bringing land under the Act. A good deal of land in the city of Melbourne is still held under the old law. Much land in the city has been brought under the Act without survey.

By Mr. Thomas.—Through Government grant?

Mr. Arter.—It has been taken straight from the conveyance. It is in that respect that I contend the limited description in this proposed compulsory registration section is no different from the paper description as given to a title brought under the Act by deed in the old days.

By Mr. Bailey.—Well, what is the advantage of the temporary title that may be issued?

Mr. Arter.—The big advantage of it lies in the fact that the public will be able to deal with land as an ordinary Torrens system document.

By Mr. Bailey.—But there would be no certainty as to accuracy of area?

Mr. Merrifield.—Not with respect to survey, but there would be certainty as to the rights of possession. That is the other phase of the system. To the extent that there is uncertainty there will be shown a limitation on the title. As the years pass, that will be gradually remedied until ultimately there is, in fact, an indefeasible title, which the Government has guaranteed.

By Mr. Thomas.—That guarantee could be given only by additional surveys, could it not?

Mr. Merrifield.—That will be one of the limitations for the time being.

By Mr. Bailey.—Will those additional surveys be made from the permanent marks when they have been laid down?

Mr. Arter.—That is the point I wish to drive home in connexion with the compulsory registration system. Having given the subject much thought and studied the South Australian system, I thought that the proper thing would be to give a full description of the way in which titles were derived in the past. I consider that we have a duty to the public and to the Government in this matter. Taking a long-range view, I suggest that, if the necessary legislation could be passed, there could eventually be a great saving of public money.

By Mr. Thomas.—Do you mean a saving of public money which is now expended in disputes over titles?

Mr. Arter.—Yes, and in the administration and examination of surveys in my office.

By Mr. Merrifield.—What you are suggesting, in effect, is that if people are compelled to take out a title under the compulsory provisions of the Bill, they will be required to accept something which has no more value than the old title that was issued under deed or on a deficient survey. There will be no greater certainty of title under the compulsory section until the permanent marks have been laid down?

Mr. Arter.—No, I do not say that. Surveys held under section 215 or modern T.L.A. surveys do give a fairly certain title, because they are tied to other surveys and physical marks on the ground. That system would still prevail. In closely settled areas, such as the suburbs, a modern survey can be re-established with a fair degree of certainty—within inches.

Mr. Merrifield.—When I said "permanent marks" I meant anything of a permanent character which enables a surveyor precisely to re-define a survey.

Mr. Arter.—Absolutely.

Mr. Merrifield.—In country districts much land is still held under the old law. The existing fences could be obliterated overnight by a bush fire, and in such cases there would be no certainty of title, if there were no other means of re-establishing the original survey.

Mr. Arter.—I agree with that. The same circumstances and conditions would, as I said previously, apply to titles based on survey tied only to post and wire fences which ultimately deteriorate or disappear. Then a title must rely on old pegs if they still exist, its own or other occupation, and consequently approximation to some variable degree must develop.

If I were to give a brief outline of what takes place in South Australia with regard to the official procedure it might be helpful. In that State an area is zoned. The system was copied practically from the New Zealand system. I have had long discussions with Mr. Jessup, the Registrar-General, and with Mr. Collins, the Chief Examiner, on this subject. Their method is to send the Chief Examiner to an area, after a public notice has been given, to explain to owners at a public meeting exactly what is meant by compulsory registration. In other words, they endeavour to sell the system to the public. They then go ahead with their procedure which is rather involved. I shall be pleased to give the Committee further information on this subject later.

The Committee adjourned.

WEDNESDAY, 8TH MARCH, 1950.

Members Present:

Mr. Oldham in the Chair;

Council:	*Assembly:*
The Hon. A. E. McDonald,	Mr. Bailey,
The Hon. F. M. Thomas.	Mr. Barry,
	Mr. Merrifield,
	Mr. Reid.

Mr. Frank William Arter, Surveyor and Chief Draughtsman, Titles Office, was in attendance.

By the Chairman.—Will you proceed?

Mr. Arter.—I had reached the point where I was about to deal with the compulsory registration system. I am not concerned with the legal aspect, but with what I consider to be the practical side. As occurred in South Australia there will be two main working difficulties from the point of view of the Titles Office with regard to a system of compulsory registration. First, there will be the search of the records and interim descriptions—and it is a most involved form of searching under the old law; and, secondly, the issuing of completed titles on the basis of a proper description, which is the ultimate goal.

Having regard to what I have said previously about title descriptions and permanent marks, I shall outline what I think is the absolute minimum required to set up a proper workable survey system with the titles issued from the interim to the final stage. That may be a long-range view, but it is the only way in which we can hope to get a proper title system. The first suggestion I make is on similar lines to what has been done in South Australia, and that is to zone the areas. The outer parts of South Australia have been zoned as an experiment so that they will learn as they go. Second, and this is the crux of the whole thing, the major alignments of the streets should be investigated and fixed, and, if necessary, surveyed by the surveyors of our Department and adopted for all future surveys. With the records at their disposal, and the full surveys available because we have a proper unified survey, the staff would be able immediately to establish the basic framework for the proper issue of titles in the future.

By Mr. Thomas.—Would that affect the town-planning scheme?

Mr. Arter.—It will not affect anything; it will simply be the standard practice. My third suggestion is that permanent marks should be placed and related to those alignments by the Office. Under the Survey Co-ordination Act, it is a compulsory function for any Government Department carrying our surveys to put in permanent marks.

By the Chairman.—What are the permanent marks, physically?

Mr. Arter.—They are concrete blocks, 2 feet deep, in the form of a truncated pyramid, 5 inches square at the top and, I think, 1 foot square at the bottom. Fourth, the area thus surveyed could then be proclaimed as a survey area under the provisions of the Survey Co-ordination Act, which provides that surveyors must tie all their surveys to those permanent marks. Fifth, a properly co-ordinated and unified title system could thus be instituted and maintained for the first time in the history of this State. That is not an idle statement, it is an absolute fact.

Sixth, after the issue of the titles based on survey in this area—and this is another very valuable contribution to the State—an amendment of title would not be necessary in the future, or should not be necessary. Section 215 of the Transfer of Land Act is the direct outcome of a system of survey that was practically non-existent. It was instituted to stabilize a man's title on his bona fide occupation. Under the present set up, when an application to amend is made the reason for the application is declared to be a faulty survey. If there were a proper survey system any error would not be due to a faulty survey but to an error in fencing; therefore, in future those titles should not be amended by adverse occupation. Actually it is not adverse, but bona fide occupation. I think that will be a direct advantage, because obviously we do not want people to be put to the expense of making application to amend titles.

By Mr. McDonald.—What would be the position if a man moved his fence deliberately thinking that if he could hold the land thus enclosed in his possession for 30 years he could get it included in his title?

Mr. Arter.—That is the law; it is not a matter of survey when the fence is shifted for that purpose.

By Mr. McDonald.—You are not interfering with that at all?

Mr. Arter.—No. It is the law of the State that a man can gain land after 30 years' adverse occupation. However, section 215 is entirely different. It provides that if a man really believes that he is in bona fide occupation of his title and the title next door is affected, that title may be simultaneously rectified as to part.

By Mr. McDonald.—Will not the ultimate result be that there will be many titles that will not agree with the occupation?

Mr. Arter.—I have previously said that a title is only as good as it may be re-established. With proper and definite permanent marks and a proper survey behind them as a foundation, the title can always be re-established, which is more than can be said to-day.

By Mr. McDonald.—A title is nothing more nor less than evidence of ownership?

Mr. Arter.—What about the location or description?

By Mr. McDonald.—I shall take that as the next step. At present a title is evidence of ownership, but if your system is adopted the title will not even be evidence of ownership, because a man owns the land within his boundary if he has kept it sufficiently long?

Mr. Arter.—I do not think an alteration in the fencing would be of such value as to warrant an application to amend.

By Mr. McDonald.—In the past it has been thought to be of such value as to warrant applications to amend?

Mr. Arter.—Only because there was no proper starting point and no means of re-establishing the title correctly.

Mr. McDonald.—I would not agree.

Mr. Arter.—The whole reason for section 215 was because there was no survey system at all.

Mr. McDonald.—There have been cases in the City of Melbourne and in other places where land has been surveyed and the builder has built according to the survey. However, in later years another surveyor has found the boundary to be in another place. You will not get rid of the human element, even with surveyors.

Mr. Arter.—Certainly not. It would be a brave surveyor who under the present system would say to within a matter of a quarter of an inch "That is your title."

By Mr. McDonald.—I have had experience in regard to city properties where the boundary has been some inches out, which makes a great deal of difference. If that happened in the future and your suggestion was put into effect the wall of the property would always be outside the title?

Mr. Arter.—I am not suggesting that the law of possession should be changed. I am only putting to the Committee a practical reason why the applications to amend should be reduced almost to a minimum, because in the average suburban house the fences remain approximately in the same position almost in perpetuity.

By Mr. McDonald.—I agree, but your scheme is to abolish amendments of title?

Mr. Arter.—Not to abolish them; I said that applications to amend should be reduced to a minimum.

Mr. Merrifield.—That is after the first application.

Mr. McDonald.—Once a title was brought up to date it would never be amended from then on.

Mr. Merrifield.—Take the case of the boundary fence between two suburban properties falling down, and for some reason the palings being put on the opposite side of the fencing rails. From a survey angle the occupation of the title is varied.

Mr. McDonald.—If that error were repeated right along the street one man might have 53 feet or 54 feet instead of 50 feet as shown in his title.

Mr. Merrifield.—The reason for so great a disparity is that some owners occupy their land simply by measuring from the next occupation. If the boundaries were pegged before the fences were erected those accumulations would not occur.

Mr. Arter.—It would not be suggested that an owner was taking a proper title if he took what he thought was his title and deliberately set out to stabilize something which could be varied.

By Mr. McDonald.—You are going to say that although a man pays for 50 feet of land, he can have occupation of only 48 feet?

Mr. Arter.—I have said nothing of the sort. I am suggesting that we should do what is universally recognized throughout the survey sphere, and that is to put in a proper system of marks so that a title can be properly re-established by survey.

By Mr. McDonald.—I thought that under your scheme after the first amendment of title there were to be no further amendments?

Mr. Arter.—I say that amendments could be reduced to a minimum. The number of re-amendments made in the suburbs and based on comparatively modern surveys are few and far between. My seventh point is that this scheme is not intended to interfere with any private practising surveyor's business; it merely forms the basic structure for unified control, economy, and ease of operation. Eighth, it would be of inestimable value if the survey of the internal boundaries of the private properties could be made by the

one private surveyor at the one time. The co-operation of the Victorian Institute of Surveyors would be necessary for this. I do not go further than that as to what the State should do.

That being so, both new and existing titles could be issued and/or rectified to accord with existing conditions. I am not suggesting big alterations of feet, but I am suggesting that small errors could be rectified when the titles are brought under the Act, thus reducing future amendments to a minimum. I wish to quote a letter from Mr. D. F. Collins, Chief Examiner in the Titles Office, Adelaide. He wrote to me after some lengthy discussion:—

> In relation to the question of survey as it affects the compulsory process, I repeat what I said to you whilst in Adelaide, that it is my considered opinion that the best way to facilitate the compulsory process is to have area surveys undertaken by the one surveyor. This is not possible when the onus is thrown on the individual to provide the Department with a survey of his own particular land. Each individual in a locality from time to time engages a different private practising surveyor to survey his own land, with consequent variations in interpretations, duplication of work, delay, and additional expense to the individual.
>
> I earnestly suggest for your consideration the following alternatives:—
>
> (*a*) that departmental surveyors do all the survey work required; or
>
> (*b*) that private practising surveyors be employed by the Department to undertake area surveys.

By the Chairman.—The Department to lay down the instructions?

Mr. Arter.—Yes, to lay down the basic grid. I continue the quotation from Mr. Collins' letter:—

> The matter is one obviously involving Government policy, but if some such scheme could be incorporated in your Act difficulties which have been and are being experienced in this State would be largely overcome.

Mr. Collins is a legal man. I have spent some time investigating the system in South Australia, and I am convinced that it is the only proper way to do the job from the working point of view.

By Mr. Merrifield.—Would there not be a legal technicality? When a person makes the final application for elimination of certain deficiencies of title, he certifies that the fences have been so bounded for thirty years to the exclusion of other people. The description might have been done only ten years previously, and there might be a variation. Would you not need a check survey at the time of the application?

Mr. Arter.—It would be the realization of a pious hope if all joined in together. I am concerned with the initial process of putting in a proper grid survey.

By Mr. Barry.—It would be a pious hope to get them to come in together?

Mr. Arter.—They would do so if they had any sense.

Mr. Reid.—It is sound in theory, but I doubt whether people will co-operate properly.

Mr. Arter.—In South Australia they have experienced difficulty with owners and with surveyors too. I think the Institute of Surveyors would have to co-operate. Again, I am concerned primarily with the gridding of alignments. We do it now, but not properly. Our office would save a lot of money in the long run, and the public too. Our surveyors and draftsmen are forced to examine survey and field notes over and over again. In South Australia permanent marks have been put in private surveys for twenty-four years. Speaking to a leading surveyor last year I said, "What advantage do you gain from permanent marks?" He said, "I was able to do a survey this morning which without permanent marks would normally have taken me all day." It was of benefit to him, to his client, and to the State.

Most of the investigation, from the point of view of survey and description, would be carried out by or under the direction of licensed surveyors who would be specially trained for this work. The nucleus of a thoroughly trained staff of surveyors is already in existence and carries out the specialized work of fixation of alignments. At present we have four surveyors doing that work. We have three pupils in training under articles of indenture. Pupils from other Departments are also being trained in survey routine under the Transfer of Land Act.

By Mr. McDonald.—Would your scheme mean a big increase in your expert staff?

Mr. Arter.—It does not matter which way you go about it there will be a big increase in technical staff. I consider that I can train a licensed surveyor much quicker than I can train a draftsman. The surveyor has had four years practical training in the field. He does an intensified course of study, and at the end of four years he is a very solid officer. A draftsman of the same age has to pursue five phases of his work and is not thoroughly trained in all sections until he has been there fifteen years. That is the trouble with our Survey Branch. Since the 1st of January, 1944, we have lost 22 draftsmen and 22 female draughting assistants, a loss of 44 from a staff which was then about 80. Eight of them were experienced men who retired; five or six went to other Departments for more money, and they had been trained for six or eight years. The 22 girls have been replaced.

By the Chairman.—Are new ones coming in?

Mr. Arter.—We have vacancies galore at the present time. I submit to the Committee a chart showing the administrative set-up of the office. On the present staff, everybody below C.1 has been in the office from two to four years. I was pointing out that surveyors can be trained in less time than draftsmen for this particular work. The scheme would in no way interfere with the bringing of land of individual owners under the Transfer of Land Act. On the contrary, as time progressed, the work would be greatly accelerated.

With regard to the initial placing of permanent survey marks or monuments and the proclamation of survey areas as set out in the Survey Co-ordination Act, I can think of no better way of utilizing and benefiting from the assurance fund in the full meaning and spirit of its conception. The marks would be a permanent safeguard for title and survey identification and re-establishment. I shall probably be hauled over the coals for making that statement, but I mean it.

The Chairman.—You will not be hauled over the coals by this Committee.

Mr. Arter.—In my opinion, the purpose of the assurance fund is to cover instability of or fault in a title.

The Chairman.—It is an insurance against risky titles.

By Mr. Bailey.—Was not the fund intended to be used for compensating land owners in the event of its being established that defective titles had been issued to them?

Mr. Arter.—All that is suggestive of shutting the door after the horse has bolted. If a proper survey system were adopted in the first place, there should not be any errors in survey.

The Chairman.—In the calculation of premiums under the compulsory insurance legislation, one factor is a contribution to the Metropolitan Fire Brigades Board—which is exactly in line with this proposal.

Mr. Arter.—What I have said is my contribution on the subject of compulsory registration. It is based, as I have previously explained, on two points. The first

one—which, I think, is completely practicable and could be legislated for—is a proper survey group system. I suppose the second point could not be covered by legislation, but it would be a matter of getting the complete co-operation of owners. At least, co-operation could be encouraged, as is done in South Australia. Government officers call public meetings in various parts of the country, and address the land owners on the benefits of compulsory registration; in other words, they sell the compulsory registration system to the public.

Mr. McDonald.—Co-operation would be more easily obtained if the owners were informed that they would not be involved in any cost.

Mr. Arter.—The system would not cost them very much. Mr. McDonald doubtless well knows the large area of land in his district still held under the old law.

Mr. McDonald.—About 80 per cent. of it is still held under old law titles.

Mr. Arter.—If surveyors are to be continually travelling up and down the country doing individual surveys the work will be costly, but if three or four or more surveys could be done on the one trip much expense would be saved. From a Government point of view, if a comprehensive survey could be examined at the one time, that would be much less costly than piecemeal examinations.

By Mr. Bailey.—Until the survey areas have been established, the ordinary routine of bringing land under the Act must still be followed?

Mr. Arter.—The system must remain as it is.

By Mr. Reid.—The system you suggest appears to be very sound. Would it not also involve, by implication, land which is already under the Act?

Mr. Arter.—Yes.

By Mr. Reid.—It could not be limited to land not under the Act?

Mr. Arter.—No.

By Mr. Reid.—Would not the suggested system mean that many titles held under the Act would have to be amended?

Mr. Arter.—Probably an abutting title would have to be amended, but that happens now. If a piece of land is held under the Act or being brought under the Act and it affects the next boundary, the owner is asked to produce his title, and it may be amended. The fixing of alignments is done frequently at present. That does not necessarily cause titles to be amended, but if titles were being re-established they would be tied to their proper marks. Recent legislation provides that alignments may now be fixed and titles moved within practical limits to and from the alignment.

By Mr. Merrifield.—Dealing with compulsory registration and the issue of interim titles, some description would have to be given. I suppose it is assumed that it would be possible, by searching the old law records and tracing down the Crown grants and conveyances, to provide a temporary definition? Has that system proved completely satisfactory in South Australia?

Mr. Arter.—No, because in that State the records are not as complete as those in Victoria. In New South Wales and South Australia titles are more or less sketchy documents as compared with titles in this State. I have seen titles in South Australia in respect of which there has been difficulty not only in locating the land, but in ascertaining the measurements. Neither do the New South Wales titles contain the finite and definite measurments shown on the Victorian documents. I can see no difficulty in preparing a paper description for a limited title.

By Mr. Bailey.—What is the advantage of a limited title which, we have been told, is of no more value than the paper from which it was taken? Why should there be a limited title at all?

Mr. Arter.—For easier operation of the Torrens system.

Mr. Bailey.—A person might purchase land, but he would have no assurance that the measurements on the title would correspond with what was on the ground. Another title would follow later.

Mr. Merrifield.—There are two advantages. In the first place, the Government by means of the compensation fund becomes the insurer against all the deficiencies of the past. That would obviate the necessity for the purchaser to trace back the whole train of conveyances, wills, and what-not, over many years to make sure that the seller was entitled properly to dispose of the land. The second point is that if land remains under the old law it will continue to be dealt with in that way in perpetuity. In other words, the old system would have to be followed for ever, whereas if land is brought temporarily under the Torrens system, although owners might in the meantime still have some deficiencies in their titles, ultimately those defects would be eliminated.

Mr. McDonald.—On the limited title there would be the Commissioner's notes or requisitions going back to the time of the Crown grant, and in that way any technical defect would be noted. Under the compulsory registration system the Commissioner would delve far into the past, and might find a defect which would not appear in an old-law title, whereas, by going back 30 years under the old-law system, a purchaser might be given a good title. Therefore, he might be worse off under compulsory registration.

Mr. Merrifield.—If the title was good under the old law, the Registrar would not have any qualifications noted against it.

Mr. McDonald.—If an old-law title is being brought under the Act, what may be discovered by going back far enough is surprising.

Mr. Merrifield.—The Commissioner would go back only 30 years.

Mr. McDonald.—No, he would go back further. Unless the Commissioner is to be limited to a period of 30 years in respect of his notes, the system will not be worth much.

The Chairman.—That completes what Mr. Arter has to tell the Committee in reference to compulsory registration.

The Committee adjourned.

WEDNESDAY, 15TH MARCH, 1950.

Members Present:

Mr. Oldham in the Chair;

Council:	*Assembly:*
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. Reid,
The Hon. D. J. Walters.	Mr. Schilling.

The Hon. R. J. Rudall, LL.B., B.Litt., M.L.C., Attorney-General and Minister of Education of South Australia, was in attendance.

The Chairman.—At our last meeting, I was requested to inquire into the working of the South Australian Act. As Mr. Rudall is in Melbourne, I thought we should take advantage of the opportunity to meet him. We shall not ask him to give details of

the working of the South Australian system, but to say whether he thinks it will be of advantage if members of the Committee go to Adelaide to discuss with the Registrar-General the working of the compulsory sections of the South Australian legislation. I know that Mr. Rudall has a high opinion of the Registrar-General and has stated that he will be willing for that officer to appear before us here as a witness, if we so desire. It will be of assistance if Mr. Rudall gives us an outline of the South Australian organization.

Mr. Rudall.—When Mr. Oldham spoke to me about this matter in Adelaide, I told him that I would be only too willing to assist the Committee. Mr. Jessup, the Registrar-General, has occupied that office for a considerable time and has published a book on the working of the Real Property Act. It is most useful from the practical point of view, as it contains sample forms, and so on. He is acknowledged as being an expert in these matters.

As in Victoria, we have two systems of registration. Recently, Parliament passed an Act making it compulsory to register under the Real Property Act all land at present registered under the old system. That is being done at the expense of the Government, but progress is being held up owing to a shortage of surveyors. If representatives of this Committee visit South Australia, Mr. Jessup will be willing to assist them in every way he can. The working of the Act could be inspected. If there were any particular points as to which advice was required, I would suggest that your inform Mr. Jessup on those matters before you come to Adelaide so that he could have the information ready. Recently, he visited Melbourne and Sydney, and is familiar with the system operating in Victoria and New South Wales. Then, if it is thought desirable that he should attend here as a witness, I shall be pleased to make the necessary arrangements. I think that would exhaust the assistance that we could give the Committee.

By the Chairman.—Is there divided control between the Registrar-General and an authority attending to the machinery work under the Act?

Mr. Rudall.—No. The Registrar-General is in complete control of the Lands and Titles Office.

By Mr. Schilling.—Does he control all its branches?

Mr. Rudall.—Yes.

By Mr. Fraser.—I presume that he obtains advice from the Crown Law Department?

Mr. Rudall.—Advice is available to him if he needs it, but, as I have stated, he is an expert in all these matters.

By Mr. Bailey.—Is there a Registrar-General and a Registrar of Titles?

Mr. Rudall.—Mr. Jessup fills both offices. He is Registrar-General of Titles and also Registrar-General of Deeds.

By Mr. Fraser.—Does he attend to the registration of companies?

Mr. Rudall.—No. There is also a Registrar of Companies, who could be interviewed by the Committee. The registration of companies is a separate organization.

By Mr. Schilling.—What proportion of land comes under the old system?

Mr. Rudall.—I cannot say off-hand.

By Mr. Schilling.—The Torrens system originated in South Australia?

Mr. Rudall.—Yes. Robert Torrens was one of the early pioneers, but, personally, I do not think he was the originator of the system. South Australia was formed as an experiment under the Wakefield colonization scheme, administered by a Board of Commissioners in England. The Government was under the Colonial Office and a Mr. Fisher was the Resident Commissioner, representing the Colonization Commissioners. That divided authority led to trouble. The Chairman of the Colonization Commissioners in England was Colonel Torrens, the father of Robert Torrens who introduced the Real Property Act system in South Australia. I think the father is entitled to the credit that is given to the son.

By Mr. Schilling.—Have you adopted the legislation of any other State in this matter?

Mr. Rudall.—I cannot say. About seven years ago, Parliament passed an Act to consolidate and amend the old system. That brought the old system up to date very much on the lines of the English law.

By Mr. Fraser.—In South Australia land agents are permitted to do work in putting through transfers, are they not?

Mr. Rudall.—Yes.

By Mr. Schilling.—Do they answer requisitions?

Mr. Rudall.—Some land agents may do work under the old system, but I do not know of any nor do I think they would be qualified. However, under the Real Property Act they certainly can and do a great deal of that work.

By Mr. McDonald.—Do land agents charge the same scale of fees as the legal men?

Mr. Rudall.—Yes. The scale of fees is set out in the Real Property Act.

By Mr. Reid.—How long does it take on the average for a simple transfer to be registered in South Australia?

Mr. Rudall.—To a certain extent, it depends on the amount of work in the office, but I should say that a title would be returned in about three weeks.

By the Chairman.—Is there an assurance fund in South Australia as a back-stop in regard to transactions under the Real Property Act?

Mr. Rudall.—Yes.

By the Chairman.—Are there any claims on it?

Mr. Rudall.—I do not think there has been one.

The Committee adjourned.

THURSDAY, 16TH MARCH, 1950.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Bailey,
The Hon. A. M. Fraser,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Merrifield,
	Mr. Reid.

Mr. Frank William Arter, Surveyor and Chief Draughtsman, Titles Office, was in attendance.

Mr. Arter.—We had arrived at the point where I had disposed of compulsory registration from the working and survey point of view. Primarily, I am concerned with the survey aspect, but it is a public office, and the main thing must be to get as much work through with as little delay as possible. I now wish to speak of amendments of titles. Two main amendments are proposed. They are in section 215, which relates to title by bona fide possession, and section 233 of the 1928 Act. Section 215 provides that a man can stabilize his title by survey, and section 216 of the 1928 Act provides that he can rectify the abutting title by excising therefrom such land as

is contained in his occupation as shown by survey, provided he can prove possession. I do not think that goes far enough. The whole spirit of the Act is badly conceived there.

If a man makes a claim that he owns his title by bona fide occupation and he can amend the other man's title, it seems logical that the boundary should be contiguous for its whole length. In other words, the whole of the boundary should be rectified. He can amend his title and delete from the abutting title so much land as is included in his occupation, but we do not make any attempt to provide, nor does the Act provide for the other little piece to be included in the next door land.

Section 216 of the *Transfer of Land Act* 1928 states—

> A proprietor may apply for the rectification of the original and duplicate certificate of any other proprietor or proprietors in any case in which the land described in the applicant's certificate and actually and bona fide occupied by him comprises land which by reason of any error in survey or other misdescription is included in the land described in any other certificate or certificates.

He can include in his title the part of the abutting title that is included in his occupation, and we then excise that piece from the abutting title. Section 216 could be amended to make the whole boundary accord with the survey. In New South Wales they do that very thing. They have no set formula for amendments. They say, "Yes, we will grant the application provided you get the consent of the man next door and produce his title."

By Mr. Reid.—What are the terms of the New South Wales section?

Mr. Arter.—There is no section; it is left to the discretion of the Registrar-General. Quite generally they amend two or three titles.

By Mr. Fraser.—There can be no amendment in New South Wales unless you get consent?

Mr. Arter.—If no person is affected you get consent on the spot. If every one is satisfied, that is all right.

By Mr. Merrifield.—Do you mean that the spirit of the section should be discounted completely? It is possible for the man next door not to have possession of the land. The boundary wall might be the applicant's wall.

Mr. Arter.—I do not think it matters, for you are simply rectifying a common title boundary. A man may say, "I am in bona fide occupation" and he can prove it. Obviously, if it was a common title boundary before, it should still remain a common title boundary.

By Mr. Merrifield.—Although the man next door may not be able to prove possession?

Mr. Arter.—He may not be able to prove it.

By Mr. Merrifield.—How many applications would there be in which the section creates a hiatus between titles?

Mr. Arter.—Every time there is an overlap on the next title there is usually some sort of gap. It is a pretty hard question. It depends on circumstances.

By Mr. Merrifield.—Would the cases of hiatus amount to many?

Mr. Arter.—I would not like to make a guess. Most of them would be under section 215. I am not going to be definite on that point. The only proposal I make is to improve the Act. Section 215 is a very fine one. It is the only one which does a proper job by amending the title on the basis of survey. I do not think section 233 is comparable. If a man makes application under that section and, because he cannot or will not satisfy possession, elects to cut down his boundaries to where they were before, the whole purpose of the application is frustrated. If he is affecting any one else we tell him, "You must apply under section 215." In many cases, section 233 does not carry out what is intended. It is not satisfactory from a survey point of view.

Mr. Merrifield.—Mr. McComb said that section 215 was in the nature of an expediency to overcome faulty surveys in the early years. He submitted the proposition that having used section 215 once to re-establish a title on the basis of survey, that section should not be permitted to be used again.

Mr. Arter.—I would say that once a title has been amended on the basis of section 215 and properly tied to a reliable survey system that can be re-established, it should not be amended again under section 215 but it could be amended on the basis of practical survey errors.

By Mr. Merrifield.—Would you take that back to a past survey which could be re-established now?

Mr. Arter.—That is a matter of law, but once a title has been amended under section 215, it should not be amended again. Subsequent alterations should be by transfer.

I was speaking the other day on titles and their description, and I said that in New South Wales they had no connexion to streets, they are governed by abuttals. That is the basis of our Crown grants here; they are issued with a Crown abuttal. They are connected by survey, of course. The reason for showing the Crown abuttals is so that the land can be re-established with regard to other surveys as they come along from time to time.

Sections 269 and 270 of the Property Law Act provide that in the case of Crown excess the boundary can be proved or apportioned having regard to the excess; but if a later survey is made and it is beyond question that it represents the original survey, the Surveyor-General can issue a certificate of adjustment in accordance with the more modern survey. Mr. Clark, former Deputy Surveyor-General, and I discussed this matter for three or four years, and I completely agreed with his remarks. He was of opinion that when we receive in the office surveys that are practically in accordance with the title and no one is affected it should be competent for the Surveyor and Chief Draughtsman to recommend to the Commissioner that the title be automatically amended without an application. That is not a big matter from the Committee's point of view, but it is from ours. We get small practical differences of inches that are negligible. I had a case at Rosanna. The area was well surveyed, but there was an inch excess in every 100 feet. The people were dividing 100-feet blocks into 50-feet blocks, and when the surveyor reached 500 feet down the street he was theoretically working on a 5-inch overlap although he was actually locating the original pegs. I am referring only to practical survey difficulties, not to grave errors. The suggested procedure would simplify the work in the office, and it would benefit the community, particularly the legal profession. Now we stop a case for the amendment of a title for something trivial, and bring into operation section 233 when, in my opinion, the matter could be rectified by a simple adjustment. I direct attention to the following comments of Mr. Clark in his report on the Survey Branch:—

> "The administration of the Acts is based upon the fallacious assumption that the measurements shown on the face of a title can be, and in fact are, sacrosanct, irrespective of whether they are derived from figures supplied by a layman, surveys carried out with crude instruments, or modern survey.

As a direct result of this assumption, one case may become the nucleus of a snowball of work for the office staff, where, for instance, disregarding the fact that the old title descriptions may have been inaccurate, and to comply with the provisions of section 233—

(1) Modern survey plans are amended by direction to exclude occupied strips to which the adjoining owner can make no claim, so that they are excluded from the amended title on paper and from the adjoining title in fact on the ground.

(2) In the case where the surveyed line of occupation lies within the "paper" title boundary, the applicant may be required to take out a new title as to part retaining a "balance" title for a negligible strip which he neither wants nor could claim nor use.

Either form of action almost certainly leads to subsequent amendments under section 215, claims by adverse possession (section 87), or transfers, of strips over which the transferror may have already lost any legal claim or control.

The original fault may lie in a connexion given wrongly by a layman, an error in survey, a difference in survey measurements due to improved methods, or an alteration in the alignment of a road or street to which a connexion has been given in the past. With the present interpretation and administration of the Act, any such error or difference may result in an imaginary buffering along a whole street, involving the office staff in the immense work and the registered proprietors in the expense and inconvenience of amendments under section 215, claims under section 87, or transfers of strips from "*A*" who never occupied the land and whose own title is satisfied as to measurements except the connexion; to "*B*" who has occupied the land in good faith and whose title also is already satisfied, and who must in turn transfer a strip to "*C*" and so on.

The absurdity of this assumption of exactness with respect to figures from old deed titles or those supplied by laymen will be immediately apparent, but it is necessary to stress the fact that survey methods and the survey system are improving over the years, and will continue to improve.

This false basis of the title system (the application of the "indefeasibility of title" ideal to the actual dimensions shown on the diagram as well as to the registered proprietorship of the parcel of land approximately described by diagram) prevents the use of more modern and accurate descriptions and connexions, where these conflict with previously issued certificates of title, except by recourse to expensive and protracted procedure.

Modern Crown survey is, in general, probably superior to survey under the Transfer of Land Act."

After commenting on the present working conditions of departmental surveyors, Mr. Clark said:—

"The adjustment of Crown Grants and Crown Survey boundaries to conform with modern surveys is much more simple than that of title boundaries whether the latter are based upon survey or not. *The methods should be similar.*"

Mr. Clark contended that when a recent survey proved that the old survey was not right, it should be rectified automatically. In New South Wales, recent and more reliable survey information is used when a new title is issued.

By Mr. Fraser.—Under the New South Wales system, consent must be given, particularly in cases involving rights. What happens when consent is not forthcoming?

Mr. Arter.—That is where the New South Wales system breaks down. I like section 215 of our Act, because it provides that, when consent is not given, the applicant can prove possession and go ahead.

By Mr. Fraser.—Is there any method of simplifying the present procedure?

Mr. Arter.—There is no office method. When a subdivisional plan that practically agrees with the title is lodged as a registered plan, I have in some instances taken it upon my shoulders to say, "Accept the plan as agreeing with the title," but only when no other title is affected. In every survey there is a misclosure in the angular measurement. There may be an angular error of 0°1′, the practical equivalent of an error of half an inch in 100 feet. There also may be small errors in chainages. As soon as the survey is broken up the misclosure is revealed in the smaller surveys. In practice, there is a tolerance in every survey.

By Mr. Byrnes.—The error would not be discovered until a subdivision was affected?

Mr. Arter.—On the title the measurements are usually a mathematical closure, but not on the ground. One could not measure precisely unless one spent considerably more time in the field—time not warranted by an ordinary title survey.

I now wish to direct attention to a point that arises in connection with subdivisional plans. A surveyor at Wangaratta recently wrote to the Town and Country Planning Board regarding composite plans of subdivisions put in by various owners. He said he thought that, under town planning schemes, councils would insist upon composite plans embracing several owners, and he suggested that section 212—it gives implied rights to purchasers—would not apply. The section would not apply because the office would not register the plan of a subdivision held by different owners. The surveyor also raised the question as to whether easements should be given to or set aside for the use of councils. I think that aspect should be considered. If composite plans are insisted upon, it may be necessary to create easements for the various local bodies, or to make them public roads and public easements, as is done in New South Wales and South Australia, where they dedicate the rights over easements for the use of the public immediately a plan is lodged. There are no implied rights similar to those in section 212 of our Act. Perhaps I am anticipating a little, but I think the Committee should consider the aspect I have mentioned.

Recently, I experienced such a difficulty in obtaining carriage-way to a block of land which I purchased at Sassafras. I cannot obtain legal right to carriage-way over the road which abuts the land, because the man who owns the subdivision left for California in 1918. The road is unmade and the council will not take it over. I was interested in another piece of land and I said to the next-door owner, "Will you give me the right of carriage-way over the road?" and he said that he would not.

By Mr. Thomas.—Could not the local council give you that right?

Mr. Arter.—It could do so only by gazetting the road as a public highway. I have raised this matter because, with composite plans, an amendment of the Act may be necessary.

By Mr. Bailey.—If a drainage easement is provided on a block, has the council control of the easement?

Mr. Arter.—If an easement is provided on a plan, the council will construct a drain through it, if required.

By Mr. Bailey.—I have in mind an instance in which the title refers to a drainage easement, through which the council put a drainage pipe. The land is fenced in, and a person not seeing the title would not be aware of the easement. When the property was offered for sale, the existence of the easement was not divulged. Who has a right over the easement?

Mr. Arter.—Possibly the council acquired the easement. I repeat that the matter of easements should be borne in mind, having regard to modern town and country planning procedure, which may cause trouble. The only delay in the Survey Branch—and it is very aggravating—is in the "plan of subdivision" section. There is no easy way to examine a plan; it must be done properly. There are four times the number of

plans to be examined as compared with five years ago, notwithstanding the fact that on every possible occasion I waive surveys relating to simple transfers. The matter of staff presents a difficult problem. A draughtsman cannot be trained overnight. When an officer retires at the age of 65 he is replaced six months afterwards by a schoolboy of seventeen, who then has to be trained. At present more than half the staff are practically brand new. Recently we personally canvassed every school in the metropolitan area, as far afield as Frankston and Dandenong, and fourteen new draughtsmen were obtained. They must now be trained.

By Mr. Merrifield.—Many difficulties are attached to the problem of plans of subdivision. Under your proposal as soon as a plan was registered, the roads, easements and anything of a public character would become dedicated to the public?

Mr. Arter.—I am not proposing anything. I am suggesting that it is one way of overcoming the difficulty; easements could be created and in "gross" to the council. In South Australia and New South Wales they are dedicated to the public.

By Mr. Merrifield.—What happens if a person lodges a plan and registers it and does not subsequently transfer the land?

Mr. Arter.—In New South Wales the land comprising the roads vests in the Crown and is controlled by the "closed roads" section of the Lands Department. If a man wishes to close a plan of subdivision he would have to make application for the roads to be transferred back to him and for the cancellation of the plan.

By Mr. Merrifield.—Is any fee required in respect of the area of land that is in road?

Mr. Arter.—I do not know.

By Mr. Merrifield.—When roads are dedicated to the Crown does that take them outside the sections of the Local Government Act dealing with private streets?

Mr. Arter.—In New South Wales the streets have to be made before the plan is lodged, and in South Australia provision has to be made for the making of the road before the lodging of the plan.

By Mr. Fraser.—There would be no private streets in New South Wales or South Australia?

Mr. Arter.—No. They are vested either in the municipality or the Crown. In Victoria at present one man can stop the advance of the locality. In the old days a 1-foot reserve was made at the end of a street to block the owner next door from getting on to the subdivision. In essence, that can be done now by putting in a *cul-de-sac* and leaving a small piece of land at the end of the street.

By Mr. Merrifield.—Your proposal will apply to the future but will not remedy past subdivisions. Most of our problems of planning and usage are a result of the subdivisions of the past.

Mr. Fraser.—That could be overcome by inserting a section to dedicate all existing easements to the public.

Mr. Arter.—Section 212 gives an implied right that where a man purchases a piece of land he immediately gets all rights of way, drainage, and so on, that might be deemed to be reasonably necessary for the enjoyment of the land. However, two or three owners cannot give implied easements over one another's properties. That is why a composite plan cannot be lodged in the office. There have to be separate plans with different creations of easements, one agreeing with the other. I am not suggesting that section 212 is not good at present, but I am raising the point in relation to town planning.

By Mr. Merrifield.—Do not many problems that have occurred in the past require solution?

Mr. Arter.—There are no problems arising from section 212 with regard to the actual operation of the office.

By Mr. Merrifield.—The individual has to make his own arrangements for rights of carriage-way in regard to private streets, but in many cases that is not possible?

Mr. Arter.—Yes, that is so. Yesterday a case was brought to my notice where a plan of subdivision had been received and the council concerned had written informing the office that the plan had been submitted but consent would not be given until such roads as were indicated on the plan were provided. The registered owner now has to find out who are the owners involved and so on.

By Mr. Merrifield.—If the roads reverted to the Crown or to the council and a process of closure were required, the consents of the individual owners would not be necessary?

Mr. Arter.—That is so.

The Committee adjourned.

MONDAY, 20TH MARCH, 1950.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. F. M. Thomas.	Mr. Barry,
	Mr. Merrifield,
	Mr. Reid.

Mr. Francis William Watkins Betts, Commissioner of Titles, was in attendance.

Mr. Betts.—There is a question regarding the Drainage Areas Act, which provides that an owner of land may apply for and obtain from the magistrate of the local court an easement of drainage over adjoining property. If the consent of the servient owner is obtainable there is no difficulty and the order is made, but it is not shewn on the title of the servient owner as an encumbrance. If the claim is disputed the magistrate may grant the easement but it still does not get on to the servient title. When I was discussing amendments with Mr. Justice O'Bryan, he pointed out that he had recently decided a case in which the servient owner had sued the dominant owner for damages, alleging that the burden of the easement granted under the Act had been increased. Mr. Justice O'Bryan said he considered that the easement granted by the court was permanent and thought it should be noted on the title as an encumbrance. It seems to me that provision for its registration should be made in the Drainage Areas Act, but the sub-committee thought it should be in the Transfer of Land Act.

By Mr. Bailey.—When a magistrate makes an order should he have power to call in the title?

Mr. Betts.—I would suggest that the efficacy of the order granting the easement be of no avail until it is put on the title; that is, the dominant owner should proceed to register the order in the Titles Office.

Mr. Merrifield.—There is something, of course, in clause 50 of the Bill covering that point.

Mr. Betts.—That is leading up to a question you raised regarding surveys. While a survey would be the ideal, we do not worry too much about that. If an order is made we should be concerned to see that

the encumbrance is placed on the title so that anyone searching will know that there is an easement over the servient land. A purchaser would naturally see it on the ground, and he should beware and make inquiries about a drain bringing water from other land. Nevertheless, it should be on the title. Regarding the definition of it, that could not be done without a survey.

By Mr. Fraser.—Before the magistrate made an order would there not be evidence before him first as to the necessity of the easement, secondly as to the efficacy of it, and thirdly as to where it should go? He would have to have a survey before him and the easement would have to be delineated.

Mr. Merrifield.—Even in the best of faith, the contractor who constructs the drain may not build it on the line of the order. That could not be known without a subsequent survey after construction.

Mr. Betts.—My view is that a great deal to much is made of the survey position. I know it is an ideal to have surveys and to make titles accord with occupation, but although a title accords to-day, to-morrow it may not. We issue a title in accordance with a survey, but to-morrow the fences are down and they do not go up again always on the same title boundary. Then you cease to have a title in accordance with occupation. That will always be so.

Mr. Merrifield.—The difference between occupation and title in the case of town fences may or may not be much, but when a drain is made through a property from the plan of an engineer, who is mainly concerned with levels, there is nothing perhaps which could enable you to show it on the title.

Mr. Betts.—That is an ideal, but I do not think you can ever get it. You might have the easement surveyed and properly defined, but in a month it has lost its position and gone somewhere else. That frequently happens with creeks.

Mr. Merrifield.—A creek is a natural water-course. We are not concerned with that but with on order of the court.

Mr. Betts.—It should be defined, but I think too much is made of surveys.

By Mr. Merrifield.—Do you argue that the order should not be registered on the servient title?

Mr. Betts.—No, I say it should be.

By Mr. Merrifield.—How are you going to define it, if there is no practical method, on the plan deposited in the court?

Mr. Betts.—A map is produced to the magistrate. We are not without some definition of it.

By Mr. Bailey.—That would give width of easement. Could not the drain be at the side or in the middle of the easement?

Mr. Betts.—Yes. The easement may run straight through or it may take a turn.

By Mr. Bailey.—Regarding the case that came before Mr. Justice O'Bryan, the order would have to be far-reaching. What about other water diverted into that easement—water not contemplated when the order was made?

Mr. Betts.—No one other than he who obtained the order has the right to divert water into it. The dominant owner brought the water from a second property belonging to him across the first property to the servient owner's land. The magistrate made an order for the adjoining property only. It should suffice if a person searching a title is notified so that he may inquire into the nature and effect of the encumbrance, even though the easement was not exactly defined by a survey.

By Mr. Merrifield.—Did you refer to the case of *Madden v. Coy?*

Mr. Betts.—Yes. It was held that the defendants had exceeded their statutory right of drainage. In connexion with Part III. of the Bill, Mr. Reid commented "The Commissioner will desire to get in as many deeds as possible. In my office, I have a number of deeds which I inherited from my predecessors." There is provision for disposing of such deeds by depositing them in the Registrar-General's office, where they are retained for all time.

By Mr. Reid.—My point was that one would be put to considerable trouble and expense in obtaining possession of the deeds, and we would be deceiving the public if we said that it would cost only £1 to commence an application.

Mr. Betts—The fee will be £1 10s. It was suggested that the Government should pay to bring the land under the Act. If the assurance fund is used it will not go far, as it will cost a considerable sum to employ examiners and other staff to implement the Act.

By Mr. Reid.—A man may be asked to produce the deeds, which he may have trouble in tracing?

Mr. Betts.—We do not insist upon deeds coming in but they should not be left floating around after the land has been brought under the Act.

By Mr. Bailey.—When an application is made, do you not require the production of the chain of titles?

Mr. Betts.—We call for the deeds, but we do not insist if it is proved that they cannot be produced. Many deeds are lost or destroyed. We require search to be made, including a search of the deeds deposited at the Registrar-General's office. We may be able to give the applicant information as to where he may find the deeds. They may be in the possession of a previous owner, who has adjoining land. After those inquiries are made, we do not insist upon production. The Act provides that the Commissioner may accept the memorial of certain deeds as sufficient evidence of title on payment of a fee of £1. If possession for fifteen years is proved no fee is payable for acting on the memorial. No case is refused on the ground of non-production of deeds.

By Mr. Reid.—A person inquiring for deeds might be involved in considerable expense?

Mr. Betts.—He may have to inquire of solicitors. I understand that Geelong solicitors assist one another in these matters.

Mr. Fraser.—If each solicitor required a production fee, the expense would be considerable.

By Mr. Bailey.—It appears to be a loose way of dealing with titles to waive production, although a man may have been in possession for only a few years?

Mr. Betts.—Is it suggested that a title should not be granted?

By Mr. Bailey.—The chain of titles under the old Act must mean something?

Mr. Betts.—We are frequently given evidence that the titles have been destroyed.

By Mr. Bailey.—Do you require proof that the person is the actual owner of the land?

Mr. Betts.—We obtain that evidence from the memorial of the deeds and the evidence of the applicant with corroboration. The Act enables us to act on memorials if deeds are not available.

By Mr. Fraser.—The memorial may show proprietorship, but it may not disclose encumbrances?

Mr. Betts.—It is only in rare cases that we find a restrictive covenant in an old law deed. I do not think I have yet seen a covenant restrictive as to user in a

general law title, but of course there is nothing to prevent parties entering into such a covenant, but there must be land of the vendor left to enjoy the benefit of the covenant.

By Mr. Fraser.—Have you heard of a restrictive title on that land by another instrument, such as a contract as between parties?

Mr. Betts.—No, you would not hear of that unless the contract of sale was memorialized, which is rare, and then the memorial might not set the covenant out.

By the Chairman.—Why are there no restrictive covenants on old law titles, and yet they are on titles under the Transfer of Land Act?

Mr. Betts.—I think the use of restrictive covenants is here quite modern; it has grown with the times and is particularly appropriate to subdivisions under the Act because of the Torrens system of registration. General law subdivisions with a restrictive covenant are practically unknown here.

By Mr. Reid.—There is quite a number of authorities about restrictive covenants on the normal English titles?

Mr. Betts.—Yes.

By the Chairman.—Were the railways in existence before the passage of the legislation that provided that all alienations of land by the Crown would be under the Transfer of Land Act?

Mr. Betts.—Yes. There are many Crown grants under the Act containing railway conditions.

By Mr. Bailey.—A covenant whereby the land is not to be used for the erection of hotels and so forth would not be disclosed in the memorial?

Mr. Betts.—It should, but it may not be.

By Mr. Fraser.—What do you mean by that?

Mr. Betts.—A properly drawn memorial should show all important details of a conveyance. A restrictive covenant, surely, is an important detail.

By Mr. Bailey.—The deed is registered by the memorial. The purchaser does not want all those things set out in the memorial; so long as they are in the conveyance he knows what he is doing. The solicitor may insert those details but it is not necessary for him to do so?

Mr. Betts.—The purchaser's solicitor should not rely on the memorial in our office, he should see the actual deed.

By Mr. Fraser.—When the Titles Office is registering a new proprietor under the old law why should it not see if there are any defects or encumbrances endorsed on the memorial?

Mr. Betts.—That was not done formerly but it is now.

By Mr. Bailey.—Is it not the practice in the Registrar-General's Office to register anything and not to worry about the contents?

Mr. Betts.—We do now, we are much more careful.

By the Chairman.—It is a little late, is it not?

Mr. Betts.—It is better late than never. It was not done for 40 or 50 years, but it is a good thing to start now, particularly as it is possible that restrictive covenants are more in use than they were formerly.

By the Chairman.—What area of land in Victoria is under the Transfer of Land Act?

Mr. Betts.—About one-third.

By the Chairman.—Probably there is more land under the old law than under the Transfer of Land Act, not taking into consideration the Crown land.

Mr. Betts.—I think most of the general law land would be country areas, running into hundreds of thousands of acres; therefore, although there would be more land under the general law, there would not be as many titles as there are under the Transfer of Land Act.

By Mr. Fraser.—The only solution seems to be to put the burden of making the requisitions on the Titles Office and also seeking the answers to those requisitions, instead of putting that obligation on the applicant who is compelled to bring land under the Act.

Mr. Betts.—I should not think there were many people who would object to having their land brought under the Act at the expense of the Government.

By Mr. Thomas.—To what extent was there opposition in South Australia to the compulsory bringing of land under the Act?

Mr. Betts.—I do not think South Australia has gone far enough to give a definite opinion, but I can speak of New Zealand where all land would be under the Transfer of Land Act by now.

By Mr. Thomas.—For how long has the Act been in operation in New Zealand?

Mr. Betts.—Since 1925. It took nearly 25 years to complete the task; a lot of work was done in the first five years. In 1947, when I received a communication from New Zealand, it was not quite completed; probably it is finished now.

By Mr. Bailey.—Does the Government or the proprietor bear the expense?

Mr. Betts.—The New Zealand legislation is exactly the same as is contemplated in Victoria. With regard to the question of compulsion, I was advised—

> The limited certificate was well received by the public; if the certificate was limited as to title, the removal of the title limitation was usually effected on the first dealing with the land after its being brought under the Act. The limitation as to parcels was usually allowed to remain. The Law Society ruled that on the ordinary open contract a purchaser of a certificate of title limited as to parcels had no right to compel the vendor to get a new survey, just as he had no such right under the "old system," and the practitioners throughout New Zealand appear to have accepted that position. Of course if the land is situated in a very valuable locality (e.g. Lambton Quay, Willis-street, Wellington), or, if it is being subdivided into several lots, or if it is suspected that the possessory boundaries do not substantially agree with the documentary boundaries, a new survey is obtained and the limitation as to parcels removed, when the District Land Registrar is satisfied that the new plan discloses the true position. If he considers it necessary he serves notices on adjoining owners before removing the limitation as to parcels.
>
> I may state that in the first instance most titles were made limited both as to parcels and to title. The limitation as to title was necessary because under our "old system" a lease for less than seven years is not registrable. It is usually also necessary to ascertain whether or not the documentary owner is in possession for, except as to land under the Land Transfer Act, the *Real Property Limitation Act (Imp.)* 1833, is in force in New Zealand.

By Mr. Bailey.—Do I understand that in New Zealand a person with a limited title cannot ask for another survey unless the land has been subdivided in the meantime?

Mr. Betts.—If a purchaser buys a title limited as to parcels he could have it surveyed if he wanted an ordinary title. However, he could not compel the vendor to pay for the survey when he had bought a limited title.

Mr. Bailey.—If that is the position he might as well have bought the land under the old Act.

The Committee adjourned.

TUESDAY, 21ST MARCH, 1950.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Bailey,
The Hon. F. M. Thomas.	Mr. Barry,
	Mr. Merrifield.

Mr. Francis William Watkins Betts, Commissioner of Titles, was in attendance.

By the Chairman.—Will you please proceed in your evidence?

Mr. Betts.—I understand that Mr. Fraser desires me to discuss two points—consideration and indefeasibility.

Mr. Fraser.—The reason for my request was that there seemed to be some difference of opinion as to whether it was sufficient to state in the transfer "valuable consideration" or "monetary consideration."

By Mr. Thomas.—Is it a matter of the definition of "consideration"?

Mr. Fraser.—No, that is well defined; it is a question as to the form in which it should appear.

Mr. Betts.—I think consideration goes to the validity of the instrument. By reason of section 37 of the Stamps Act, every officer who enrols any document must see that the correct duty is paid, but the Titles Office practice is mainly based on concern as to the validity of the instrument. We have to see that that which the registered proprietor is doing, he is entitled by law to do. We are not concerned so much with duty, as with validity. Mr. Wiseman suggested—if I understood him correctly—that in the new Bill provision could be made for two considerations. One, a monetary consideration, would present no difficulty. If it were not a monetary consideration then he suggests it would be sufficient if it were stated that the transfer was "for valuable consideration".

By Mr. Bailey.—Is there any need for monetary consideration if it is stated that the transfer is for "valuable consideration?"

Mr. Betts.—There will be one of two considerations. One will be "monetary consideration". If it is not that one, it will be "for valuable consideration". As I see it, we are not concerned so much with the monetary one, and there is no difficulty in the Titles Office in cases of that kind. It is where there is a departure from monetary consideration that the difficulty will arise. If in future we are to accept transfers "for valuable consideration", validity of the document requires us to know what that valuable consideration is. In the eyes of the law and in the definition of valuable consideration it could mean a number of things. If we are not to inquire into it, we will not know whether the transferor is acting legally.

By Mr. Fraser.—If the true consideration is stated, you are not concerned with its value?

Mr. Betts.—That is so.

By Mr. Fraser.—But another Department may be concerned with it. In the case of a gift, someone would be concerned with payment of the proper stamp duty according to the value of the gift, but so fas as registration and the giving of legal efficacy to the transfer is concerned, so long as there is consideration, in what way are you concerned? Can it affect the validity of the document?

Mr. Betts.—I think it can. Suppose it is a gift the transfer will show "for valuable consideration", and the transfer will bear some stamp duty. It will not be disclosed in the Titles Office that it is, in fact, a gift.

By Mr. Fraser.—Will that matter?

Mr. Betts.—Suppose the transferor is an executor. What right has he to give away the property of the testator? He may be transferring the property to his wife. What right has he to do that?

By Mr. Fraser.—He may be answerable to the estate or to other people. If the instrument of transfer is a good instrument, then, in the absence of fraud, why is it not registrable?

Mr. Betts.—We are not to allow a breach of trust; we have been told that many times by the High Court. The latest was the Leviathan case.

Mr. Fraser.—That was a breach of trust on the face of the document itself.

By Mr. Bailey.—What is the objection to the consideration being recited, for instance, in consideration of a devise contained in a will? I think the Titles Office ought to have that information.

Mr. Fraser.—I do not disagree with that.

Mr. Bailey.—That is one consideration which would not be disclosed in the transfer.

Mr. Fraser.—Consideration may take many forms altogether apart from money. It may be necessary to state in a short form what the consideration is. It may be a devise under a will, or by way of an exchange, or some other advantage.

Mr. Bailey.—The Titles Office would not have the foggiest idea what the consideration was—whether it was under a will or something else.

Mr. Betts.—I will go a step further, and this is very common. "*A*" transfers to "*B*" for, say, £5,000, and duty is paid on that sum. I agree that we should not inquire, but suppose that "*A*" signs by attorney; surely we should be allowed to inquire into that if necessary.

Mr. Fraser.—But that is not a matter of consideration; it is a matter of the execution of the documents.

Mr. Betts.—No, it goes to the validity of the documents; it concerns the power to do what the attorney is endeavouring to do.

Mr. Bailey.—He would have to recite in the documents, "as attorney for so-and-so". On the face of the documents, you would know that much.

Mr. Betts.—Yes, but we would be told that consideration had nothing to do with the Titles Office.

By Mr. Fraser.—Your point is that you must see that the person purporting to be the transferor is authorized under the terms of the instrument appointing him attorney to do what he attempts to do? If he did it for £10 or any other sum, that would not affect you.

Mr. Betts.—It is all bound up with the validity of the document. That is what I am trying to make clear.

Mr. Fraser.—If there is no consideration, it may be *nudum pactum.*

(Mr. Oldham being called away, Mr. Fraser was appointed to the Chair.)

Mr. Betts.—The Titles Office registers 150,000 dealings yearly, 80,000 of which are transfers. One in 400—that is, 200 a year—is stopped in connexion with consideration. Fifty only of those cases would require amendment or explanation of consideration, so it will be seen that the number of cases of this type is small.

By Mr. Fraser.—Is not one difficulty that the wording of the Act is not elastic enough! Have you had a look at the English Act?

Mr. Betts.—No.

Mr. Fraser.—There seems to be suggestions for alternative forms, one recognizing a monetary consideration or valuable consideration—I suppose all considerations are valuable—and the other to cover cases of departure from monetary consideration. It may be by way of a devise under a will, or an exchange, or in consideration of accepting employment, or other things.

Mr. Betts.—They would not be roped all under the one heading of "valuable consideration" as suggested in the new Bill, surely.

Mr. Fraser.—No, there are alternative forms. I think there is something in the argument that to put it simply as "valuable consideration" may lead to some criticism. The present Act states, I think, "true consideration", and the Titles Office feels in duty bound to ascertain the true consideration and it goes to a lot of trouble to find out what it is. That seems to have led to criticism.

By Mr. Bailey.—The Comptroller of Stamps will make all those investigations. If it is necessary to supply him with the information, why not recite it briefly in the transfer?

By Mr. Fraser.—Whether the consideration is too much or too little should not be any concern of yours?

Mr. Betts.—It never has been. We are not concerned with the quantum of consideration. All we are concerned with is the consideration to make good an instrument, which we have to register. As we have to guarantee the indefeasibility of a title, and bind the Government in respect of it, we should know that the man transferring is doing what he is entitled to do.

By Mr. Fraser.—But you do not guarantee the title?

Mr. Betts.—We do.

By Mr. Fraser.—You give a good title but you are not concerned with outstanding equity or anything like that?

Mr. Betts.—We certainly are if it is known to the Office.

By Mr. Fraser.—Did not a Sydney solicitor named Abigail take a case to the Privy Council which made a hole in Mr. Wiseman's views?

Mr. Betts.—I have yet to meet the man who understands *Abigail's* case.

By Mr. Fraser.—What is your suggestion now on consideration?

Mr. Betts.—I think it should be left as it is. The true consideration should be stated. I cannot see the difficulties some people see in it.

By Mr. Merrifield.—What are the objections of the Law Institute to disclosing the true consideration?

Mr. Betts.—My view is that some solicitors do not like being told by the Titles Office what to do.

By Mr. Merrifield.—If the Act provides for something to be done, why do not the solicitors do it in their transfers without being required by subsequent requisitions?

Mr. Betts.—If you could see some of the transfers that come into the Office you would realize that many solicitors do not know very much about conveyancing or the Transfer of Land Act.

By Mr. Merrifield.—Do the cases we are concerned with mainly come from that class of solicitor?

Mr. Betts.—I think so. We have not the slightest trouble with the big firms.

By Mr. Bailey.—Why should not the true consideration be disclosed?

Mr. Betts.—It has to be disclosed to the Comptroller.

Mr. Fraser.—I think one of the criticisms is that it may involve a form of interpretation and the Titles Office might take the view that the correct expression was not used.

Mr. Betts.—That is the view, but I say it is wrong. The real objection from these solicitors is that they do not like the Titles Office telling them what to do. It has even been suggested that the Office should register every instrument without inquiry.

By Mr. Bailey.—What happens if there is a conflict between you and a solicitor and he will not comply with your requisitions?

Mr. Betts.—We meet him as far as possible. I refer you to the records in the last twenty years. Prior to that, it was not uncommon to have a case before the Court.

By Mr. Merrifield.—Do you think the solicitors' clients are worried?

Mr. Betts.—No. Solicitors have said they do not like to go back to their clients to obtain consent to an amendment of a transfer.

By Mr. Thomas.—To what extent does that take place?

Mr. Betts.—Very little. One in 400 transfers is stopped for an explanation.

By Mr. Fraser.—Could you get for us a list of ten cases stopped because the true consideration was not stated?

Mr. Betts.—I asked the Registrar to supply me with some figures showing the dealings lodged in the years 1945 to 1949. Over those years there was an increase from 81,754 to 153,429. Including transfers there were 43,016 in 1945 and 87,950 in 1949. The opinion of three men engaged in amendments of dealings is that not more than four a week, or 200 a year, require amendment. Where duty does not accord with consideration there would not be more than 50 a year.

By Mr. Merrifield.—Your records, showing the prices at which land has been sold, are available to municipalities and outsiders. Is that a factor in the demand for an alteration in the system?

Mr. Betts.—Do you mean that if the monetary consideration or the true consideration is required to be shown, it may assist outsiders? The Taxation Department certainly uses those figures. I do not think anyone should be influenced by that. If I ask a certain amount for land that I own, what does it matter what I paid for it?

Mr. Fraser.—The difficulty arises when the consideration perhaps relates to documents of some sort. A short form is needed to state the consideration and an argument starts between the Titles Office and the solicitor about the construction of the document.

Mr. Betts.—There are very few of those cases. I think, taking a proper sense of proportion, it would be best left as it is because of the much wider effect.

By Mr. Fraser.—In your evidence as to an executory consideration, you gave an example of a case in which the money was to be paid in the future, and you took the view that the man would not receive a good title. Have you given that matter further consideration?

Mr. Betts.—The purchaser would be able to pass on a good title, and that is where the objection lies. We would place him in the position of being able to pass on a good title when he should not be able to do so, as an equitable interest would be outstanding.

By Mr. Fraser.—The vendor need not execute a transfer. If he did so, he would rely upon his ordinary rights. If the land passed out of the purchaser's hands, the new purchaser would obtain a good title, and the original vendor would have his remedy at law for the money outstanding. If he is foolish, why should you act as a policeman to protect him?

Mr. Betts.—The point I desire to make is that there is an equitable interest in the vendor in respect of the purchase money "to be paid" and, while there is indefeasibility of title guaranteed by the State, we should not permit an equitable interest, which is known to the Office and in respect of which we may in certain circumstances become liable, to be outstanding.

By Mr. Fraser.—The unpaid vendor gives you an opportunity to do so. There is no need for him to execute a transfer until he is paid his money in full.

Mr. Betts.—That is so.

By Mr. Bailey.—You say that the consideration is so much money to be paid?

Mr. Betts.—Yes.

By Mr. Bailey.—Do you follow the matter up later to see if the money is paid?

Mr. Betts.—No. When we are given notice of an outstanding equity, we should not issue a title.

By Mr. Fraser.—Suppose that a transfer comes from "*A*" in consideration of the sum of £200 that has been paid and £4,800 to be paid by instalments over a period of five years, and the document is properly executed by both parties. Will you register the document?

Mr. Betts.—No. We would say, "There is an outstanding equity, and the Transfer of Land Act does not permit of our issuing a title when we know that there is an equity in some one else."

Mr. Fraser.—It is not outstanding in any one else. The man entitled to the money has executed the document.

Mr. Betts.—But he has given us notice of an equity outstanding in favour of some one other than the registered proprietor, namely, the purchaser. We do something more than register a document. Under the Act, we guarantee an indefeasible title against which there are no known equities.

Mr. Fraser.—The transfer could be registered and the title would issue in the name of the proposed purchaser. If the vendor desired to protect his interest, he could do so by means of a caveat. He would not commence any action until there was a dealing with a third party.

By Mr. Bailey.—When the money is paid by instalments, a transfer is executed and lodged in escrow until the full amount is paid?

Mr. Betts.—In such transfers it is usual to state "In consideration of £500 paid."

By Mr. Bailey.—But it would be lodged in escrow until all payments had been made?

Mr. Betts.—That is true. There is no difficulty in cases of that type, and they would not be stopped because there is nothing on the face of the transfer to indicate any outstanding equity.

By Mr. Fraser.—The document would not be handed to you by the person holding it in escrow until all payments had been made?

Mr. Betts.—I think there is some confusion in our discussion. In escrow cases the transfer is usually "in consideration of £500 paid (full price) and the instrument is held by a third party until all payments have been made. In such cases there is nothing on the face of the transfer to call for any requisition. If the transfer read "in consideration of £100 paid and £400 to be paid by instalments" and any vendor's lien had not been negatived, we would require amendment negativing the lien or proof that the £400 had been paid. It is in cases where it has not been paid and the amendment is required that the objection is raised outside to our practice. The money consideration has been used as a simple example, but the principle applies to all other executory considerations, for example, that the transferee shall maintain the transferor.

By Mr. Fraser.—Are there many transfers which recite that so much has been paid, and the balance will be paid by instalments?

Mr. Betts.—There are not many. The point is that if there is an outstanding equitable interest shown in an instrument, we should not register it until that interest is disposed of.

Mr. Barry.—Might not the first purchaser need cash to pay the original vendor?

Mr. Betts.—What might happen is this: "*A*" transfers to "*B*" for £500 cash, leaving a balance of £5,000 to be paid. If "*B*" receives a title from the Office in the way suggested that he should, he can immediately transfer to "*C*" for £5,000 without paying "*A*."

By Mr. Bailey.—How could that affect the title?

Mr. Betts.—We contend that, having registered the transfer to "*B*" knowing that there was an outstanding equity in "*A*" we are liable to the vendor "*A*" we having given an indefeasible title subsequently passed on to "*C*," and thus defeating "*A's*" equity in the land, as "*C*" must get a good title.

By Mr. Fraser.—The vendor might say, "I know what I am doing and I want you to register the transfer. If the purchaser does not pay I shall be satisfied to negative the vendor's lien and take the matter to court." Do you want protection of that kind?

Mr. Betts.—Yes. If he negatives the lien, as is frequently done the transfer is registered.

By Mr. Bailey.—How would he negative it?

Mr. Betts.—It would set out in the transfer—"any unpaid vendor's lien being negatived."

By Mr. Merrifield.—What would be the position if a trustee sells, with an amount to be paid?

Mr. Betts.—A trustee could not transfer in those circumstances, as it would be a breach of trust. He would know that we would not register the transfer.

By Mr. Merrifield.—You would not know of the amount outstanding unless it was stated?

Mr. Betts.—We would not know if it merely said "for valuable consideration."

By Mr. Merrifield.—Therefore, you should be protected?

Mr. Betts.—Yes.

By Mr. Barry.—You do not know about some considerations?

Mr. Betts.—That is true, and in some instances the revenue is being defeated. In the case of *Templeton v. Leviathan*—it is reported in Vol. 30 of the *Commonwealth Law Reports*—Starke, *J.* said: "If beneficial interests are outstanding, the Registrar, for the reasons assigned by my brother Higgins, is justified in refusing registration of the instruments presented to him." Starke *J.* confirmed the opinion of Higgins *J.*

By Mr. Fraser.—We can appreciate difficulty with beneficial interests outstanding, but a vendor is presumed to know his rights. If he executes a transfer and takes it to the Titles Office, he implies, "I want you to register this document." Why should it not be registered?

Mr. Betts.—That occurred in the *Leviathan* case, and the court said that we were right in refusing the registration.

By Mr. Fraser.—Was money outstanding in that case?

Mr. Betts.—The property was sold for £96,000. The purchasers gave £3,000 in cash, borrowed £55,000 on first mortgage and gave the vendor a second mortgage for £38,000. Mr. Justice Cussen approved of the transaction but the High Court upheld the Office view.

By Mr. Bailey.—Does not the *Leviathan* case support the contention that the Titles Office has authority to query these things?

Mr. Betts.—Definitely. I do not think the extent of the powers of the Titles Office is fully realized.

Mr. Bailey.—The Commissioner's powers are indicated very definitely in that case.

Mr. Betts.—They are very wide.

Mr. Barry.—That fact was endorsed by the court.

Mr. Fraser.—I think the same view is recorded at page 53 of Volume 30, which reads—

> In my opinion where it has come to the knowledge of the Registrar that a dealing lodged for registration is a breach of trust, or that for any other reason the person dealing with the land as registered proprietor is not competent at law or in equity to deal with it in the manner proposed; it is his duty to refuse to register.
>
> I do not suggest, nor was it contended, that where the Registrar merely suspects that the dealing may be a breach of trust or otherwise improper, or he knows no facts to justify him in concluding that it is so, it is any part of his duty, or that he has any right, to ask for information or make inquiries in order to ascertain the true facts."

Mr. Betts.—In other words, we are not to nose around.

Mr. Fraser.—The Judge continued—

> I desire to limit my opinion with regard to his power to refuse registration to those cases in which the facts within his knowledge appear to him to show that the proposed dealing is improper.

Mr. Bailey.—That is, facts derived from documents, but the Registrar would not be justified in acting merely on the word of some one else.

By Mr. Fraser.—The case Mr. Betts mentioned regarding the executory consideration was neither one of breach of trust nor a case in which the registered proprietor was not competent to deal with the land?

Mr. Betts.—That would be a case in which beneficial owners were selling.

Mr. Fraser.—I have in mind a case of a vendor, *sui juris,* with a knowledge of all his rights. He executes a transfer and applies for it to be registered, although there is some unpaid purchase money. The Titles Office then refuses to register it. It says, "We will protect this man against himself."

Mr. Betts.—We would refuse only if it is apparent on the face of the transfer that some part of the purchase money is unpaid, thus disclosing an outstanding equity, but we would not be protecting the man, we would be protecting the assurance fund. If a man is foolish enough to do that sort of thing, he may do it, so long as the fund is not liable.

By Mr. Fraser.—Take it a step further. Suppose the Titles Office registered the transfer, and the purchaser resold it without paying the vendor. Do you suggest that the vendor could sue the Titles Office in any shape or form?

Mr. Betts.—Yes.

By Mr. Fraser.—Why?

Mr. Betts.—Because a title would have been given, although it would have been known that there was an outstanding equity.

By Mr. Fraser.—Would that person not be the author of his own wrong? He executed a transfer and asked the Titles Office to register it?

Mr. Betts.—Yes, but he said, in effect, I have shown in the transfer that I have an outstanding equity and you have issued a title which does not and cannot preserve it. The Titles Office is not required to register anything and everything. According to the Judge quoted, if there is an outstanding equity, it should not register the transfer. It would not be any justification of its action for the Titles Office to say, "You are the author of your own wrong."

By Mr. Bailey.—Where do you derive your authority to refuse to register a transfer where there is an outstanding equity?

Mr. Betts.—That is equity law.

By Mr. Bailey.—So far as it affects land?

Mr. Betts.—Under the Transfer of Land Act—Yes. If it is so important in these few cases that such transfers should be registered without inquiry, then, I say, absolve the Titles Office from any claim in respect of that outstanding equity.

By Mr. Fraser.—Anyhow, these cases are few in number, are they not?

Mr. Betts.—They are rare.

Mr. Fraser.—Even in the *Leviathan* case, the trustees and all the people associated with the case realized in the first place that they could not get that document through the Titles Office unless they got the approval of a superior authority, and they sought to get that authority from Mr. Justice Cussen by way of a compromise sanction as to the children. They thought that the difficulty could be overcome in that way.

Mr. Betts.—That is so.

Mr. Barry.—The fact that there are only a few cases of that kind does not necessarily mean that there will not be more in the future.

Mr. Bailey.—I can see no reason why consideration should not be stated.

Mr. Barry.—I agree with Mr. Bailey. I see no reason why consideration should not be disclosed.

Mr. Fraser.—I am inclined to agree with that view.

By Mr. Merrifield.—I think I asked Mr. Betts previously if he had any suggestions regarding the assurance fund. I think it was agreed that the fund mounted up and up and really became a source of revenue to Governments. My query was whether the fund could be used to a greater degree within his own system to enable improvements to be effected, or to expedite dealings, or whether it might be spent on the survey system to ensure greater certainty of title.

Mr. Betts.—If the compulsory provisions become law, the Government will have to pay a large amount for salaries. I daresay the assurance fund could be used for that purpose, but I do not think that any money taken from it now or in the future will enable the Titles Office to be more lenient in its view on dealings under the Act. The assurance fund is mainly derived from applications to bring land under the Act. Under the compulsory provisions there is to be no contribution to the assurance fund, and therefore the fund will gradually diminish. It is only in a few cases under the Transfer of Land Act, such as those

we have talked about this morning where the requisitions could not be satisfied, that it might be decided to ask for contributions of a £1 on account of any risk involved.

By Mr. Barry.—What sum of money is in the fund?

Mr. Betts.—A sum of £140,000. By special Act, the Government has transferred £50,000 at a time to Consolidated Revenue.

By Mr. Merrifield.—Claims against the fund have totalled about £11,000 in 80 years?

Mr. Betts.—Yes.

Mr. Merrifield.—Then, the Government need not worry unduly about claims. That brings me to the point: Does the Bill provide for the abolition of payments from the assurance fund?

Mr. Betts.—No. It provides that there shall be no future contributions to the fund in respect of Part III. But the fund would still exist, and claims could be made on it.

By Mr. Merrifield.—When a person is granted an interim title, he will not pay to the assurance fund?

Mr. Betts.—That is so.

By Mr. Merrifield.—But when all the limitations are removed and an ordinary title is issued, payments will still be made to the fund?

Mr. Betts.—No. As a matter of information, I remember a case in which a contribution of £250 was required in respect of a property worth £10,000. Mr. Guest approved of that dealing. In that case a question arose regarding illegitimate children being entitled under a will. They could not be found. Rather than hold up the dealing or refuse it, a contribution of £250 was required. It was a case of a bad title.

By Mr. Fraser.—Suppose a Registrar's case goes to court and costs are given against the Registrar, would that come out of the Departmental vote or the assurance fund?

Mr. Betts.—Out of the assurance fund. In the last case before Mr. Justice Lowe we asked for costs and the Judge asked if the Registrar had any doubt about getting his costs and said he could get them out of the fund, and made the necessary order.

By Mr. Bailey.—If one of a chain of conveyances is missing how do you know that the person who submits the title to you has a good title not subject to a restrictive covenant?

Mr. Betts.—It does not necessarily mean that because you take a conveyance you have a good title. You can have a good title subject to a restrictive covenant.

By Mr. Fraser.—You might have a good title but it might put a limitation on the use you could make of the land?

Mr. Betts.—If a conveyance is missing we would ask for its production. There might be a covenant in it. If the memorial did not contain the covenant, we waive production where the deed cannot be found, and we take a risk. That is what the assurance fund is for.

By Mr. Merrifield.—Does any form of restrictive covenant have to be registered?

Mr. Betts.—So long as it is a covenant restrictive of the user, we will register it.

The Committee adjourned.

TUESDAY, 25TH JULY, 1950.

Members Present:

The Hon. A. M. Fraser in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Crean,
The Hon. F. M. Thomas.	Mr. Reid,
	Mr. Rylah.

Mr. Alexander Philip Sutherland, Registrar of Titles, was in attendance.

By the Chairman.—Mr. Sutherland, I understand that you wish to add certain observations to the statements contained in your memorandum, which was circulated to the members of the Committee?

Mr. Sutherland.—I should like to clear up any wrong impressions that may have been given by certain evidence.

By the Chairman.—I gather from the figures you have set out in your memorandum that if there are any hold-ups you maintain they are due to lack of space, shortage of staff, and quality of staff?

Mr. Sutherland.—Yes, and also to the increased number of lodgings.

By the Chairman.—That is so, but what would be the position if you had the space, increased staff and the proper calibre of staff?

Mr. Sutherland.—During the course of his evidence Mr. Vance, my predecessor, stated that in 1939 when the total number of dealings was 91,000, cases were being put through in seven days. However, when I took over in 1945 the dealings for 1944 had dropped to 72,000, yet they were taking nineteen to twenty days to put through. The staff had decreased and although the number of dealings was considerably less the time taken was nearly three times longer.

By the Chairman.—That was because there was not sufficient staff to cope with the work?

Mr. Sutherland.—That is so.

By Mr. Thomas.—Would the filing be any more complicated?

Mr. Sutherland.—No. That was the time taken for a simple dealing, which does not require any legal examination at all.

By Mr. Reid.—That would be a dealing such as a transfer for an ordinary consideration?

Mr. Sutherland.—Yes, a mometary consideration.

By the Chairman.—Has any consideration been given to improving the set-up to facilitate the flow of the dealings; if they went through fewer hands or there was a specialized method, could dealings be speeded up?

Mr. Sutherland.—There has been no alteration in the practice of the office during the last 25 years, yet prior to 1939 simple dealings were taking only from five to seven days. Since 1939–1940 they have been taking anything from fifteen days, and up to 60 days in 1947.

By Mr. Thomas.—Is that wholly due to the lack of staff?

Mr. Sutherland.—Lack of staff and the increase in the number of dealings.

By the Chairman.—During a period of 25 years should not there have been some improvement in the system. There has been a big advance in business organization during that period. Has any attempt been made to reorganize the system to give it greater efficiency?

Mr. Sutherland.—Only in regard to picking men for various positions and perhaps cutting down entries that were made previously. We have made alterations to books so that dealings are put under headings, whereas previously remarks on the progress of the dealing had to be written in. When I say there has been no alteration in the practice of the office, I mean that the Act is the same, the Schedules are the same, and there has been no alteration in regard to the examination of dealings. We have not made the examination more strict than was the case 25 years ago.

By Mr. Rylah.—Do you not think it would be better if there was a Director of the Titles Office, who would be responsible for the whole understanding. Under the Director there would be four heads of departments—the Commissioner who would deal with the legal side, the Registrar who would be concerned with the ordinary titles, an administrative officer concerned with all staff problems, and an officer in charge of the Survey Branch?

Mr. Sutherland.—Of course, an officer in charge of personnel would conflict with the Secretary of the Law Department, who is at present responsible for staff.

By the Chairman.—For the present purposes you have to disregard the Secretary of the Law Department.

Mr. Sutherland.—I think it would be very helpful if the officer responsible for personnel could approach the Public Service Board directly and state a case.

By the Chairman.—Under Mr. Rylah's idea the Director would approach the Board through the staff officer.

Mr. Sutherland.—I know that in other States there are personnel officers who are responsible for obtaining the necessary staff.

By Mr. Rylah.—You agree that a personnel officer is required?

Mr. Sutherland.—I think it would be advantageous if such an officer existed.

By Mr. Rylah.—Would it not be a further advantage to have a director to co-ordinate the work of the four sections I have suggested?

Mr. Sutherland.—From what I have read of the evidence it is suggested that one set of requisitions should go out. That would be most difficult, because in the first examination something might be found which would preclude that dealing from being registered, but it is suggested that the requisition should go to the Survey Branch. If that were done the work done by the Survey Branch would be wasted because the dealing might be withdrawn.

Mr. Rylah.—I do not consider that one set of requisitions would solve the problem.

Mr. Sutherland.—That seems to be the thought running through the evidence I have read.

Mr. Rylah.—I am quite prepared to accept the advice of the technical officer on how to deal with requisitions, but I am concerned about the co-ordination of activity in some way to ensure that bottle-necks are removed.

Mr. Sutherland.—It is not a question of bottle-necks at all at present, as no branch is ever waiting for work. Under present conditions there are always sufficient men in one department to give work to the next. I cannot remember when any particular branch has had to wait for work because another branch has not had enough officers to attend to the work of their particular section.

The Chairman.—The term " bottle-necks " might not be a good one, but I have heard solicitors complain that it takes a long time to get a dealing through the Titles Office, that clients cannot obtain their titles except after months of waiting. Of course, there may be no justification for their criticism.

Mr. Sutherland.—I hear most complaints with regard to applications to bring land under the Act. That is within the Commissioner's department, where there are requisitions which are very difficult to meet. However, in other sections fewer than 1 per cent. of the dealings take longer than a reasonable time to be dealt with.

Mr. Rylah.—It seems to be generally accepted in the profession at the moment that it takes somewhere in the vicinity of two years and probably more for a plan of subdivision to be registered and the dealings following it to go through.

Mr. Sutherland.—Yes. That is because plans of subdivisions are eighten months behind. Mr. Arter has informed me that he cannot obtain the trained staff to deal with plans of subdivisions. That work requires the attention of skilled men, and they are not available. He is training them, and he informed me that last month was the first time more plans were examined than came in. However, they are eighteen months behind at present.

By Mr. Reid.—I suppose the shortage of staff is partly attributable to the fact that many technical officers are going to Commonwealth Departments rather than into the State Public Service?

Mr. Sutherland.—Yes, and also to the State Electricity Commission and other undertakings. The examining staff has examined between 13,000 and 14,000 transfers which are awaiting plans of subdivision, and they have been waiting for months.

By the Chairman.—The present procedure is, when a transfer is lodged the lot number in the transfer cannot be given for some considerable time afterwards?

Mr. Sutherland.—The lot number is given but not the plan number. That department is admittedly a long way behind.

By the Chairman.—Are you familiar with the practice in New South Wales or in South Australia?

Mr. Sutherland.—No, I have not had an opportunity of examining the systems operating in those States.

By the Chairman.—There must be an enormous number of dealings in New South Wales?

Mr. Sutherland.—Recently the Registrar of Companies in South Australia visited me and I asked him what the position was in South Australia in regard to staff. He stated there was no difficulty with staff as they had out-bid the banks. If there is no difficulty in regard to staff there is no trouble with the work.

By Mr. Reid.—Your problem is that the temporary men are no good?

Mr. Sutherland.—Compared with the average permanent officer the efficiency of the average temporary officer is about 60 per cent.

Mr. Reid.—I understand that the shortage of permanent staff in the Titles Office is attributable to the fact that not sufficient men or women can be recruited into the State Public Service.

Mr. Sutherland.—In the past five years I have lost 26 permanent officers and received ten young permanent officers.

By Mr. Rylah.—You have stated that in your opinion the standard of examination set by the Public Service Board deterred applicants?

Mr. Sutherland.—The educational standard was fairly high. I know of two who were turned down by the State but were accepted by the Commonwealth. The standard has been lowered because an internal examination is now held, and that has helped the position.

By Mr. Rylah.—In your reports about staff shortages and when asking for additional staff have you set out the fact that the section dealing with plans of subdivisions is eighteen months behind?

Mr. Sutherland.—I have left that to the Surveyor and Chief Draftsman to stress to the Board.

By Mr. Rylah.—Has that been stressed?

Mr. Sutherland.—Yes. As a matter of fact I know that the technical schools have been canvassed for officers. Some were obtained, but also officers have been lost.

By the Chairman.—That is because there is not a large enough pool and not because the Public Service Board is holding up appointments?

Mr. Sutherland.—That is so. There is competition for the officers by the Melbourne and Metropolitan Board of Works, the State Electricity Commission and the Melbourne Harbor Trust, and those undertakings offer certain inducements. For instance, recently I lost an officer because an undertaking was able to provide a house for him. The State Public Service cannot compete against that.

By the Chairman.—Is not that a good argument why all public authorities should have a uniform practice, so that one Department will not purloin staff from another Department?

Mr. Sutherland.—They are all Government instrumentalities.

By Mr. Rylah.—There is an impression that there is perhaps lack of co-operation or of co-ordination between the Registrar's department and the Commissioner's department. Once a dealing gets into the Commissioner's department, the Registrar loses touch with it and does not come into contact again until the Commissioner pushes it back to him. Is there any way of overcoming that?

Mr. Sutherland.—A dealing referred to the Commissioner would involve a legal question, and the Registrar would not take it out of his hands once he had placed it there. He would abide by the decision of the Commissioner.

By Mr. Rylah.—Is there any system of assuring that there is a flow of dealings from the Registrar to the Commissioner and back again?

Mr. Sutherland.—I do not understand just what you mean by that. As soon as the Commissioner has put his seal on the document it comes back to me.

By Mr. Rylah.—Does the order of priority in the Commissioner's department depend on the amount of work there?

Mr. Sutherland.—Yes, and on the staff he has.

By Mr. Rylah.—Would there be any value in having an over-all Director to co-ordinate the activities of the various departments? I have had the feeling from reading the transcript that the Registrar and the Commissioner work in water-tight departments.

Mr. Sutherland.—That is not so. The Registrar goes every morning to the Commissioner with work. The Commissioner may retain only one out of a dozen cases. I take the others back. They have been dealt with on the spot.

By Mr. Rylah.—What happens to the old law dealings that go direct to the Commissioner?

Mr. Sutherland.—The Registrar has little to do with those except to issue the title.

By Mr. Rylah.—After the Commissioner has completed his work it goes to the Registrar for issue?

Mr. Sutherland.—That is so.

By Mr. Reid.—Apart from staff shortage has any consideration been given by senior officers of the Department to methods of economy in administration? Do you have a conference from time to time on those points?

Mr. Sutherland.—Every Registrar consults the branch heads if he thinks any saving could be made. That is done regularly.

By Mr. Reid.—A great deal of complaint has arisen regarding the length of time it takes for a person to lodge a caveat, which is often a matter of some urgency. Have you given consideration to the fact that it might be possible to lodge caveats at a separate lodging office apart from the general reception office?

Mr. Sutherland.—You would be getting away from priority if you did that. A man in one room might put in a dealing and time it at 11 o'clock. A man in the caveat room, who might actually have been earlier, might lodge a caveat and time it 11.1 a.m. The discrepancy might affect that very dealing. The idea was mooted some time ago in regard to those lodging more than twenty dealings and those lodging less than that number. It would be very dangerous to take the entries away from the one book. Once you start to distinguish between the two you are on dangerous ground. There was recently a case before the Court where the priority of caveats arose.

Mr. Reid.—I had occasion to lodge a caveat the other day. I was there early and waited about an hour, which was a comparatively short time. There was some one ahead of me who was lodging 80 dealings.

Mr. Sutherland.—That should not have happened. If you had seen the man in charge of the room you would have been attended to.

By the Chairman.—Would Mr. Reid have been taken out of his turn?

Mr. Sutherland.—No.

By the Chairman.—Might not one of the 80 dealings have involved the transaction in which Mr. Reid wanted to lodge a caveat?

Mr. Sutherland.—The time is recorded on each transaction. If some one had 80 dealings to lodge at 10 o'clock, Mr. Reid's transaction would be timed, say, 10.5 a.m. If another man were put on the counter and took Mr. Reid's dealing first it would be timed at 10.5 a.m. and the others would be 10 o'clock. No one would be prejudiced.

By the Chairman.—Then it would not make much difference to have a separate caveat room if the clocks were synchronized. Would it affect priority?

Mr. Sutherland.—It might.

By the Chairman.—Then priority depends on the position in the queue?

Mr. Sutherland.—Exactly. Recently a man lodged a caveat. The time showed that, although he was taken twenty minutes in front of another man, he was actually later.

By the Chairman.—Have you seen this letter from Mr. Jenkins, Secretary of the Municipal Association? On the view of priority expressed there, you would have a queue stretching a very long distance.

Mr. Sutherland.—Mr. Rigby saw me on that point, and I agreed with him. I pointed out that it would cause a tremendous amount of work and would be tantamount to using a steam hammer to crack a nut.

The Chairman.—That would be so if you were dealing with all the caveats spoken of by the municipalities.

Mr. Sutherland.—That was what I pointed out. I suggested that the proposed Bill be postponed until adequate staff was available. The ideal would be for a person to be able to go to the Titles Office and see everything affecting a title. In 40 odd years there have been only two cases of a man not knowing of something that made his title bad.

By Mr. Thomas.—What is the general charge for lodging a caveat?

Mr. Sutherland.—Seventeen shillings and sixpence.

By Mr. Rylah.—Do you see any real reason why the Registrar-General who is concerned with the registration of companies, should not be divorced entirely from the position of Registrar of Titles?

Mr. Sutherland.—It could be.

By Mr. Rylah.—Is there any reason why the office dealing with companies should not be in a separate building?

Mr. Sutherland.—I think that is feasible. I have thought that we could take the instrument as being sufficient. Often the persons signing as directors are not listed as directors because they have neglected to register.

By Mr. Rylah.—Is that actually the only cause of reference?

Mr. Sutherland.—Yes. The only other time would be when a company was perhaps making a gift of land and we would want to see the company's papers to make sure that it had the power to make such a gift.

By the Chairman.—Are the claims on the insurance fund negligible?

Mr. Sutherland.—Yes.

By the Chairman.—Perhaps too many magnifying glasses are used on these dealings. Does that impede the flow?

Mr. Sutherland.—It did not impede the flow before the war.

By Mr. Rylah.—Do you not recognize that people engaged in any form of enterprise have had to organize to deal with increased work and shortage of staff?

Mr. Sutherland.—We are dealing with land, not motor cars. Cutting down on the work might weaken the title, which the Government guarantees.

By Mr. Rylah.—A simple transfer might refer to "all my estate." It is stopped and sent back because it should have read "all my estate and interest." Could not the Titles Office add the words "and interest"?

Mr. Sutherland.—That is done.

The Chairman.—One of the answers is that there should be a statutory form.

Mr. Sutherland.—That is what I have been proposing for years. The legal profession is against it. I have just received a report from the Law Institute Committee on the point.

By the Chairman.—And the members of the Law Institute Committee are still against it?

Mr. Sutherland.—Yes. They say it will do a disservice to the profession.

By Mr. Rylah.—Are any reasons given for that statement?

Mr. Sutherland.—No.

Mr. Rylah.—Although I am a member of the profession, the point is new to me.

Mr. Sutherland.—If there were a statutory form it would achieve three purposes. It would reduce stopped cases by 50 per cent.; it would increase the output from my staff because they would not have to read through a lot of typewritten forms, and the forms would be easier to handle in the Register Book.

Mr. Rylah.—My impression of the New South Wales form is that there would be a fourth advantage. Even the dumbest law clerk, if he looked at the instructions, could fill in a form.

By the Chairman.—Are not solicitors paid the equivalent of estate agents' commission based on the value of the property, the value determining the costs in connexion with the transfer?

Mr. Rylah.—I dissent from the suggestion that the rate is estate agents' commission; it is nowhere near it.

The Chairman.—I did not mean their quantum.

By Mr. Crean.—In view of the fact that Mr. Sutherland has up to the present been answering legal members of the committee, may I ask, on behalf of lay members, whether there is a possibility of some fault lying with the legal profession—for instance, in relation to their procedure in the matter of lodgment—rather than with the staff at the Titles Office? Is there any way in which the procedure adopted by solicitors could be improved?

Mr. Sutherland.—I have no complaint to make, but I think that not all the dealings are sufficiently checked before they come in. About five weeks ago, I had before me a mortgage that had been lodged. It was undated and not one of the parties had executed it.

By Mr. Reid.—In such a case, would not the action in your office be to send out a requisition card stating, in effect, "your dealing is stopped"? That card would not assign any reason why the dealing had been stopped or what was wrong with it?

Mr. Sutherland.—That is so.

By Mr. Reid.—Is it considered that the method of sending out requisition cards causes a certain degree of unnecessary work not only in your office but also to the person lodging the dealing? Some one receives such a requisition card which conveys no reason for stopping the dealing. I presume that the law clerk goes to the "stopped cases" counter and asks for the dealing to be found. The clerk is put to the trouble of finding the dealing concerned and afterwards he returns to his office armed with the necessary information as to what is wrong. Subsequently he makes a second trip to your office to rectify the matter.

Mr. Sutherland.—If the law clerk could see that it could not be rectified, he should withdraw it. In certain circumstances, we would have to send out a memorandum every time.

By Mr. Reid.—In the long run, would not that be a better method and save your officers the time involved in dealing with cases at least twice?

Mr. Sutherland.—Cards would have to be sent to a typist for filling in, enveloping, and despatching by post.

By the Chairman.—Whereas at present, the advice is sent by means of a simple card?

Mr. Sutherland.—Yes, and that card intimates that the case has been stopped. The Assistant-Registrar examines every stopped case and notes on it certain

things, such as "amend" or "consent required." The only case in which it is necessary for a law clerk to return to his office is one requiring the consent of the party affected by the amendment. I suppose that in about 60 or 70 per cent. of the cases any amendment could be made straightway by the solicitor's clerk.

By the Chairman.—Suppose that there was this statutory form of transfer and the question of consideration was divorced from you, would not that speed up dealings immeasurably? I am suggesting that consideration should be the prerogative of the Stamps Office. With the imprimatur of that office regarding true consideration and so forth and with the use of the statutory form, the matter would be completed.

Mr. Sutherland.—Nearly 90 per cent. of the dealings are for monetary considerations.

By the Chairman.—And they ought to go through automatically?

Mr. Sutherland.—I would say that they do.

By the Chairman.—Would not the statutory form cover 95 per cent. of the cases?

Mr. Sutherland.—Yes.

By Mr. Thomas.—Is it not a standardized form?

Mr. Sutherland.—Yes.

The Chairman.—Reverting to the caveat proposal, I think it is not practicable in Victoria, at least for some years. Where could the necessary staff be obtained? I have no doubt that many persons would feel that their tenancies ought to be protected.

Mr. Sutherland.—I thing so, too. I have spoken to many members of the profession who have said that although, in regard to the settlement of a cash transaction, a certificate of rates owing might be obtainable in two or three days, they would proceed with a caveat straightway as soon as the client had left their office. They would not take the risk of waiting until they received the certificate and could lodge the transfer.

By the Chairman.—What is the basis of the rate certificate? Is it conclusive evidence against a municipal council?

Mr. Rylah.—I think it is conclusive.

The Chairman.—Mr. Jenkins, Secretary of the Municipal Association of Victoria, says in his letter—

> As it is understood that the purpose of requiring these caveats to be lodged is to provide a means whereby persons interested in land may ascertain the extent of the charges relating thereto, I would again state that there is already provided statutory means of ascertaining with certainty the amount of any charges for street and footpath construction in favour of municipal councils, namely, by the obtaining of a rate certificate.

Suppose the rate certificate shows either that nothing is owing or that £10 is due for roadmaking and it is subsequently shown that there is a sum of £140 due on that account. Does the municipal council lose that amount or does the loss fall on the new purchaser?

Mr. Thomas.—I do not think that a council has the power, in present circumstances, to make that charge.

Mr. Rylah.—It has. One of the difficulties in many cases is that of councils making charges long before there is a possibility of roads being constructed.

The Chairman.—Charges could not be made before the road-making scheme was sanctioned by a council, all the relevant provisions of the Local Government Act complied with, and a proportionment arrived at.

Mr. Rylah.—That is so, but in some cases that procedure is followed years before the actual construction of a road or street.

By the Chairman.—If a purchaser ascertains that there is nothing due for road-making charges and after he has completed the transaction finds that actually £220 is owing on that account, where does that liability fall? Mr. Jenkins seems to suggest that some protection is afforded. The cost of roadmaking is a charge on the land and such charges stand until they are liquidated by payment. At any rate, that is the way the matter appeals to me.

Mr. Sutherland.—I know that rates are the first charge on the land according to the Local Government Act, but I do not know the position regarding road constructions.

By the Chairman.—Does Mr. Sutherland desire to comment on two other questions? In the first place, there is the case to which Mr. Schilling referred.

Mr. Sutherland.—Mr. Mackinnon's explanation of the practice is correct, and was followed in the case quoted by Mr. Schilling which I dealt with personally. He claimed that the distinction was made but that was not so. After all the trouble, a certain document which had been lost was found in his office.

The Chairman.—The other matter concerns examining clerks and is mentioned on page 54 of the minutes of evidence.

Mr. Sutherland.—That is so. I feel that an injustice was done to the examining clerks. I quote from the evidence—

> Mr. Vance.—. . . . At present, there are men working as examining clerks without qualifications, but they have had to be put on. How they learn the work no one knows, because there is no one to instruct them. They must rely on their associates and ask "What would you do in this case?" Each man has a practice notebook which he keeps in his own desk. He does not always tell the other fellow and help him to get ahead of him.
>
> By the Chairman.—Their practices might vary?
>
> Mr. Vance.—Yes. . . . .

That is altogether wrong. Every examining clerk is a picked man. About twelve months after I took over as Registrar of Titles, I put a man off because I did not think he measured up to the work. In the first place, every examining clerk must know the schedule forms for transfers, mortgages and so on; those schedule forms are contained in the Act. Every examining clerk has a copy of the Act and must know the forms. A roneod copy of rulings of Titles Office practice is available to every examining clerk. These rulings appear in Wiseman's *Transfer of Land Act* and also in Currey's *Manual of Titles Office Practice.* There is also a rulings book kept in which any alteration or addition is noted. This book is available to every examining clerk. These men are trained and the practice cannot vary because they all receive the same information. The training is not haphazard.

By the Chairman.—Is the rulings book brought up to date?

Mr. Sutherland.—Yes, and every ruling is entered in it.

By the Chairman.—Does a ruling given in 1860 stand for all time, or is it modernized?

Mr. Sutherland.—It might be struck out. Since I have been Registrar I have struck out certain things which I thought should not be asked for.

By the Chairman.—Where is the rulings book kept?

Mr. Sutherland.—At present Mr. Forbes is in charge of examinations and the book is kept in his room. When a ruling is entered every man sees it, and some of them put a note into their own books.

By the Chairman.—Is there any conference held on the rulings?

Mr. Sutherland.—Every ruling comes from the Registrar. It might be given after consultation with the Commissioner, and probably is. In regard to this matter, there are special men who deal with covenants, dealings pursuant to wills, partition and other agreements, by co-operative societies and companies so that there will not be any variation. That has been the practice for as long as I can remember. To say that practice might vary is distinctly wrong.

By Mr. Reid.—At present one of the great causes of complaint is the length of time it takes for a person who wishes to search a certificate of title to get his title and also the time that elapses between when he lodges his permit to search and when he is told that the title is available or not. Can you give any indication as to why that delay occurs?

Mr. Sutherland.—That department is causing me the most concern, but the position Mr. Reid has outlined exists because of the shortage of staff. Last March I asked the Public Service Board for five additional men to undertake the duties of sorting and putting away. The position is that when a solicitor or clerk comes up to search a title that title is got out for him. At the end of the day, with the completed dealings coming through, there are thousands of titles out of the files. They are put into heaps, because there are not sufficient men to sort and put them away. The next day a solicitor may wish to search a title which has not been filed, and to obtain it an officer might have to go through the various heaps of titles, sometimes as many as twelve.

By the Chairman.—What happened to your application for those five men?

Mr. Sutherland.—Three officers were appointed. One stopped only a fortnight and another a month. The Board appointed another man and he stopped for only ten days. The present position is that I have only one man out of the five I requested.

By Mr. Thomas.—Why would they leave?

Mr. Sutherland.—Because bigger salaries are offered outside. The work to be done is sorting and putting the titles into bags. It is not highly remunerative, and as men can get high wages outside they will not remain. I quite agree that searching is a headache at present.

By Mr. Rylah.—Is there any likelihood of additional staff being appointed to replace those you have lost?

Mr. Sutherland.—I have to depend on the Public Service Board. The difficulty is that men doing this work should be under 40 as older men cannot be expected to pull out the bags and put the titles in. Young men are most difficult to get. I have been fortunate that certain of the clerical officers have volunteered to work overtime in respect of the work involved in the Register Book branch.

The Committee adjourned.

MONDAY, 31ST JULY, 1950.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Crean,
The Hon. A. M. Fraser,	Mr. Reid,
The Hon. F. M. Thomas.	Mr. Rylah.

Mr. Cyril Frank Knight, Secretary to the Law Department, was in attendance.

The Chairman.—I presume that I understand the position correctly when I say that Mr. Knight has been asked to attend for the purpose of giving information regarding the congestion of work in the Titles Office and the organization of that office generally.

Mr. Fraser.—We had in mind also the fact that the Registrar said that nothing had been done for 25 years in respect of reorganizing the place or of endeavouring to introduce modern office efficiency and so on.

Mr. Knight.—To begin with, I join issue on that point. I am willing to say that, as far as the Survey Branch is concerned, there is no comparable place in the British Empire for efficiency. The Branch has everything it needs in the way of equipment. It is arranged, in regard to accommodation, in such a way that a case in any one of the groups—there are seven groups, according to the class of work that has to be done on the surveying side—is rarely in that place longer than two days, with one exception, namely, the subdivisional branch. The reasons for that exception are that there is insufficient elbow room; that we want six more trained survey draughtsmen and that, since land controls were lifted, the amount of work on the subdivisional side has increased—I am guessing now—from 300 to 400 per cent. at least. On the other side, again the greatest pinch is on the question of accommodation. The building is certainly not large enough, particularly since the Stamps Office takes the whole of one corridor on the northern side and the Public Solicitor a corresponding position upstairs. The Registrar of Births, Deaths, and Marriages also occupies a big room and an ante-room. Furthermore, there has been an increase in dealings from 2,100 a week to about 4,000 a week.

By the Chairman.—Since when?

Mr. Knight.—Since 1939. The staff is down 20 per cent. or thereabouts. No matter what efforts the Public Service Board has made to obtain staff, it has been unsuccessful. It has been said that the salary we are offering juniors is not enough—that it should be increased; but that is a counsel of perfection, because it does not work out that way. Whenever the Public Service Board increases salaries in the Branch, outside industry goes one better. There is hope, however, in the new system of examination. As is known, every candidate for entry to the Public Service must pass a competitive examination. We used to have examinations once a year, combined with the intermediate and leaving examinations for the Melbourne University. Now that has proved a failure because it takes too long to announce the results. By the time the results are published and the candidates know whether they have passed or not, they are in other jobs which they will not leave to take positions in the Public Service. We were getting about 37 passes and only about six of the candidates came to the Public Service. Now there has been a reversion to the old system of having the Education Department prescribe the examinations. It is holding three or four a year and we are hoping to obtain more of the candidates. I think that we probably obtained about 30 following the last examination and that is a great improvement on what occurred in connection with the university examinations.

From 1883 until possibly fifteen years ago, vacancies in the Public Service were filled by successful candidates at examinations set by the Education Department. Senior officers and permanent heads—leaving Boards and Commissions out of consideration—had qualified to enter the Service, in the first place, by passing an Education Department examination. I do not think that the Public Service has done badly by having recruited appointees in that way. This brings me to the position in the Registrar of Titles Branch. I think that representatives of the legal profession have inspected the counters both inside and

outside. Regarding the system, I do not know of any process that can profitably be cut out to make the distance from lodging to registration any shorter; but I have in mind a reorganization to the extent that I do not think examining clerks should be under the Registrar of Titles. The most intricate part of the work of the Titles Office is the examinations. At that stage all the requisitions on dealings are raised. The examining staff is divided into two branches. In the first place, there is the Commissioner, under whom there are the Examiners of Titles, qualified lawyers, who do the intricate work of the office, both under the Transfer of Land Act and under the general law. Furthermore, on the registration side and under the Registrar of Titles himself, there is a series of clerks, senior and junior, who are not qualified except by experience in the office. They raise and send out requisitions that frequently annoy the legal profession because of their pernicketiness. I think some check should be effected in that regard. The Branch should be divided into a mechanical side under the Registrar and a technical side under the Commissioner of Titles, with lawyers as Examiners, and the assistant-examiners who are qualified but are just gathering experience, and cadet examiners. They should be under the sole control of the Commissioner of Titles. In that way a check could be made and the possibility of foolish requisitions going out would then be avoided. Again, the Branch should be given the task of perusing all rulings that have been in operation since 1862 and of discarding a lot of them, if thought fit, in the interests of expedition.

That brings me to another point where delays occur. We have what we call patent errors; no doubt previous witnesses have mentioned the facts. A patent error is one that should never have occurred because probably it often arises through something being left out of the statutory form; it may arise from a clerical or a typographical error caused through inefficiency, or it may be due to an inefficient check in the lawyer's office. If the lawyers were compelled to use a printed form for transfers, patent errors would be reduced practically to nil. In the Conveyancing Branch of the Crown-Solicitor's Office everything is done on printed forms, and I am prepared to say that there would not be .005 per cent. of requisitions on dealings in that office. We deal with the most complicated conveyancing and transfer matters that could be found anywhere. We deal with all classes of titles to land for all kinds of bodies, such as the Country Roads Board, the Railways Department, and various other Government undertakings including the State Rivers and Water Supply Commission. There are some real headaches in the conveyancing work done in that office which falls both under the general law as well as under the Transfer of Land Act. If it is good enough for the Crown Solicitor's Office to use printed forms without the delays attendant on answering a series of requisitions, it should be good enough for the legal profession as a whole. It may be said that there is a grave objection to putting out printed forms and requiring them to be lodged compulsorily, because of the risk of delay. However, that point does not terrify me nor should it have that effect on the legal profession. For 65 years, it has been possible for any one to purchase from law stationers printed will forms and other legal documents for 6d. or 1s. each. Even a partnership agreement form can be obtained. The public does not seem to have availed itself to any great extent of this facility to the detriment of lawyers. When the documents are typed in lawyers' offices, the margin of error is doubled, because it is impossible to get 100 per cent. accuracy in work in those offices. Consequently, a document often is presented for lodgment when it is not properly checked, with the result that it has to be held up. For example, the words "in Victoria," the insertion of which is prescribed by statute, may be omitted, whereas when the forms are printed nothing can be left out—the requisite words are there for all time.

As to the statement that there have been no reforms in the Registrar of Titles Branch for 25 years, that I think is an over-statement. The outside public does not know anything about the changes that have been effected from time to time. Short cuts have been introduced, sections reorganized, and branches subdivided. Regarding major reforms, I would point out that in 1925-26, the Government of the day spent something like £15,000 or £16,000 on a complete reconstruction of the office, altering the set-up so as to get smooth progression through the office and avoid the physical bottle-necks that then we had to face. That reorganization has been outgrown because the number of dealings now lodged is beyond the capacity of the staff and accommodation to handle. *Per capita,* we handle more dealings now than at any other time in the history of the office and in fact more than in any other State.

By the Chairman.—Can you tell us something about searching? We have been informed that the process of getting a title out for search takes almost a morning and practically precludes the possibility of a final search before settlement.

Mr. Knight.—I admit that it does take a long time; that is another weakness. There are unsorted dealings by the thousand. A dealing may be one already in progress or in the bag—that is, in the register book itself—and it is a question whether the title could be obtained in half an hour or a couple of hours.

By the Chairman.—I understand that the position is worse than that. A solicitor who desires to make a search sends a clerk to the Titles Office in the morning and the clerk fills in the necessary form. The search forms are, so to speak, queued up and the clerk returns about mid-day in the hope of being able to make the search. Suppose a special search is required, is there any way of providing for it without delay?

Mr. Knight.—Yes, if dealings, when once searched, were immediately sorted. What happens, in view of the few men now on the searching side, is that if there are searches relating to fifteen dealings, the documents are handed back and put into a bundle. If they were immediately taken by the searchers and placed back straightway into the bag, the difficulties would be overcome. However, that turns on a question of staff and accommodation. Vacancies on the searching staff have not yet been filled; there is too much of a lag between the creation of vacancies and the filling of them, and between the creation of new positions and appointments to them. Unless there is continuous sorting and a quick replacement in the bag, the difficulties that solicitors now experience will not be solved.

By the Chairman.—When did the bottle-neck in the searching arise?

Mr. Knight.—About 1944 or 1945 when land controls were eliminated, and it has been a gradual process. The bottle-neck was not nearly as bad two or three years ago as it is now.

By the Chairman.—How does the Conveyancing Branch of the Crown Solicitor's Office fit "Transfers by Direction" into the printed forms?

Mr. Knight.—There is plenty of room on the form for the typing in of additions.

By the Chairman.—Is there sufficient room for those cases where there are a number of parties?

Mr. Knight.—Yes. The form is a big one. A further advantage of a printed form would be the uniform size, which would help considerably in the sorting and filing at the Titles Office.

By the Chairman.—Mr. Rylah, as we now have a copy of the New South Wales form, would you care to ask Mr. Knight the questions which you directed to Mr. Sutherland?

Mr. Rylah.—There were a number of points, but I think they were covered by the question of space and by having a form bigger than the New South Wales one.

Mr. Knight.—The form used in the Crown Solicitor's Office is larger than that prescribed in New South Wales.

By Mr. Rylah.—There would not be sufficient room on the New South Wales form to deal with transfers of unregistered plans of subdivision?

Mr. Knight.—No. We do not get "Transferee covenants with the transferor" to such an extent that we would require as much space as is left on the New South Wales form.

By Mr. Rylah.—There are some very long dealings.

Mr. Knight.—Yes, I agree, with restrictive covenants.

The Chairman.—The New South Wales form allows of an annexure, and in some cases I presume the plans would be by annexures.

Mr. Knight.—On our form there is plenty of room for the drawing of a plan.

Mr. Rylah.—I have recently witnessed several transfers in my own office and they have gone into two pages of demy.

Mr. Knight.—How much would be the formal portion?

Mr. Rylah.—I could not say, because I have not been concerned with the machinery of them but have simply witnessed them.

The Chairman.—A great deal of the material on the New South Wales form could be omitted, but much of it would be directional. It is a matter of getting the correct form.

Mr. Rylah.—It is a question of designing a form to achieve the purpose, but I do not think the New South Wales form would be suitable.

Mr. Knight.—The costs will not vary whether the whole document is typed or whether a printed form is used, as the scale of costs is fixed.

Mr. Rylah.—I do not think this Committee is concerned with any argument of that sort.

Mr. Knight.—I am speaking of the objection of the Law Institute on behalf of its members to any regimentation in the way of a prescribed form, and I thought that might have been concerned with costs.

Mr. Rylah.—All we are concerned with is the question of whether a suitable form can be designed for all dealings.

By Mr. Thomas.—Is there any possibility of a draft form being submitted to the Committee for study by the legal members?

Mr. Knight.—Yes. In my opinion the best way to approach the matter would be on the basis of trial and error, and for us to make out a form and have it criticized.

By Mr. Reid.—The form specified in the Act is a good one?

Mr. Knight.—Yes.

By Mr. Thomas.—Is the examination branch responsible for the delays in the caveat department?

Mr. Knight.—No. Of course, we are very short of men there, but we are coping with the work of examination. I mentioned that point particularly with regard to the irksome requests that go out and annoy solicitors and hold up dealings. I think we can reduce those delays in two ways: First, by having a printed form to cut out patent errors; and, secondly, by having all requisitions supervised by a qualified lawyer before being sent out. At present a layman examiner sends out a requisition without reference to anybody. He is a senior man.

By the Chairman.—He puts out a net wide enough to overcome any deficiencies in his own knowledge?

Mr. Knight.—Yes. Further, at a certain stage a junior examiner will send out requisitions, and later another batch of requisitions is sent out by the Registrar. I feel that that is unnecessary. All the requisitions should be discovered and sent out at once so that one visit from the lawyer who has the answers is sufficient.

By Mr. Fraser.—That is more an administrative matter?

Mr. Knight.—It is.

By Mr. Fraser.—If that is so, why has something not been done to rectify it?

Mr. Knight.—I suppose it is only a question of not directing one's mind to it. Of course, the criticism of the legal profession did not start this year. I have a file about 4 inches thick, headed, "Delays in Titles Office." During the sixteen years I have been head of the Department, there has been at least one deputation a year. On each occasion, when general allegations were being made about delays in the Titles Office, I have asked for the red ink numbers of the cases in mind. The Commissioner of Titles and the Registrar have produced those dealings and it has been proved that they were justly stopped. When the members of the deputation have seen the dealings they have agreed with the stoppages. However, we are branded as inefficient, causing delays, inattention, and all sorts of things, although we have been able to prove that that class of dealing was rightly stopped.

Another point is that very few principals bother attending the Titles Office but they send their clerks or managing clerks. Those clerks come to the Titles Office and deal with the dealings, half the time thinking they are simple matters, without showing them to their principals. We raise requisitions and to direct attention to what we want we place a card in the lawyer's post box. When a clerk receives that card he does not always bring the matter to the attention of the principal, but tries to straighten it out himself. The principal is not aware of what is going on and when he asks the clerk where the dealing is he is told that it has been in the Titles Office for three months. The reason is that the clerk will not attend to the requisition and will not disclose his mistakes to the principal. That happens frequently.

Further, when new Titles Office clerks are employed by solicitors only on very rare occasions are they shown around by their predecessors. When a new girl comes to the Titles Office we have to teach her where to go. She puts a bundle of documents down and does not know what to do with them. Our officers have to sort them out for her.

Mr. Thomas.—There should be somebody at the top to put a stop to that practice.

Mr. Knight.—How can that be done where there are 1,100 lawyers in the State?

Mr. Rylah.—The discussion is developing into a sort of defence of an attack on the Titles Office. I think we should treat it from a more dispassionate point of

view. This discussion was started on the basis that the Registrar told the Committee there has been no reorganization of the methods of the Titles Office for 25 years.

Mr. Knight.—I thoroughly agree that there has been no general reorganization, except when the physical state of the building was altered to make a better flow on the assembly line, as it were.

By Mr. Fraser.—It was also stated that except for making some small alterations in regard to the entries in a book that was about the full extent of the reorganization?

Mr. Knight.—Whose fault is that?

By the Chairman.—We are not concerned with that.

Mr. Knight.—It is the Registrar's responsibility to recommend any reorganization where he sees a bottleneck.

By Mr. Rylah.—That may be so, and that brings us to the question of whether the present organization is sound. After hearing the evidence of the Registrar and reading the transcript, I felt that no one was in control of the Titles Office. The Registrar and the Commissioner are working on parallel lines; in certain matters the Commissioner is the head, and the Registrar is in others. The Registrar has the problems of personnel on his already over-loaded shoulders. I suggested that there should be in charge of the organization a Director-General of Titles under whom there should be a Commissioner to deal with legal matters; a Registrar to deal with registrations; a personnel officer to deal with staff matters; and a survey officer to deal with survey matters. It would seem, I think, from the evidence given to this Committee, that the Survey Branch is working well and that the other three departments are "bogged down." It may be that that position has arisen because the Registrar is attempting to carry out too many functions and is not succeeding in efficiently carrying out any of them?

Mr. Knight.—If it were suggested that somebody should be in control of the Commissioner of Titles, I would protest immediately, because judicial officers should not be subject to the direction, no matter how indirect, of a lay officer.

By Mr. Rylah.—Is is possible to put the Commissioner in charge?

Mr. Knight.—No, because he has sufficient troubles on the technical side without worrying about internal organization and staff matters.

By Mr. Fraser.—How is it possible to co-ordinate the work of the office?

Mr. Knight.—It should not be necessary to co-ordinate it once there is a definite divided responsibility on the technical side and on the mechanical side.

By the Chairman.—What objection is there to a non-qualified man being over a qualified officer. Although you are qualified, there is no reason why the Secretary to the Law Department should be?

Mr. Knight.—Qualification is not a requirement.

By the Chairman.—Was Mr. Anderson qualified?

Mr. Knight.—He was a police magistrate.

By the Chairman.—Secretary to the Law Department is an organizational position?

Mr. Knight.—It is an administrative position in which the occupant must have a lot of legal knowledge.

By the Chairman.—You have under your control a number of lawyers, including the Commissioner of Titles?

Mr. Knight.—I have.

By the Chairman.—If you, as Secretary to the Law Department, decided that the organization of the Titles Office should be the responsibility of one man, is there any basic reason why he should be a qualified lawyer?

Mr. Knight.—No, probably not.

By the Chairman.—The Secretary of the Department of Health has a number of doctors under him?

Mr. Knight.—He has.

By the Chairman.—The Commander-in-Chief of the Australian Army has all sorts of technical men under him?

Mr. Knight.—Yes. He could not himself do all the jobs.

The Chairman.—In other words, the job of organization is not of necessity a job of applying specific legal knowledge about what some one said. They do not want to bog themselves down in a morass of red tape which is sometimes dear to the heart of the lawyer.

Mr. Knight.—In which case they cannot see the wood for the trees.

Mr. Fraser.—I do not know anything about the Titles Office except that it exists. I am only going on what we have heard here. We have heard Mr. Vance, Mr. Sutherland, Mr. Betts, and others, and a lot of strange things emerged. We had produced to us what are called "Canons of Construction in the Interpretation of Wills." It was drawn up many years ago and it seems to have been slavishly followed ever since.

Mr. Knight.—That should go to the technical side. No layman should interpret wills. We may not find that his interpretation is wrong for 100 years.

Mr. Fraser.—After all, there must be some one in the Titles Office who is in charge and can say, "This is wrong." Consider the Rulings Book. You have a vast number of rulings, some going back perhaps to Roman times.

Mr. Knight.—Those rulings should be revised to see if they are out of date. The technical side should do that.

By Mr. Fraser.—Why does not the technical side undertake the task and bring the rulings up to date?

Mr. Knight.—At present the responsibility is cast on the Registrar of Titles by the Act itself; it is not the Commissioner's function. Once the Act gives the Registrar these functions he has to perform them. He takes advice from the examiner's staff to guide him.

By Mr. Fraser.—Does not your answer involve this, that there should be a co-ordinating authority?

Mr. Knight.—My idea would result in that. Technical work cannot be dealt with finally by the Registrar without getting advice.

Mr. Fraser.—The suggestion made here is that the professional staff and the Registrar's Branch should have a boss over them to see that in administrative and staff matters there is a smooth flow.

Mr. Knight.—Suppose you put Mr. Sutherland in charge of the whole show, and in charge of the Commissioner of Titles. It would be virtually the same as now. The Commissioner has his technical staff going at full bat, and has no time to bother about staff matters. The Registrar looks after the mechanical side and the staff. All important matters relating to staff come to me.

By Mr. Reid.—I think Mr. Sutherland indicated that the employment of about five additional men would reduce the great delay in searching. Would applications for staff go through you?

Mr. Knight.—Yes.

By Mr. Reid.—When was the application made?

Mr. Knight.—Applications for staff have been made from time to time since 1942-43. As an example of what happens, we asked for twenty men for the index room. We got nine temporary men. Such men are coming and going all the time. I think we have five of them left. Some of them were most unsuitable; some were sacked and others left. They are birds of passage, and are not efficient. They never settle down in any employment for any length of time.

By Mr. Reid.—Would you say it is difficult to get permanent staff?

Mr. Knight.—Extremely difficult.

By Mr. Reid.—Would that be due to bad conditions for employees at the Titles Office?

Mr. Knight.—It is mainly due to the competition of outside industries.

By Mr. Reid.—Would it have anything to do with amenities at the Titles Office? They are bad, are they not?

Mr. Knight.—They are practically nil.

By Mr. Reid.—Some time ago there was an alteration of hours at the office. When was the system of having some one on duty at lunch time introduced?

Mr. Knight.—I think I gave directions for that in 1942-43.

By Mr. Fraser.—Is accommodation a burning question?

Mr. Knight.—Yes.

By Mr. Fraser.—Could you not get rid of the branches dealing with companies and business names by putting them together in one building?

Mr. Knight.—Yes, if we had a building. I have another problem like that at the Crown Law Department. The Licensing Court occupies the whole of one wing out of three floors. I have been trying since 1935 to get rid of it. When the Government bought a public office annexe in Queen-street, where the Housing Commission now is, I did my best to get a floor of that building for the Licensing Court. It is an excellent building for that purpose. The ground floor should be the Chief Office of Stamps Duties. The Public Solicitor should have rooms there and not be quartered in the Titles Office. The building was bought by the Treasury, which occupied most of it until recently, when the Housing Commission went in.

By Mr. Byrnes.—Was there a proposal for three extra floors to be added to that building?

Mr. Knight.—Yes, but there is a catch in that. I am building courts in the Law Courts Building, thanks to the activities of the ex-Attorney-General. I do not think the shell will be finished until about this time next year, and as to furniture and fittings, they will take as long again, so that in two years we may be able to hold a court. The main difficulty regarding the acquisition of buildings by the State is that there is no power to acquire them. We can acquire only vacant land.

The Committee adjourned.

THURSDAY, 3RD AUGUST, 1950.

Members Present:

Mr. Mitchell in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Crean,
The Hon. A. M. Fraser,	Mr. Oldham,
The Hon. F. M. Thomas.	Mr. Reid,
	Mr. Rylah.

Mr. Cyril Frank Knight, Secretary to the Law Department, was in attendance.

By the Chairman.—Mr. Knight, will you proceed with your evidence?

Mr. Knight.—Yes. On the last occasion I submitted evidence, I contended that a printed form should be made compulsory for use by the legal profession and others and typewritten transfers should not be lodged. I made that suggestion with a view to the elimination of patent errors, which represent approximately 50 per cent. of the stoppages in the Office of Titles. There are 24,000 stopped cases in that office as present. On an average intake of from 650 to 800 a day, including transfers lodged by the Crown Solicitor, the stopped cases represented approximately 20 per cent. If the transfers lodged by the Crown Solicitor were not included, the percentage of stopped cases would be between 35 to 40 per cent., which means that the legal profession is inefficient to that extent.

By Mr. Oldham.—Do you mean that transfers lodged by the Crown Solicitor are never stopped?

Mr. Knight.—On our dealings there are, I suppose, ·005 per cent. stopped cases.

By Mr. Rylah.—Does that include matters that are stopped because the Titles Office has not done something that is required?

Mr. Knight.—No, I will not admit that for a moment.

Mr. Rylah.—I shall not interrupt at this stage but later I shall give an example of one stoppage for nearly two months because of a requirement of the Titles Office.

Mr. Knight.—I admit that possibly there are one or two such cases but they are a very small percentage. If there were 100 such cases I could still be quite confident that we are not inefficient.

By Mr. Thomas.—Would the stoppages affect the substance of the instruments lodged?

Mr. Knight.—Very frequently. I suggest that of the overall 20 per cent. stopped cases, probably 50 per cent. are because of patent errors. The members of the legal profession want us to correct patent errors, but we are not going to take the responsibility of altering documents already executed. That is the duty and responsibility of the parties.

By Mr. Thomas.—Can the Registrar issue a stop order because of patent errors?

Mr. Knight.—Yes, because the documents are not in accordance with the statute. A statute cannot be waved to one side. If it were compulsory to use a prescribed printed form of uniform size, stopped cases because of patent errors would be avoided. Of course, people cannot be prevented from spelling names wrongly, and if that occurred dealings would have to be stopped to have corrections made. A patent error of that sort could occur on a printed form. However, that should never arise as the spelling should be checked before the dealing is lodged in the Office of Titles.

By Mr. Thomas.—Would the misspelling of a name affect the substance of an instrument?

Mr. Knight.—Yes, because it would not be the party on the Register. For instance, if the " e " in Jones is left out, the transfer will not be registered until the spelling of the name is corrected. We have to be satisfied as to the parties who execute the document. Further, under the Act, the words " signed by . . . in the State of Victoria " have to be included, but frequently the last portion is omitted. That is a patent error and the legal profession want us to make the amendment. However, so far as we are concerned, it is not a patent error as the document might have been signed in New South Wales. That would not affect the position very materially because of the position of the authorized witnesses. If a transfer is signed in New South Wales, we have to be satisfied with the qualifications of the witnesses.

I produce a series of forms that are used in the Crown Solicitor's Office. Naturally we act for various corporations and bodies and the forms are printed for those concerns to save writing or typing in the names on each occasion. If this form were altered as I suggest in the margin, it could be used generally and would cover 95 per cent. of the cases. I would agree that it should not be necessary to obtain the permission of the Registrar each time it was required to have a transfer typed. If the number of parties exceeded three, or the number of encumbrances to be put at the bottom of the transfer exceeded perhaps two or three folios, the dealings could be typed. However, that would be necessary in only 5 per cent. of all cases. Between last Monday and to-day, I made a rough survey of how many cases the printed form would cover and, in consultation with the Registrar, I came to the conclusion that 95 per cent. of all transfers lodged could be placed on this form without any disability. The other 5 per cent. would have to be typed because there would be too many parties or perhaps too lengthy restrictive covenants.

By the Chairman.—Would they be typed in a space provided at the bottom of the form, or would the whole document be typed?

Mr. Knight.—They would be typed in on the space provided. The schedule form in the Act states " being registered as the proprietor . . . subject to the encumbrances notified hereunder." There is also room at the bottom of the form for the encumbrances referred to; 75 per cent. of those encumbrances can be referred to by registered numbers. As an example, there may be six encumbrances on the certificate of title, and all that need be put at the bottom of any transfer is " the encumbrances notified on the certificate of title No. So and so." That covers everything existing on the face of the title. On the reverse side, mortgages, creations of easements and anything else that occurred since the title was first issued are shown. Reference has also to be made to those matters, but there is no necessity to recite the particulars; all that is necessary at the bottom of the transfer is " Mortgage No. So and so," " creation of easement No. So and so " and so on.

By Mr. Oldham.—Is there any reason why the Statutory form should not be amended or why a provision should not be inserted in the Act to the effect that a transfer is deemed to be subject to the encumbrances, easements, and so on, shown on the certificate of title, which would overcome the necessity of showing all those particulars?

Mr. Rylah.—There is a very serious objection to that course. If that were done, a client would be signing a transfer not knowing what the title contained.

Mr. Knight.—That is so. A person is supposed to be aware of what he is signing.

Mr. Rylah.—I do not see any difficulty in relation to encumbrances, as they are referred to by number and will fit into the available space. However, I have an example of a convenant prepared by the Crown Solicitor relating to a transfer to the Housing Commission in which the document has been typed out in full. There is a transfer by direction, and a covenant.

Mr. Knight.—That covenant does not exceed two folios, and if my idea were followed the printed form would be used except where the number of parties exceeded three, or the encumbrances, including restrictive covenants, exceeded two or three folios.

Mr. Rylah.—That particular transfer would not go on any printed form.

Mr. Knight.—It would, with the provision of the extra room that I suggest.

Mr. Rylah.—I think you said that the Crown Solicitor used the printed form wherever he could.

Mr. Knight.—That is so.

Mr. Rylah.—Obviously, this dealing defeated the Crown Solicitor because it is typed out.

Mr. Knight.—There is not the slightest reason, except for elegance, why the printed part of the form should not be done in single spacing. It would be possible for the printed form to be so arranged that there would be three or four inches left for insertion of encumbrances; that is only a question of mechanics.

Mr. Rylah.—If you examine that transfer carefully, I think you will discover certain difficulties.

Mr. Knight.—What difficulties do you suggest there are; in transfers by direction?

Mr. Rylah.—Yes.

Mr. Knight.—We have always been able to get directing parties on the printed form, and I have dealt with thousands of such cases. I am not exaggerating when I say that, because I spent many years in the Conveyance Branch of the Crown Solicitor's Office.

By Mr. Byrnes.—Why was that transfer produced by Mr. Rylah not on the printed form?

Mr. Knight.—Only because there was not sufficient room at the bottom of the form to contain the two folios of restrictive covenants. Restrictive covenants cannot be referred to by reference to a registered number because they are not registered.

Mr. Rylah.—I think there is a further difficulty, that it would be almost impossible to get the names of the four parties into that form, particularly as the first one is rather long.

Mr. Knight.—I am suggesting that the form be limited to three parties. There must be some limit, as I have seen transfers involving nineteen parties. It is quite obvious that a printed form would not be suitable for such a dealing.

Mr. Oldham referred to the question of implied encumbrances. We get that in every lodged plan of subdivision. If all easements and other encumbrances created in certain subdivisions had to be recited it would take up perhaps two pages of demy. The act states that when a plan of subdivision is lodged, all encumbrances, easements and other things of that nature shall be deemed to be included in every transfer of land, therefore they need not be mentioned. Mr. Oldham suggests that all the encumbrances existing at the time of the lodging of the transfer could be deemed to be included in the transfer, but I do not know whether that would be acceptable to the legal profession, on the grounds mentioned by Mr. Rylah.

Mr. Rylah.—It would be most unwise to introduce anything like that.

Mr. Fraser.—There would be only 5 to 10 per cent. of dealings unsuitable for the printed form, and uniformity would be obtained in 90 per cent. of the cases.

Mr. Rylah.—I am in favour of the printed form, but I think we have to consider very carefully the circumstances in which it should not be used, otherwise I anticipate the stopped cases will increase considerably above 24,000. Unless we formulate a very comprehensive scheme, it will be at the Registrar's discretion whether the printed form shall be used or not.

Mr. Reid.—I think Mr. Rylah has correctly summed up the position. I am in favour of using a printed form in a great majority of cases. Apart from all other considerations of departmental practice, I think the shortage of staff in the average solicitor's office would be a further paramount reason why a printed form should be preferred. Then you get this difficulty; when you provide exceptions you leave the way open for the use of typewritten forms unnecessarily.

Mr. Knight.—There would be no limitations on either side if you provided that the form need not be used if there were more than three parties or if the matter at the bottom exceeded three folios.

Mr. Rylah.—It will be necessary to have a fair amount of room, especially where you have to deal with a company with a registered office which has to be described. There has to be a fair amount of room for the description of the land.

Mr. Knight.—We file transfers in the same class of bags as titles. There is no reason therefore why they should not be of the same size. A double sheet would restrict the filing system because you would be up against storage space and accessibility.

By Mr. Fraser.—Would a cabinet system be of any assistance?

Mr. Knight.—We have a cabinet system.

By Mr. Fraser.—Could women be used for the filing work?

Mr. Knight.—I could not recommend women for the work. The men are on their feet all the day, they have to stretch, and they have to haul down bags weighing up to 16 lb.

By Mr. Reid.—Is that system of keeping documents in bags prevalent in registrar's offices in other States?

Mr. Knight.—I believe the same system exists in all the other States.

By Mr. Reid.—Have you personally inspected the titles offices in the other States?

Mr. Knight.—I have not, but some of the other officers have, and have reported. I think it is the only way you could file loose folios in any registry.

By Mr. Reid.—Have you made a recent personal inspection of the Titles Office in Melbourne?

Mr. Knight.—Yes, last Thursday.

By Mr. Reid.—At what time of the day would that be?

Mr. Knight.—9.30 a.m.

By Mr. Reid.—That, of course, would be before the biggest rush of business set in?

Mr. Knight.—When we left there were roughly 100 people searching. Not more than 120 or 130 people could be there at one time.

By Mr. Reid.—Have you made an inspection at 11 or 12 o'clock in the morning?

Mr. Knight.—My inspections are regular; they are done before the rush because I do not want to take up the time of the officers in the busiest period.

By Mr. Crean.—How many titles are there in existence?

Mr. Knight.—There are about a million and a half of certificates of title, and for every certificate of title there is an average of six transfers and two mortgages, apart from creations of easement and other documents. Transfers are filed separately and mortgages separately, by the same system but in a different part of the strong room.

By Mr. Crean.—Would it be possible to file all the other documents with the certificate of title?

Mr. Knight.—That would not be possible. The certificate of title might be wanted in one place and the mortgage in another. Coming back to patent errors, it is remarkable to note that the Associated Banks rarely have a stopped case. They use printed forms. I suppose that with their large staffs checking is done accurately. That is perhaps not possible in a small office.

Mr. Thomas.—The banks carry a great responsibility because they handle the actual cash.

Mr. Knight.—It is notorious that the banks have efficient staffs.

Mr. Rylah.—I think your figure of stopped cases due to negligence in the legal profession is entirely misleading. I propose to give you one or two examples from my office to illustrate how untrue the statement is. A plan of subdivision was registered in September, 1949. All the transfers subsequently were stopped because consents to insert the plan number were not acceptable, although they had been prepared in accordance with instructions issued by the computing room. The Registrar decided that he wanted another sort of consent. Some weeks ago that was cleared up. The differences were practically negligible. Now the whole of the seventeen transfers following that application are held up because another transfer—not one of the seventeen, but relating to one of the parties who bought a lot and is selling to another person—did not have a consent filed. The seventeen transfers are held up until this consent is produced, although it has nothing to do with those seventeen transfers.

Mr. Knight.—If the Registrar was seen on that case he could fix it in two minutes. The weakness is that your clerk has been dealing with the matter.

Mr. Rylah.—I am only one of nine solicitors concerned in the matter. I do not act in all the transfers concerned, but only in three or four of them. I suppose that if my client went to the Registrar she might get her transfer pushed on, and she might get others pushed on. The point I am making is, why should it be necessary to go to the Registrar?

Mr. Knight.—Until I have seen the Registrar it would be unfair of me to criticize. It might be a mistake in the Titles Office. In a staff of that magnitude mistakes must occur, but I am willing to bet that it was not a mistake by the Registrar.

Mr. Rylah.—Take the case of a simple transfer by endorsement lodged on the 6th of April this year. According to statistics issued by the Titles Office, such a transfer should take 40 days. It went to the examiners and they stopped it " Case required," which means that they wanted particulars of a previous transfer, presumably to check the signature. That was with the examiners until the 13th of June. It has now gone back to the examiners, and, although it is only a simple transfer by endorsement, it has virtually not started four months after it was lodged.

Mr. Knight.—Is not the weakness what we spoke about last Monday, that the transfer was not made available at first? I do not think for one moment that we do not make mistakes and blunders here and there.

By Mr. Fraser.—Is it the practice of the Titles Office to go to other documents for verification of signatures although they have been attested by authorized witnesses?

Mr. Knight.—It has been my attitude all along that that should not be necessary, but the Commissioner of Titles and the Registrars of the day will not agree because they have found forgery in times gone by. That, however, does not matter. If a forgery gets through that is a matter for the parties concerned. Authorized witnesses are responsible persons and they must satisfy themselves that the persons signing are the persons referred to in the documents. In the Clements case the Government of the day had to provide compensation to the extent of £800. After all, we are not handwriting experts, and we cannot guarantee that a signaure is not a forgery. The Clements case was a forgery.

Mr. Thomas.—That should not be the responsibility of the Titles Office.

Mr. Knight.—Certainly not. The practice is wrong, but I have no authority to alter it. The Act confers the power on the Registrar and the Commissioner of Titles.

By Mr. Rylah.—Would you be prepared to suggest an amendment of the Act to remedy that?

Mr. Knight.—Definitely, to provide that attestation by an authorized witness should be accepted as sufficient to guarantee that the signatures to the transfer are the signatures of the parties named therein.

Mr. Rylah.—I think the Commissioner is sticking his neck out on that.

Mr. Knight.—He is in accepting a responsibility not placed upon him. It is very hard to overcome the attitude of the Titles Office to the sanctity of the assurance fund, which has been protected throughout to a ridiculous extent.

By Mr. Fraser.—By the Treasurers of the day?

Mr. Knight.—Not so much by the Treasurers, but by the Commissioner of Titles who has the sole right to authorize payment out of the fund. He certifies, and the Governor in Council has to issue a warrant.

Mr. Oldham.—We have had correspondence tabled here by the Treasurer instructing the Commissioner of Titles in certain matters relating to the fund.

Mr. Knight.—I do not think there is any authority for any Treasurer to instruct the Commissioner of Titles in the discharge of his duties. The fund is an assurance to the registered proprietor of land that should his rights be adversely affected by any error in the Titles Office he will be reimbursed out of the fund. The fund has been built up over the years for that express purpose. When I was an Examiner of Titles I was irritated by the extent to which it was necessary to examine a chain of titles over a piece of land worth £10. On a case like that we would put in perhaps a week's work, examining perhaps forty deeds. The *prima facie* title should be accepted in such cases and if anybody is damaged by it let that person be paid the £10 and save this terrific expense and labour. The Commissioner of Titles has from time to time brought bundles of work to me to find out what action he should take in matters of doubt and my policy has been to accept something less than the perfect title and take a chance on the assurance fund. I have done that as Permanent Head on fifty or sixty occasions over the years; taken the chance, and the cases have gone through and we have had no claims in respect of those dealings. One case referred to a piece of land 10 feet by 10 feet right in the heart of Myers' Buildings. The value of it was placed at £100; it might have been worth £1,000 to Myers but not worth £5 to any one except a "high-jack" buyer.

By Mr. Reid.—At what intervals have you made your periodical inspections?

Mr. Knight.—Probably four to five times a year.

By Mr. Reid.—Having observed the receipt of documents at the lodging counter are you satisfied that the methods employed in handling the cash and dealing generally with the documents are modern and efficient?

Mr. Knight.—I should like to receive suggestions for improvements. I would prefer an assembly line, going from place to place in sequence, but that cannot be done under the present set-up. We are doing it step by step now, but following a zigzag course.

By Mr. Reid.—As a time saving device have you considerd affixing stamps to documents before lodging instead of the actual handling of cash?

Mr. Knight.—We had stamps until there was a stamp fraud which involved the Titles Office in some £32,000 worth of peculations. The men concerned were removing stamps from registered dealings, cleaning them and using them on other dealings. I still say that honesty has not improved to such an extent that we could not expect some one to revert to that practice.

By Mr. Oldham.—Would not that apply to adhesive stamps?

Mr. Knight.—In transfers you get into thousands of pounds worth of stamps. It would not be worth while in other cases. Mr. Reid is speaking about fees, and so on.

By Mr. Reid.—I was referring to £1 for lodging of transfers, 17s. 6d. for the lodging of caveats and so on.

Mr. Knight.—The stamp duty was paid all round, for duty as well as fees.

Mr. Fraser.—Leave out stamp duty.

Mr. Knight.—Then the fees are only a mere bagatelle.

By Mr. Reid.—At the lodging counter much of the time of clerks is taken up by their having to go through a long set of dealings and calculating whether the right fees are printed on the dealings and whether they tally with the cash. Do you not think that many of the methods adopted in respect of these documents are cumbersome?

Mr. Knight.—If there were adhesive stamps of various values it would take longer to check their total than it would to check the rubber stamps and cash.

By Mr. Rylah.—Would it be feasible to have some form of stamp machine which added as it went along so that the clerk would not have to calculate the amounts presented by a bank lodging 80 dealings to see that the cash agreed with the rubber stamps on the documents?

Mr. Knight.—I do not think that would be possible. The fees vary from 5s., 7s. 6d., 8s. 6d. and so on, and no stamping machine would cover that. A Burroughs adding machine would be necessary.

By Mr. Reid.—Have you inspected the Titles Office on any day between 1 p.m. and 2 p.m., at the time when it is supposed to be manned and carrying on?

Mr. Knight.—No, but it has a skeleton staff at that time.

By Mr. Reid.—When was the application made by you to the Public Service Board for additional searchers?

Mr. Knight.—It was made in conjunction with another application for staff about the end of 1945. I have not renewed that application because the requisition went up for twenty and we got nine.

By Mr. Reid.—Would the requisition be in the form of a memorandum to the Public Service Board?

Mr. Knight.—It is a form prescribed under the Public Service Act. We obtained nine men but it was not pursued to any extent because were were getting temporary "no hopers." I referred earlier to one of the men we obtained who was on sorting work. He was a returned soldier from the first war and he had a tray of documents which he wheeled to the various bays to be placed in the various bags. He was dragging a stool behind him so that he could sit down at each bay. That is the type of man we got.

By Mr. Reid.—Has Mr. Sutherland recently emphasized to you the great need for additional staff, particularly in the searching branch?

Mr. Knight.—Yes. I have passed that requisition on to the Public Service Board, but it is no good. I do not want temporary men who are only 30 per cent. or 40 per cent. efficient. I propose to ask the Board to create permanent positions for five new searchers. They would be permanent men who would have a career. I am offered warders from the gaols, or attendants from the Public Library who are seeking higher-paid positions without shift work. It is departmental cannibalism, but other staffs pirate from mine and I have to pirate from others. If I had five permanent men with a career ahead of them, on a comparatively easier job with no shift work, that would be acceptable. I have not yet made those representations to the Public Service Board because we have been trying out the temporary men. They are birds of passage who might remain there a fortnight and then leave. They have no stability and possibly have had thirty employers since they were aged 21 years. We are getting the discards from industry and if they will not suit some industries then they will not suit me on this technical work which calls for concentration and intelligence.

By Mr. Reid.—You mentioned that you had not made inspections of offices in other States. On what do you base the assertion made at a previous sitting that so far as the Survey Branch is concerned there is no place in the British Empire comparable from the efficiency angle.

Mr. Knight.—We have had men from overseas who have inspected our office. Only recently we had two from Adelaide who spent a fortnight in the Branch to get the hang of it. Others had been to other States and they felt, quite definitely, that our Branch was second to none.

By Mr Reid.—Have you arranged for any officers in the Titles Office to go to other States to get reciprocal experience?

Mr. Knight.—They have been to other States, but *per capita* we are in a much better position than any other State.

Mr. Fraser.—I made some inquiries in New South Wales recently and I found there does not seem to be the dissatisfaction with the Titles Office there among the legal profession that exists here.

Mr. Reid.—The same applies in South Australia.

Mr. Knight.—I will tell you later why South Australia has no reason to complain. The New South Welshmen are different people temperamentally from Victorians; that is psychological for a start. The public *laissez-faire* attitude in New South Wales is astounding to Victorians. In any Government Department in New South Wales—I will stake my reputation on this— they have 33 per cent. more staff doing the same amount of work as we are doing here. I do not care whether it is the courts' administration, probate administration, Titles Office or anything of the kind. For every two men we have in Victoria New South Wales has three. Their classifications are sometimes about £120 a year more than ours and that is the reason they can get staff. I do not say they are worth it because our classifications are good for the work performed since the Board has been in power.

By Mr. Byrnes.—Would five extra searchers be sufficient?

Mr. Knight.—Yes, provided I got searchers and not duds. If the Board will create the new positions I will get the men. I have had men apply from the gaols and the asylums willing to take less money than they are receiving because they want to get away from shift work. A married man with children does not want to spend month and month about on all-night duty looking after prisoners and patients. West Australian officers who came through Sydney, Brisbane, Melbourne and Adelaide have frankly admitted that the Melbourne office is putting through more dealings *per capita* than is done in Adelaide, Sydney or in Brisbane.

By Mr. Rylah.—If the work of the Survey Branch is being done efficiently, why are plans being held up for eighteen months?

Mr. Knight.—I previously stated that the work of the sub-divisional branch can be performed only by senior draftsmen; that is to say, draftsmen who have had not less than ten years' training in the Titles Office. I cannot obtain the services of such men.

By Mr. Rylah.—Does that principle apply to simple plans?

Mr. Knight.—We could not deal with simple plans only. We must proceed on an equitable basis.

Mr. Rylah.—It is notorious throughout the profession that if a client knows some one in the Titles Office, a plan will go through quickly, otherwise it will remain on the heap.

Mr. Knight.—I hope you are not suggesting corruption.

Mr. Rylah.—I am not, but the Committee is perturbed at the over-all supervision of the organization.

Mr. Knight.—If inquiries were made to allocate the blame, it would be found that it rested with municipal councils. I have never heard of anything as stupid as making it compulsory to lodge a sub-divisional plan merely to divide a block of land into two pieces—even when a householder wishes to divide his back yard into two parts and sell one.

By Mr. Reid.—That was the outcome of an Act of Parliament?

Mr. Knight.—Yes, and its passage followed representations by the Municipal Association. For years, I have fought that provision.

Mr. Fraser.—Politicians appear to be frightened when the Municipal Association is mentioned.

Mr. Knight.—I gave members of Parliament a fright when I had a Bill drafted to provide that all fines should be paid into Consolidated Revenue, and that municipalities should be granted an annual sum equal to the average amount of fines paid them for the previous three years. As the amount received in that way was sure to increase, the municipalities objected to losing that source of revenue.

Mr. Fraser.—The trouble is that after a plan is lodged with the Survey Branch nothing happens to it for, possibly, six months.

Mr. Knight.—That is owing to the fact that more than 7,000 plans have been lodged with the Branch. I would not object to plans being checked by outside

qualified surveyors and I feel certain that the Government would pay them for that work. However, men are not available to do the work.

Mr. Fraser.—There has been a shortage of surveyors and draftsmen for many years.

Mr. Knight.—Yes, and sufficient numbers of men are not qualifying now as surveyors.

Mr. Thomas.—You were to place a plan before us this morning.

Mr. Knight.—I recommend that the form I have submitted should be used. The printing on it could be contracted so as to leave more vacant spaces. It should be made compulsory to use the form in all cases in which the parties do not exceed three in number, or where the encumbrances to be notified on the transfer do not exceed three folios.

Mr. Oldham.—I wish to direct attention to the form used to cover transfers to the State Rivers and Water Supply Commission. That form consists of a double sheet. If there is no machinery difficulty against the handling of a double sheet in the Titles Office, the use of such a form might overcome the problem in the matter of possible annexures.

Mr. Knight.—The double form is used by the State Rivers and Water Supply Commission because, in many cases, the plan covers much space.

Mr. Oldham.—In my experience, at times there is a variety of plans, and it would be difficult to fit the average plan on the proposed form. Frequently the plan is put on the back of the form for the sake of convenience.

Mr. Knight.—As I have pointed out, the same sized bags that hold the certificates of title also are required to hold the transfers, for filing purposes. My objection to the double form is that it will reduce by half the number of documents that can be put into each bag and that will entail additional bags and storage space. Those are problems. There is no reason why the transfer forms should not be of the same size as the certificate of title. I shall consult Mr. Sutherland as to the maximum sized form he can handle conveniently. There is no reason why a plan should not appear on the back of the form, particularly if the plan has been reduced in size.

Mr. Reid.—I see no reason against extending the idea of the printed form to other documents, such as a caveat. I suggest that consideration be given to sealing the form with the amount of revenue duty imposed in order to cope with the problem of handling cash.

Mr. Knight.—That enters the realm of cash, which comes under the direction of the Treasury. We have tried to meet the convenience of clients and on my representations stamps to the value of 5s. 6d. are now issued for use in Courts of Petty Sessions to save using a stamp to the value of 2s. 6d. and another for 3s. The matter that has been mentioned will be considered.

Mr. Fraser.—A statutory form for a caveat would simplify matters. I think the Titles Office agrees with the view that it will be sufficient to set out that some one claims an interest without a lot of detail in the way of statutory declarations.

Mr. Knight.—The statement of the nature of an interest in a caveat entails much unnecessary work. When the purchaser is informed that there is a caveat, he can ascertain the details.

Mr. Fraser.—At the moment, this appears to be the practice: If I claim an interest by virtue of a contract of sale, that is accepted at its face value. However, if I claim that some one holds property as trustee for me, declarations have to be submitted setting out the facts giving rise to the trust.

Mr. Knight.—That is true. We cannot take notice of trusts on the register. In South Australia the printed form of transfer must be used compulsorily. In that State, brokers are licensed to prepare transfers and it is in the interest of the brokers to be accurate because a series of stopped cases with any one broker might lead to the cancellation of his licence.

Mr. Fraser.—Having regard to present-day conditions, I feel that the 40 days is not a long time.

Mr. Knight.—Many landowners do not worry once the matter has been placed in the hands of the Titles Office. In the early days, solicitors were able to obtain the services of as many clerks as they needed and could cope with all their work without overtime. Now that there is a shortage of staff, they are compelled to work overtime, and they are having work done by incompetent clerks. They ask "Why does this take 40 days?", and when I explain that it is due to shortage of staff they say "Why do not you employ additional staff?". They cannot get staff in their own offices, nor can I.

By Mr. Fraser.—Is there any objection to the appointment of additional permanent searchers?

Mr. Knight.—No. When the Public Service Board is satisfied that the additional appointments are justified, an Order in Council will be issued creating the new positions, which will be advertised and filled in the ordinary way. The necessary action is now being taken.

By the Chairman.—Is there anything further that you wish to submit to the Committee?

Mr. Knight.—No.

Mr. Thomas.—If a person lodges a caveat that does not conform to all requirements a stop order is issued, and court action has to be taken within a month.

Mr. Knight.—The person lodging the caveat must protect his interests. After receiving notice, he must either establish or remove the caveat and so it is essential that a period shall be specified within which that must be done. I object to the necessity of having to go to the Court, because that is where the delay occurs. When an approach is made to the Court such a matter is listed for hearing in the miscellaneous list, and the matter might come on in three months or in nine months.

Mr. Fraser.—Unless arrangements are made for the treatment of the case as urgent.

Mr. Knight.—That is so. In those circumstances, justification has to be made for the application to have the case treated before others.

By Mr. Thomas.—As soon as a person lodges a caveat, he has to make an application to the Court within one month or he loses his rights?

Mr. Knight.—When a dealing comes in which cannot go through because of the bar of the caveat a notice is sent to the caveator. In effect, this is what happens: the Registrar says "I have a dealing in the office and unless you get rid of the caveat or prove it, this dealing will be registered." The onus is on the caveator to establish his rights and stop that dealing from going through.

The Committee adjourned.

FRIDAY, 11TH AUGUST, 1950.

Members Present:

The Hon. A. M. Fraser in the Chair.

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Crean,
	Mr. Oldham,
	Mr. Reid,
	Mr. Rylah.

Mr. Hubert Dallas Wiseman, of Counsel, was in attendance.

The Chairman.—Members of the Committee will remember the question raised about rate certificates and the memorandum sent to the Crown Solicitor and Mr. Wiseman in these terms:—(Memorandum read.)

Mr. Wiseman.—Mr. Frank Menzies, Crown Solicitor, called on me during the week and we discussed this matter, and he asked me to report to the Committee. Having expressed his views he requested me to convey them to the Committee. He was busily engaged on some other urgent public matters and asked that he might be excused from attendance at this meeting. As a result of a conversation we had together we felt that so far as the Local Government Act was concerned, section 385 made it clear that the certificate given by the municipality was conclusive with regard to the matters which were contained therein, and that that certificate related to all rates and other moneys, and that other moneys included such matters as street construction charges. Therefore, when you write to your municipality and you get your certificate, it is conclusive evidence with regard to matters stated therein as to amounts due. I think we both agreed that that was the position, and neither of us in those circumstances could see any objection to the view put by the municipalities.

The Chairman.—Suppose something is omitted from the certificate, would it still be conclusive?

Mr. Wiseman.—The section reads—

> The production of such certificate so signed shall for all purposes whatsoever be deemed conclusive proof that at the date thereof no rates or other moneys were due or payable to such municipality other than those stated in such certificate in respect of such property.

By the Chairman.—Is that in the present Act?

Mr. Wiseman.—Yes. I think the Crown Solicitor's view and my view is that such a certificate prevents the municipality from claiming any moneys other than those set out in the certificate.

Mr. Byrnes.—If there was an omission by the municipality from the certificate, would it have any recourse? It seems that it would not.

Mr. Wiseman.—That is how I read it.

By Mr. Thomas.—Would that apply only in the initial stages?

Mr. Wiseman.—I think you will always arrive at this situation, that where you are dealing with such matters as street construction there is a somewhat complicated series of steps to be taken before the municipality can proceed with the physical construction of the street. At some stage an obligation is imposed on the owner of the land, and it is an obligation for him to pay. At that time the amount becomes a charge. Up to that time there is no obligation to pay and there is no charge on the land, but after that time both things occur. Of course, there may be dealings right up to the time when the obligation is imposed. If you write in before the time, in my view you would be told that no money was then due, because it would not be due. Thereafter, that is after the time of the giving of the certificate under section 385, the moneys would become due and the purchaser, I think, would have the obligation imposed on him to pay. I can tell you what those dates are. Section 580 of the *Local Government Act* 1946 provides that when the scheme is finally settled the council shall serve on every owner of premises fronting on the street to be constructed notice in writing. The contents of the notice are set out. Sub-section (2) provides—

> Subject to the next succeeding section every such owner shall within one month after the serving of such notice pay to the council the sum aforesaid for which he is liable under the scheme, and if such sum is not paid within one month after the commencement of the works *in situ*—

then interest is to be payable. That fixes the time when the owner becomes liable, and I think it then becomes a charge on the land as soon as it is due. Up to that stage I would think that the municipal clerk would give a certificate that no money was due.

The Chairman.—I suppose the purchaser would by way of requisition take steps to find out whether the scheme had been passed. Is not that so, Mr. Rylah?

Mr. Rylah.—I think the vendor would probably be bound to answer the question, but it is usually answered very loosely to the effect that it is not within the knowledge of the vendor.

By the Chairman.—If he had knowledge that the council was going to do certain work, before the rate was struck and apportioned between them, would he not be bound to disclose that there was a possibility of a charge?

Mr. Wiseman.—If he got notice I think he would be bound to disclose. Section 580 provides that when the scheme is finally settled the council shall serve notice.

Mr. Rylah.—I think in many cases the notice is ignored. The real effect is not recognized by the vendor.

The Chairman.—The requisition would have to be framed in a different way to meet that requirement.

Mr. Rylah.—It would have to be worded "Have you received notice under section 580, and if so, when?"

Mr. Wiseman.—I was suggesting that the charge arises one month after the serving of the notice. Even if it was necessary to lodge a caveat against the charge of the municipality, that caveat would not become lodgeable, if I may use the word, until the charge had arisen under section 580. Two things synchronize. I agree that it would be an unnecessary complication to lodge a caveat.

The Chairman.—There are two ways to look at it. One is from the point of view of the municipality lodging a caveat to protect its own interests. The rate certificate under this section is something to protect the purchaser. If the municipality thinks that it already has adequate protection under the existing section, that is alright, and if we are satisfied that a purchaser has adequate protection under section 385, everyone is satisfied.

By Mr. Thomas.—Does the letter from Mr. Jenkins mean that there is a possibility of lodging caveats, or is it a matter of policy?

Mr. Wiseman.—He was referring to a proposed amendment in one section. I think the amendment should be to section 104. That is the section which now protects rates, and it does not include other moneys.

Mr. Thomas.—He refers to certain municipalities, such as Preston. I was talking to one of the councillors at Preston, and he conveyed to me that a number of new streets were being constructed and that on the

service of the notices for road-making charges 60 per cent. of the owners paid forthwith and the others decided to pay over a period. He said there was never any trouble. There seems to be no necessity for a municipality to lodge a caveat.

Mr. Wiseman.—There is another thing to be mentioned. So far as I can see there is an extraordinary situation with regard to the Melbourne and Metropolitan Board of Works.

Mr. Rylah.—Have you considered the remarks of the late Chief Justice Irvine in the Braybrook case? The head note states "A purported certificate which does not comply with all the terms of the section cannot be relied upon as a certificate." In other words, if the municipality makes a bad job of the certificate you cannot rely on it. You cannot hold it against it; but if it does the job properly, you can.

Mr. Fraser.—That is what was worrying the Committee. Any money due would still become a charge on the land.

Mr. Wiseman.—Undoubtedly, it is a charge on the land.

Mr. Fraser.—The purchaser gets a certificate but the municipality, either through negligence or through not knowing the section, does not comply with the strict terms of the section. The purchaser settles on that basis; the municipality says that it is not a proper certificate, but it is still a charge on the land.

Mr. Wiseman.—Section 385 must be amended to provide that it applies whether or not the certificate strictly complies with the form. If the Braybrook case judgment means what it says then it is not right. I cannot overrule the judgment, but you gentlemen can.

Mr. Fraser.—Adopting the reasoning in that case, an omission might be in the same category, in as much as an omission from the certificate might mean that it is not binding.

Mr. Wiseman.—The omission would mean that the certificate was ". . . not complying with all the terms of the section," but I should be inclined to amend section 385 to provide "whether the certificate complies with the terms or not."

By Mr. Fraser.—Do you know whether that case has been adverted to in recent times. Was it a reserved judgment, or was it given extempore?

Mr. Wiseman.—I notice that Mr. H. I. Cohen, K.C., appeared for the complainant and Mr. R. G. Menzies, K.C., for the defendant. Apparently the late Chief Justice delivered his judgment forthwith. The case came before the court on an order to review and the case was, in fact, determined by the Full Court. Mr. Justice Cussen said, "I agree with the order as pronounced by the Chief Justice, but as I arrived at my conclusion for somewhat different reasons I will state shortly what those reasons are." Mr. Justice McArthur said, "Without going to the length of saying that I disagree with the reasons given by the Chief Justice, I agree with the judgement of the Court, for the reasons given by Mr. Justice Cussen." It is a very dangerous case as it stands.

Mr. Rylah.—It seems to torpedo the whole effect of the section.

Mr. Wiseman.—The headnote says, "A purported certificate which does not comply with all the terms of the section." What are the terms of the section?

Mr. Rylah.—Sub-section 2 of section 385 of the Local Government Act provided, *inter alia* " . . . . a certificate in writing signed by the municipal clerk in which certificate it shall be stated what (if any) rates and other moneys and interest are due or payable to such municipality in respect of such property with the particulars of such rates and other moneys and interest, and when the same became due or payable or that no such rates or other moneys are then due or payable (as the case may be)."

Mr. Wiseman.—That is what the Chief Justice referred to.

By Mr. Rylah.—Would it not amount to this, that if the date on which it was payable was omitted it would be a bad certificate and could not be used against the municipality?

Mr. Wiseman.—I think it will be necessary to amend section 385 to provide "Notwithstanding the same might not comply with all the terms of the section it will be conclusive evidence."

Mr. Rylah.—That is my impression at the moment.

Mr. Wiseman.—It cannot safely be left as it is. Some one might interrupt the municipal clerk while he is working on the certificate; he might think that he has done something which in fact he has omitted to do.

Mr. Rylah.—That may be a good reason for requiring municipalities to lodge a caveat. I think we should get out of that obligation if we can.

Mr. Wiseman.—In view of the policy outlined in section 385 I think it is being a little hard on the municipalities.

Mr. Fraser.—It may require only a slight amendment of the Act. The section could provide that once the municipality gives a certificate that certificate is conclusive against the municipality for all purposes.

Mr. Byrnes.—That seems a practical way of doing it.

Mr. Wiseman.—I think so.

Mr. Fraser.—It will be necessary to consider how it should be framed.

Mr. Barry.—The amendment would protect everyone.

Mr. Crean.—Except the municipality which makes a mistake. There is a similar provision in the Income Tax Assessment Act. The income tax assessment is conclusive at the time, but the Commissioner can, within three years, correct a mistake in fact.

Mr. Wiseman.—If it be proposed to amend section 385 of the *Local Government Act* 1946, it will also be necessary to amend section 93 of the *Sewerage Districts Act* 1928.

Mr. Fraser.—Section 334 of the *Water Acts* 1928 also deals with this matter.

Mr. Wiseman.—That also would have to be amended.

Mr. Crean.—Probably a similar section appears in the Land Tax Assessment Act.

Mr. Byrnes.—It can only appear where rates and charges are levied.

Mr. Wiseman.—While dealing with the question of rates, if I may proceed from the Local Government Act and the Sewerage Districts Act, I was looking at the Melbourne and Metropolitan Board of Works Act, and I cannot there see any similar provision for a certificate to be given. I am informed this morning that the Board issues a certificate under the Sewerage Districts Acts. Does that become conclusive so far as the Melbourne and Metropolitan Board of Works is concerned? It is a convenient method, but I have not considered whether it has the effect of legally binding the Board. There is one strange provision in the Melbourne and Metropolitan Board of Works Act. In section 111 it is provided that distress may be levied for rates, which is an unusual provision.

Mr. Byrnes.—At one time that was the practice in the State Rivers and Water Supply Commission.

Mr. Wiseman.—At the back of my mind there is the idea that the levying of distress is the appropriate remedy for satisfying a charge, but I cannot give any legal authority for it. I do not feel happy about a certificate given under the Sewerage Districts Act binding the Melbourne and Metropolitan Board of Works, unless I can see that they are interlinked.

Mr. Barry.—It would be advisable to consider all legislation affecting authorities and instrumentalities to see how far the amendment would go. We cannot keep taking a stab at what we think would be the effect of such an amendment.

Mr. Wiseman.—That is not necessarily so in this case, because it may be a caveat would have to be lodged to protect the Melbourne and Metropolitan Board of Works water rates.

Mr. Byrnes.—It seems extraordinary that the Melbourne and Metropolitan Board of Works can take action under the Sewerage Districts Acts because it is also levying water charges and other charges on the property. They are two separate and distinct activities.

Mr. Wiseman.—In Part III. of the Melbourne and Metropolitan Board of Works Act I think the expression used is " remain a charge " and not " is a charge." Costs and expenses under Part III. of the Melbourne and Metropolitan Board of Works Act remain a charge.

Mr. Rylah.—Under the Lands Act the Commissioner is obliged to give a certificate when he receives a fee of 2s. 6d., but the section does not suggest that it is in any way binding on him.

Mr. Wiseman.—I think we have arrived at this stage, that so far as municipal rates and charges are concerned, provided the certificate is conclusive evidence, as it is intended to be made conclusive by section 385, there is no objection in not requiring the municipality to lodge a caveat. The only difficulty that arises is whether any amendment should be made in those sections which make the certificate conclusive evidence, so as to cut out possible non-compliance with the section. It is to be conclusive in any event against the municipality when given. It is only a matter now of straightening out the respective sections in particular Acts.

The Chairman.—We have really to find out what laws we have to amend.

Mr. Wiseman.—It will be necessary to go through the Acts to find out.

By Mr. Rylah.—Could we ask Mr. Wiseman to give us at a future meeting a clear picture showing whether the Board of Works is bound and whether it is desirable that the Land Tax authorities should be bound too?

Mr. Wiseman.—I will do that.

Mr. Rylah.—I think it is fair to say that the feeling of the Committee is that we do not want to overload the Titles Office with caveats if they are not necessary, and if we can find another system which provides protection to the purchaser we would be quite happy not to place upon the municipalities the obligation of lodging caveats.

Mr. Thomas.—Would the lodging of a caveat be an additional charge on the land?

Mr. Wiseman.—It would be an additional expense. The idea about caveats is that if a person has an interest of a permanent nature he ought to be able to protect it, but interests with regard to water rates and street construction charges are fluid—they are on and then they are off.

Mr. Reid.—In view of the present cost of street construction it is important to find some means of protecting the purchaser. A person searching a title with a view to purchase of the land would have to go to the municipality to find out whether anything was owing.

Mr. Wiseman.—And he would have to find out how much, which is probably the vital matter. I do not think at this stage we can carry the matter any further.

The Committee adjourned.

WEDNESDAY, 30TH AUGUST, 1950.

Members Present:

Mr. Mitchell in the Chair.

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barry,
The Hon. A. M. Fraser,	Mr. Crean,
The Hon. A. E. McDonald,	Mr. Rylah.
The Hon. F. M. Thomas.	

Mr. Hubert Dallas Wiseman, of Counsel, was in attendance.

By the Chairman.—Mr. Wiseman, will you please proceed with the matter under consideration?

Mr. Wiseman.—The positon with regard to rates and charges seems to fall under two heads—those where provision is made for giving a certificate which shall be conclusive evidence that not more than the amount shown on the certificate is due and cases in which charges on land are made and there is no provision for such a certificate. Under the Local Government Act provision is made for giving a certificate that is conclusive evidence that not more than the amount shown is chargeable, and that position is reasonably clear. In the case *Shire of Braybrook* v. *Robinson* some difficulty arose because the headnote reads: " Per Irvine, C.J.: A purported certificate which does not comply with all the terms of the section cannot be relied upon as a certificate." That part of the headnote is perhaps justified by the remarks of the Chief Justice, but Mr. Justice Cussen and Mr. Justice McArthur did not appear to agree with that statement of the Chief Justice, but I think it can be demonstrated that this case does not affect substantially the position as stated in the provisions of the Local Government Act, because what occurred in this case was that the certificate purported to deal with charges made by the municipality for private street construction and the clerk who gave the certificate put the items rather high up on the certificate and made it appear that one of the items which was for £46 15s. 3d, related to interest on pan charge. If you read it straight across in that way it clearly did not refer to that item and it seems the defendant Robinson was endeavouring to avoid the charge for street construction by saying that he had settled on the faith of the certificate and put in the certificate saying " That item relates to interest on pan charge and all that relates to street construction is interest at 6 per cent. The other item refers to another matter." All he was trying to do was to avoid liability for this payment and he apparently had already had credit for it from his vendor. I think the court was endeavouring to find a way out of the difficulty; in other words, where a certificate is given to a purchaser to show him what is due he can read it for himself.

By Mr. Fraser.—Is that the Chief Justice's decision?

Mr. Wiseman.—It is a Full Court decision.

By Mr. Fraser.—But still the principle of this seems to be that unless it is a purported certificate which complies with all the terms of the section it is not an answer?

Mr. Wiseman.—If there is a doubt about it the wording of the section could be amended to say "Even if the certificate does not comply with all the requirements of the section." I do not see how the next purchaser could be mislead. I think that this was a case of trickery.

By Mr. Fraser.—The Chief Justice suggested that so far as the amount is concerned it is not an amount under section 341, Mr. Justice Cussen said "I do not in any way differ from what was said in regard to the construction of section 341.

Mr. Wiseman.—It would be very undesirable to have more caveats on the register book than are necessary for the protection of the public. Would it not be better to add some words to the section of the Local Government Act which makes the certificate conclusive?

Mr. Crean.—That question might give the draftsman a headache as the section appears to be drawn as widely as it could be drawn. It should be made a better section.

Mr. Fraser.—If this be consolidated, the courts will take the view that the consolidator had given the court's decision consideration and consolidated the Act on the basis that that is the law.

By Mr. Rylah.—Mr. Wiseman, assuming that the difficulty is got over would you feel that in all other cases section 385 is a complete protection?

Mr. Wiseman.—Yes, I feel it is a complete protection to the purchaser.

By Mr. Rylah.—It does not release the charge?

Mr. Wiseman.—No, it does not release the charge.

Mr. McDonald.—So far as the purchaser is concerned, the position would arise that the charge could be enforced.

Mr. Wiseman.—It does not remove the charge. I do not know whether there is any limitation of the time within which the charges can be enforced, but under the Limitations Act they can be enforced within fifteen years. That is the difficulty with regard to it—that the second purchaser could be caught.

By Mr. Rylah.—Is not land tax a charge?

Mr. Wiseman.—It is a first charge. Land tax has to be a first charge on the land. Sub-section (2) makes provision for registration of that charge, but there is no provision made as to the certificate being conclusive.

Mr. Rylah.—There might be transfer transactions in which the purchaser is unaware of any charge and suddenly the vendor decides to register the charge.

Mr. McDonald.—There is still the provision as to the certificate.

Mr. Crean.—If that decision is made because some clerk makes a mistake in the certificate, one might come to settlement believing £20 is owing, whereas, due to a clerk's mistake, £100 is owing.

Mr. McDonald.—If the purchaser obtained registration he would have his title and they could not register a charge without his knowledge.

By Mr. Rylah.—Would not the effect of that be that municipalities would register every charge?

By Mr. McDonald.—How many default in street construction? How often do municipalities take action to collect rates on street construction?

Mr. Byrnes.—There is only one reported case in which this difficulty has arisen.

By Mr. Thomas.—Is it absolutely necessary that action should be taken to protect people from the mistakes of clerks?

Mr. Crean.—We had better let it go as it is.

By Mr. McDonald.—From the point of view of a municipality, it might be all right, but what about the purchaser?

By Mr. Crean.—Would it be possible to insert the words: "A certificate or one that purported to be a certificate under that section shall be conclusive?"

Mr. Rylah.—But that still will not get over the difficulty in the charge remaining on the land and enforceable against the second purchaser where a certificate is issued. That will release No. 1 purchaser and the municipality "sits back" and waits until another purchaser comes along.

Mr. Byrnes.—It would appear this is a situation in which the municipalities are quite prepared to accept the position rather than lodge a caveat; they are prepared to take the risk of their certificates being binding and correct. Why not make the certificate binding? If the certificate is issued by a clerk and signed by the responsible officers of the council it should be binding and final.

Mr. Wiseman.—The other difficulty in regard to that is that rates for current years would be coming along; what would be the correct certificate on to-day's date might be quite incorrect this day twelve months.

Mr. McDonald.—There is another position, a case where there is a plan approved to construct private streets. They have only got their estimated charges out. They say this on the certificate. When the work is completed the actual charge may be higher than the estimated charge. They show all the information they have, perfectly correct information, but it is only on the estimates that the plans are approved.

Mr. Crean.—There is nothing due or payable.

Mr. McDonald.—The purchaser has no protection.

Mr. Byrnes.—In that case the position is that a man is buying a block of land; he knows he has a liability for street construction. It is between him and the vendor if the charge has not been definitely fixed.

Mr. Crean.—I suggest the following amendment:—"The production of such certificate or purported certificate shall for all purposes be admitted as conclusive proof when any other rates or other payments are due to the municipality other than those shown in such certificate." If the municipality want to enforce the charge the certificate would show that they were not entitled to any sum.

By Mr. McDonald.—Would their authority be limited to the amount shown in the certificate?

Mr. Wiseman.—That does not get over the charge being made on the second purchaser.

Mr. McDonald.—It would, if that charge was limited to the amount in the certificate.

Mr. Crean.—I suggest the words "at the date thereof."

Mr. Rylah.—This suggestion conflicts with the last words of section 381.

Mr. Wiseman.—A difficulty I see is that on the second transaction there will be a request for a fresh certificate from the municipality. One cannot rely on the vendor's certificate. When the request is made for this certificate, the municipality will say "The correct figures are so and so," and give higher figures.

Mr. Byrnes.—That is on the second transaction. Mr. "A" buys from Mr. "B" on a certain date on that certificate. That shows the rates owing, but when the second transaction comes along there is a fresh certificate.

Mr. McDonald.—Another practical difficulty is that one may have two purchasers further on. The vendor has not got the certificate, in which a mistake was made, and there is no way of getting that certificate; the papers may have been destroyed. How can that certificate be obtained?

Mr. Wiseman.—There should be a copy available.

Mr. Crean.—I think this Committee shall have to act upon the basis that municipalities are public authorities. Their officers are supposed to be honest and persons who would not resort to dodges. It is really impossible to cover every possible device.

Mr. Wiseman.—One cannot legislate persons into honesty.

Mr. Crean.—I think the municipal clerk means the Town Clerk. The certificate bears his signature and it is his responsibility.

Mr. Rylah.—It is usually signed by the rate collector.

Mr. Thomas.—All certificates are signed by the Town Clerk.

Mr. Wiseman.—If the rate certificate is going to be made conclusive against a municipality for all time, I feel it will have to be included as part of the title. In other words, if a certificate was issued when a sale took place and settlement was made, in good faith, on that certificate, but later it was discovered a blunder had been made when the certificate was issued and the settlement therefore had been on a wrong basis, the municipality could be requested to supply a correct certificate.

Mr. Fraser.—If a certificate was issued showing roadmaking or other charges as at 28th of August, 1946, and if in 1952 the municipality showed a lot of charges including charges relating to a period anterior to the 28th of August, 1946, it could not recover because the amount shown on that earlier date would be conclusive against it.

Mr. Wiseman.—I quite agree with that. What is going to happen a couple of transactions further on? Some one will say, "Show us where the municipality said that." A copy of the certificate will be needed.

By Mr. Fraser.—Is there no record kept?

Mr. McDonald.—A duplicate is kept, but only the municipal clerk sees that certificate.

Mr. Fraser.—Provision should be made to keep that duplicate.

By Mr. McDonald.—It might go on for ten years and a mistake might be made. How is a purchaser going to find out ten years hence?

Mr. Fraser.—A solicitor could ascertain how many times the property had changed hands. The solicitor acting for each purchaser would ask the municipal authorities for rate certificates in relation to the property.

By Mr. Crean.—Does not the municipality issue an account for its rates once a year?

By Mr. Barry.—Could it be done by alteration in the rates certificate?

By Mr. Rylah.—Could the difficulty be overcome by making some recommendation retaining the clause that puts the obligation on the municipality to lodge a caveat that in the event of the relevant information being satisfactory, that clause may be deleted.

Mr. Fraser.—Members of this Committee were satisfied with the clause. It was only this case that raised a difficulty. Suppose the words "Any certificate or purported certificate" were inserted. That would get out of the difficulty that arose.

Mr. Rylah.—Mr. Wiseman has something further to say on the defects of other legislation.

Mr. Wiseman.—To clear this aspect up, municipal rates are already provided for under the Local Government Act. The next charges are those of the Melbourne and Metropolitan Board of Works. The Melbourne and Metropolitan Board of Works Act in effect makes them a charge.

Turning to the Sewerage Districts Act, section 93 provides that the sewerage authority must give a certificate when required. Section 186 provides that for the purposes of section 93 "sewerage authority" means the Melbourne and Metropolitan Board of Works, and the Melbourne and Metropolitan Board of Works gives its certificate under section 93 of the Sewerage Districts Act.

By Mr. Fraser.—Is there some provision in the Sewerage Districts Act for making it conclusive?

Mr. Wiseman.—It is the same as with the Local Government Act. The Melbourne and Metropolitan Board of Works incurs costs which are due to it in respect of water supply or rates and comes within that provision. That Act would require to be put on the same footing as the Local Government Act.

The other Act which is similar is the *Water Act* 1928. Section 334 of that Act provides for rates and irrigation charges, and a certificate given under that section is made conclusive evidence in the same terms as under the Local Government Act. The "authority" in the Water Act includes the Board of Land and Works and the State Rivers and Water Supply Commission.

By Mr. Rylah.—What would happen with Waterworks Sewerage Trusts under one authority? Would two certificates have to be obtained or would one be binding?

Mr. Fraser.—Whatever certificate was given would be conclusive.

Mr. Wiseman.—May I mention another Act—the *Fruit and Vegetable Act* 1928, which enables cool stores to be built. A trust which can be constituted under the provisions of this Act may require contributions from owners of orchards for construction of cool stores. The contribution imposed upon the owner is made a charge under section 37, and the certificate is conclusive evidence under the Local Government Act. I mention this in case it needs to be brought into line.

Mr. Fraser.—I think the word "purported" should be inserted in all cases.

By Mr. Crean.—What is the position in regard to the Vermin and Noxious Weeds Act?

Mr. Wiseman.—There is a clause here about vermin-proof fences between the owner's and his neighbour's land. There is no provision for a certificate in that. It can be considered with the others.

By Mr. Rylah.—What is the position regarding land tax?

Mr. Wiseman.—A certificate as to land tax can be applied for and given, but it is not made conclusive.

Mr. McDonald.—There is a reason for that. Their records are not so complete.

Mr. Wiseman.—As the position stands at the moment the local authorities will be exempt. What is the position in regard to the land tax authorities?

Mr. Rylah.—They must also be exempted.

Mr. Wiseman.—Provision has been made for rates and taxes. That covers the whole matter.

The Chairman.—Mr. Wiseman, on behalf of the Committee, I desire to thank you for your assistance.

The Committee adjourned.

FRIDAY, 6TH OCTOBER, 1950.

At Parliament House, Adelaide.

Members Present:

Mr. Mitchell in the Chair.

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Barry,
The Hon. G. S. McArthur,	Mr. Crean,
The Hon. F. M. Thomas.	Mr. Oldham,
	Mr. Reid,
	Mr. Rylah.

The following were in attendance:—

Mr. M. C. Kriewaldt, representing the South Australian Law Society.

Mr. P. B. Carvosso, representing the Real Estate Institute of South Australia.

Mr. G. E. Cresswell, Searcher, Lands Titles Office, Adelaide.

Mr. D. F. Collins, Searcher, Lands Titles Office, Adelaide.

Mr. G. A. Jessup, Registrar-General of Deeds for South Australia.

In the unavoidable absence of Mr. Mitchell during the early part of the meeting, Mr. Oldham took the chair, and explained that this Committee, which consists of members of the Legislative Council and Assembly in equal numbers and also of equal numbers in regard to each of the three parties in the Victorian Parliament, had come to Adelaide in the course of its consideration of the proposed Transfer of Land Bill to simplify existing procedure and also to provide for compulsory bringing of land under the Act. As a result of the Committee's inspection of the Lands Titles Office and information given by the Registrar-General of Deeds, the members had resolved in their own minds a number of the questions they might otherwise have put to the witnesses.

By the Chairman.—Mr. Kriewaldt, as a representative of the South Australian Law Society, what is your opinion of the working of the land registration system here, the degree to which it gives satisfaction to the profession, the relations between the Lands Titles Office and the profession, and are there any complaints by the profession against the working of the system?

Mr. Kriewaldt.—I think every practising solicitor would say that the Lands Titles Office works extremely well, and that the provision which requires the Registrar-General to bring all land under the Act met with the whole-hearted approval of the profession. There have been no delays since the war, and it is my impression that during the last two years that it would be impossible to speed up the system. Documents are generally back in the solicitor's office within a week of lodging at the Lands Titles Office, and any delay is usually caused by the solicitor's clerk either not lodging them promptly or not picking them up at the Lands Titles Office as soon as they have been completed. The relations between the officers of the Department and the profession are extremely happy. Junior partners, articled clerks, or managing clerks usually do the conveyancing although the senior member may still get the original instructions for the transaction and supervise the signing of the documents. Since the publication of Mr. Jessup's book, the work has become almost mechanical, but if any advice were needed the officers of the Department are very ready to give it. I know of no complaints by members of the profession against the office or the working of the system.

By the Chairman.—You are the Lecturer in Conveyancing at the University, are you not?

Mr. Kriewaltd.—I am the Lecturer in Property, Real and Personal, which touches on the Real Property Act, but the University does not purport in that course or in any other to teach conveyancing—lawyers are expected to learn that in their own offices as articled clerks.

By Mr. Oldham.—Was it representations on the part of the profession over a number of years which led to the passing of the Bill for compulsory registration in 1945?

Mr. Kriewaldt.—I am not certain of the reason as I was away from Adelaide at the time, but I rather think the inaccurate surveys of the City of Adelaide were responsible for the Bill. Colonel Light in the Crown Survey was very generous in his Town Acre lots, which vary from 209 feet square up to as much as 217 feet square, and when dealing with such valuable land something had to be done.

The Chairman.—In Victoria roughly one-third of the land is under the Transfer of Land Act. From the passage of the Transfer of Land Act in the 1850's onwards all Crown grants were automatically under the Act, and so far as the City of Melbourne is concerned, it is practically all under the Transfer of Land Act. The areas which are not under it are in one or two of the big provincial cities like Geelong and in the Western District.

Mr. Kriewaldt.—Land more than 50 miles from Adelaide is most likely to be under the Act, and I am surprised to learn that Melbourne is nearly all under the Act for there are still substantial parts of the City of Adelaide not under the Act.

By Mr. Rylah.—You would say that the profession welcomed the 1945 Act?

Mr. Kriewaldt.—Definitely.

By Mr. Oldham.—When a block is to be compulsorily brought under the Act would a solicitor welcome the transaction to the extent that he would readily give up his time to go through all his deeds to find any necessary documents and not charge the client for so doing?

Mr. Kriewaldt.—I have not found this a problem which causes any trouble. I doubt whether solicitors in South Australia keep title deeds to the extent to which they do in Victoria, but this does not mean that they are not kept—the client probably keeps them at his bank.

By Mr. Rylah.—You have no scale of costs for the legal profession in South Australia like we have in Victoria, and therefore solicitors find it difficult to arrive at conveyancing costs?

Mr. Kriewaldt.—More than that; almost impossible.

By Mr. Oldham.—What are your legal rights in the matter?

Mr. Kriewaldt.—We are limited to £1 10s. regardless of the size of the transaction. Anything above can be taxed down to that amount.

Mr. Rylah.—The present scale of costs in Victoria is based not so much on the amount of work involved as the responsibility and in point of fact the large transactions pay for the small ones.

Mr. Kriewaldt.—That does not apply to the same extent in South Australia. For two entirely similar transactions one for, say, a house of £2,000 and the other a house of £6,000 or £7,000 the difference in costs would be only £1 1s. or £2 at the outside.

By Mr. Thomas.—Are there any stereotyped forms for the junior members of the firm to follow when doing the conveyancing?

Mr. Kriewaldt.—There is a whole set of printed forms procurable from stationers, or printed by offices for their own use, and all that is necessary is to fill in the names of the parties and the title references.

By Mr. Oldham.—As a practising solicitor do you experience any difficulty in getting surveys done with reasonable speed?

Mr. Kriewaldt.—There is great difficulty with surveys because the number of surveyors in South Australia is too small. Very few young men seem to be taking on surveying. However, it is not often that a conveyancing matter requires a survey. If a block of, say, 150 feet by 150 feet were to be divided exactly in half, the solicitor would draw a plan, lodge it with the Town Planner and it would be approved within a day or two without survey.

I urge on the Committee, if you are re-drafting your Act, the desirability of making it one which could eventually be adopted as a uniform Act all over Australia. It seems ridiculous that the Transfer of Land Act or the Real Property Act should vary in any substantial matter from State to State. I would draw your attention to an article on uniform legislation, written by Professor Beasley of Western Australia, and which was mentioned in the last report of the Australian Law Convention. It might be impossible to have complete uniformity, but it is very necessary in those sections dealing with the legal aspects of transactions.

The Chairman thanked Mr. Kriewaldt for his evidence, and Mr. Kriewaldt then withdrew.

The next witness was Mr. P. B. Carvosso, licensed land broker, representing the Real Estate Institute of South Australia.

By the Chairman.—Mr. Carvosso, would you give the members of the Committee some idea of your training?

Mr. Carvosso.—I think my training and length of experience is unique. I commenced in the office of the then legal firm of Symon, Rounsevell, and Cleland. I had ten years in the conveyancing department of that firm before joining in 1908 the licensed land and land-broking business of the then firm of Jackman and Treloar, now Jackman and Treloar Ltd. The Company has established a reputation for doing Real Property Act work, and people go to them quite unsolicited. Naturally some purchasers prefer to go to their solicitors, and my firm does not object to that at all. Under the *Land Agents Act* 1925, unless there is a clause in the contract, the land-broking firm cannot claim the right to do the documents, and, if it does the work, cannot charge unless the person concerned knows he is paying for the transfer, &c. The vendors and purchasers often come in to have the documents prepared by my Company, who then search the title and obtain particulars of the rates and taxes. They also arrange the settlement and adjust the rates and also make sure that there are no encumbrances on the title or arrears of water or council rates, &c. There are, sometimes, unregistered liens or mortgages and that fact is revealed when the production of the title is asked for.

By Mr. Rylah.—Registration of a mortgage is optional, is it not?

Mr. Carvosso.—The banks sometimes hold an unregistered mortgage in which case we check up with the bank and arrange for payment of the amount owing under the loan. Before the last depression the banks very rarely registered their mortgages. The depression made them realize the necessity for registration. The fees chargeable by land brokers are laid down under the Real Property Act, and I think the solicitors appreciate the fact that land brokers do not do the work cheaply; nor do they compete with solicitors in the work.

By the Chairman.—Mr. Carvosso, have you any suggestions for improvement in the practice here?

Mr. Carvosso.—I do not think I could make any suggestions—I feel that the South Australian system is almost perfect. It is a wonderful thing to know that a title can be lodged on the 28th of a month, and the title and registration completed by the 6th of the next month.

By the Chairman.—Is there any land-broker's association? Do you think that the type of young man who wants to become a law clerk, a land-broker, or go into the Titles Office, receives any inducement from any of the bodies concerned?

Mr. Carvosso.—There is no association of land brokers. Some of them are members of the Real Estate Institute. The type of lad entering the business is good and the lectures he must attend are of a high standard.

By the Chairman.—Are there plenty of lads offering? In Victoria, there is difficulty in getting clerks for solicitors' offices. Do lawyers and land brokers have the same trouble in South Australia?

Mr. Carvosso.—Quite a number of young men who feel that it is impossible for them to get into solicitors' offices go into land brokers' offices, and do the required examinations. They do not always pass these, but it helps them to do work under the Real Property Act. Bank clerks also take lectures and do the examinations.

By the Chairman.—How many new land brokers come through per annum?

Mr. Carvosso.—I do not think there would be very many.

Mr. Jessup.—The number usually evens out each year. At present there are approximately 180 land brokers in Adelaide.

By Mr. Thomas.—Do land brokers have difficulty with surveys?

Mr. Carvosso.—That is the jam unfortunately. Surveys are not always required, but there are cases in bringing land under the Real Property Act when there must be a survey. There are so few surveyors and the work is so involved that it takes a considerable amount of time.

The Chairman thanked Mr. Carvosso for his evidence, and Mr. Carvosso then withdrew.

Mr. G. E. Cresswell, Searcher of Titles, of the Lands Titles Office, was the next witness called.

By the Chairman.—Mr. Cresswell, I understand that you look after the section which deals with the voluntary bringing of land under the Act, and we should be pleased to hear any comments which you may care to make.

Mr. Cresswell.—The procedure is that an application is made by the owner of the land concerned—the application being prepared, of course, by his solicitor. In nearly all cases a survey is asked for, but sometimes this is dispensed with if there is enough data in the office, and particularly if the land comprises an allotment in a plan wherein full measurements are given, and there is nothing in the adjoining titles to conflict with those measurements. When the application is lodged it is immediately sent to the Chief Draftsman and when he is satisfied with it he submits it to the Searcher for examination of the title. Should there be any contentious points it is forwarded to the Crown Solicitor for opinion. When returned to the Registrar-General as approved it is published in

the *Government Gazette* for a period of either one month in the case of a good documentary title or two months otherwise. After this period the title is issued.

By the Chairman.—How long would it take from the date of lodgment to the issue of the title, and what time would elapse before the application is dealt with in the office?

Mr. Cresswell.—The average period is six months for completion, but each application is dealt with within a week of its being lodged in the office.

By the Chairman.—How many applications would be dealt with each year?

Mr. Cresswell.—The average would be 75 with a slight increase each year.

By Mr. Rylah.—How many qualified solicitors are employed in the Office of the Registrar-General of Deeds?

Mr. Cresswell.—There are none at all on the permanent staff, but the Registrar-General, Mr. Collins, and myself are qualified in law, and one solicitor is temporarily employed.

By Mr. Thomas.—On what authority does the Chief Draftsman dispense with a survey?

Mr. Cresswell.—This is done by virtue of his position.

By the Chairman.—Is assurance payable on these applications?

Mr. Cresswell.—No assurance is required.

By Mr. Rylah.—Discretion is used in cases where there is some doubt, but probably no real doubt, that the purchaser has been in possession?

Mr. Cresswell.—In such cases, and cases where continuity of possession is not fully shown, the Registrar-General uses his discretion.

By Mr. Rylah.—Is section 80 (*c*) of the South Australian Act similar to clause 120 of the proposed Victorian Bill which provides that the Commissioner may use his discretion?

Mr. Cresswell.—In 1940 the then Assistant Crown Solicitor who dealt with this matter used his discretion in making his report, but the reference to him is now purely formal.

By Mr. Thomas.—It there any difficulty with caveats against applications?

Mr. Cresswell.—No. The application is held in abeyance until action is taken in Court and the Court's decision made known.

By Mr. Fraser.—Could you tell us how many applications have been held up in the office?

Mr. Cresswell.—There would be anything up to 40, some of them having been lodged as far back as 1890 or 1900. In some cases a survey has been asked for, but has not been made and the matter has been allowed to lapse.

By Mr. Rylah.—Are there any applications held up because of apparent lack of interest on the part of the applicant?

Mr. Cresswell.—A number of solicitors take anything up to six months to complete an application if there are requisitions to be attended to. I should like to add that the introduction of the compulsory procedure has stepped up the number of voluntary applications of which the large proportion are now based on adverse possession.

By Mr. Thomas.—Is there any charge for these voluntary applications?

Mr. Cresswell.—There is a charge of £1 10s. for the certificate of title, plus 8s. for advertising the application in the *Government Gazette*. There is no advertising expense connected with compulsory registration.

By Mr. Thomas.—Are there any legal expenses involved?

Mr. Cresswell.—Yes, because, before the final certificate of titles can be issued a statutory declaration must be taken.

By Mr. Thomas.—Do land brokers deal with those cases?

Mr. Cresswell.—The Department does not like that because if there is any legal complication the broker may find himself in difficulties.

The Chairman thanked Mr. Cresswell for his evidence, and Mr. Cresswell then withdrew.

The next witness was Mr. D. F. Collins, Searcher of Titles, of the Lands Titles Office.

The Chairman.—Mr. Collins is responsible for the compulsory bringing of land under the Act. I suggest that members of the Committee ask any questions which might have occurred to them since their visit to the Lands Titles Office.

By Mr. Rylah.—I understand that the compulsory clauses have been in operation since 1945—how many applications have been put through since then?

Mr. Collins.—The Department makes a distinction between the voluntary application, properly so called, and searches under the Compulsory Act. Considerable deliberation was made on the compulsory clauses, and it was about the middle of 1946 when they were put into operation. Since that date upwards of 600 searches have been done, and just over 200 limited certificates of title and 150 ordinary titles issued. About one-third of the latter are conversions from limited to ordinary titles. Therefore, in about four years' operation the Department had actually searched and broken new ground at the rate of approximately 150 a year.

By Mr. Rylah.—Have you had the co-operation of the owners of the land and of the legal profession in so doing?

Mr. Collins.—Yes. It is usually only on account of misunderstanding that owners fail to comply with requests for documents, &c.

By Mr. Rylah.—You do not have to use drastic powers to get them?

Mr. Collins.—Only in three cases out of 600 have we had to follow up with a severe letter, and in each case it had the desired effect.

By Mr. Rylah.—Are there any difficulties with surveys?

Mr. Collins.—Survey is probably the most difficult and delaying factor in this compulsory conversion. We are up against the survey problem at every turn, and I cannot stress too strongly the advisability of incorporating in any Bill which is brought forward to implement or to bring into effect this compulsory process, provision to give the Department power to have surveys made. Time and time again when starting on a new area the Department experiences great difficulty because of the isolated and scattered surveys which are available for the area.

By Mr. Thomas.—Have you any new areas where there has been a complete survey made?

Mr. Collins.—No, there are none here. My Department approached the problem of the compulsory conversion on a purely geographical basis. We mapped out the order of dealing with the State, starting in the extreme south-east corner, and are adhering strictly to that order. We have not as yet made a start on the metropolitan area, which means the land between the Gulf and the River Murray and the

Southern Ocean and 60 miles north of Adelaide, but are still working on the outlying areas which involve many difficulties in tracking down titles.

By Mr. Rylah.—Could the Committee have a copy of the limited certificate of title?

Mr. Collins.—A sample can be prepared. I have here a summary of the forms and procedure under the compulsory process.

By Mr. Fraser.—Apparently the purchaser is not permitted, under your Act, to search the minutes?

Mr. Collins.—He can search the register book, but can inspect the minutes only with the authority of the registered proprietor or by order of the court.

By Mr. Fraser.—Why make the search of the minutes limited to a certain class of people?

Mr. Collins.—Well, simply because the Registrar-General's minutes have a direct bearing on the title, and any defects which may have been brought to light in the search when bringing the land under the Act are considered to be the concern of that registered proprietor and there may be very good reasons, say, relating to family matters, for not allowing them to be made public.

By Mr. Fraser.—Is this novel, or does it follow the New Zealand procedure?

Mr. Collins.—It follows the New Zealand Act.

By Mr. Fraser.—What justification is there for charging people anything but a purely nominal fee when you are compelling them to bring their land under the Act?

Mr. Collins.—Here, so far as the compulsory conversion is concerned, the Department does all the solicitor's work. There is no preparation of the application. We initiate the application; do the search; contact the person concerned, and even give him the *pro forma* of a statutory declaration he must finally make and suggest that he put it in the hands of his solicitor. The only Departmental fee is £1 10s. for the new title.

By Mr. Reid.—Do you think the purchaser might be involved in any expense such as seeking out deeds with other solicitors, &c.?

Mr. Collins.—I imagine that to be a matter entirely for the profession.

Mr. Reid.—I understand that the introduction of the compulsory system in South Australia in 1945 has had the effect of inspiring a number of people to initiate their own applications to bring their land under the Act.

Mr. Collins.—That is so; the number of applications has increased greatly since 1945. There is an incorrect impression abroad that no further dealings could take place until land was brought under the Act.

The Chairman thanked Mr. Collins for his evidence and Mr. Collins then withdrew.

Mr. G. A. Jessup, Registrar-General of Deeds, then gave evidence.

Mr. Jessup.—Mr. Kriewaldt's assumption that the 1945 Act is due to the inaccurate town acres in the City of Adelaide is incorrect. It is entirely due to Mr. Justice Abbott's keenness, when he was Attorney-General, to see placed in the Statute Book anything which could contribute to the law, and in particular the culmination of the work of Torrens. I have with me three plans of subdivisions which are awaiting attention in my office. These are the only such plans held up besides two small ones which are in the hands of the draftsmen.

By Mr. Reid.—Could you give some idea of the length of time taken by your Department from the lodging of the application to bring land under the system to the making of the requisition?

Mr. Jessup.—It would take my Department from six to ten days, so long as no survey is required, but if a survey were necessary it might take anything up to six months for the surveyor to attend to various requisitions.

By Mr. Fraser.—How much time is taken by the Departmental solicitor who deals with the voluntary applications, and would his report have to be favourable for the application to be approved?

Mr. Jessup.—The solicitor's report is purely a formality under the Real Property Act, and a favourable report from him is not essential to the approval of the application by the Registrar-General.

By Mr. Fraser.—Do you think the proposed Victorian Bill is satisfactory so far as departmental control is concerned?

Mr. Jessup.—In South Australia the Department is accustomed to centralized control, but in Victoria they are used to divided control. I consider that divided control is bad for administration. For example, I assume that in Victoria the Registrar would be hesitant to pass any application or transaction in case the Commissioner might question his decision. Mr. Collins, Mr. Cresswell and myself are all qualified in law.

Mr. Rylah.—I think it should be a condition of appointment in Victoria that the Commissioner should have five years' practice or be qualified in law.

Mr. Jessup.—I consider it quite essential for the head of the Department to be qualified in law.

By Mr. Rylah.—What is the average time taken in your office for a simple transaction?

Mr. Jessup.—Four days.

By Mr. Rylah.—When a new certificate of titles is involved?

Mr. Jessup.—Seven or eight days.

By Mr. Rylah.—When we were in the Registration Room yesterday we saw a dealing that had gone through in three days from the time of lodging to the time of issue. Was that a normal dealing, not prepared in any special way for our inspection?

Mr. Jessup.—Nothing like that was done. Four days is the standard we try to maintain, but quite often the time is less.

By Mr. Rylah.—The procedure adopted of endorsing on the original certificate of title the number of the mortgage or a transfer when it is lodged affecting that title is a universal practice?

Mr. Jessup.—Yes.

By Mr. Rylah.—In indelible pencil?

Mr. Jessup.—Yes.

By Mr. Rylah.—Is there any congestion at your lodging counters which involves persons having to wait for some hours before they can lodge dealings?

Mr. Jessup.—No one would wait more than ten minutes.

By Mr. Rylah.—Is the cash register system satisfactory?

Mr. Jessup.—Entirely so.

By Mr. Rylah.—That involves the folding lengthwise of documents?

Mr. Jessup.—No, they are folded prior to lodgment.

By Mr. Rylah.—Are requisitions endorsed on the documents?

Mr. Jessup.—That is so.

By Mr. Rylah.—Do you have any trouble with the legal profession?

Mr. Jessup.—None at all.

By Mr. Rylah.—With land brokers?

Mr. Jessup.—None at all.

By Mr. Rylah.—Have you inspected the titles system operating in Melbourne, and have you found that there are details there which are not understandable from your point of view here?

Mr. Jessup.—I find that question a little difficult, but I have been at a loss to understand why any system based on the simplicity of the Torrens system should show the delay which I witnessed in Melbourne.

By Mr. Rylah.—Do you feel that the keeping of titles in bound books of 50 is a more satisfactory system than loose files?

Mr. Jessup.—Yes; even more hygienic.

By Mr. Rylah.—I take it that it does not lead to losing titles?

Mr. Jessup.—Certainly not; the reverse is the case.

By Mr. Rylah.—Do you find it quite convenient for the use of the public and for searching?

Mr. Jessup.—Quite.

By Mr. Rylah.—What would be the average time necessary to secure a register book for a searcher?

Mr. Jessup.—Three minutes.

By Mr. Rylah.—Have you found that there are any delays in dealing with land in subdivisions?

Mr. Jessup.—None at all from the office point of view.

By Mr. Rylah.—If I lodged a plan of subdivision with you on Monday, how soon would you reasonably expect it would be dealt with by your staff?

Mr. Jessup.—That would be dealt with by Wednesday.

By Mr. Rylah.—What is the biggest contributing factor to delay in dealing with applications and plans at the present time?

Mr. Jessup.—There is no delay in dealing with either plans or applications.

By Mr. Rylah.—Did not one of your staff say that the difficulty in getting surveys made led to delay?

Mr. Jessup.—The difficulty in getting surveys made is a matter between the client and the surveyor. That is a grave difficulty but does not affect the office routine.

By Mr. Oldham.—Would that mean, then, that delay occurs at a period before the lodgment of the document and not during your handling of it?

Mr. Jessup.—Yes, except that any subsequent requisition relative to survey would still depend on the surveyor's attention.

By Mr. Rylah.—Your State was the first to institute the Torrens system, and it has operated efficiently here since then?

Mr. Jessup.—Except for the first three or four years, yes.

By Mr. Rylah.—Have you yourself visited other States to see how their machinery is operating under the Torrens system?

Mr. Jessup.—Only New South Wales in addition to Victoria.

By Mr. Rylah.—Have you had any Victorian visitors?

Mr. Jessup.—Only in a semi-official way.

By Mr. Rylah.—When was the last senior officer of our Titles Office over here?

Mr. Jessup.—Mr. Vance was here about six or seven years ago, and we had a visit from Mr. Taylor about six weeks ago. He was in Adelaide on a holiday.

By Mr. Fraser.—You also had Mr. Arter here, did you not?

Mr. Jessup.—Yes; somewhere about last November.

By Mr. Rylah.—Have Mr. Knight or Mr. Sutherland been here?

Mr. Jessup.—No; not since I have been Registrar-General.

By the Chairman.—How long have you been Registrar-General?

Mr. Jessup.—About nine years.

Mr. Reid.—As I understand it, you have always worked on the system in South Australia—as far as administration is concerned—of having a Registrar-General who is the ultimate administrative authority.

Mr. Jessup.—That is so.

By Mr. Reid.—Regarding the question of the actual lodging of dealings for registration, you work on the system that you keep your original titles in books of convenient size, and when a dealing comes in for registration you do not put the original certificate of title with the duplicate and the other documents that are being lodged for registration?

Mr. Jessup.—That is quite right.

Mr. Rylah.—The original certificate of title is not moved about in any material way until such time as that dealing is completed.

Mr. Jessup.—Not until it reaches the registration room.

By Mr. Rylah.—Do you seek a statutory declaration in support of facts which are in a caveat?

Mr. Jessup.—Certainly not.

By Mr. Rylah.—Would a caveat, on being produced for registration, be immediately noted in the book containing the original certificate of title?

Mr. Jessup.—Yes.

By Mr. Rylah.—And as far as dealings other than caveats are concerned, is it your practice when they come in to make a marking of the dealing on the original certificate with indelible pencil?

Mr. Jessup.—Yes.

By Mr. Rylah.—What is your policy in regard to setting out requisitions?

Mr. Jessup.—Requisitions are made on the back of the document.

By Mr. Rylah.—What is your method of notifying requisitions to the lodging party?

Mr. Jessup.—We list the names of the solicitors or brokers concerned on a board at the public counter in the Lands Titles Office.

Mr. Rylah.—In the office of your Chief Draftsman you have an officer who is described as the "Town Planner". I understand that it is his duty to see that the various plans of subdivision lodged comply with the regulations of the local authority concerned.

Mr. Jessup.—No, that is not so. We have a Town Planning Act in operation here, and the Town Planner is, of course, the executive officer under that Act. However, the question of subdivisions is a practical responsibility of the local governing body concerned. In giving his consent or withholding it, the Town Planner consults with the local governing body.

By Mr. Rylah.—Is it necessary to have the appropriate Council's consent on a plan of subdivision?

Mr. Jessup.—Yes. That is a matter again which comes under the Town Planning Act, no person being allowed to subdivide or re-subdivide without the consent of the Town Planner unless it is horticultural, agricultural, or viticultural land.

By Mr. Thomas.—When Mr. Arter was over here, did he agree as regards your method or system of surveying?

Mr. Jessup.—Mr. Arter is Surveyor and Chief Draftsman, and consequently I had very little to do with him, but I understand he thought our Survey Branch was not as efficient as it should be. From my observations in Melbourne I entirely agreed with him in this contention, and since then have sent two of my officers to the Victorian Titles Office on a week's investigation. We have adopted certain methods of the Victorian office which it was thought would improve matters here.

By Mr. Thomas.—Have you had any communication from the office in Victoria within the last twelve months relative to the Torrens system?

Mr. Jessup.—Correspondence does take place between myself and the Registrars of Australia and New Zealand; sometimes about questions of law, sometimes on procedure, but so far as Victoria is concerned, I do not remember anything of that nature passing between us during the last twelve months.

By Mr. Thomas.—How do you deal with misspellings in documents?

Mr. Jessup.—We have no powers under our Act similar to the Transfer of Land Act for correction of clerical errors. Consequently, it is the responsibility of the solicitor or his clerk to spell names correctly. A mis-spelling may delay the matter for, say, two days.

By Mr. Crean.—In connexion with those bound volumes of 50 titles each, would it be possible to have them on a loose-leaf system?

Mr. Jessup.—As far as our Act is concerned, section 47 provides that the Registrar shall bind them in books. We might argue that the word "bound" does not extend to a loose-leaf system. About three months ago I had my bookbinder experiment with a loose-leaf register. I had one made up and I intend to break down the first 100 register books and put all the cancelled and other titles in loose-leaf binders, so that in the future the filed books will contain live matter only.

By Mr. Crean.—Victoria has some 1,500,000 titles and to bind them in books of 50 would be a huge task. I wondered whether there would be any legal objection to having a loose-leaf file?

Mr. Jessup.—I am inclined to think that your statute uses the word "bound". But I also think that it would be very difficult to bind or punch for binding purposes some of the titles in the Melbourne office which have become rather dilapidated.

By Mr. Fraser.—Could we have a copy of the plan you showed us yesterday, Mr. Jessup, of the staffing and general set-up of your office?

Mr. Jessup.—I am having a photostat made for the information of the Committee.

By Mr. Reid.—Is it the practice of your office after a transfer has taken place, to notify local councils and other bodies concerned of the change of owner?

Mr. Jessup.—Complete particulars of ownership are notified.

(*Mr. Mitchell being called away, Mr. Fraser took the Chair.*)

Mr. Fraser.—Mr. Jessup, we should be pleased to hear your comments on the proposed Victorian Bill as compared with the South Australian Act.

Mr. Jessup.—I think it only fair to explain, in regard to the compulsory process, that what may appear a small achievement numerically in the time in which the Act has been in operation is in fact no such thing, as only Mr. Collins and a typist have been engaged on the task. Only for limited periods have they had the assistance of a further searcher. I have read the proposed Victorian Bill and explanatory paper only cursorily, and would like to point out with all due deference that I think the note on page 2 of the Explanatory Paper to the effect that the simplicity inherent in a Torrens system has not been realized is somewhat ungenerous. I consider that the suggested amendments tend to overlook the fact that the Act was designed to provide machinery for registering and exhibiting title, and not as a code. I think the proposed amendments would clutter up the Act, and I would urge that consideration should be given to allow the Act to function as it was originally intended —merely as a registration medium. I view, with a great deal of concern, the suggestion that equities should rank according to the time of their protection by caveat. As the Law of Equity is ancient in its origin, and extremely wide in its ambit, I think that to attempt, as it appears to me, to interfere with what has hitherto been a plenary jurisdiction in Courts of Equity is, to say the least of it, a very serious step. If a volunteer were to lodge a caveat and then the transferor were to sell, would any rights under 27 Eliz. C.4 be relegated into second position in view of the suggested caveat provisions? Further, if *A* were to die subsequent to executing a contract of sale, and the next of kin were to lodge a caveat, would the contract be postponed again into second position? If these very simple situations have already been resolved by the Committee I apologize for mentioning them, but I desire to emphasize my previous statement that to attempt by statutory means to regulate the all-embracing rules of Equity is dangerous.

By Mr. Fraser.—Would there be any difficulty with a caveat lodged by the next of kin?

Mr. Jessup.—The Victorian Act proposed to regulate all equitable interests in priority of lodgment of caveats, and if not protected by caveat they might not take their ordinary preference.

By Mr. Fraser.—In the case you cited, would it not be a good contract of sale when executed before the death of the testator?

Mr. Jessup.—I would say that there is no question at all in Equity, but are you not interfering with well-known rules when you attempt to regulate equities not as to their time of creation but as to the time of protection by caveat? Whatever conflict may arise between equities, it is apparently intended to make the lodging of a caveat the dominating feature.

By Mr. Rylah.—Would we not be placing upon the Registrar-General the duty of investigating equity matters and giving an interpretation of law in a number of cases which in your opinion is not his responsibility?

Mr. Jessup.—I quite concur in that.

Mr. Rylah.—Your opinion is, Mr. Jessup, that the Registrar-General should not have to look at a will and see what its terms are. He should accept a dealing lodged by an executor and leave the individuals to their own remedies if there is a breach of trust.

Mr. Jessup.—I concur entirely. Your section 232 is, I think, almost the same as the South Australian section 180, which absolves third parties from inquiring. The ownership is full and complete.

Mr. Reid.—You feel that there is a great tendency to go far beyond the intention of the machinery of the Transfer of Land Act, which is primarily an instrument for ensuring a rapid and easy method of producing a title to land, and there is a great danger of our going into all sorts of questions which involve the complications of rights between parties.

Mr. Jessup.—Quite so.

Mr. Rylah.—I understand that the practice in South Australia does not permit restrictive covenants being registered on a title.

Mr. Jessup.—We have no procedure for that.

By Mr. Rylah.—Do you think that would save a considerable amount of work which the Victorian Act imposes upon its officers?

Mr. Jessup.—I know that the officers in New South Wales were extremely sorry that it was introduced into their legislation.

By Mr. Rylah.—Have you found hardship in this State because you cannot register restrictive covenants?

Mr. Jessup.—Not at all. The simple method of encumbrance has proved satisfactory over at least twenty years.

Mr. Rylah.—That is in the form of a registerable charge against the land which we would set out as a restrictive covenant.

Mr. Jessup.—The fundamental difference, of course, is that on the one hand you clutter up the certificate itself with matter that tends to destroy the simplicity and clarity of the title, whereas the registered charge is merely registered on the title, and can be viewed by extracting it from the file in a few minutes.

By Mr. Rylah.—Do you see any great advantage in the form of transfer used in New South Wales where the procedure is that you either use a printed form and pay the prescribed fee or you use a form of your own and pay an additional fee?

Mr. Jessup.—I consider that the standardization of forms is almost imperative if any degree of uniformity is intended in registration.

By Mr. Oldham.—Are your forms standard?

Mr. Jessup.—I hesitate to do so, but other witnesses have referred to my book setting out standard forms, which publication is used by the profession wholly. This has brought uniformity, understanding, and explanation which rids the Department of unnecessary inquiries.

Mr. Rylah.—You do not insist on a printed form issued by your Department. You simply say "We are prepared to tell you the type of form that suits our office and will enable a quick examination of the dealing, and we advise you to follow that."

Mr. Jessup.—In the absence of such a publication, I should say that the issue of standard forms would be highly desirable.

By Mr. Thomas.—How does the legal profession view that publication?

Mr. Jessup.—The legal profession use this as their conveyancing precedent as it can be handled by a relatively junior member of the staff.

By Mr. Rylah.—Is a declaration to the effect that an applicant for the replacement of a title has searched at his bank, and been unable to find it, accepted by your Department, or would you also inquire of the bank?

Mr. Jessup.—We accept the declaration of the applicant.

Mr. Rylah.—In Victoria they not only insist on that declaration but ask the person to produce proof from the bank that the title is not there.

Mr. Jessup.—I would regard the statutory declaration as being as important as the law meant it to be.

Mr. Fraser.—One of the arguments for the printed form as against the typewritten form used by solicitors is that there is less checking to do on the printed form.

Mr. Jessup.—A standard printed form would mean a saving of time.

Mr. Rylah.—You only want the volume and folio of the title which makes a printed form very much easier to produce.

Mr. Jessup.—I see no reason so far as South Australia is concerned to depart from the mere mentioning of the certificate of title concerned, except that possible error may occur in this way, whereas a description of the land itself would inevitably bring the error to light.

By Mr. Oldham.—Do you have titles here where there is a limitation as to depth?

Mr. Jessup.—We would issue a certificate of title for a stratum of land.

By Mr. Oldham.—If somebody wanted to sell land with mineral rights underneath reserved, could he do so?

Mr. Jessup.—Yes; *Chirnside* v. *Registrar of Titles* is authority for that. I consider that the introduction of the proviso under the suggested clause 236 is a good one, although it is a pity that a caveat was ever regarded as taking precedence of a prior lodgment as, for example, under section 53 of the Victorian Transfer of Land Act. I would point out that the words in clause 2—"Provided always that no instrument presented for registration shall be in any way affected by any caveat lodged at a later date than the presentation of such instrument"—might lead to the absurd position of making it impossible for new caveats to be lodged. I would suggest following the South Australian section 191, sub-section 3, by putting it as follows:—"Notwithstanding the receipt of a caveat the Registrar-General shall proceed with and complete the registration of any instrument affecting the land which instrument is produced before the receipt of the caveat by the Registrar-General." I should also like to draw your attention to the last three lines of clause 26 of the suggested Bill which, I consider, creates an anomaly when compared with clause 240.

The Chairman.—On the surface it does appear that way.

Mr. Jessup.—I would refer to clause 71 of your Bill which deals with the compulsory process. You have omitted from this clause something which was regarded in South Australia as fundamental policy. If the purpose of the omission was not particularly designed, I would suggest that the remission of fees should be extended to voluntary applications, as it is by this clause, extended to the compulsory process. In this way you at least do not penalize any one who, instead of waiting for the compulsory process, is generous enough to make his own application. It is at least a gesture to him and an encouragement which may ultimately relieve the office of much work.

By Mr. Rylah.—On that, would you say that the remission of fees on voluntary applications in South Australia has probably been a contributing factor in the increase of applications since you brought in the compulsory process?

Mr. Jessup.—I certainly would say that, although the compulsory process, as Mr. Collins has pointed out, has of itself, in awakening inquiries, induced people to go the step further and convert their titles voluntarily into an ordinary title.

By Mr. Rylah.—And would you say further that it is of great assistance to the Titles Office and to the Government of the State if voluntary applications are increased simultaneously with compulsory registration?

Mr. Jessup.—Most certainly I would say that. I would now refer to clause 81 of your Bill and respectfully point out that this was one of the amendments

I had in mind when speaking of the sphere in which the Real Property Act should remain—that is as a means or a method of exhibiting title rather than one of substantive law where we find the imposition of a duty on various people to lodge caveats. I suggest that the matter of lodging a caveat is one which should rest with the parties concerned and the responsibility for it should not appear in this Bill.

By Mr. Rylah.—Would you say that if this clause were introduced in its present form the amount of work to be done by the Titles Office, particularly the legal side, would be considerably increased?

Mr. Jessup.—Naturally, the more caveats lodged must bring a corresponding increase in investigation work apart from the actual registrations.

By the Chairman.—Do you suggest we could eliminate sub-clause (2) and the subsequent sub-clauses of clause 81?

Mr. Jessup.—What I am suggesting, Mr. Chairman, is that whatever desire or need there is for such an amendment it should appear in its appropriate statute, but certainly not in an Act which is purely designed for registration machinery.

By Mr. Oldham.—The benefit of registration under the Transfer of Land Act was to allow you to take the proprietor at his face value, whereas we in Victoria have a provision which, in effect, recognizes trusts; does that seem to you to be contradictory with the original idea?

Mr. Jessup.—No; because your present section 55 and our section 162 provide for the declarations of trust, and our section 162 provides that declarations of trusts may be deposited for safe custody. This does not amount to notice, and in no way places any restriction on a registered proprietor relative to the office or third parties.

By Mr. Oldham.—Do you know why we made it compulsory for any trustee to lodge a caveat?

Mr. Jessup.—No. Another matter arises in connexion with section 72 of the Victorian Act covering the rights of tenants in possession. I feel that in clause 209 of the proposed Bill the provisions regarding a mortgagor would put into the Transfer of Land Act something which may be found to reside in equitable jurisdiction. In this connexion I refer the Committee to *Hargreave* v. *Carey* (1933), South Australian State Reports.

It is proper for me to point out that local circumstances contributed to whatever relative efficiency in the South Australian organization which the Committee might have observed. For example, there are land brokers licensed by the Registrar-General who were permitted to prepare instruments. A course of lectures was instituted seventeen years ago extending over the academic year for the purpose of preparing candidates for the examination, which must be passed before a licence is granted. The lectures are also open to any others engaged in this work, and over 1,000 drawn from conveyancing firms and institutions and banks have attended. The result is that much understanding has been reached, and Titles Office practice has been observed. With such uniformity and co-operation established, the opportunity to introduce efficient departmental routine is obvious. This factor should be borne in mind when comparing other jurisdictions in which such advantages do not exist.

By Mr. Rylah.—Do you regard our provisions for remedying defects in instruments as of some value?

Mr. Jessup.—Yes.

The Chairman.—I very much regret that it is necessary to close the meeting at this stage. A recommendation will be made to the Victorian Government that it request the South Australian Attorney-General to loan Mr. Jessup to the Victorian Titles Office for a week or two to give further help. I should sincerely like to thank Mr. Jessup for his evidence, which we have found most enlightening.

The Committee adjourned.

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

1950-51

VICTORIA.

FINAL REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

TRANSFER OF LAND BILL 1949

TOGETHER WITH

AN APPENDIX AND MINUTES OF EVIDENCE

Ordered by the Legislative Council to be printed, 17th July, 1951.

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

TUESDAY, 20TH JUNE, 1950.

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

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 28TH JUNE, 1950.

23. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barry, Mr. Crean,* Mr. Mitchell, Mr. Oldham, Mr. Reid, and Mr. Rylah be appointed members of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—put and agreed to.

TUESDAY, 3RD JULY, 1951.

9. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Holt be appointed a member of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—put and agreed to.

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* Resigned as a Member of the Legislative Assembly on 17th March, 1951.

FINAL 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 completed their inquiry into the provisions of the Transfer of Land Bill—a Bill to amend and consolidate the Law relating to Simplification of the Title to and the Dealing with Estates in Land—which was introduced and read a first time in the Legislative Assembly on the 30th March, 1949. This Bill was prepared by a special sub-committee set up by the Chief Justice's Committee on Law Reform. The sub-committee was specially chosen so that all points of view might be adequately put, and consisted of Mr. F. W. Betts, then Commissioner of Titles, who acted as Chairman, Mr. A. D. G. Adam, K.C., Mr. L. Voumard, K.C., Mr. H. D. Wiseman, Barrister, Mr. E. L. Piesse, Solicitor (now deceased), Mr. F. R. Gubbins, Solicitor, Mr. A. D. Pearce, Solicitor, and Mr. P. Moerlin Fox, Solicitor.

2. The Committee presented to both Houses of Parliament on the 20th September, 1949, a Progress Report (D. No. 3—Victorian Parliamentary Papers of 1949) and a Second Progress Report (D. No. 3—Victorian Parliamentary Papers of 1950–51) was presented on the 29th November, 1950. The evidence of witnesses who appeared before the Committee prior to November, 1950, is appended to those Reports. Appended to this Report is additional evidence given by the following :—

Mr. G. A. Jessup, Registrar-General of Deeds for South Australia ;
Mr. C. F. Knight, Secretary to the Law Department ;
Mr. A. P. Sutherland, Registrar of Titles ;
Mr. A. D. Pearce
Mr. A. W. W. Rodgers } of the Council of the Law Institute of Victoria.
Mr. P. Moerlin Fox
Mr. F. W. Arter, Surveyor and Chief Draughtsman, Titles Office ;
Mr. A. E. Rasmussen, Commissioner of Titles ;
Mr. G. H. Daniels, Registrar of Titles ;
Mr. L. Voumard, K.C., a member of the Chief Justice's Committee on Law Reform.

The technical nature of the subject-matter of the Bill and the amount of evidence taken and considered made the inquiry more protracted than usual.

3. The Bill, as well as consolidating the Transfer of Land legislation, will apply in Victoria the principle of compulsory registration under the Act of all land, and contains certain amendments designed to simplify the existing law. The chief amendments are those seeking to have the Register Book disclose all interests.

4. In conducting their inquiry the Committee had in mind that the Transfer of Land Acts in this and other States of the Commonwealth are designed to give effect to the Torrens System, the objects of which are stated in the Preamble to the *Transfer of Land Act* 1928 :—" Whereas it is expedient to give certainty to the title to estates in land and to facilitate the proof thereof and also to render dealings with land more simple and less expensive."

The Torrens System aimed at :—

(*a*) establishing an Office of Titles to record by means of a Certificate the owner of an allotment of land, the precise nature of his interest, and the legal interests of other parties, and to issue a duplicate of such Certificate to the registered proprietor ;

(*b*) prompt registration of dealings affecting land on the Certificate held by the Office of Titles and, where necessary, on the duplicate issued to the registered proprietor ; and

(*c*) facility for the public to search at the Office of Titles and ascertain with certainty the legal interests affecting any allotment of land under the Transfer of Land Act.

The system was originated in South Australia over a century ago and was subsequently copied by Victoria and other Australian States. It became apparent to the Committee that the primary objects of the Torrens system have been overlooked in this State.

5. The Committee feel that they cannot properly report upon the question of adopting or rejecting this Bill without drawing attention to the alarming fact disclosed by the evidence, namely, that the administration of the Office of Titles is in a state of deplorable inefficiency. The essential principles of the Torrens system, enumerated in the preceding paragraph, have been completely set at nought, in as much as—

(*a*) original Certificates of Title frequently cannot readily be found in the Office;

(*b*) months, and even years, elapse before many dealings lodged for registration are completed; and

(*c*) a search at the Office may not readily disclose the legal interests affecting an allotment of land because delay in registration prevents the obtaining of correct information.

In short, the advantages of the Torrens system may be totally lost unless the administration of the Office is urgently and drastically reformed.

6. The Committee formed the opinion that the Bill contains many admirable features, but that certain of its provisions must entail considerable additional work in the Office of Titles and, until administrative reform is effected, the enactment of the Bill in its present form might tend to increase the confusion already existing in that Office. The effectiveness of the law may be measured by the degree of efficiency existing in the Department responsible for its administration, and the Committee therefore considered it proper to inquire whether the Office of Titles was in a position to implement certain of the proposed changes in the law.

7. The Committee became increasingly aware of the inability of the Office of Titles to cope with ordinary business. Seeking simplification of the Victorian law, the Committee inspected the Lands Titles Office in Adelaide and heard evidence on the South Australian law and practice, and were impressed with the efficient operation of that Office. The Committee received great assistance from the inspection and the views expressed by Mr. G. A. Jessup, Registrar-General of Deeds for South Australia. Subsequently the Attorney-General arranged for Mr. Jessup to inspect the Victorian Office of Titles and report upon the working of the Victorian Act. Mr. Jessup suggested that changes in administration would improve the efficiency of the Office, the disorganization of which was not solely the result of the undoubted boom in land sales which had increased lodgments at the Office from 87,670 in 1940 to 178,410 in 1950. A copy of Mr. Jessup's report is appended hereto.

8. Mr. Jessup's report and certain of the evidence make a case for a drastic overhaul of the system of the Office of Titles, its interpretation of the law, and its practice and procedure. The Committee cannot emphasize too strongly the need for such an overhaul being carried out at once, and it has no hesitation in discarding most of the excuses offered for the existing state of affairs. The views of certain witnesses that the chaos was due to lack of staff, lack of space, and to lack of skill and care on the part of some members of the legal profession have some foundation in fact, but the evidence discloses a lamentable failure on the part of senior officials to attack the real cause of the trouble, namely, the failure of an important Government Department, with everyday contact with the public, to move with the times and keep abreast of modern developments in simplified office practice and procedure, and efficient management.

9. The Committee had the advantage of perusing the reports of the Select Committee of 1866 on the Real Property Act and the Royal Commission of 1885 on Land Titles and Surveys and, generally speaking, the reasons for the delays in those days in registering dealings are the very same reasons advanced by the witnesses from the Office of Titles in explaining the chaotic conditions existing today. The Select Committee reported that there was "a want of method and system without which the business of such a Department cannot be carried on"; the Royal Commission suggested that it was "absolutely necessary that some radical and immediate changes should be made in the management of so important a Department of the Government". On the evidence before the present Committee there is "a want of method and system" existing today and "some radical and immediate changes" are absolutely necessary.

10. For many years past the same procedure has been followed in the Office of Titles, and a ruling given on a case twenty years ago is treated almost with reverence, and it is difficult to have the simplest piece of practice changed. No attempts apparently have been made to introduce modern business methods or to re-organize the staff and alter the practice to do what the Statute intended, namely, the simplification and speedy registration of transfers, mortgages, leases, &c. There appears to be a complete lack of co-ordination between the three different branches in the Office and the traditional lack of harmony between the Commissioner's Branch and the Registrar's Branch, which caused the Royal Commission of 1885 so much concern, still exists. Since Mr. Jessup's investigation, and while the Committee were taking evidence on the workings of the Office of Titles, some effort was made by the senior officers to re-allocate staff to attempt to bring up to date that part of the work in which the greatest delay occurs, and to introduce minor changes in practice, but the overall delays are becoming greater as each month passes, and the Committee are seriously concerned with the likelihood of a complete breakdown in the Office.

11. An efficient system of land dealing, quick searching and checking titles, and registration of dealings within a minimum time, is absolutely essential to the commercial and business life of a well-developed and prosperous State like Victoria, and the Committee find it hard to understand how successive Governments and senior officers in the Public Service have permitted the present confusion to develop and continue unchecked. The evidence suggests that not only have representations for increased staff been made long after the need has arisen, but there has been a failure on the part of responsible officers to face up to re-organization to meet the limits of space and staff, problems which have been of concern to all undertakings since 1939. In the commercial field emergency measures are introduced to get over unusual conditions, but in the Office of Titles the tendency seems to have been to watch complacently while confusion becomes worse confounded. Complaints have been met with excuses and efforts to place the blame elsewhere than in the Office. The waste of time of the public and the legal profession and institutions dealing with the Office apparently has not been considered. It has a bad moral effect on a loyal staff to ask them to work under poor conditions and without the aid of modern filing cabinets, recording machines, &c. The fact that the delay itself has a " snowballing " effect and places more work on the staff also seems to have been neglected. The Committee take some comfort from the obvious sincerity of the present Commissioner of Titles, and believe that he is anxious to co-operate with the Registrar in an effort to get over much of the " red tape " which has such a " stranglehold " on the present administration, but at the same time feel that a completely new approach to the problem of Titles Office administration is needed.

12. The Committee view with grave concern the failure to introduce unified control in the Office of Titles despite the recommendations of 1866 and 1885. Unless the Office is prepared to shed its assumed obligations of policing matters of concern to other Government Departments, such as stamp duty and also investigating the rights of the parties *inter se*, which do not directly affect a dealing lodged in the Office, it will be a long time before the problems associated with the Titles Office administration will be solved.

13. The Committee recommend that the Bill be reintroduced in an amended form to give effect to the recommendations set out in this Report but realize that the administration of the Office of Titles will have to be drastically re-organized to meet the impact of the legislative reform recommended.

PART I.—OFFICERS—Clauses 5–14.

14. The Committee recommend that Part I. be amended :—

(*a*) To establish clearly the control of and responsibility for the Office of Titles in the Commissioner, who shall be expressly designated as the officer responsible for the carrying out of the Act, and that provision be made that all officers of the Department shall, in the performance of their duties, comply with the directions of the Commissioner ;

(*b*) To provide that the Commissioner be a person holding legal qualifications and preferably one having had practical experience of the operation of the Act. The Courts have held that the Commissioner is required, under the Act, to exercise judicial functions. The practice has been for the Commissioner to be appointed either from the Examiners, who are required to be barristers and solicitors, or from practising barristers and solicitors ; and

(*c*) Subject to the adoption of the foregoing recommendation for unified control of the Office of Titles, that the whole of the Bill be redrafted to eliminate the separate statutory functions of the Registrar, Examiners of Title, and other officers now designated in the Bill. The Committee consider that this will simplify the law and put an end to many of the difficulties of administration.

PART II.—BRINGING LAND UNDER THE ACT ON APPLICATION—CLAUSES 15–50.

15. The Committee recommend that Part II. be amended—

(*a*) Clause 31, sub-clause (2), the expression " within three miles of the Office of Titles " be used instead of the expression " within the present limits of the city of Melbourne ".

(*b*) Clauses 49 and 50, which make provision for notification to the Registrar of Titles and endorsement of Certificates of Title when rights are obtained under the *Drainage of Land Act* 1928 and Part XIX. of the *Local Government Act* 1946, be enacted with additional clauses to include the registration of rights acquired pursuant to the *Water Act* 1944 and the *Local Government (Streets) Act* 1948.

PART III.—COMPULSORY REGISTRATION OF LAND—CLAUSES 51–72.

16. The Committee unhesitatingly accept Part III. of the Bill providing for the compulsory bringing of all land under the Transfer of Land Act by a gradual process directed by the Office of Titles. This Part follows the lines of similar legislation operating in South Australia and New Zealand. The Committee were impressed with the progress made in South Australia since the introduction of the system in 1949. However, in view of the state of the Victorian Office of Titles, it is recommended that the proclamation of this Part be postponed for some period so that the necessary staff may be recruited and trained and suitable accommodation provided for the smooth working of the scheme. Careful preliminary planning will be necessary in regard to survey of areas to be brought under the Act by direction, as the evidence discloses that there can be a serious wastage of time and duplication of effort where surveys are not related to permanent survey marks. These matters should be attended to with the utmost urgency in order that this desirable feature of the Bill may come into operation at the earliest possible date. The following amendments are recommended in this Part :—

(*a*) The heading to read " Bringing Land Under the Act by Direction " this being considered a more appropriate description.

(*b*) Clause 53, sub-clause (1), to provide for the Commissioner giving notice by such other means as he considers desirable.

(*c*) Clause 60 to provide for inspection of the Commissioner's minutes only with the written consent of the registered proprietor or by order of the Court, this being the South Australian law.

(*d*) Clause 68 to give a discretion to dispense with a survey plan when sufficient survey information is available in the Office of Titles either in its own records or in other applications or matters lodged therein.

PART IV.—CERTIFICATES OF TITLE AND REGISTRATION—EASEMENTS—CLAUSES 73–117.

17. Clause 98 provides that the doctrines of law and equity relating to the acquisition of easements shall apply to land under the Transfer of Land Acts and a means whereby implied easements may be notified on the Certificate of Title. The Committee recommend the adoption of this clause with the following amendments :—

(*a*) Sub-clause (1), be extended to include easements acquired by apparent user.

(*b*) Sub-clause (2), to impose an obligation rather than a discretion on the Office of Titles to register an easement which has been proved to its satisfaction.

18. Clause 104 incorporates amendments suggested by the Chief Justice's Committee on Law Reform. These amendments are designed firstly to encourage registration of all rights and interests in land thereby deferring unregistered rights and interests to those rights and interests which are contained in a dealing lodged for registration or the subject of a caveat lodged in the Office, and secondly to make the Register Book a repository of all interests claimed in the land. The 1928 Act has been found to be unsatisfactory in that unregistered rights and interests in land can be created and in certain circumstances those possessing such rights and interests can get priority in protection over other persons who rely on what the Register Book discloses. The clause preserves the following rights or interests :—

(*a*) Encumbrances notified in the Register Book.

(*b*) Estate of a proprietor claiming the same land under a prior grant or Certificate of Title.

(*c*) Any portion of the land included by wrong description in the grant or Certificate of a proprietor not being a purchaser for value or one claiming through him.

(*d*) The reservations, exceptions, conditions and powers (if any) contained in the Crown grant.

(*e*) Rights under adverse possession.

(*f*) Public rights of way.

(*g*) Easements acquired by enjoyment or user.

(*h*) Unpaid rates.

The rights or interests in addition to the above which are protected by section 72 of the *Transfer of Land Act* 1928 which the Chief Justice's Committee recommend should no longer have protection are—

(*a*) 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.

(*b*) 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.

(*c*) Where the possession is not adverse, the interest of any tenant of the land.

The Committee consider that it is unnecessary to register the interest of a short term tenant and recommend that the clause be amended to give protection to the interest of a tenant for a term of less than three years, whether registered or not. Some tenancy agreements give the tenant an option to purchase. In *McMahon* v. *Swan* 1924 V.L.R. 398, it was held that a purchaser of land which was subject to a tenancy with an option to purchase was bound by the option under section 72 of the *Transfer of Land Act* 1928. An option to purchase is a very important right and requires only the exercise thereof to complete a Contract of Sale. In these circumstances the Committee think that when a person is in a position, merely by an act of his own will to become a purchaser, it is not unreasonable to require that, if he needs to protect his right, he should notify the Office of Titles of the fact by lodging a caveat, and therefore the Committee recommend that any amendment to give protection to short term tenancies should not apply to options to purchase included in agreements for such tenancies. It will be noted that the effect of this clause and clause 224, which the Committee also consider should be adopted, will place an obligation on Government Departments, Instrumentalities and Municipalities of lodging a caveat when acquiring, resuming or charging land. The Committee realize that this will place considerable additional work on the Office of Titles, but feel that it is in the public interest that land which is subject to the process of acquisition or resumption or subject to a charge should be ascertainable on a search of the Register Book. Clause 224 should be re-drafted to make it clear that notice shall be given to the Office of Titles, and notified on the original Certificate of Title, as soon as an acquisition or resumption is commenced or an interim development order is made pursuant to the Town and Country Planning Acts.

19. Clause 115 makes provision for the Court to deal with a person who refuses or neglects to comply with an order of the Registrar to produce a document. Clause 109 enables the Registrar, with the consent of the Commissioner, to dispense with the

production of a document, and recourse to clause 115 would be had only in cases where the Registrar (or Commissioner) has not dispensed with production. The Committee consider that clause 115 should be amended to enable the Court, when the matter is before it, to have power to order the Commissioner or Registrar to dispense with production if it considers it proper in the circumstances, as well as exercising the disciplinary powers in the clause.

PART VII.—DEALINGS WITH LAND—Clauses 150–230.

20. Clause 150 and the Forms in the Eighth Schedule amend section 121 and the Eighth Schedule of the 1928 Act, the provisions of which have been the subject of considerable objection by conveyancers, as difficulty is frequently experienced in stating the true consideration where it does not consist in the payment of money. The Committee recommend the clause and Schedule in their amended form, but draw attention to the need for omitting the words " the sum of " and " paid to me " in the Form relating to the transfer of a lease, mortgage or charge.

21. Clause 210 of the Bill should be adopted as more suitable than sections 177, 232, and 264–7 of the present Act dealing with the transmission of land on the death of the registered proprietor.

22. Clauses 211 and 212 of the Bill alter sections 275 and 276 of the present Act to clarify the position of the purchaser of interests in land from a bankrupt, the position of the bankrupt trustee in relation to interests in land, and the position of a purchaser from that trustee of such interests. These clauses should be adopted but in line 7 of clause 212 the word " or " should read " and ".

23. Clauses 213 and 214 of the Bill alter Section 178 of the present Act to clarify the position of a purchaser from the sheriff of interests in land of a judgment debtor. The Committee consider that these clauses should be adopted as it is in the interests of the judgment debtor as well as the purchaser that the sale by a sheriff should give a good title.

24. Clauses 215–217.—The Committee consider that the present practice of endorsing on Certificates of Title lengthy restrictive covenants serves no useful purpose and increases the amount of typing and checking in the Office of Titles. The Committee prefer the South Australian system of embodying the terms of a covenant in a separate document, which, when registered as a charge, is referred to in the Certificate of Title and in subsequent documents by its reference number, and recommend that the clauses be amended to give effect to this simpler method of registering covenants.

25. Clause 224 is referred to in connexion with the remarks upon Clause 104 in paragraph 18 above.

PART VIII.—CAVEATS—Clauses 231–240.

26. (*a*) Clause 240 substantially alters the existing law regarding the protection of all estates and interests in land by providing that a person dealing for value and without fraud with the registered proprietor shall be protected against all outstanding interests other than those disclosed by a search of the Register Book. The Committee accept the recommendation of the Chief Justice's Committee that the adoption of this clause will clarify the existing law and provide much greater certainty in land dealings.

(*b*) Provision is made in this Part for a simpler and less expensive procedure for determining a dispute arising out of the lodging of a caveat. The Committee strongly favor the proposed amendment of the present procedure to obviate such matters having to be heard by the Full Court.

(*c*) Clause 232 should be redrafted to extend the classes of persons entitled to notice when a caveat is lodged, the Committee being of the opinion that notice should be given—

(i) to the person against whose application to be registered as proprietor the caveat has been lodged ;

(ii) to the proprietor against whose title to deal with the estate or interest such caveat has been lodged ;

(iii) to any other person having any registered interest in the land ; and

(iv) to any prior caveator claiming an estate or interest in the land,

The time after which a caveat lapses should be extended from fourteen to thirty days. In sub-clause (2) of Clause 232, the words " such proprietor " should be amended to read " the proprietor or purchaser from the sheriff ".

(*d*) In order to clarify the position of a dealing lodged for registration prior to the lodging of a caveat in connexion with the same land, the Committee recommend that the proviso to Clause 236 be omitted and a new sub-clause inserted, as follows :—

" (2) Notwithstanding the receipt of any caveat the Registrar shall proceed with and complete the registration of any instrument lodged for registration prior to the lodgment or renewal of such caveat."

(*e*) A number of minor drafting amendments is required in this Part which, no doubt, will be brought to the notice of the Parliamentary Draftsmen when the Committee's recommendations are put into effect.

PART IX.—POWERS OF ATTORNEY AND ATTESTATION OF INSTRUMENTS—CLAUSES 241–243.

27. Clause 243—The Committee recommend that consideration be given to extending the classes of authorized witnesses both within and without the limits of Victoria. The present class of authorized witnesses without the limits of Victoria is unduly restricted.

PART XI.—SURVEYS, PLANS, PARCELS, AND BOUNDARIES—CLAUSES 253–267.

28. Clause 253 should be redrafted so as to direct the Commissioner to dispense with surveys when there is sufficient survey information in the records of the Office of Titles, either in its own records or in some other application. A consequential amendment will be required in Clause 271.

PART XII.—RECTIFICATION OF CERTIFICATES—CLAUSES 268–278.

29. Clause 268, a new provision to facilitate the business of the Office of Titles by widening the powers of the Court, the Commissioner and the Registrar to rectify the Register Book in certain cases, should be adopted.

PART XIII.—SPECIAL POWERS AND DUTIES OF THE COMMISSIONER AND REGISTRAR—CLAUSES 279–291.

30. Clause 282—Provision should be made for the Commissioner to dispense with the signature of any party where such signature is unobtainable or procurable only with difficulty.

PART XV.—ACTIONS AND OTHER REMEDIES—CLAUSES 296–307.

31. Clauses 301 and 305 altering sections 246, 250, 251, and 252 of the present Act, and section 2 of the *Transfer of Land* (*Forgeries*) *Act* 1939 to simplify and clarify claims against, and payment of compensation out of the assurance fund, should be adopted. Clause 301, sub-clause (11), should be amended to provide for the joining of any other person as defendant by the proper officer acting on behalf of the Office of Titles. Should the Transfer of Land (Forgeries) Bill, now before Parliament, be passed, consideration should be given to incorporating its provisions in these clauses.

32. Clauses 303 and 305—Consideration should be given to the redrafting of these clauses to bring them into line with the proposed Limitation of Actions Bill already recommended by this Committee.

PART XVII.—MISCELLANEOUS—CLAUSES 313–327.

33. Clause 320 provides that the conditions of sale in the Twenty-fifth Schedule—Table A—may be adopted by reference. The Committee consider that Table A should be amended to clarify the position where default is made in the payment of purchase money, and to provide that, in the event of breach, a purchaser shall have a reasonable time after such breach to remedy the default before rescission takes place. Consideration should also be given to the amendment of Table A to conform to the current forms of contract in general use.

PART XVIII.—RULES AND REGULATIONS—CLAUSES 328–330.

34. The Committee endorse these clauses which provide for a Committee to be established to make rules to supplement the provisions of the Act, and recommend that Clauses 222 and 280 of the Bill be not enacted in their present form but their provisions incorporated in Clauses 328 to 330.

GENERAL.

35. The Bill as drafted provides for many matters to be determined by Order of the Court. The Committee recommend that consideration be given to amending these provisions to enable many, if not all, of these matters to be determined on summons by a judge in chambers. This could be achieved by amending the interpretation of " Court " in Clause 4, to read " ' Court ' means the Supreme Court or a Judge thereof ".

CONCLUSION.

36. Difficulties associated with the registration of dealings in land were apparent to the Select Committee of 1866 on the Real Property Act and the Royal Commission of 1885 on Land Titles and Surveys, both of which recommended that the Commissioner of Titles should be in complete control of the Office of Titles, but these recommendations have not been put into practice. The present Committee earnestly express the hope that their recommendation to the like effect will be adopted immediately.

37. The Committee are indebted to the special sub-committee of the Chief Justice's Committee on Law Reform for the valuable work of preparing the 1949 Bill and the Explanatory Paper circulated therewith. The Committee express their sincere thanks to the witnesses for the valuable evidence presented, and appreciate that much time and care were necessary in its preparation, in view of the highly technical nature of the matters under consideration.

38. The Committee appreciate the actions of successive Governments in making Mr. Hubert Dallas Wiseman, of Counsel, available in an advisory capacity.

39. The Committee conclude by expressing their appreciation of the services of the Officers of Parliament who assisted the Committee in their deliberations and in the preparation of this Report.

Committee Room,
11th July, 1951.

APPENDIX

REPORT BY MR. G. A. JESSUP, REGISTRAR-GENERAL OF SOUTH AUSTRALIA

To the Honorable the Attorney-General.

SIR,

At your invitation and request I have investigated the administration of the Titles Office, Melbourne, and as a result have to report as follows:—

GENERAL OBSERVATIONS.

I can only describe the state of the affairs existing in the office as chaotic, and the criticisms of the administration which I have heard and read are in my view completely justified.

I have directed my attention to fundamentals. Where I shall suggest remedies, there will almost certainly remain a few very minor or unimportant incidentals which a future commonsense leadership will easily resolve. In other words I have not wasted time on the small things which are ancillary to any system.

There are so many things which demand alteration or elimination that gradual treatment will be necessary. It would be an error to introduce changes too rapidly.

I have received courtesy from the staff, but except in one or two instances only the personnel was negative. My investigation has accordingly been more difficult than I expected it to be.

OUTPUT.

In order to assess the staff contribution, it was necessary to establish some standard. In the light of events, it was both natural and logical that I should regard my own State as providing that standard.

The next step was to equate the relative staffs, and after much analysis the Registrar of Titles gave me his clerical figure as 125 as against South Australia's 50.

Much overtime has been worked by the Melbourne office, and various press and other statements have overlooked this very pertinent point. In the nine-month period ending September, 1950, which was used as a means of comparison, no less than 15,586 hours were used in this way. Reduced in terms of man-power, approximately ten more officers were employed.

The final result of my investigation into this basic position disclosed a most alarming disparity. The Torrens system achieves the same result in very much the same manner in all States. One could expect a slight variation in implementary procedure which might account for 3 per cent. or 5 per cent. in staff effort. Here, however, I found a departure of at least 30 per cent.

Assuming, as I have, that officers in all States have the same conscientious approach to their duties and in common with their fellow public servants dedicated their official lives to the service, I had to look elsewhere to explain the position. This entailed an examination of each link in the chain of registration in order to discover the unnecessary things which were the obvious cause of the extremely poor staff results.

In brief, I have found situations which have completely explained the matter and which reflect little credit on those in authority. Later in this report I shall treat in detail some of the most glaring inefficiencies, but in justice to the staff, many of whom are working hard and in uncongenial surroundings, I say at this juncture that personnel have been loaded with impedimenta plus an atmosphere which has made their tasks difficult.

STAFF CONTROL.

In the beginning I feel this heading is a paradox. I am of opinion that the deplorable condition in which I find the office is in the first place directly attributable to the lack of control. I support wholly the statement of a witness before the committee, who "felt there was no one in charge of the Titles Office."

In a well-ordered jurisdiction there is some one with complete authority, some one to whom all can look for direction. It is a basic principle of business life. Absurd as it may appear, I report that there is an almost entire absence of any such leadership.

In effect I find there are four officials, all of whom seem to exercise authority without any final arbiter in the office itself.

SECRETARY TO LAW DEPARTMENT.

Here is a position which I can only describe as an infliction reminiscent of things very long ago. Throughout my investigation I have been continually conscious of the unfortunate repressing impact of this office on the personnel, and yet this official does not even work in the same building, and in consequence would necessarily know little of its law and much less of its practice. Perhaps it is enough to say that neither small things, such as office furniture, nor big things, such as staff, or procedural re-organization can be obtained without the approval of this official. As an example, the very recent discontinuance of the almost unbelievable practice of checking signatures had to receive the approval of the Secretary to the Law Department. In answer to a question of mine the Registrar of Titles said that he would not carry out any suggestion of mine (if at all) without the concurrence of the Secretary.

The spirit of this office broods over the whole Department and the failure to deal with accumulation, accommodation, and all its attendant gross inefficiencies by methods appropriate to the needs, is due in very large measure to the lack of some one who is in control and himself uncontrolled. I suggest this position be rectified and the head of the Titles Office be a head *de facto* as well as *de iure,* and responsibility direct to the Attorney-General be established.

COMMISSIONER OF TITLES.

This official exercises an authority which is completely out of proportion to the responsibility normally expected in such an office. The Transfer of Land Act invests him with certain powers it is true, but his primary duty is to examine general law title with a view to its conversion to the Torrens system. For this purpose he has a staff which has always been a small one, and at the moment comprises a chief examiner, two or three other examiners, and two or three searchers. He is the legal adviser to the Registrar of Titles, and, in consequence, various instruments involving certain questions of law are referred to him.

It is not digression to point out that I have found very few of the legal profession in Victoria—not excluding the staff of the Titles Office—who really understand the Torrens system. They have not been encouraged to master it, and this can be attributed to the attitude of the various Commissioners of Title. Rulings have been issued, and some of these are very, very old.

In brief, there has been a rigid adherence to principles of law which I submit have no place in the scheme of a Torrens system. The fluidity of registration designed by that system, the simplicity expected by the profession and public from the system have, in Victoria, been frustrated by the heavy hand of the Commissioner. In effect his position is that of a legal head, and instead of his Department functioning, as in my own State and New South Wales for example, as a unit in the Department, designed for a particular service, he intrudes into the very heart of the legal administration. An inferiority complex has developed within the profession and within the Department, and the virtues inherent in the Torrens system have accordingly been stifled. Contemporaneous with the creation of this position came divided control.

I have found only one official in this Department who has been prepared to discuss law with me and the reasons are not confined to the fact that there is no permanent Commissioner. I shall treat this matter more fully at a later stage of this report.

From my experience of nearly 40 years, I say with absolute conviction that this position should be abolished. The Transfer of Land Act would need only minor amendment. Divided control, which has been slowly but surely building up the crisis which this office now faces, must be ended, and the Commissioner of Titles *eo nomine* has been the major factor in this matter, and I cannot over-emphasize this. This part of the office should simply be administered in a sectional way by the Senior Examiner of Titles who would be responsible direct to the Registrar of Titles, and I submit a graph which makes my view on staff control clear.

Surveyor and Chief Draftsman.

Although I am conscious of the difficulties which have arisen in all States from the lack of surveys and also of the need for certain work of this nature, I am of opinion that far too much is being made of it. There is a school of thought which believes that indefeasibility of title is measured by the quantity of surveys. Permanent marks of sufficient number are very necessary, but individual surveys of themselves, unless quite unavoidable, place an expense on the public which is quite unjustified. Alignment of streets is the most important feature and not the ordinary truncations.

In so far as this branch of the Department is concerned, its policy towards surveys should be carefully directed by the Registrar of Titles.

There are indications within the Department which coupled with evidence given before the committee, clearly show a tendency to place this branch in a position of authority far beyond what it requires for normal administration. A sectional autonomy could easily develop here, deleterious to the Department as a whole. It is pertinent to point out that the salary of the Surveyor and Chief Draftsman is £50 only below that of the Registrar of Titles.

Here again are the seeds of divided control and I failed to discover a proper attitude towards the authority of the Registrar of Titles.

Registrar of Titles.

I have left the discussion of this office until the last and this is the relative importance which it seems to occupy within the Department. Instead of finding in it all the elements of leadership, I have seen it as being the pivot of a section only. As one example of the trivial things which the Registrar attends to, is the signing of all letters.

The unfortunate fact is that although the clerical staff is responsible for the transition of some 700-800 instruments a day, and comprises a staff of 125 or more, it does not receive commensurate status.

I am of the opinion that here lies the greatest disability from which the administration suffers. The logical position is that the Registrar of Titles should be the head of the Department with a salary clearly indicating his status. He must obviously be qualified in law, in order to direct the examiners of titles and other officials who seek advice on their respective duties. The Transfer of Land Act would need amendment in order to effect this change, also providing that the occupant must hold a degree or certificate in law of an Australian university.

It is necessary that the gravity of the present position be fully realized. The ownership of land is of primary importance to the economic life of the community.

It follows as a corollary therefore that title to that land is also basic. The failure to afford the people the ready and reliable title to which they are accustomed is a very serious omission in public administration. The correcting of the present state of affairs and the stabilizing of the future in this respect is indissolubly associated with the choice of a Registrar of Titles. I shall make clear in my report some of the attributes necessary for this leadership, but it is very obvious that very great care will be needed in the selection. I have not met any on the clerical side with the necessary qualifications and only one with potentialities on the legal side. Obviously a leader from within the Department is to be preferred.

LAW.

Opinions given by Commissioners of Title years ago and on which the administration still relies have continued to be responsible for much of the irritation and dissatisfaction expressed by the legal profession. These opinions mostly concern the matter of consideration and the perusal and interpretation of wills and settlements.

Whatever the legal position may be, it is most illogical and humiliating to the profession to insist on the production of wills and then to set up laymen to make requisitions on them. In brief I have found that considerable time is taken up in viewing wills, and the question of consideration is still regarded as a fundamental matter of inquiry.

I am of opinion that neither is justified, and when I voiced that to various officials, I have been reminded *ad nauseam* of the rulings of the Commissioner. Only one member of the staff was prepared to discuss the relevant sections of the Transfer of Land Act with me, and although I did not expect any contribution from laymen, I fully expected more response from the legal members. Few of the staff have copies of the Transfer of Land Act, and the leading cases on its principles are not known. In other words there is no such thing as an academic approach to the subject and consequently no justification is available to them. I think that the staff as a whole should be given some instruction through the newly appointed Registrar of Titles on the fundamentals of the system. Wills should not be produced or viewed, and consideration is entirely a matter for the parties and not for the Department. On this matter in particular not any one had heard of *Wossildo* v. *Catt* (1934) 52 C.L.R., p. 301.

It is beyond the ambit of this report to enter into a discussion of the leading cases, but I suggest that sections of the Transfer of Land Act such as 55, 179, 232, 241, 279 in particular be studied by the legal members of the staff, and debated in the light of the many decisions. There is no doubt in my mind at all that the present policy of the Department towards these matters is entirely wrong, and is the cause of constant friction between the Department and the profession. Not only so, but much time is wasted.

The new Registrar will naturally be directed to this position before appointment in order that some realism be present in the administration.

Every encouragement and preferment should be given any person within the Department who qualifies in law, and the addition to the staff of other young qualified men is almost essential for proper functioning. This is a pressing necessity and affords the opportunity of rapidly promoting promising youth. In particular if the compulsory process of bringing land under the Act becomes law, a staff ready to handle it will be very necessary and the present time presents the challenge. The Registrar of Titles as a legal man could, with the co-operation of these young examiners, set up an entirely new outlook.

Associated with any aspect of leadership is the question of establishing co-operation with the legal profession. It is regrettable that understanding does not exist between those who lodge and those who register. Some medium is urgently required, such as a book of practice which will make the Titles Office requirements known to those without the Department. I am pleased to say that such a publication is contemplated as soon as the law becomes settled.

DEPARTMENTAL MACHINERY.

Public Lodgment Room.

Under the rather primitive methods employed here, the staff performs very well. There was an absence of confusion and the pleasant courteous attitude of the young receivers created an easy approach for the public. The hours set apart are very generous, but little work was done during the period 12.30 p.m. to 2 p.m.

Some co-operation from the profession and public is needed to utilise this quiet period in order to ease the pressure during the busier time. If this is not done, then consideration should be given to the closing of the whole office, because the various lunch hour periods at present taken by the staff are not in the best interests of administration.

The method of assessing and payment of fees falls very short of what is expected in a procedure that demands facile treatment. The clerks have numerous stamps each representing a certain amount. As many stamps as are necessary to equal the assessment must be used and quite often the number is large. The officer who receives the money is called over to check the amount and cancel the stamps by further stamping. It is incongruous and must be seen to be believed. It is simply very old-fashioned and slow and attended with little dignity. It is very obvious that a modern cash register is needed here. As I have already indicated the hours of lodgment are so spread that one cash register could probably handle all the lodgments. The procedure necessary will be a ticket with the fee endorsed which will act as a receipt. A sample accompanies this report. The machine would be placed in such a position that clerks either side could feed to the cashier. These machines can segregate a number of items and are capable of answering almost any problem relative to the receipt of moneys. They are quick, safe, clean, and of course modern.

A practice has arisen here which seriously affects the smooth flow of lodgments. Whenever an instrument is presented without its accompaning duplicate, the clerk has been instructed to leave the lodgment counter, and the client, and search records to see whether there is an authority to use the duplicate concerned. This happens very frequently and is a disruptive influence. This should cease at once, and the instrument accepted. When it reaches the progress book it would then be diverted to the "followers"—clerks who are designed for this purpose.

Another practice which should be discontinued is that of accepting instruments without being submitted for stamp duty. This all means double handling with its unfortunate impact on a staff already burdened with old-fashioned procedure. The question of stamp duty is primarily the responsibility of that Department, but of course all public officers have a duty to protect in this respect. However, the act of accepting an instrument for registration which is known to require stamping, is a contravention of the statute.

The use of the "red ink" number has become so much a part of the departmental set-up that any suggestion to alter it needs careful consideration. However, there is one serious disability attached to its use, namely that these numbers do not necessarily reflect the order of priority. I think this should be altered at some later stage in the reorganization.

If all lodgments were numbered for registration purposes prior to the entry in the progress book, each number would then represent its priority. It would speak for itself, and this would be particularly useful in the examining and registration branches. I do not agree that the entering of a name in the lodgment book and waiting to be called has much to commend itself. With a cash register installed and a staff available at crush periods, any person lodging should be able to approach any clerk and submit his lodgment. That clerk would record the time of lodgment on the instrument and it is at that stage that any dispute as to time could (if at all) take place. In practice of course there is no dispute, and from experience it is clear that the difficulties which theorists could predict, do not in fact arise.

Summarizing this phase, I consider there is too little freedom of action for the public and not enough staff organization to see that sufficient personnel are supplied at peak periods. At the moment of course the whole situation is one of confusion and poor administration relative to the housing of the index and progress book and "stopped cases."

As to intelligent use of the space in this large room, I shall have some comment to make under the heading of accommodation.

Interim Index.

This has been established in order that the searching public can be informed as to any unregistered instruments affecting a certain named registered proprietor. It is a card index and is compiled as lodgments at the public counter are made. The men engaged on this index have a difficult task and are kept on their feet throughout the day.

The procedure is that the public pay a search fee and proceed to the first floor of the building and search the relevant certificate of title. They then return to the public counter, form a queue, and present a permit to search for unregistered interests in this card index, that is for instruments recently lodged but unregistered. The clerks rapidly run over the cards—thousands are in this index—and give the answer. Incidentally this index is adjacent to the progress book and the "stopped cases," and the noise and shouting and clatter of books is most distracting both to the staff and public alike.

Strangely enough this index does not have any records of caveats or writs or orders of court, or any entry in the names of transferees. Another room holds, caveats, &c., and at considerable distance from the above index.

The next step is that the searcher must visit this room, present the afore-mentioned permit, and receive the report of the clerk. The risk that the department might miss some instrument is a real hazard in both these indexes.

The machinery set up in these two rooms demands the service of thirteen or fourteen clerks, including the listing and fitting clerks. So far as the "caveat room" is concerned all instruments—700 odd per day—are sent from the examiners to this room in order that the staff may report as to whether there are any unregistered or *registered* caveats or powers of attorney. The examiner, by the way, has already perused the original certificate and must have noted any such *registered* interests. Nevertheless and typical of the checking and re-checking which seems routine, the duplicated examination is insisted upon and the caveat room officials duly report instruments both registered and unregistered.

Each day all registrations are forwarded to the interim index so that the cards affected can be removed. The work of keeping this index can only be described as a very unpleasant duty, and the young men engaged on it are to be commended for their forbearance. One of the matters concerning the Government at the moment is the complaint that searchers have to visit or inquire from certain places as to what charges and so forth affect the land in certificates of title. Suggestions have been made that they must be registered in the register book.

In the above two rooms we find the Titles Office itself setting up inquiries away from the register book. The fundamental principle established by the Transfer of Land Act is not even observed by the department.

Apart from this, however, and apart also from the duplication of work with its waste of valuable man power, the interim index and caveat room are completely unnecessary. They should be abolished. With the exception of perhaps four, the whole of the staff could be available in the branches which are so far in arrear.

This wasteful machinery is an explanation of the relatively low output per man which I mentioned at the beginning of this report. The solution of the unregistered instrument problem, and it need not be a problem at all, is to use two clerks in listing the red ink numbers with the references to the certificates of title, and the name of the registered proprietor in a similar fashion as the cards are filled in at present. Two clerks of senior status would take these lists (perhaps a dozen or so entries on each list) and mark in indelible pencil on the respective original certificates of title (register book) a reference to the red ink number with an indication of its nature, e.g., "T" for transfer. These lists would be supplied to these officers at frequent intervals throughout the lodgment period. In other words within a very short time after lodgment, an indelible pencil note of every dealing will appear on its relevant certificate of title. Searchers would merely scan the certificate of title and see both registered and unregistered instruments of every kind. This would be as it should be, namely that a search of the register book should disclose everything. Instead of the public visiting three places and waiting their turn on every occasion, only one inquiry at the one place and at the one time will be necessary.

One of the worst features of the administration is the number of original certificates of title taken from the file and spread throughout the various rooms. In particular, the practice of extracting the original certificate from the file and placing it with the lodged dealing contributes to the general confusion. That certificate simply remains with that dealing until registration, and at the moment no less than 80,000 such certificates are in various rooms. The result is that both public and staff are constantly inquiring for missing certificates. If an instrument is held up (stopped) for any reason, the original certificate will remain with the instrument, sometimes for years. The drain on man power for this purpose is obvious.

A very simple system to cover this is as follows. The two senior clerks referred to above, at the time of noting the red ink number, could quickly scan the endorsements and make a note against their list of any registrations which *from their experience* they will know at once will not appear on the duplicate. If a caveat, for example, it will be taken from file and a note of any such thing made on the document or its annexure. In this way the examining clerks can examine from the duplicate with all the information contained on the original (register book).

Immediately the noting and scanning of each certificate are completed by the two clerks, the relevant certificate would be refiled by the strong-room staff who would accompany these clerks. The original certificate, therefore, would not leave the strong room until the registration room required it. In this way the register book would always be available to the public.

It is true that many certificates of title are "missing." Indeed, I understand some are considered to be lost. In the latter case, of course, section 82 of the Transfer of Land Act should be used. In the former case neither the public nor the Department can view the certificate in any event. For the few cases which might occur an interim index could, as at present, be opened wherein any lodgment of any kind could be noted.

The result of this move would be to eliminate what may be termed a classic bottle-neck. It should be obvious that the less movement that takes place in the transition of an instrument the more fluid becomes the administration. The more stopping places for examination and re-examination, and so on, the slower the process of registration becomes.

The registration branch would, of course, notice any number marked on the certificate when registration took place. If it were those numbers they were registering, then they would neatly rule a line through the number, but not in such a manner as to obliterate it. If it were not the number they were registering, then reference to the progress book might be necessary. For any such purpose the progress book would in future have to record the time of each document's lodgment in order that priority could be certain.

The use of the "red ink" number has been so universal that to discontinue it, as already mentioned, would require care. I think it should be eliminated at a stage when some streamlining has taken place. It would then be a boon to the registration branch to know that serial numbers represented priority. Summarizing, I consider this interim index and caveat room is an astonishing misuse of dependable officers, and altogether unwarranted and wastful units. I am convinced that few staff conferences (if any) at which intelligent youth was represented have been held. The release of the unwanted staff provides the balance necessary to handle the incoming work without overtime and its insidious impacts on staff morale.

Examining Clerks and Advice Officers.

This branch is responsible for the most important function of the clerical side of the Titles Office. It is here that decisions are made as to whether the particular instrument shall or shall not be registered. It is obvious, therefore, that these officers express departmental policy.

I have already referred to the matter of law, and I repeat this fact, namely, that it is here that most differences with the legal profession arise. Although there is no officer qualified in law, pure questions of law are dealt with by the staff. This fact alone indicates the delicate ground on which the Department stands. Nevertheless, the administration is adamant.

On basic questions such as the reason in law for inquiry into trusts and consideration, I failed, of course, to receive any answer beyond the fact that it was an office "ruling."

In brief, there is urgent need for staff education by a legal head who will sweep aside these incorrect attitudes and establish a system of examination which concentrates on statutory requirements and not on cherished equitable views. Tradition has left its unfortunate mark on this branch.

Apart from law which is simply not understood, these examiners are in general too relentless. A more liberal sentiment should animate them. They appear to adopt the attitude of custodians of the Assurance Fund. Incidentally not one officer, including those at the top, to whom I spoke was aware of the significance of section 241 of the Transfer of Land Act. Perhaps this is understandable in view of the evidence given by the late Commissioner.

The expected fluidity in the transition of instruments receives its rebuff right here in this branch. What should be a rapid examination can only be described as an inquisitorial investigation, and it is no wonder that the profession resents it.

In my view, the cleansing properties which a knowledge of the basic principles of the Torrens system can effect must be introduced into this branch by means appropriate to the situation. Within my own limited time here I have to this end conducted what may be termed vigorous tutorials among various of the staff and profession.

The following set-up will explain some of the reasons why the staff checks and rechecks and, in consequence, is hemmed in with some work that should be no concern of the Department at all.

Much time is spent in simply reading such things as section numbers, name of parish, and so on. It would be a very good thing to direct the Commissioner to act under section 226 (2) (*a*) of the Transfer of Land Act in order to prescribe a variation in the forms of instruments which would dispense with the necessity for this work which, after all, could be done by a boy. Although I am of opinion that this variation could be implemented by mere arrangement with the profession, and with the aid of section 279 of the Transfer of Land Act, the rigid departmental views make that attitude altogether too short and efficient. It is pertinent in respect to the general functioning of this branch to refer to *Crowley* v. *Templeton* (1914), 17 C.L.R., at pp. 466, 467, ". . . . Slavish adherence to forms is not demanded. Technical and immaterial departures from them do not deprive the dealing of efficiency. . . . Substantial compliance is sufficient. . . . The actual terms of the bargain are a totally different matter. These the parties are at liberty to mould and settle for themselves and, so long as the fair working of the Act is not impeded or embarrassed, the parties are left unfettered with respect to the stipulations they desire . . ." The variation suggested is that only a reference to the Certificate of Title will be necessary in future. It is obvious that if a person sells all his interest in all the land in any certificate he cannot do so more effectively. If portion only is transferred, then, of course, the Schedule Eight must be followed by including a description. The bulk of instruments, however, deal with the entirety, and this short reference to the Title number would effect a considerable saving in time and man power and relieve highly paid officers of a duty which is not in keeping with their salaries.

Incidental to this suggestion I mention what amounts to something extraordinarily remarkable in this modern age. As is well known, each volume of the register book has 200 folios. In other words, there should be no more than three figures to refer to as the folio. It was with amazement that I learned that each folio now has no less than seven figures. For example, one refers to Certificate of Title, Register Book volume 7416, folio 1483188. By taking the next hundred and dividing by two the answer is the volume. This is all very cute, but when I asked a senior officer why this was done he could not tell me at the time, but informed me the next morning that sometimes a wrong volume was quoted by the profession and this exercise then became useful. It is hard to believe that such an astounding practice has continued so long without its wasteful incidence being apparent to those in authority. The large amount of entering which is carried out by the members of the staff often entails a reference to the volume and folio. The risk of transposition both within and without the office is great, and the amount of completely unnecessary work is considerable. Any statement made by any official that steps have been taken to effect economies loses much of its value when things such as this and other matters mentioned herein are taken into consideration.

All covenants are perused in all mortgages and charges except those printed forms with which the examiners are familiar. Apart from the creation of trusts which are forbidden by section 55 of the Transfer of Land Act, there appears no reason whatever for this minute inspection. Perhaps the dicta quoted above may be referred to again. So long as the covenants are completed or deleted as the case may be, and the interest rate, for example, conforms to the Federal regulation, no further duty rests on the Department.

In particular much care is bestowed and much time wasted upon charges in favour of brewing concerns. A fresh view must be brought on these matters and a definite line taken as to the ambit of this examination. At the moment there is a grave loss of man power over these matters and a situation which should be fluid is anything but that.

Perhaps the most vexatious document of all is that which contains restrictive covenants. There is no authority to register these at all, and steps should be taken either to stop them or to legislate on the matter.

If legislation is adopted it should compel the registration to be effected per medium of a charge. That would avoid recording on the certificate long descriptions which at the moment tend to confuse, and is the antithesis of the clarity intended by the Transfer of Land Act.

Some confusion appears to exist in the minds of these officers relative to the incidence of the Property Law Act on discharges of mortgages. It would need the clearest possible language in that Act to override the provisions of the Transfer of Land Act, section 163 of which simply provides for a memorandum apart from any question of consideration.

Although the matter of consideration may affect stamp duty, and, as already pointed out, a certain responsibility rests on every public servant in this respect, the primary oversight must remain with the Stamp Department. Its machinery must be geared for action rather than that of the Titles Office.

A further example of the extent to which inquiry is extended is provided in the case of a transfer to a volunteer. If the transfer is stamped by the Stamps Department indicating that duty has been paid on the primary deed, that deed is asked for by the Titles Office. This is not done because of any question of stamp duty, because it is clear that that has been paid. It is simply a determination to go behind the dealing. Executory considerations, of course, are a fruitful source of inquiry, and here again basic policy urgently needs overhaul.

As to the question of devises under wills, what I have already stated applies to these also. It is simply a policy which has been inherited from past Commissioners. It is a policy which has brought the Department into conflict with the profession, holds up work unnecessarily, involves the staff in thought and analysis not, in my view, the prerogative of the Department or within its competence, and altogether foreign to the various sections already quoted. Associated with all this procedure is the constant handling of instruments from one to another, and finally, perhaps, to the Commissioner or his staff for final decision. In a well-ordered Titles Office comparatively few instruments should ever need this degree of investigation. Dealings under power of attorney are referred to the Commissioner's staff which necessitates taking the power from the file. A better system, it seems to me, is that when a power of attorney is first deposited, an officer capable of doing so should enter in a small book its number, the parties, and very briefly its powers, e.g., "T" for transfer, "M" for mortgage, and so on, or the simple statement (if so) "full powers." This book could be kept in the examiners' branch and merely referred to as dealings were executed pursuant to any power. Revocations, of course, would likewise be entered there. This would obviate the continual removal from file.

The administration of this branch could be improved. The system is that the examiners make their requisitions, and, if in doubt, refer to an advice officer. When the public finally receive the requisition, it is taken to a senior examiner who spends almost the whole day interviewing the public and explaining just what is required of them.

In the first place the examiner who originally dealt with the instrument and made the requisition became perfectly familiar with every phase of the transaction, and, if involved, this is most pertinent. It would be logical that the public should interview him, rather than another officer to whom the dealing is quite new —and possibly difficult.

I am of opinion that each examiner should treat his own requisitions, and what is very important, is that the reason for the requisition should be more fully set out with its remedy. The practice of examining an instrument and making requisitions thereon, having such requisitions satisfied, and then sending the instrument to the draftsmen who may make further requisitions, should be stopped at once. Is it not very unfair as well as very inefficient in its double handling to ask the public to visit the office on two occasions when one will do? I am afraid this is typical of the whole Department.

All instruments which have to be examined by the draftsmen should be so treated and any requisitions made, after which or prior to which the clerical staff has likewise to examine and requisition. One set of requisitions sent out at the one time and attended to at the one time is only proper.

Advice officers and the examining staff should be housed together and concentrate their time on what is obviously the most important branch of the Department.

According to standard, there are too many employed in this branch, but until the above question of requisition is attended to the present staff may have to be maintained. Stripped of what I consider to be unnecessary and unjustified investigation, and organized on an efficient basis, five or six officers are quite sufficient.

In general this branch displays the effect of precedent. Not any one has the inclination to question. The fundamental reason for a requisition or inquiry is not known. It is an example of obedience to direction. The sooner this matter of inquiry is settled the sooner will the Department function smoothly and relationships with the profession be put on a different plane. Checking the seal of a company and the names of directors should also cease.

Stopped Cases.

This branch, as its name implies, deals with instruments which the Department considers defective. When the instrument was treated by the examiners, the original certificate was removed from the file, and, of course, remained with that instrument even when it became a stopped case.

It is estimated that there are over 25,000 of these cases. This is a very serious position, but both the Titles Office and the profession have treated the matter as routine. The subject cannot rest there. Some approach, some adjustment, must be made.

On the one hand the profession bitterly complains that many of the requisitions should not have been made, and with this I entirely concur as my report on the examining staff indicates. On the other hand the staff feels that the profession is careless and neglectful in not attending to these cases. To a limited extent I agree with this also.

The profession finds it difficult, as I have found it difficult, to know just what the Department really requires. The book of practice already referred to should ease this position. Perhaps a series of lectures open to all those who deal with the Titles Office, including its own members, could be given when departmental policy has been stripped of its "horse and buggy" constitution and become refined, stabilized, modern, and correct.

I do think, however, that the legal profession has stressed its rights rather than its responsibilities. After all it is a reflection on practitioners to report so many cases which remain unattended. The staff is entitled to expect a little more co-operation. These stopped cases are seriously affecting staff movement. The public has been deprived of the right to view these certificates, where they should normally be found. Solicitors are in many cases simply using the Titles Office as a storage room. The only thing to rectify this is to adopt measures which some may feel are somewhat peremptory. However, the responsibility for the instrument must rest with the solicitor, and he should be compelled to take it from the office. It is true that a rejection notice could be given, but that involves the Department in much work.

As a permanent feature of administration every stopped case should be taken from the Titles Office and amended by the solicitor or his client in his own office. It is more likely to receive attention there. Any delay cannot be excused by saying "It is in the Titles Office."

To introduce this, a note of the red ink number of the instrument and any "follower" should be made on the certificate of title as set out previously in this report, and the certificate returned to file. The instrument should be signed for, of course, and any "followers" put aside in an appropriate place. At the time of the return the red ink number of the "follower" should be noted on this returned instrument so that when it is amended and again presented to the stopped case clerk, the "follower" can be picked up and fitted. A handy designation for the bundle holding such "followers" is that of O.D.R. (other documents returned) and these letters should precede the red ink number of the follower as endorsed on the returned document.

In order that stopped instruments will be lifted by the solicitors' clerks, a neat board should be placed in a conspicuous position just where the fees are paid. On this board, in alphabethical order, the names of the firms should appear whose instruments have been

stopped. Each day at least, as the stopped cases are received from the examiners, these names should be listed. As the firm concerned signs for the instrument its clerk should strike the firm's name through, showing that the matter has received attention. When the board tends to be untidy or difficult to follow, because of these names, a new up-to-date sheet should be supplied.

This is a matter of education. From my observations, I am confident the same ready response from the clerks who lodge, which has been found in South Australia, will also be found here in Melbourne. The Titles Office clerks operating at the lodging counter know the names on the board and will, in the beginning, remind the public that their documents have been stopped. In a very little while it will became mere routine for each clerk lodging first to look at the board. As a matter of fact the position has developed in South Australia to this extent that the profession regards the posting of their names as an indication of poor work and, in consequence, the standard is raised. It is one of these gentle suggestions which stimulate.

The effect of this move, of course, will be that the staff at the stopped case counter will be no longer required, and at present there are four clerks whose duties may be described as very tiresome.

Here again is the point that was made at the beginning, namely, that many of the staff have not been employed on the actual work of registrations, but in performing work which should not be necessary.

The present practice, of course, is that stopped cases are asked for by the public, the requisitions are perused and the Titles Office clerk attempts to give as much help as he can, but always with trepidation lest the senior examiner should take a different view. The alternative, of course, is for the case to be placed before the examiner, the party to wait, perhaps, and interview the examiner. When directions are given, the case is handed back to the stopped cases clerk. In any event the solicitor's clerk who finally provides the answer to the requisitions must at some later stage again ask for the same document and again go before the examining officer who views the actual amending. All of this double handling will be no longer necessary under the new system.

The stopped cases should, in future, be kept at the counter with the clerks who receive the lodgments. It is a duty which can be discharged relatively easily, because the same people who lodge also lift their firms' stopped cases. Experience in South Australia has proved that interference with their other duties is negligible.

It should be clear, of course, that these 25,000 cases occupy space which the executive claims is so urgently required. This only strengthens the suggestion that the housing of these is the responsibility of the solicitor concerned. The Titles Office, in spite of its many imperfections, should not become a mausoleum.

Registration Room.

This branch, as its name indicates, completes the work of the remainder of the staff by endorsing on the original and duplicate certificates and instruments memorials of the various transactions. There are nearly 20,000 instruments in this room awaiting endorsement, and the usual confusion and additional work caused by such accumulations is obvious. Congestion in this room is also unpleasant. Questioning the officer in charge, I found that his assessment of staff requirements for the checking of this work was ten—just twice as many as my standard demanded. Again I had to examine the routine in order to uncover the inevitable truth, namely, that unnecessary work was being done.

In the first place the complaint was made that insufficient clerks were available capable of interpreting the instrument and recording its import on the certificate. On investigation, however, I found that the clerks who were occupied in this work not only endorsed the original certificate but the duplicate also. The endorsing of the duplicate entails the mere copying of what is on the original. It should have been abundantly clear, therefore, that this could be done by a girl or lad, or for that matter any older person who would hardly need to think very much. In other words, half the time of the officer who is called to do the relatively important work of endorsing the original is wasted on the duplicate. This, of course, should be discontinued, and any officers who are sufficiently capable should be used exclusively for the original. This is merely using the staff intelligently. In any case it is common knowledge that the copying of one's own work does not contribute to efficiency.

The next thing I discovered was that the checker treated both original and duplicate. I should have thought it obvious that if the duplicate were checked, that would automatically cover the original.

As already suggested, a different person should copy from the original. If this is done then the duplicate only should be checked with the instrument. Any errors found on the duplcate will naturally be found on the original.

This procedure, of course, reduces the examination by half, and this explains the difference between ten checkers and five.

The procedure just outlined has been in operation in South Australia for at least 50 years, and is scientifically sound. After endorsing the certificates of title the Transfer of Land Act (section 59) requires the Registrar to endorse on the instrument concerned a certificate of the time at which the memorial was entered in the register book (original certificate of title). I can only express complete surprise at the manner in which section 59 has been observed.

Firstly, a huge rubber stamp containing unnecessary information is placed on the instrument. This stamp takes up much room on the table and is difficult to handle. It makes provision for the Registrar to sign in two places, and compels the clerk to fill in quite a few unwanted particulars.

After this is done and checked, large bundles of instruments so endorsed and stamped are taken to any assistant Registrar who happens to have the time, and they are signed by him *without any checking by him at all.* He accepts the fact that the checker, whose grading by the way is too low, is actually responsible. The stamp should really be exhibit to this report, but I emphasize the very great waste of time and man power, first in its use—on many of the few hundred instruments lodged each day—secondly, in the superfluous information the clerks have to record, and, thirdly, in the time which an assistant Registrar occupies in doing something quite automatic.

I regret that matters of this kind which are so obviously open to serious criticism on so many grounds, particularly in the gross waste of man power, have continued without being questioned by those whose duty it was to prevent these very things. Probably the most difficult thing to understand in this badly conceived procedure is the failure to take advantage of, or rather to observe, the provisions of section 60 of the Transfer of Land Act. That section states that instead of signing these memorials and certificates, the seal of the Office of Titles shall be attached, together with the *initials* of the officer attaching the same. Here was and is a way to effect a very great saving of man power. The checker is

the man responsible, and instead of double handling and double signing as a mere automaton, the registration can be effected by the very person whose primary duty it is to do this very thing.

Delivery.

This branch is a small one and entails relatively little organization. One thing, however, could be introduced which would appear to save quite an amount of entering. It is suggested that a very small slip be attached to every dealing at lodgment worded:—

"Please deliver to.....

Certificate of Title, Volume.....Folio.....

Mortgage No....., after registration of

.....to.....

.....Signed.

Received the above deeds.

.....Signed.

Date....."

When registration is completed, the delivery office merely obtains the receipt of the person named therein, hands over the deeds, and files the receipt with the instrument. This slip is slightly gummed so that it will adhere to the instrument. Filing space is saved, unnecessary books are dispensed with, and the "follow" clerk can see the authority at least as easily as is now the case.

Index Room.

I do not consider it would be possible to find another office in Melbourne with such antiquated books as one finds here. Each book must weigh anything up to 60 lb. The entries are not in true alphabetical order, and in consequence much time is spent in locating the particular name.

The outstanding feature of this room is the very great waste of space. These very large cumbersome books are spread over desks. Obviously they would be incapable of being filed in any reasonable rack. Even men could hardly lift them. These large desks are spaced in a room which I should estimate is about 60 feet long and 35 feet wide.

Nothing is filed above the desks or below them. In other words a mere stratum of space is used in a room over 2,000 square feet. Apparently no one has considered that there might be a more modern approach to this matter of indexing. In point of fact, of course, rapid strides have been made in office equipment, but little of it can be seen in the Titles Office except in the Chief Draftsman's branch.

Here is a position which needs immediate attention. A steel filing cabinet and very small books of a loose leaf design are urgently required. It would be safe to say that an area of about 100 square feet only would be necessary for the new set-up of streamlined indices. I suggest that this room in particular be inspected so that its out-of-date methods might be clearer than language can make it.

With all the complaints about lack of space, it raises the question as to what means have been employed to grapple with the situation at all.

A new index as suggested could be comfortably housed in the caveat room, which, it has been suggested, should be vacated as quite unnecessary. This will leave a room as large as an ordinary school hall for those portions of the office considered to be cramped.

The practice of cancelling the entry against a vendor's name who has sold all the land described in that entry is, I submit, undesirable. First of all, of course, the public and departmental searchers rely on that cancellation. Secondly, it means that, in effect, a second register is being maintained.

All office machinery is designed to build up the register book, but not to compete with it. Everything should be subservient to the main feature of a Torrens Title, and that is the certificate itself. Any practice which tends to suggest that information, exclusively the province of the register book (original certificate of title) can be found elsewhere is not in the interests of administration. The only thing which is given indefeasibility is the certificate of title itself, and the question of ownership of land is entirely a matter for the certificate of title to which searchers should be directed.

Entries in the index are made after registration. This means that at present there is no avenue available in the Titles Office whereby the name of an unregistered transferee, &c., can be searched. Although this fact is not of very great importance, it does strike me as somewhat peculiar, and I think for more reasons than one that indexing and numbering of instruments should be completed immediately after lodgment. In this way priority would be indicated by the number, and the old practice of "red ink" numbers could be entirely dispensed with. I repeat that at this juncture of suggested office reorganization the time at which indexing takes place is not vital, but it has sufficient merit to make it an item for attention after other matters of primary importance have been attended to.

Correspondence Branch.

In common with my experience in the index room, I found in this branch a book now rarely seen—a wet press copy. For purposes of quick transition I think instruments lodged by post should be lodged in the normal way and examined in the normal way. I see no reason why priority cannot be conferred as usual rather than wait until examination takes place.

Each letter has a folder, and I think there is a waste of time in this respect. These letters, unless important, could be destroyed each month or two. The crucial thing in this branch is to see that a proper check of fees is made and that each entry in the cash book represent a dealing which is lodged. If a cash register is installed, as I have suggested, some little efficiency might be added here.

The outstanding inefficiency here is the employment of the next senior man to the Registrar of Titles in the work of opening and checking the mail bag. Although the receiving of cash through the post is a responsibility calling for the assistance of a somewhat senior officer, there appears no reason why such a highly placed man should spend valuable time on a relatively minor matter. I was surprised, too, that the Registrar of Titles himself signs every letter which leaves the office.

Summarizing this aspect, there is abundant evidence that the status of work is not related to the official standing of the officer. On standard of work no more than five should be in this room, but if the company's branch brings much work, then some modification might be necessary. This room requires some more investigation. A Secretary to the Registrar appears very necessary. In this way the head of the Department would not be called on to do what he now appears to do, namely, many things which are not top executive duties.

Any other man with less commendable humility and willingness than the present registrar would surely have demanded such an officer long ago.

Examiners of Titles.

This is the legal branch of the Department where any questions of law are submitted, but the chief function of which is to examine title to land which it is proposed to bring under the Transfer of Land Act.

The lodging of an application to bring land under involves the public in unnecessary walking from place to place. I think the application should be accepted at once at the Titles Office counter and passed on normally. This will remove just another irritation which is not really necessary at all.

The work here is about twelve months in arrear. Although the very nature of the duties require quietness and meditation, I do not think sufficient thought is given to the question of organization. This deficiency is found in most strictly legal atmospheres.

For example, I found that declarations, which are produced with the application and which of course can be perused, are copied in the report to submit to the Commissioner. A little thought should have made it clear that this work was unnecessary.

When an application is made it is referred to officers called " searchers," who trace all registrations through the index and report to the examiners. Very technical knowledge is required by these searchers, and perhaps attention could be given to their grading. It is very important work because it is the foundation for the certificate of title which follows, and in respect of which the State guarantees indefeasibility.

When searching in this way a history of the title is prepared with sketches of the land and so on. Briefly it can be said that the searcher has before him in chronological order the chain of title as disclosed by the deeds as registered. However, all that is generally sent to the examiner is a list of the deeds which have been registered.

The examiner compares the deeds produced with these registrations and, as he peruses the deeds and wills and other evidence of title, he compiles a history of the chain in *longhand* in a very similar manner as the searcher does. A good deal of the time of an officer receiving somewhere between £1,200 and £1,300 a year is occupied with this ordinary work, which, as stated above, has already been done by the searcher.

The history of the chain of title which the searcher has previously prepared in *longhand,* but has retained, should be sent up to the examiner, who would then be relieved of the duplicating which at present is the practice.

This unfortunate overlap accounts for some of the failure to reach the standard I should like to see here. The fact that the deposit index is not searched raises the question as to whether trusts may be missed. I think this should receive the attention of the Chief Examiner.

Whenever an examiner (transfer of land work) finds a reference on any certificate of title to a general law mortgage, &c., the case is submitted to the searching branch. This is just another place where transactions might be and merely adds to the confusion. I think any examiner should be able to deal with the matter himself, because once the land is brought under the system it is subject only to the provisions of the Transfer of Land Act. This feature would have been more properly included in my treatment of the examiners' branch.

Few law books have been obtained, and I understand it is over ten years since a purchase was made. Even legal men must have equipment. This explains the very poor knowledge shown of the principles of the Torrens System.

My suggestion to abolish the position of Commissioner of Titles would simply leave the Chief Examiner as the senior executive officer. As the compulsory process may be introduced more staff might be required. If young men are recruited then, when senior vacancies arise in this and other branches, younger men will be trained and available for active vigorous leadership. A new attitude is needed here free of the old traditions, rulings, and other trappings which have had such an unfortunate impact.

Drafting Section.

I am convinced that the whole drafting of new certificates of title should be carried out in the draftsmen's section. The main features are already prepared there, and what is added by the drafting clerks is mainly of a copying nature, e.g., covenants and easements. A set up exists here which is out of proportion to its importance, and the checking of these ordinary details only magnifies the matter.

Strong Room.

There is evidence of a lack of supervision here. A large staff such as exists must be organized in order to render the service which the public expects from this room. All search tickets must now be presented at the one place, and yet the book or instrument required might be—and is known to be by the searcher —at another end of the very large room. Poor management here can impose much walking about by the staff.

I think an attendant should stand before each of the sections which are known to be busy. In this way the public searcher could present his ticket to that man and receive attention. Systematic setting apart of certain areas of register books to each book attendant would regularize something which at the moment has anything but that appearance. A senior attendant should supervise these men continually. Modern lighting is required here. An essential thing too is care in taking from file and re-filing, and the troubles arising from a failure to observe this, suggests the bound volume.

Section 47 of the Transfer of Land Act requires that this must be done. A statute speaks with authority and must be obeyed. It has, however, been ignored, and I draw the attention of the Honorable the Minister to this continued disobedience. I think a loose leaf binder could be adapted to take these certificates, in order that totally cancelled certificates could be excluded. In other words, a loose leaf register containing totally cancelled certificates could be filed beneath the loose leaf register of extant matter. Little clearance would be available in the slate recesses, but investigation will show, I think, that with a little trimming of the certificate, the book might fit comfortably. An immediate start should be made on this project. The present untidy and dirty state of the certificates makes action of this kind almost imperative, apart from the legal position which has been defied for so long. Either bound books or an amendment of the law is called for. Loose leaf certificates, as at present, make filing a very unpleasant and unhealthy duty. Bound volumes are neat, clean, and almost impossible to misplace.

Section 54 (2) of the Transfer of Land Act provides that original instruments must be bound up in the register book. I suggest this calls for a slight validating amendment in order that authority may be given to their being filed as in the past.

It is unfortunate that transfers and mortgages are separately filed. This position should be watched carefully in order that any steps available may be taken to avoid staff confusion.

In general there is a call for over-all planning of this room which will be essentially long range in its policy. The housing of millions of documents, unless accompanied by care and close attention to public and departmental needs, can easily develop into something very serious.

Draftsmen.

I have already referred to some aspects of this branch, but my investigation has been much narrowed due to the absence in New Zealand of the Chief Draftsman.

This is the only part of the whole Titles Office where I gained the impression of efficiency. Furniture and equipment was clean and modern. Rooms were clean and the staff did not fall below this environment. Every question received an almost stacatto reply from the Assistant Chief Draftsman and those below.

The arrears in this office are really dreadful. They are causing the worst possible embarrassment to the public and Department. Repercussions are felt in almost every section, but I am satisfied that staff inefficiencies are not to blame. Overtime has not been worked and industrial conditions, I understand, make that step impossible.

It is a question of enough senior men, and the only hope of arresting the matter is to see if any avenue is open whereby certain work could be dropped temporarily. Facts have been revealed by my investigation and I shall discuss these when Mr. Arter returns, and this, I understand, will take place when my report is being considered by the committee. I am confident that whatever can be done will be done after consultation takes place between us.

OVERTIME.

In some instances overtime is unavoidable. I think it is a pernicious thing, however, and so far as this Department is concerned I think it should stop immediately if my suggestion for the abolition of the interim index and caveat room is accepted. In any case I think that if overtime ceases it would bring speedier action for the rehabilitation of the Titles Office.

ACCOMMODATION.

Public Counter.

At present this room, with the noise of stamps, shouted questions, and banging of books, has more of the atmosphere of an auction room. The abolition of the stopped cases and interim index will cure much of this.

The set-up of the room, however, leaves much to be desired. The public has a much greater area than it needs, and the staff has been deprived of valuable filing space. The "follow" clerks are in most unbecoming cubicles. One senior officer has a room which is used also as a passage way!

All of this could be avoided by moving the two counters closer together and providing for the staff between the walls and the counters. Each wall should be used for modern steel cabinets. In this way the staff would have much more room and better light so far as at least as the Queen-street side is concerned. When spoken to about this one officer informed me that he had suggested plans for something like this, and I have urged him to place it before the head of the Department—the Registrar. This room is very large and can with intelligence provide ample space for a long time. I think the youth of this room—and they commend themselves to me—should be consulted in any change.

Strong Room.

In general there is much space between the ceiling and the filing bins. Tiers of racks could be placed above those already there. Between the balconies there is room. All of this can be used and, with fluorescent lighting and air induction fans and the like, comfortable working conditions can be established. I am completely satisfied that those who have complained at the lack of space have never had to grapple with such a problem.

If either the New South Wales or South Australian officers had the potential room which I see available in Victoria, there would be happier minds in those States.

The point is that in the present exigency it is not a question of new buildings, but how can we fully use to the best advantage what we have got. In the realm of the home only those who have faced it know its significance. *A fortiori* this applies to the Titles Office. Floor to ceiling is available. The failure to utilize what is abundantly available would be wanton. Any inspection of these premises which gave rise to the alibi of space must have been made cursorily and without even moderate meditation on the matter. Furthermore, the excessive accumulations of work tend to colour the position more highly.

Summarizing the position, my suggestions, apart from those under this heading, provide for the whole of the space of the index room—over 2,000 square feet—and more room and comfort at the public counter. Space is not a major problem here at all. It is the failure to face these things intelligently.

SUMMARY OF REPORT.

Although I consider that the Titles Office should function just as smoothly as any other well-ordered office, I am not unmindful of the fact that the rapid growth of the population prevents any set-up becoming static.

It may well be that in another ten years the question of decentralizing may have to be considered, and I believe this is a step which all large cities will ultimately have to take. Put succinctly, my investigation reveals that neither shortage of staff nor lack of accommodation are the basic reasons for the failure of the Titles Office to function as it should.

The fundamental causes are divided control, the heavy hand of legal authority which has so suppressed and repressed the staff that it no longer attempts to reason or learn but merely follows, and the absence of any one who really understands the principles of the Act which the office is committed to administer.

Steeped in tradition, and with no realistic approach, the staff thirsts for new leadership and for the youthful members who sense this vacuum I have every sympathy, as indeed I have for the older ones who are the product of an unfortunate administrative set-up.

I regret that my inquiry has failed to find any Department (other than the draftsmen's branch) which is not in need of reform. It is obvious that no attempt has been made to inquire of any means whereby the office could improve its standards.

If my suggestions are adopted, the saving of man power alone would be:—

Interim Index	.. .. ..	5
Listing Clerk	.. .. ..	1
Fitting Clerk	.. .. ..	1
Caveat Room	.. .. ..	6
		13
Less those required for noting on certificates	.. .. ..	4
		9
When the examiners are released from many of their painful duties only five or six will be required—		
Potential saving up to	.. ..	7
The registration room asserts it is necessary to have ten checkers. With my views implemented, these would be reduced to five—		
Potential saving	.. ..	5
TOTAL	.. .. ..	21

If adopted, I think my main suggestions should be implemented in the following order:—

1. Registration room procedure.
2. Stopped cases.
3. Abolition of interim index and caveat room.
4. Front counter, including delivery.
5. Index room.
6. Abolition of rulings, investigation of wills, &c. Streamline the examination.

As quickly as possible I would add young men, qualified in law, but only those who have a sound grip of the Torrens system. Much care should be exercised in selecting a Registrar of Titles who must—

(*a*) have relative youth,
(*b*) have character,
(*c*) be qualified in law,
(*d*) be prepared to adopt an outlook altogether new,
(*e*) oust inquiry,
(*f*) have ability to manage a staff,
(*g*) if possible, come from the Titles Office.

In making this Report I have deemed it proper to supply detail in order that those on the Committee who are not familiar with Titles Office matters might be able to obtain as clear a picture as possible of the procedure. Any prolixity, therefore, may perhaps be excused.

My inquiry has not been a pleasing one, because I have seen so much that has been depressing to any one who knows how simple and sound a Torrens system can really be.

I have a great admiration for the system, and whatever I have said has been prompted by a determination to see that the virtues inherent in the system are not submerged by hands that either have no love for it or knowledge of it.

To this end, therefore, I have been blunt and critical, for in the destruction of the things that are undermining, I have, I trust, made a constructive contribution. To many whom this Report may unwittingly offend, I tender my sincere regret, but I remind them, nevertheless, that I have discharged my trust to my own satisfaction, and I hope to the satisfaction of the Government which has employed me.

I have the honour to be, Sir,

Yours faithfully,

G. A. JESSUP,
Registrar-General,
South Australia.

At Melbourne,
30th November, 1950.

23

TRANSFER OF LAND BILL.

MINUTES OF EVIDENCE.

TUESDAY, 5TH DECEMBER, 1950.

Members Present:

Mr. Mitchell in the Chair.

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Crean,
The Hon. A. M. Fraser,	Mr. Oldham,
The Hon. F. M. Thomas,	Mr. Reid,
The Hon. D. J. Walters.	Mr. Rylah.

Mr. G. A. Jessup, Registrar-General of Deeds, South Australia, and Mr. C. F. Knight, Secretary to the Law Department and Mr. A. P. Sutherland, Registrar of Titles, Victoria, were in attendance.

The Chairman.—In addition to Mr. Jessup, we have with us this afternoon Mr. Knight and Mr. Sutherland. I may say that I took down copies of the report immediately we adjourned yesterday and the three gentlemen concerned and I had a preliminary talk this morning. Mr. Knight and Mr. Sutherland both pointed out what we quite realize, and that is that the time has been available to them for the consideration of the report is very short—too short for them to be able to appreciate fully the ramifications of the report. I told these gentlemen that Mr. Jessup would be returning to Adelaide to-morrow and that that was all we could do. After a conversation with them I think I can put it that there are one or two points which they would like to express opinions on before this Committee. I suggest that we invite Mr. Knight first to make his comments.

Mr. Knight.—I would prefer to confine my remarks to the report itself which is the only matter at issue now before this Committee. I refer in the first place to remarks appearing on page 3 in which the position that I hold as Secretary of the Law Department is canvassed. It is described on that page "as an infliction reminiscent of things very long ago." The report proceeds "Throughout my investigation I have been continually conscious of the unfortunate repressing impact of this office on the personnel, and yet this official does not even work in the same building, and in consequence would necessarily know little of its law and much less of its practice." Now that is a statement of Mr. Jessup's conclusions. It is obvious that he has come to those conclusions from sources other than the proper sources. At no time since Mr. Jessup arrived here on the 15th of November last has he consulted me regarding the relationship of the permanent head of the Department to the Branch. I invited him to see me and I told him that I was always at his disposal, but he did not take advantage of that invitation. The point of criticism to which I would first direct my comment here is that I "would not necessarily know much of its law and would know much less of its practice," that is to say I would not necessarily know its law or its practice. Had Mr. Jessup made inquiries as to my experience in the Law Department, which now covers a period of more than 39 years, he would have realized that I know quite a lot of the law and all the practice and procedure of the Titles Office. For many years I was a senior clerk in the Conveyancing Branch of the Crown Solicitor's Office while the present Registrar was a fourth class officer in the Titles Office, and I have seen four Commissioners come and go, and as many Registrars of Title. I know the work of the outside counter of the Titles Office as well as the inside thereof and, as I mentioned to Mr. Jessup this morning, we never relied on the clerks to get the records. We got them ourselves. I am speaking now of a period as conveyancing clerk during which £20,000,000 worth of land was purchased by the Crown. That was before many of the Crown instrumentalities concerned took on their own private solicitors. We did that work. We made our own final as well as preliminary searches and we carried on all the Titles Office work without the assistance of the Titles Office clerks. Their work was so voluminous that we spared them for attention to the public. The plainest fool in the Conveyancing Branch would learn much by doing what we did in the Titles Office in those days.

The Chairman.—What were you in the Titles Office in those years?

Mr. Knight.—I was not in the Titles Office but was senior conveyancing clerk in the Crown Solicitor's office. Passing from there, I became an Examiner of Titles and did the advising on the Transfer of Land Act work—that is, along with other Examiners—and also on the general law. The Crown Solicitor sought my services from the Commissioner of Titles to return as Assistant Crown Solicitor, in which capacity I worked for nearly ten years, advising amongst other things on transfer of land dealings in addition to giving advice for the various Departments in like matters. Since then I have been the Permanent Head of the Department covering a period of nearly seventeen years. It is also stated in this report that there is no necessity for the set-up in the way it is at the present moment. It is quite obvious that Mr. Jessup does not know the law in Victoria regarding the responsibility of permanent heads of Departments because in the *Public Service Act* 1946 there is this provision—

> Subject to this Act the permanent head of a Department shall be responsible for its general working and for the transaction of the business thereof and shall advise the Minister adminstering the Department in all matters relating to the Department.

That means the Department in all its spheres, one of which in this instance is the office of Titles and the Registrar-General.

Mr. Jessup.—May I at this point ask Mr. Knight a question?

The Chairman.—You may proceed, Mr. Jessup.

Mr. Jessup.—Will Mr. Knight tell me which section of that Act confers on the Secretary of the Law Department the leadership of the Titles Office?

Mr. Knight.—That section which I have just quoted does so. I am the permanent head of the Law Department as Mr. Jessup will see by reference to the second schedule to that Act. Sub-section (1) of Section 24 states—

> The First division shall consist of the permanent heads of the departments specified in the first column to the Second Schedule to this Act and the officers for the time being holding offices specified in the second column to the said Schedule opposite such departments shall be the permanent heads of departments.

The Second Schedule—First division officers—sets forth the secretary of the Law Department. On the passage of that Act I was the officer holding that office—"Law Department—Secretary to the Law Department."

Mr. Fraser.—Where is there a suggestion in this report to the contrary?

Mr. Knight.—I refer to the passage on page 3 reading: "The spirit of this office broods over the whole Department and the failure to deal with accumulation, accommodation, and all its attendant gross inefficiencies by methods appropriate to the needs, is due in very large measure to the lack of some one who is in control and himself uncontrolled. I suggest this position be rectified and the head of the Titles Office he a head *de facto* as well as *de jure*, and responsibility direct to the Attorney-General be established."

Mr. Fraser.—I read that passage as meaning that you were *de jure* head of the Titles Office but not so *de facto*.

Mr. Knight.—No. Mr. Jessup wishes Mr. Sutherland to be *de facto* as well as *de jure* head of the branch. At present I am head of that branch *de jure* and *de facto* and am responsible to the Attorney-General and, through that Minister, to Parliament.

Mr. Byrnes.—Mr. Jessup's report indicates that that is not a satisfactory method of conducting the Titles Office.

Mr. Jessup.—And that is all I have suggested.

Mr. Knight.—Parliament has suggested the contrary.

Mr. Jessup.—I have not suggested in my report that Mr. Knight's position is not one *de jure*. He has now satisfactorily indicated where his position *de jure* arises. I have merely suggested that in my opinion that position is untenable. I have not questioned the validity of his appointment at any stage.

Mr. Rylah.—Does Mr. Knight see any reason why the Registrar of Titles does not control the Titles Office?

Mr. Knight.—He does, but I am responsible for the business of the office. However, if Mr. Sutherland wishes, for instance, to put Smith from Branch "A" to Branch "Z" he can do so.

Mr. Rylah.—You say at the moment that the Registrar of Titles does control the Titles Office?

Mr. Knight.—Of course he does.

Mr. Rylah.—Is that so in fact? Under the legislation at present does not the Commissioner exercise certain statutory duties which make the Registrar more or less helpless?

Mr. Knight.—They share the responsibility. It is a question of personality as to whether one will encroach on the functions of the other or not. But I would not presume to interfere with the functions of either when Parliament has delegated their duties to them.

Mr. Rylah.—We do not feel that the situation as it stands is satisfactory. We want to improve it.

Mr. Knight.—This report is based on the present situation.

Mr. Rylah.—Mr. Jessup was asked to report on the position as he found it.

Mr. Knight.—This is the report on the position at the moment, not having reference to any suggestions in the amending Bill which is now before this Committee. The Transfer of Land Act confers on the Commissioner of Titles certain functions and upon the Registrar-General certain functions with which neither I nor the Attorney-General can interfere. How, therefore, can "the spirit of this office brood over the whole Department"? How can the spirit of the permanent head brood over the Department like a clucky hen?

Mr. Fraser.—The report shows that certain things ought to be done in order to give elasticity to the working. For instance, there is the matter of the 24,000 odd stop cases.

Mr. Knight.—When I was last here before this Committee I gave you gentlemen the secret of nearly 60 per cent. of the stop cases.

Mr. Byrnes.—That indicates that you still keep control of the Department, and as to your ideas concerning what are the troubles existing there, how can they be dealt with?

Mr. Knight.—I will discuss them with the head of the branch but I can give no directions as to how he shall register dealings. I can give ideas but if he does not adopt them that is his business, since he is responsible to Parliament for the performance of his statutory duties. I have to advise the Attorney-General as to this part of the Department, amongst others. Consequently, it is necessary for the Registrar of Titles to advise me of any major changes affecting Government policy.

Mr. Fraser.—Take the position in the public lodging room. In this report, who is responsible for the departmental machinery? I invite you to look at page 8 and say who is responsible for that condition set forth there.

Mr. Knight.—We are not responsible for the collection of the fees in the Titles Office. The treasurer is responsible for that part of the organization. We must assess, and the fee clerk must collect, and the Auditor-General lays down the method by which these fees must be collected. The cash register system was canvassed about ten or twelve years ago and the Auditor-General was not then satisfied that it was a fool-proof system. Therefore the present system was introduced at the instance of the Auditor-General. In this regard I would suggest that this Committee address that question to that officer rather than to me. As to the reference in the report to physical things such as furniture, I have already indicated what I have done in the Survey Branch in providing for their requirements. With respect to the Titles Office furniture, invariably the Registrar-General having justified the necessity for a thing, it is approved by me and I advise the Attorney-General accordingly. Some thousands of pounds have been spent on new works in the Titles Office and in no case have I recommended that a specific request be turned down. Of course, there is the question fo funds. If the funds are not made available somethings has to be cut down in one direction or another, but that stage has not been reached.

The Chairman.—In our procedure this afternoon would you, Mr. Knight, rather go through your points as you have prepared them after a perusal of the report and answer questions directed to the particular point you are discussing?

Mr. Knight.—May I proceed as I am doing because I feel that I have been pilloried and if I can answer the Committee as to any question that may arise here I shall be only too happy to assist them.

Mr. Rylah.—Let us look at this matter from the practical point of view, leaving out the question as to who is responsible or which department is responsible and taking up some practical suggestions as to how to make the Titles Office work efficiently. Would Mr. Knight like to make any comments upon that? I do not think this Committee is concerned about the past but that it is concerned to see that the public obtains efficiency from the Titles Office point of view, and I think that even you, Mr. Knight, would agree that they are not getting that.

Mr. Knight.—I agree that they are not getting it but it is not for these reasons set forth here. If this report contains practicable suggestions I will do my best to implement them. But it is asking me quite a lot to have this report before me in the very short time that I have been able to examine it and to be

required to analyse and examine all the suggestions in order to see whether they are practicable, having regard to the existing set-up and with the legislation as it is.

Mr. Fraser.—But the set-up can be altered.

Mr. Knight.—Yes, but that is rather a council of perfection. It is one of the most difficult things possible to get done. This Transfer of Land Bill has been on the stocks since 1947 and it is still, so to speak, only browned on one side; it has not been cooked on the other side yet. If it is introduced again in June of next year and is eventually passed some time next year there will still be practical difficulties in the way of new requirements such as the compulsory bringing of land under the Act. However, after further examination, the immediate thing is to see whether what is suggested here by Mr. Jessup would be in the nature of improvements. In that regard the time has been much too short to see whether the suggestions can be applied to the present set-up.

Mr. Fraser.—The Transfer of Land Bill was nearly completed by this Committee. Then as to Part I. of the Bill we were not quite satisfied with it—that is, as to the general set-up of it—and the question arose whether it would be satisfactory to leave it in that way; that is, whether to have them in watertight compartments. The evidence seemed to disclose that there was no real head there. As a result, consideration was given to it and the Committee went to South Australia and had a look at the South Australian Act. In that State there is a solicitor and not a Commissioner of Titles. We also in the course of our visit saw the Titles Office in working, and we found that the results over there were really astounding when the tests were made. Acting on that, the Committee thought they would like to get Mr. Jessup to have a look at the set-up over here purely in order to see whether we should alter Part I. of that Bill, because this Committee has nothing to do with the administrative side.

Mr. Knight.—If you alter Part I. of the Bill so that the office of the Commissioner of Titles be abolished and the duties transferred to the Chief Examiner of Titles, you would have to revise the rest of the Bill itself.

Mr. Fraser.—That would be a minor matter. There would be consequential amendments. In South Australia they have a solicitor but the Registrar is also a legal man.

Mr. Knight.—My evidence before this Committee was to this effect, that I felt as far as the alteration of Part I. was concerned it was scarcely necessary, provided certain things could be done administratively. That was, that all the advice should be under the control of a legally qualified head who should not be hampered by staff and administrative matters and the like but should be free to look after the administration end of the office. A lot of the objections to the dual control that is apparent now would be eliminated if the Commissioner were kept entirely to the technical legal field and the Registrar were to concentrate on the mechanical registration side.

Mr. Fraser.—But you would still have two heads.

Mr. Knight.—Only that the Commissioner would have no say outside of the legal sphere, the Commissioner being the legal head and the other official—the layman—being the administrative head on the registration side.

Mr. Rylah.—There are two objections that arise here in my opinion. The first is that that would not give the unified control which is essential for efficiency. And, secondly, there is the objection that this Transfer of Land Act is going to continue to be cluttered up with Commissioners' rulings which have been the *bête noire* of the whole show for years past.

Mr. Knight.—You simply cannot administer an Act without rulings as to interpretation.

Mr. Oldham.—I think there is no doubt in the minds of every member of this Committee that it is desirable to have unified control and the whole organization with a head who is a lawyer with administrative ability and, if necessary, with a legal assistant, a solicitor or whatever you may like to call him, but that the final responsibility should be in the hands of one person. I shall be extremely surprised if that view does not meet with the support of Mr. Knight.

Mr. Knight.—I have no fundamental objection to that.

Mr. Jessup.—May I address a question to Mr. Knight? In your remarks just now, Mr. Knight, you referred to the legal leadership of the department being with the Commissioner and the administrative leadership resting in the Registrar of Titles. What place do you reserve for yourself as the departmental head?

Mr. Knight.—The same at now. I do not interfere in the interal execution of duties.

Mr. Jessup.—May I, Mr. Chairman, put a question now to Mr. Sutherland? If you, Mr. Sutherland, found the Secretary for Law violently disagreeing with anything that you wished to introduce in the Titles Office would you, in spite of that, introduce it?

Mr. Sutherland.—I would only submit to him matters of policy.

Mr. Jessup.—For example, the abolition of the checking of signatures. You would discuss that with the Secretary for Law?

Mr. Sutherland.—I would refer it to the Secretary for Law and he would refer it to the ministerial head.

Mr. Jessup.—If any basic question were submitted to the Secretary for Law and the Secretary for Law were to disagree strongly with you, would you, in the face of that, introduce that change?

Mr. Sutherland.—It would be very hard to say. In some cases I would do so in direct opposition to the secretary and in others I would not, that is, where I felt it to be a matter of policy. It would have to be decided on its merits. I do not think you could say yes or no to a question such as that.

Mr. Knight.—May I put a question to Mr. Sutherland? How many years have you been Registrar of Titles, Mr. Sutherland?

Mr. Sutherland.—I have been Registrar for five and a half years.

Mr. Knight.—Are there any instances that you can give this Committee as to where you have altered the internal procedure of the office without reference to me?

Mr. Sutherland.—Yes, there are.

Mr. Knight.—Did those matters involve policy or principle?

Mr. Sutherland.—They did not involve policy. They did in some instances involve principle, but not policy.

Mr. Knight.—It was not a question of Government policy in which the Minister could be interested?

Mr. Sutherland.—No.

Mr. Knight.—And you went ahead and did those things?

Mr. Sutherland.—Yes. For instance, I have altered the progress book.

Mr. Jessup.—That is not basic policy.

Mr. Sutherland.—I am speaking of internal machinery. Where they are not basic matters I have altered them without reference to Mr. Knight.

Mr. Reid.—Are there any other particulars such as those that you can call to mind?

Mr. Sutherland.—There have been others. In regard to plans of sub-division, where they used to leave the number blank we insisted on their withdrawing and relodging. I suggested the system of saving the withdrawal of those dealings on the ground that there was no necessity to relodge it.

Mr. Jessup.—That was very very recently, was it not?

Mr. Sutherland.—No, it was nearly twelve months ago.

Mr. Byrnes.—I do not know that this kind of detail puts the discussion by the Committee forward. I can quite appreciate Mr. Knight's feelings on this matter, but there are matters in this report that we should like to discuss. This particular item that we are now on is only one of them. Mr. Knight's relationship to the office is, I think, a matter that we could discuss at any time.

Mr. Jessup.—May I suggest this: Would it help if I were to ask Mr. Knight one or two relevant questions which could be disposed of rapidly and would be on matters of principle?

The Chairman.—As time is slipping away rapidly I would rather that Mr. Knight just raise the points he wanted to deal with, without interruption from the table. I ask Mr. Knight now to state the more salient features of what he feels about the report, and then we shall hear Mr. Sutherland.

Mr. Knight.—I am at a loss with respect to this report. I would have expected more time to examine all these suggestions contained here. I mentioned to you this morning, Mr. Chairman, that I felt that in coming here to-day at such short notice I could give very little assistance execpt in respect of the criticism contained on page 3 about my relationship as Secretary to the Law Department with this branch. The internal workings of the statutory duties of the Registrar of Titles do not concern me and it would be very helpful to this Committee, therefore, if Mr. Sutherland were invited to cover that ground.

Mr. Jessup.—I would like to ask again if I might put to Mr. Knight a few questions. Do you, Mr. Knight, see any virtue in anything that I have suggested in my report?

Mr. Knight.—Without closer examination I cannot say whether there is virtue in it or not.

Mr. Jessup.—Do you say that you see no virtue in it. You have had the report since yesterday morning at 10 o'clock.

Mr. Knight.—I have.

Mr. Jessup.—And you do not see anything of virtue in anything that I have suggested?

Mr. Knight.—I did not say that. I do not know whether your suggestions would be practicable in Victoria as in South Australia.

Mr. Jessup.—Your brief examination of the report does not show you that it contains any virtues?

Mr. Knight.—Yes, I think it does in regard to the legal profession, and I may add that it will not be palatable to them.

Mr. Jessup.—From my association with the legal profession you can quieten any fears that you may have in that respect. Are there any parts of my report with which you disagree?

Mr. Knight.—I am not prepared to answer that until I have made a closer examination of it.

Mr. Jessup.—You told this Committee that printed forms were mandatory in South Australia?

Mr. Knight.—I was so informed.

Mr. Jessup.—Do you not know that that is wrong?

Mr. Knight.—I do not know.

Mr. Jessup.—Where did you get your information?

Mr. Knight.—I heard it from people.

Mr. Jessup.—Hearsay evidence?

Mr. Knight.—I took it so.

Mr. Jessup.—It is entirely incorrect.

Mr. Knight.—Then say so.

Mr. Jessup.—I do. In regard to the Commissioner of Titles you said that you worked for a good while as Examiner of Titles. For how long did you work in that capacity?

Mr. Knight.—For four months.

Mr. Jessup.—During that period did it not strike you that the work was overloaded?

Mr. Knight.—It was absolutely ludicrous.

Mr. Jessup.—Then you agree with my report as to that?

Mr. Knight.—I would say that much of the work was unnecessary; for instance, the work of the Examiner of Titles in sketching title in longhand was just a copy clerk's function.

Mr. Jessup.—Why was it not altered in the period of your administration?

Mr. Knight.—Because I have no say in what the Commissioner requires before he will certify any title. I have made suggestions to previous Commissioners of Title to the effect that much that was done was unnecessary. You spoke of the adverse possession cases and you laughed at the procedure in regard to them. When I was there, each one of the supporting declarations had to be sketched in longhand and I suggested that that procedure should be altered.

Mr. Jessup.—You admit a serious loss of manpower there?

Mr. Knight.—Yes. That, however, is the Commissioner's job and not mine.

Mr. Jessup.—In regard to the *per capita* output you said that in Victoria this was far in advance of any State and that New South Wales would require three men whereas Victoria would require two. On what did you base your figures that the output of Victoria *per capita* was in excess of that in my State? Have you figures?

Mr. Knight.—Yes, I have.

Mr. Jessup.—Can they be made available?

Mr. Knight.—No.

Mr. Jessup.—Why not?

Mr. Knight.—Because they were given to me verbally.

Mr. Jessup.—Hearsay again?

Mr. Knight.—Yes, like a lot of your report.

Mr. Jessup.—The actual figures *per capita* are six documents per day per man in South Australia as against four and one-fifth per man per day in Victoria. In the Victorian press, South Australia was quoted as having a staff of 84 as against Victoria's staff of 103. Is that so?

Mr. Knight.—Correct.

Mr. Jessup.—Did you know that the figure of 84 was the total figure of the whole of the South Australian staff including draughtsmen, book binders, typists and in fact every person from the Registrar down to the messenger, whereas the Victorian figure included certain clerks only.

Mr. Knight.—It was not stated in your letter to the Attorney-General to that effect. The draft made it plain that there was a total staff of 84. Your letter was supplied to the Attorney-General, who made it available to me for the file.

Mr. Jessup.—Showing that the total staff was 84. Why did you quote the total of my staff at 84 as against a Victorian merely clerical staff of 103 which should have been 123, and also omit the relevant question as to about 15,000 hours of overtime and on that basis suggest that it was unfair to Victoria?

Mr. Knight.—It is a matter of arithmetical progression and I hope you will be able to follow it. It does not follow that because you have 84 men for 54,000 dealings that to deal with 108,000 dealings you need twice the number of staff. It is not a fair comparison for you to speak of a staff of 84 dealing with 54,000 dealings a year and then to come along here and adversely criticize the administration where there is a staff of only 103 dealing with 154,000 dealings a year.

Mr. Jessup.—Your comparable staff here is in fact 135 as against 50 in my State and I have not criticized. I have merely given a report which has compared that output, and I might say that I have commiserated with a staff which is asked to deal with such an output when it is cluttered up at the same time with work which I think is unnecessary.

The Chairman.—Would you, Mr. Sutherland, like to raise any points here?

Mr. Sutherland.—Mr. Jessup has explained now that the figure of 50 includes other than clerical officers. I object to the word "clerical" in this connection because I say that my clerical officers include a lot of temporary male and female assistants. I include them in my total of 103 and Mr. Jessup assures me that he has done the same. I supplied those figures of 103 to you, Mr. Jessup, and they are correct. But I want to make it clear that they include temporary male and female assistants and so on. Actually my number of clerks totals 68 permanent and 7 temporary clerks.

Mr. Jessup.—In this connection I suggest that the words "Titles staff" would be better than "clerical staff." They are a misnomer.

Mr. Sutherland.—Yes. Mr. Jessup cleared that point this morning and I have nothing further to raise with respect to this matter. I should like to say here that Mr. Knight has referred to the cash register. From Mr. Jessup's report it would look as if that was something for which I am responsible. I have nothing at all to do with the collection of the cash. That is a matter between the Comptroller of Stamps and the Auditor-General. If I were to say that I would get a cash register in my office to-morrow and the Comptroller of Stamps said he would not use it, why put this in the report as a knock at my administration? I have no control over the collection of fees and I could not advocate the obtaining of a cash register either.

Mr. Jessup.—But you would suggest that the installation of a cash register would be better than the present situation?

Mr. Sutherland.—I would.

Mr. Jessup.—That is the point, is it not?

Mr. Sutherland.—Yes, but I feel that that should not be held as part of my administration. In regard to the comparison of staff I think Mr. Jessup will agree that my examiners do a lot more than his examiners in South Australia do, and I do not think you could compare the work of the two classes of officers.

Mr. Jessup.—My report makes it clear that they are doing terrifically much more here.

Mr. Sutherland.—Yes, that is if the report is read carefully. But I want this Committee to know that that is there. On page 8 of your report under the heading of "Public Lodgment Room" you say "Under the rather primitive methods employed here, the staff performs very well. There was an absence of confusion and the pleasant courteous attitude of the young receivers created an easy approach for the public. The hours set apart are very generous . . ." We attend to the public from 9.30 in the morning until 3 o'clock in the afternoon whereas South Australia's hours are from 11 o'clock to 3. I do not know how the profession would agree with the shorter hours if we were to work them here, but it would suit the office and we would get through more work. I have a staff that I fully employ in the hours from 12.30 p.m. to 2 o'clock daily.

Mr. Jessup.—You really support that comment of mine, then?

Mr. Sutherland.—Yes, I support it, but if I were to try to shorten the hours I would ask what the profession would say.

Mr. Jessup.—You would not do it without the knowledge of the Secretary for Law?

Mr. Fraser.—That is a very minor matter than can be worked out later.

Mr. Sutherland.—I would only comment that the work could be got through. However, it is not so long since the profession wanted the hours extended until 3.30 in the afternoon and it was only prevented by the Comptroller who stepped in and said that it was not practicable in view of the banking of moneys received. Anyway, you criticized the method of collection of fees, Mr. Jessup, with which I have nothing to do.

Mr. Jessup.—You think it incongruous to have all these stamps about the place?

Mr. Sutherland.—Yes, but that should not be made a point on which to cast reflection on the administration of the Titles Office. Now, if I may, I would direct attention to page 9 of the report in which Mr. Jessup says "A practice has arisen here which seriously affects the smooth flow of lodgments." You, Mr. Jessup, have expressed to me that there has been no undue delay and yet you say here that it seriously affects the smooth flow of lodgments. My comment is that it does not do so seriously. I have told Mr. Knight that the way in which to get over that is to have what I call a ledger officer who will look after those things. He will look them up before they go to the counter.

Mr. Jessup.—You admit that the present procedure is holding up business?

Mr. Sutherland.—Only to a small extent. The use of the word "seriously" is not warranted. Your suggestion to overcome the situation is wrong. We have found too often that the titles required are not in the number quoted. I submit that your suggestion for curing that position is a wrong one.

Mr. Jessup.—But there is something to overcome?

Mr. Sutherland.—Yes. There is another matter in regard to which again the blame is due to the persistence of the Law Institute and the Titles Office has been put in a certain position, through the time it takes to get an opinion from the Comptroller of Stamps on certain instruments. The position has been put up that time is being lost and that a risk is being taken and so the poor old Titles Office has got it again with the strong insistence of the Law Institute and its influence upon the Attorney-General of the day. I was not the Registrar at the time when this arose but I know that the direction came from the Attorney-General.

Mr. Fraser.—Does an instrument which is not stamped become accepted in the Titles Office?

Mr. Sutherland.—In these cases, yes.

Mr. Fraser.—Then if it is not properly assessed and made available for registration it would not get any priority.

Mr. Sutherland.—It would, and it did, and it still does. The document is taken in to the Comptroller who puts his stamp on it to show that it is an instrument which can be taken. We take it in and the man in charge of it has to send the transfer down to the Comptroller of Stamps and get a receipt for it, and when he comes back he has to sign a receipt for it and then has to re-assemble the case. That takes time. Mr. Jessup says that this should not be done, but it is done with the approval of the Attorney-General at the suggestion of the Law Council. This has caused extra work which is not justified. Work has been put on to this office which never should have been given to it.

Mr. Jessup.—Would you decide such a matter without reference to the Secretary for Law?

Mr. Sutherland.—Knowing that it was approved by the Attorney-General, I would send it to the Secretary for Law.

Mr. Jessup.—You would not say "I am not going to register this"?

Mr. Sutherland.—I would not override the direction of my ministerial head.

Mr. Jessup.—You have no ministerial direction under the Act. Mr. Knight has pointed out that you are *de jure* as well as *de facto* head. Under your Act you have no responsibility to the Minister at all but you have certain functions to carry out.

Mr. Sutherland.—When I took over there was ministerial direction to do this and I would not override that without a counter direction. There are other matters that I should like to go into, arising from this report, but I should like to have more time to consider it.

The Chairman.—We have not the time now. If you could pick a couple of the salient points at this stage, points that you would like to raise, you could deal with them, but our time is short.

Mr. Thomas.—I wish to refer to page 10 of Mr. Jessup's report with regard to the stop cases and I would like to ask Mr. Knight a question about them.

Mr. Knight.—I agree with every word of what Mr. Jessup says in regard to stop cases. Mr. Sutherland and I have always discussed the stop cases and I have recommended that we use the rejection notice more frequently in order to discipline a very undisciplined legal profession. From 40 to 50 per cent. of cases is only a conservative estimate. Of the 25,000 odd cases that are now stopped, probably 50 per cent. of them are stopped for patent errors.

By Mr. Rylah.—Mr. Knight, do you think it would be right to say that every plan which is subsequently an unregistered plan is a stop case?

Mr. Knight.—Yes, that was mentioned previously.

Mr. Rylah.—There are 25,000 stop cases.

Mr. Knight.—Yes.

By Mr. Rylah.—Do you believe that of those 25,000 stop cases 50 per cent. would be due to patent errors. If you do I think it would be just as well for you to check your figures?

Mr. Knight.—Plans of subdivision may be involved.

Mr. Rylah.—I think the figure would probably be in the vicinity of 70 per cent.

Mr. Knight.—I do not think so. I would say at least 10,000 of those cases would be due to patent errors.

Mr. Rylah.—There are some thousands of plans unregistered.

Mr. Knight.—Yes.

By Mr. Rylah.—Would the average number of transfers following a plan be five?

Mr. Knight.—No, it would be higher than that.

By Mr. Rylah.—Would seven be nearer the mark?

Mr. Knight.—Yes.

Mr. Rylah.—If there were 1,000 plans not registered in the office there would then be 7,000 stop cases.

Mr. Knight.—No, not necessarily.

Mr. Rylah.—But I asked about the number of transfers following on the plans. This in an interesting matter. I made a check at the Titles Office only yesterday. The bulk of the unregistered matters are followers on plans. I would like to have some definite statistics in relation to this matter. I think the figures concerning the stop cases, following on unregistered plans, are amazing, and I feel that this Committee has been misled—not intentionally.

Mr. Sutherland.—I would like to look at the plans of my own department.

Mr. Rylah.—I desire to know the actual figures.

Mr. Sutherland.—I do not wish to make a guess.

Mr. Knight.—I do not think the figures would be so great—of course, I am subject to correction.

Mr. Sutherland.—I would like to have a look at my own figures. The Committee should see the number of cases in my own department—they are stacked around the strongroom.

Mr. Rylah.—We will leave the matter at that for the moment. Perhaps, at some subsequent stage, you may like to supply this Committee with definite statistics. I think they would be revealing to you, as well as to the Committee.

Mr. Sutherland.—Is the Committee aware that the transfers are put in before the plans for subdivision are ever lodged in the office?

Mr. Rylah.—That would increase the number of stop cases.

Mr. Knight.—But why put it on to the Titles Office?

By Mr. Fraser.—Referring to page 16 of the report of Mr. Jessup, what is the virtue of the numbers marked in red ink? Also, it is stated, ". . . each folio now has no less than seven figures. For example, one refers to Certificate of Title Register Book, volume 7416, folio 1483188. By taking the next hundred, and dividing by two the answer is the volume."

Mr. Sutherland.—That is hardly worth while considering. The number is put on with a stamp and it is just as easy to stamp seven figures as three figures.

Mr. Knight.—I agree that a margin of error may arise in copying seven figures. They may be transposed.

Mr. Rylah.—A volume has folios 1 to 200. There would be not only a saving in the preparation of the transfers, and so on, but there would be a saving in mortgages, &c., and in the Titles Office in the recording of the documents.

Mr. Knight.—But in time the volume numbers will go to seven and the folios only to three.

Mr. Rylah.—But on the present basis the volume numbers will not reach seven until about the year 2,250. The system has now been in operation for about 80 or 90 years and you are getting up to 7,000.

Mr. Knight.—Yes. We would still have to open a new volume for every 200 folios.

Mr. Oldham.—It seems to me that it is a question of the approach to these matters—the Committee does not wish to approach the matter from the point of view that every suggestion has to be made the subject of defence of the existing position.

Mr. Knight.—That is so. From a cursory examination of the report, I am willing to agree with Mr. Jessup up to a point in some of these matters.

Mr. Jessup.—In regard to the abolition of the caveat section?

Mr. Knight.—Yes, I would do that.

Mr. Jessup.—Why has not that been abolished?

Mr. Knight.—These discussions have been taking place during the last twelve or eighteen months. It was not time to be talking of such matters when there were major changes in the Transfer of Land Bill pending.

Mr. Jessup.—Was the abolition of the caveat section relevant to the new legislation?

Mr. Knight.—It may have been—inasmuch as it may increase the number of registrations.

Mr. Jessup.—It is only a matter of machinery—the Transfer of Land Bill is a question of law.

Mr. Rylah.—To a large extent, this discussion is academic. The Committee is mainly concerned about such of these recommendations of Mr. Jessup as could be adopted forthwith. Consideration of the new Transfer of Land Bill will then be facilitated. Perhaps the Committee could now hear what Mr. Jessup has to say about the proposed Bill. I am particularly interested to hear him on certain aspects of it.

By Mr. Reid.—Before Mr. Jessup does that I desire to ask Mr. Knight some questions. Mr. Knight, you mentioned you were an Examiner of Titles for four months. By that, do you mean that you were an examiner on the staff of the Commissioner of Titles?

Mr. Knight.—Yes, a legally qualified legal practitioner appointed as such.

By Mr. Reid.—In what year were you carrying out those duties?

Mr. Knight.—In 1927.

By Mr. Reid.—Prior to that date, were you conveyancing clerk in the Crown Solicitor's office?

Mr. Knight.—Yes, for five or six years, but immediately prior to my appointment as Examiner of Titles I was second in charge of the Common Law Branch of the Crown Solicitor's office.

By Mr. Reid.—Do I take it that over the last few years you have had frequent conferences with the Registrar or his senior officers, regarding the Titles Office administration, and so on?

Mr. Knight.—Certainly. For instance, the Survey Branch has been re-organized only in the last six years. Conferences commenced in Mr. Vance's time, some seven or eight years ago.

By Mr. Reid.—Has the question of the huge number of stop cases been somewhat of a running sore in the Titles Office administration for years?

Mr. Knight.—Yes, a bugbear to myself and everybody concerned.

Mr. Reid.—You have submitted evidence to the effect that if rejection notices were sent out to practitioners the situation would be greatly improved.

Mr. Knight.—Yes. That was only from a machinery point of view. Mr. Jessup has a suggestion which does not go so far as that. Rejection of a dealing means the parties losing the fees.

By Mr. Reid.—Leaving aside the suggestion of Mr. Jessup, how many times within the last five years have you discussed with the Registrar the question of rejection notices as a means of improving this position?

Mr. Knight.—That is putting a big test on my memory.

By Mr. Reid.—When did you last discuss the matter?

Mr. Knight.—I cannot remember whether it was with Mr. Vance or Mr. Sutherland.

By Mr. Reid.—Might it have been before Mr. Sutherland's time?

Mr. Knight.—It might have been. The stop case problem has become really disastrous only since land sales control was lifted. Until 1943 onwards, we were not in nearly such a parlous condition.

The Chairman.—This is a matter that could possibly be discussed with Mr. Knight at another time. I suggest that the Committee now hears the evidence of Mr. Jessup.

By Mr. Oldham.—Before doing so, could Mr. Sutherland and Mr. Knight briefly give the Committee their general reaction to the suggestion in relation to the present examination of various documents under the present system, with an adherence to old orders of Commissioners of Title?

Mr. Knight.—Very deliberate consideration is required before discussing some matters which are regarded as essential to an indefeasible title.

Mr. Jessup.—In other words, you do not regard it as the province of the Registrar to do this without your concurrence?

Mr. Knight.—No, I was asked for my opinion—not what I intended or did not intend to do.

Mr. Jessup.—Is there any one known to you of high authority in the legal profession who supports the Titles Office type of inquiry?

Mr. Sutherland.—Mr. Fox, who was on the Committee, expressed the opinion that he did not think I could do anything else.

Mr. Jessup.—Is there any one else, any legal authority, who supports this procedure?

Mr. Sutherland.—Mr. Fox is a lecturer at the University and we are on friendly terms. That is probably why he just expressed the opinion. I do not know whether we actually discussed it.

Mr. Jessup.—Mr. Fox does not think that way now, nor does Mr. Wiseman. I have spoken to a number of lawyers and I have not discovered anybody who supports that view.

Mr. Knight.—The legal authority is our Commissioner.

Mr. Jessup.—Of course, that is what I was coming to—you have no authority to support you outside the Commissioner's rulings?

Mr. Sutherland.—To give an indefeasible title is the only purpose behind it.

Mr. Knight.—Yes.

Mr. Sutherland.—Section 69 of the South Australian Act states that an absolute and indefeasible title is obtained except in cases of fraud or forgery. There is nothing like that in the Victorian Act.

(*Mr. Sutherland and Mr. Knight withdrew.*)

By Mr. Oldham.—Mr. Jessup, did you have in mind making some comments upon the proposed Bill?

Mr. Jessup.—I anticipated that the members of the Committee would ask questions themselves rather than working seriatim through the Bill with me.

Mr. Fraser.—Will you go back to the question of the indefeasibility of titles. Section 72 of the Victorian Act is somewhat similar to section 69 of the South Australian Act.

Mr. Jessup.—Yes—but the law is not properly analysed here in Victoria.

By Mr. Fraser.—What is your view of the case *Templeton* v. *Leviathan Pty. Ltd?*

Mr. Jessup.—Speaking from memory, *Templeton* v. *Leviathan Pty. Ltd.*, was a case which was fought out after an order was made by the Supreme Court in certain trusts. There are two main features of this case, one, that the Registrar has not to nose around and look into transactions and find out if something may be wrong. The second is that the Registrar must not register anything which on its face shows a breach of trust.

Mr. Rylah.—The footnote to section 55 of the *Transfer of Land Act* 1928, reads:—

Where the Registrar knows facts which show that an instrument proposed to be registered is a breach of trust, although no copy of the trust document is lodged under this section, or King's caveat lodged under section 233 (*c*), he may refuse to register the instrument.

Mr. Jessup.—The position is that the Titles Office instead of waiting for that very rare document which does, on its face, disclose a breach of trust, inquires by all possible means within its power to find out what the parties actually are doing. In other words, it goes far beyond the ambit necessary in order to feel that it is assuming a jurisdiction which was never in fact expressed by *Templeton* v. *Leviathan Pty. Ltd.* In my opinion the Titles Office is working on the wrong basis altogether. Furthermore, a submission was made today that the Registrar of Titles confers indefeasibility. In point of law that is not so, indefeasibility primarily is conferred by the registered proprietor executing in statutory form a certain document, presenting it for registration, and expecting to have it registered, which is his prerogative. As I have already said in my report, section 179 should be studied, and there are many other salient sections which determine the principles. The Torrens system should at least be understood by those who purport to administer it.

Mr. Rylah.—The note to the preamble to the Transfer of Land Act says, " The object of the Transfer of Land Act is not to obstruct but to facilitate business, and the Registrar is not justified in refusing to register an instrument merely because it does not literally comply with the precise form prescribed for such instrument, provided that any variation from the form does not effect the substance." That was stated by Chief Justice Griffiths in *Drake* v. *Templeton.*

Mr. Fraser.—The evidence we have heard seems to indicate that has all been forgotten.

Mr. Jessup.—I say, with respect, that the administration of this Office disregards fundamentals of the Act which are by their nature inherent in every Transfer of Land Act of the States of the Commonwealth, of the British Empire, and also of America. In South Australia those principles are administered fearlessly, and to the satisfaction of the profession. Those principles are not recognized here and consequently it is most unsatisfactory to the profession, and it is the main cause of the difference of opinions and the unfortunate atmosphere generated between the profession on the one hand, and the Titles Office on the other hand. Remove the spirit of inquiry and relationships will be smoothed and departmental procedure reduced to what is merely normal rather than inquisitorial.

By Mr. Fraser.—Our proposed Bill makes a departure to the extent that every Government Department, or anybody else, having some charge upon land, either for wire netting, or for water, rates, &c., can lodge a caveat. What are your comments upon that provision?

Mr. Jessup.—I think the general principle is correct, namely, that any person who has a statutory charge should be compelled to register it, except for those ordinary charges that are so well known in every walk of life, for example, rates and taxes, where normal inquiry always elucidates the true position, and, therefore, I suggest registration of those is not justified. Where the charges are of such a nature that the ordinary individual cannot be expected to know of them I think they should appear on the certificate of title. That is the general principle adopted in South Australia.

Mr. Fraser.—In the case of a private charge or a charge arising from some instrument executed by the parties, clearly such a charge ought to be registered, and if any one wants to protect his rights he should lodge a caveat, but in the case of statutory charges everybody is presumed to know the law.

Mr. Jessup.—In the ordinary course of events we should know that those charges may be impressed on the land as a charge, and the law so provides, but I think the concept of the framers of the Torrens system was that it would disclose all registered interests to which the land was subject, either registered by act of the parties or registered by the statute which imposed the charge.

By Mr. Fraser.—You think all these public bodies should register these charges?

Mr. Jessup.—I think they should.

By Mr. Rylah.—That is in respect to charges other than municipal rates, water rates, and Land tax?

Mr. Jessup.—Charges other than the ordinary domestic things which every one knows from experience have to be paid.

The Chairman.—I regret that it is necessary for me to withdraw at this stage. I will ask Mr. Oldham to take the Chair.

By. Mr. Rylah.—What is your view on tenancies?

Mr. Jessup.—I think the present attitude to the position, the necessity for any person occupying under a short tenancy to lodge a caveat is very harsh. I think your old section 72, where these rights under short tenancies were protected, is preferable. The position in South Australia under sections 116 and 119 is that tenants in possession under any unregistered agreement not exceeding one year are protected. If the agreement extends beyond a year they are expected to lodge a caveat to protect themselves. If the right to acquire, such as an option to purchase, is included in the agreement, no protection is given unless supported by caveat.

By Mr. Rylah.—Has that worked satisfactorily in South Australia?

Mr. Jessup.—I have heard no complaints about it.

Mr. Fraser.—If you were to get the same legislation in South Australia as that proposed in our Bill you might have a number of notations on your original certificate in reference to caveat, where, under your system, you notify on the title immediately it comes under caveat. You might have eight or nine public bodies lodging caveats.

Mr. Jessup.—They do not lodge caveats, they lodge a notification of the charge and the statute under which it is constituted, and produce it to the office in the shape of an ordinary document and it is registered as an ordinary document.

Mr. Fraser.—I am thinking of the case where it is a statutory charge. For instance, where the Wire Netting Act makes a charge upon the land for advances, a charge made by the statute itself, you could not expect the Treasury, or the Government Department which is dealing with the Wire Netting advances to lodge a charge in respect of every block of land.

Mr. Jessup.—That is universal in South Australia.

Mr. Rylah.—It would perhaps have the effect that if the advance was only a small one they would not bother. What is the position in South Australia with regard to Housing Commission acquisitions of land.

Is the housing authority there taking over compulsorily big sections of land and not giving notice to the registered proprietor, or not putting anything on the title to show they have taken it?

Mr. Jessup.—Acquisitions of property in South Australia are almost exclusively consummated by private treaty and not by compulsory acquisition.

Mr. Fraser.—One of our difficulties under the Transfer of Land Act may be if the Housing Commission pursues the policy it has followed over the years of blanketing a whole area by notification in the *Government Gazette*. The Housing Commission does not say it will compulsorily acquire all the land in the blanket, it releases certain blocks to certain individuals for good reason. The result is that some blocks are released, some are still in the transition period, and some may be taken over. What will be the position under the Transfer of Land Act in a situation like that?

Mr. Jessup.—We have in South Australia a somewhat similar position relative to the methodical widening of arterial roads. This question is a really live one insofar as many of our roads are being extended 7 feet, and perhaps more, on either side for miles. The law provides that at some future time, when the Highways Department may require it for the road, they will acquire the land and then the question of compensation is arrived at. In the interim there is a stretch of land on either side which is in fact a new alignment. In order that the general public might know of it, a provision was inserted in the 1949 amendment to the Highways Act, to which I refer you, whereby the Commissioner of Highways must submit to the Registrar-General a notification of the certificates of title affected by this new alignment, and a notice something like " Subject to acquisition " is noted on each of those certificates. In that way any searcher is apprised of the position immediately. I also refer you to the *Fencing and Water-Piping Act* 1938, of South Australia, where a somewhat similar policy has been introduced.

Mr. Rylah.—It would seem that a strong and efficient Titles Office in South Australia has been able to protect, to some extent, the ordinary citizen from the rampages of the Government in that it has been able to bring influence to bear on legislation to ensure that the private individual is properly informed of any acquisition or any deprivation of rights.

Mr. Jessup.—I may say the only secure way this can be done is to ensure that the Registrar of Titles—provided of course you have unified control—has a copy of every Bill passing through the hands of the Parliamentary Draftsman. In that way any impingement upon the policy and procedure, and the basic things of the Torrens system, can be seen at that stage and attended to appropriately through the proper Minister. That is the South Australian set-up.

The Acting Chairman.—I do not know how far that applies so far as the Titles Office is concerned in view of what has been discussed here to-day. The Titles Office may to some extent be protecting the rights of citizens, but to the extent it is doing these things it is going beyond its proper function.

Mr. Reid.—I do not think the Titles Office would be going beyond its function in a case like that. All Mr. Rylah is saying is that an organization which has a plan in mind on acquisition should be obliged to register some notice of its intention at the Titles Office. I think this is going to be even more strongly felt with the Town Planning Acts at the present time. One instance that comes to mind is the City of Nunawading, which set about a town planning scheme approximately four years ago, and under the Act they got out what is known as an interim order. I do not know if they have that in South Australia. The effect of the interim order is to suspend operations by the land owner, but a person seeking to buy a piece of land in that area, if he searches at the Titles Office, does not obtain any knowledge of the projected scheme by the municipal body. Some municipalities may have it noted on the rates certificate, and he may learn of it in that way, but that is only a casual thing. The prospective buyer does not learn anything by a search of the title, and may very well buy a piece of land with which he can do nothing because it is subject to some intended scheme of replanning.

Mr. Jessup.—I suggest that discloses a lack of liaison between those who are safeguarding the interests of the public.

Mr. Rylah.—The opening words of the preamble to our Act, " Whereas it is expedient to give certainty to the title to estates under lease and to facilitate the proof thereof, and also to render dealings with land more simple and less expensive," have been on the statute-book for some 90 years, but it would seem there has been considerable departure by legislation and administration from the principle which was attempted to be introduced with the Torrens system.

Mr. Fraser.—To give the words of the preamble their proper import we should insist that when a person goes to search a title particulars of any proposed scheme should be there available to him.

By Mr. Rylah.—You are aware of the suggestion by various people that the introduction of charges of the sort we have been discussing would overload the already overloaded Titles Office to a point where the organization would break down completely. Is it your belief that, if it is possible to have the Titles Office working along the lines you have recommended, it will be practical to impose an obligation on Government Departments and others to register charges without the fear of a breakdown in the Titles Office organization?

Mr. Jessup.—Years ago, in New South Wales, the number of documents registered was as high as 1,000 per day, and the simple ones were completed in 24 hours. In other words, the question of numbers is entirely irrelevant, providing the basic office machinery is geared to handle the work. There is nothing at all in the question of numbers to show any deficiency in the Transfer of Land Act.

By Mr. Rylah.—Would you care to make any general suggestions in connection with the proposed Bill, and, in particular, point out features of it which, in your opinion, would be dangerous and contrary to the spirit of the Torrens system?

Mr. Jessup.—It would be impossible to go through the Bill section by section at this late hour, but, as I said in Adelaide, I do think that portion of the Transfer of Land Bill which introduces the regulation of equities by caveat only is most undesirable. I repeat, equitable principles are well established and courts have long had an entirely free hand in respect of all questions of competing equities. Surely, it would need the very soundest of arguments to oust any of that jurisdiction, and to bring about the position of regulating equities, sometimes on the split-second judgment of the wise person who lodged the caveat. To that extent, therefore, I suggest this is a fundamental matter which requires more thought than appears to have been given to this particular problem.

By Mr. Rylah.—Is it correct to say you would strongly recommend that restrictive covenants be not endorsed on the title but, instead, registered by way of charge?

Mr. Jessup.—This, again, involves a simple administrative procedure. If I were administering the Transfer of Land Act, I should merely notify the

profession, through the appropriate channels, that restrictive covenants would no longer be registered because there was no law to permit it. However, I would suggest to the profession that the registration of a restrictive covenant could be achieved per medium of the ordinary encumbrance or charge, and the question of covenant as between the parties could be left entirely in their hands and not in the hands of the Registrar.

By Mr. Thomas.—Would that be without registration?

Mr. Jessup.—No, with registration; the charge would register everything.

Mr. Rylah.—But it would not be cluttering up the certificate of title or the transfer.

Mr. Fraser.—The title would contain merely a short reference to it.

Mr. Jessup.—Instead of a person having to search what to him might be an irrelevant matter, the certificate of title would clearly show the charge, and an interested person would merely take the charge from the file.

By Mr. Thomas.—Would the charge be uniform?

Mr. Jessup.—The charge could be drawn according to the circumstances of each individual case, to meet what was desired by the parties. For example, I have seen registered in South Australia a restrictive covenant in connection with partial restraint of trade.

By Mr. Thomas.—Looking at the matter from a layman's point of view, would that mean that if a person made a search of a title, and there was a restrictive covenant, the fact of his finding a charge would disclose to him that there had been a restrictive covenant?

Mr. Jessup.—Yes, it would be there for perusal. It would have the advantage that an explanation of all details would not appear on the certificate to the exclusion of the clarity an ordinary certificate is expected to give; there would be excluded from the certificate things one would expect to find in the documents on file.

The principle of making the Transfer of Land Bill a code does not appear to be good policy, and in that connection I refer the Committee to page 25 of the evidence submitted by Mr. Wiseman on 9th August, 1949, where he suggests that is one of the intentions behind the framing of the Bill. I also respectfully refer the Committee to *in re National Trustees Executors and Agency Company of Australia Limited* (1898) 19 *A.L.T.* 222 where the principle was established that the Torrens systems were not expected to be codes at all but merely machinery to implement a changed principle of law. It appears to me, once that attitude is changed, the Tranfer of Land Act will be made something that was never intended. I suggest the intentions of the Bill should be confined to purely machinery matters, rather than incorporating matters that should be properly found in other parts of the law. For instance, the matter of trusts should be found in the Trustee Act, not in the Transfer of Land Act. An example of that is to be found in clause 15 of the Bill, which refers to the Soldier Settlement Act. I suggest that, once the law resides in any Act, those administering the Transfer of Land Act know of its existence without its incorporation in a machinery Act. Furthermore, I think a good deal of trouble has been taken to quieten doubts. In that connection, I think clause 17 (*c*) of the Bill is hardly necessary, because it appears the principal Act already has that power.

By Mr. Fraser.—What do you mean by "the principal Act"?

Mr. Jessup.—The Transfer of Land Act—this is a Bill.

Mr. Rylah.—This is a consolidation.

Mr. Jessup.—In that case I should have referred to the Transfer of Land Act rather than to the principal Act.

By Mr. Rylah.—In other words, you mean it is already there and, consequently, clause 17 (*c*) is unnecessary?

Mr. Jessup.—That is what I suggest. I further suggest that the last paragraph of clause 17 is typical of clause 18 and other clauses which seem to restrict the Commissioner in the free and unfettered use of his powers. I see no reason whatever for compelling a Commissioner to accept certain evidence; I think any power the Commissioner has to exercise should be left to his discretion rather than that he should be circumscribed as to what he should or should not accept in evidence.

I think the last three lines of clause 26 should be analysed, because, it appears to me, there is a conflict with clause 240.

Mr. Rylah.—I agree.

Mr. Jessup.—As far as compulsory conversion is concerned, there is a provision in the last two lines of clause 34 which could hold up the proceedings. Instead of providing a penalty for non-production, as is the case in South Australia, this clause merely says the Registrar shall not be bound to proceed with the bringing of land under the operation of the said Act. These provisions, called compulsory provisions (by misnomer, apparently), if carried out, could prevent the implementation of the Act.

It is my opinion that clause 36 (1), relative to the viewing of any document of title, should be contrasted with the liberality of section 60 (2). A provision in the Transfer of Land Act has always allowed the registered proprietor to give an order for the title to be searched, and, obviously, any purchaser would obtain such an order from the vendor as a prerequisite to settling.

Mr. Reid.—At the moment, the purchaser can make the necessary search without appealing to the generosity of any one.

Mr. Jessup.—Under section 60 (2) of the present Bill, any person, whether he is interested in the land or not, can, on the payment of a fee, search the Commissioner's minutes, which seems a little inconsistent.

By Mr. Rylah.—From your examination of the Titles Office in Melbourne, the Victorian Transfer of Land Act and the proposed Transfer of Land Bill, are you of the opinion that Part I. of the Victorian Act must be amended to place unified control in the hands of the Registrar to ensure the efficient working of the transfer?

Mr. Jessup.—Considering that aspect, the New South Wales Titles Office, which deals with many more registrations than the Victorian Titles Office, has only one Head and it functions efficiently. In South Australia, also, there is one Head and, apparently, that commends itself to this Committee. I would suggest that proper functioning of the Victorian Titles Office is completely impossible until unified control is established and, in view of the various powers of the Commissioner of Titles I cannot see how this can be done effectively without an amendment of the Transfer of Land Act.

Apart from that, I respectfully suggest that the Transfer of Land Act, as it is at present constituted, be allowed a period of trial during which this new set-up of unified control could prove what I think is there, namely, the necessary legal efficacy.

Mr. Rylah.—Would you add to that a recommendation that compulsory registration be introduced at the present time?

Mr. Jessup.—Yes. I would say this: the compulsory conversion of old system land to that of the Real Property Act is merely a natural corollary following on the acceptance of the principle in the Transfer of Lnad Act—whether or not it can be implemented quickly is quite irrelevant. The point is that if Parliament feels that this should be a part of the law then I think it should be put through, and, in order not to cloud the issues which seem vital, may I suggest that it pass through Parliament in the form of a principal Act of its own. Questions of amending the Transfer of Land Act would then not necessarily be wrapped up in the compulsory conversion and it could stand or fall on its own merits. This was in fact done in South Australia.

The Acting Chairman.—Unless members of the Committee desire to ask further questions I would suggest that at his leisure Mr. Jessup might send the Committee similar comments on the succeeding clauses of the proposed Bill.

The Committee would like to record its appreciation of the thoroughness with which Mr. Jessup has carried out the mission he was invited to perform. The services he has rendered to the Committee are of an outstanding nature.

Mr. Fraser.—I have much pleasure in supporting the remarks made by Mr. Oldham. Among the great qualities shown my Mr. Jessup have been a fearlessness and a facility of expression.

Mr. Jessup.—I thank Mr. Oldham and Mr. Fraser for their kindly remarks.

The Committee adjourned.

TUESDAY 12TH DECEMBER, 1950.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barry,
The Hon. A. M. Fraser,	Mr. Crean,
The Hon. F. M. Thomas,	Mr. Rylah.
The Hon. D. J. Walters.	

Messrs. Arthur William Warrington Rogers, Philip Moerlin Fox and Arthur Dean Pearce, of the Council of the Law Institute of Victoria, were in attendance.

The Chairman.—Gentlemen, as you are aware, a sub-committee of the Council of the Law Institute, consisting of Mr. Rogers, Mr. Fox and Mr. Pearce, has been investigating the Transfer of Land Bill which involves the consolidation and amendment of the Transfer of Land Acts. In the course of deciding its policy on the Bill, the Statute Law Revision Committee found it necessary to inquire into the functioning of the Titles Office, because, to some extent, the functioning of that office might have to be improved to suit the policy of the Bill, which policy might also have to be altered to conform with the practical requirements of the Titles Office. For these reasons, the Committee has had to be concerned with the actual administration and workaday routine of the Titles Office.

The Committee visited South Australia and investigated the working of the Titles Office in that State. It was arranged for the Registrar-General in South Australia to report on the working of the Victorian Titles Office and that report has, unofficially I think, been shown to members of the sub-committee of the Council of the Law Institute. Generally, the Statute Law Revision Committee will welcome any comments that members of the sub-committee of the Council of the Law Institute would care to make on the administration of the Titles Office in this State, in the light of their perusal of that report and of their conferences with the South Australian Registrar-General, Mr. Jessup.

Mr. Rogers.—Mr. Chairman and gentlemen: For some years past the Council of the Law Institute has been concerned at the increasing delays in the Titles Office in Victoria, and last year it became particularly concerned because of the increasing number of complaints from solicitors regarding delays in the registration of dealings and in the growth of what we often consider to be onerous and sometimes unnecessary requisitions in connection with those dealings. Complaints have also been made concerning the increasing difficulties and delays in the searching of titles. Further, it is often complained that titles could not be searched, because they could not be found in the Titles Office.

From time to time these matters were referred to and discussed by the Council of the Law Institute. In September of last year, when I happened to be in Adelaide, I made it my business to call on Mr. Jessup, with whom I spent a very interesting day in the Titles Office discussing the South Australian system. I came back imbued with enthusiasm in the belief that the South Australian system was more satisfactory than the organization in operation in Victoria. I submitted a report to the Council of the Institute. As a result, this "Titles Office sub-committee," consisting of Mr. Pearce, Mr. Fox and myself, was appointed to investigate the matter further.

We then had certain informal discussions with Mr. Sutherland, the Registrar of Titles, who was very helpful and courteous, and expressed his willingness to give us whatever assistance he could, except in one matter. As soon as I mentioned the South Australian system, he became very angry and said that he would not discuss the subject. He said that the system in operation in South Australia was different from the Victorian procedure, and as he did not understand the South Australian system he would not discuss it on that basis.

Therefore, I refrained from discussing the South Australian Titles Office organization, feeling that I was treading on dangerous ground and that if I attempted to pursue the subject I would not get the co-operation I wanted. I then asked Mr. Sutherland for certain statistics relating to dealings, staff and other matters, over a period of years, which he promised to supply. We asked Mr. Sutherland what, in his opinion, were the causes of the delays in the Titles Office, and he said that they were: (1) Insufficient staff, (2) insufficient space, and (3) carelessness by solicitors in the preparation of documents. Mr. Sutherland telephoned me to say that the statistics were ready, but that he could not release them without the permission of the secretary of the Law Department. Apparently, the secretary took the view that we should have made the request for the information through him and in not doing so we were guilty of discourtesy.

I was surprised to hear that the secretary had taken that view, because I was under the impression that the Registrar was the administrative head of the Titles Office and was the proper person to whom one should apply for such information. However, we made formal application by letter to the Secretary of the Law Department, reciting what had been done and asking for the desired particulars. He replied that he

could not supply all the statistics as their preparation would take up too much of the time of the staff at the Titles Office. That seemed rather strange, as I knew that the information had already been prepared and was in Mr. Sutherland's hands.

Later, I had some discussion with the Secretary of the Law Department as to the causes of the delays in the Titles Office, and he said that there was only one cause, which was perfectly obvious, and that was the carelessness and inefficiency of the legal practitioners in Melbourne. In evidence of that statement he cited the fact that in South Australia dealings were registered in four days, which he considered proved conclusively that the whole trouble lay with the solicitors in Melbourne. To my mind, his reply indicated that he did not know much about how the South Australian Act was administered as compared with the administration of the Victorian legislation on the subject.

The sub-committee then prepared a report, which we submitted to our Council, and from which I should like to read the following extracts:—

This committee was set up as a result of the Council's grave concern at the time taken by the Office of Titles to register dealings and at the uncertainty and delay experienced in searching titles, owing partly to the enormous volume of unregistered dealings.

This committee was charged with the duty of investigating the causes of these delays and uncertainties and of recommending to the Council what measures might, in its opinion, be taken to remove them, or at least alleviate their worse effects.

After certain preliminary discussions with the Registrar and some correspondence with the secretary of the Law Department, the committee ultimately met the Registrar in conference on the 17th day of May, 1950. The committee had previously prepared and handed to the Registrar a list of questions relating to Titles Office dealings, most of which called for the extraction of various figures and their analysis. The Registrar explained that to give all the information sought would have required too much of the time of his staff, but at the conference the following statistics were furnished to the committee.

I shall not quote all those statistics, but will merely say that the average time for the registration of transfers by endorsement in 1939 was seven days, and in 1949, 25 days. At present the average time is five months, which indicates that the deterioration of the position is extraordinarily rapid. A later portion of the report reads:

Although the committee agrees with the Registrar that he is sadly in need of more staff, it is believed that the best use is not being made of what staff the Titles Office has. There is too much evidence of time wasting, lack of interest and general slackness and too little attention to, or interest in, getting on with the job. In short, proper supervision and a stricter discipline could do much to increase the output per head of the present staff. More efficient and up-to-date office methods and management, the installation of modern office equipment and more vision, initiative and vigour, could do much to alleviate the shortage of man power.

The committee is also of the opinion that a more realistic approach might be made to the problem of "stopped cases." More use should be made of the "patent error" provisions of section 233 (*b*) of the Act and patent errors should be corrected by the Titles Office staff under the direction of an Assistant Registrar.

This would considerably reduce the congestion and bottlenecks caused by stopped cases and keep many more dealings running more smoothly along the "production line" (an expression unfortunately probably not understood by the administrators of the Transfer of Land Act.)

Finally, the committee made the following recommendations:

(*a*) That urgent representations be made to the Attorney-General for the substantial increase in the staff of the Office of Titles.

(*b*) That consideration be given by the Council or Legal Education to varying the Articled Clerks course to permit a service of three years' articles in a solicitor's office and two years' articles in the Titles Office.

(*c*) That the Registrar be requested to place a more liberal construction on section 233 (*b*) relating to "parent errors."

(*d*) That the Council recommend to the Attorney-General as appointee for the vacent office of Commissioner of Titles a practising solicitor who not only has a working knowledge of the Transfer of Land Act, but one who is vitally concerned at the present delays and uncertainties and who realizes that if they are not arrested and corrected they may well defeat the very purpose of the Act, which, as set out in the preamble to the Act, is to facilitate dealings in land. Such an appointee should, in the opinion of this committee, be some one possessing the confidence of the Council and one who is prepared to re-organize the every-day routine of the Titles Office, introduce modern business procedure and methods, up-to-date office equipment; streamline its production, circumvent circumlocution, introduce adequate supervision and impose a stronger discipline. He should be a man of some vision, drive, organizing ability, and initiative and not afraid to tackle old problems with new weapons.

(*e*) That the co-operation of the profession be sought in eliminating errors in documents presented for lodging.

(*f*) That publicity be given to this report in the "Law Institute Journal."

(*g*) The committee has not felt competent with the material at its disposal to present any comparison of the administration of the Tranfer of Land statutes of the various States, but is impressed by the fact that the South Australian Act as administered does "facilitate dealings in land" far more effectually than the Acts of other States. The committee therefore recommends that the Attorney-General be requested to try to arrange an interstate conference of Registrars to which the Law Institute of each State might be invited to send representatives, at least in an observing capacity.

It is coincidental that the recommendations, in general, in this report agree with what Mr. Jessup has said in far greater detail, namely, that modern business methods should be introduced into the Titles Office and that there should be in control a man of business experience who is prepared to re-organize the procedure. After the report of the Titles Office sub-committee of the Council of the Law Institute had been presented to and adopted by that Council, it was discussed with the Attorney-General, who asked us to meet him as a deputation, to discuss the matter further.

By Mr. Fraser.—What was the date of that deputation?

Mr. Pearce.—Tuesday, the 17th of October, 1950.

By the Chairman.—Who was present?

Mr. Pearce.—Mr. Mitchell (Attorney-General), the secretary of the Law Institute, Mr. Rogers, Mr. Fox, and myself.

By the Chairman.—Was a shorthand writer present?

Mr. Pearce.—No.

Mr. Rogers.—I have before me a report of the meeting, which I shall now read:

The Attorney-General received a deputation from the Law Institute Council of Victoria, the members of which expressed the concern of the legal profession at the increasing delays being experienced in the Titles Office in the registration of dealings in land and in the searching of titles.

The deputation pointed out that, relying on statistics supplied by the Titles Office itself, the time to register a simple dealing had more than doubled itself between December 1949, and August 1950. In December 1949, it took 25 days to register a simple dealing. By August 1950, this time had grown to five months.

It was contended by the deputation that these growing delays were causing great congestion to all departments of the Titles Office and that the resultant delays and uncertainties were matters of great concern to the profession generally as they tended to defeat the very purpose of the Transfer of Land Act, which was to facilitate dealings in land. Instead, however, the confidence of the profession and the public generally in the administration of the Act was being undermined.

The deputation acknowledged the enormous increase in the volume of work passing through the Titles Office—107,000 dealings in 1929 and 153,000 in 1949—but argued that to leave the matter there was to admit that the system had broken down under its own weight. Remedies suggested by the deputation were:

(1) That more trained staff be made available to the Titles Office.

(2) That the Titles Office make use of the powers given to it under the Act to itself rectify "patent errors" in documents instead of insisting upon written consents being obtained from the parties to the particular transactions.

(3) That the present divided control between the Commissioner and the Registrar be superseded by the appointment of a Commissioner with full power to introduce more modern and efficient methods and to install modern office equipment and filing systems.

A comparison of the administration of the two Acts in this State and in South Australia shows that whilst in South Australia a simple dealing takes four days to register, in Victoria a similar dealing takes five months.

I now come to my discussion with Mr. Jessup, of which I have a full note:—

On Saturday morning, the 18th of November, 1950, the president and all members of the committee (with the exception of Mr. McArthur) met Mr. Jessup, the Registrar of the Office of Titles in South Australia, at the Institute's rooms. A most interesting discussion which lasted for 2½ hours, took place. Mr. Jessup was at first disappointed, as he had expected to meet some 200 or so solicitors, and to hear their views on the administration of our Titles Office. However, the committee assured him that its views represented the views of the great bulk of the profession and certainly of the whole Council. It was pointed out to him that the members of the committee had been intensively studying the whole problem for approximately twelve months, and that our Titles Office problems had been discussed with members of the profession both in Melbourne and in the country centres, where they had been visited by representatives of the Council. It was also pointed out that the committee's recommendations had been publicized in the Journal and comments invited from practitioners.

Mr. Jessup was furnished with a copy of the committee's report and recommendations and informed of the Institute's views as put by the recent deputation to the Attorney-General. It was also pointed out to Mr. Jessup that the committee's early and persistent commendation of the South Australian administration had greatly impressed Mr. Oldham when he was Attorney-General and had first interested the Statute Law Revision Committee in the South Australian office and had probably prompted that committee to visit Adelaide and take evidence there and to subsequently invite Mr. Jessup here.

The committee, in its discussions with Mr. Jessup, stressed the view that the appointment of a Director-General of the Titles Office with the necessary authority to implement reforms was the crux of the whole situation.

Mr. Jessup asked the committee to express its views on the following specific matters:—

(1) Did it agree with the practice of the Titles Office in inquiring into matters of consideration in transfers?

Mr. Jessup contended that the Transfer of Land Act was intended merely to be a piece of legislative machinery for the purpose of transferring a title to land from *A* to *B*, and whether the consideration was adequate or even a good consideration was not the concern of the Titles Office. If *A* said in the document "I hereby transfer to *B*," his reasons—good, bad or indifferent—for so doing were the concern of no one but *A*. The committee agreed with this view and assured Mr. Jessup that in doing so it could speak for the profession as a whole.

(2) Did the committee agree that the Titles Office practice of inquiring into trusts and looking at the dispositions contained in wills was justifiable?

In this connect Mr. Jessup referred the committee to sections 232 and 179 of the Act and contended that the same principles applied as those he had referred to when discussing consideration. The committee again expressed its approval of this view, both on its own behalf and that of the profession.

(3) Did the committee favour the introduction of printed forms of transfer?

The committee said it did not; firstly because their use might well react to the detriment of the profession and secondly because transfers took so many different forms that an untidy document would generally result. Mr. Jessup said that he agreed that typing produced a clearer and more satisfactory document, but expressed the hope that the new Commissioner would produce a book of precedents, with directions and rulings so that the profession would know what the Titles Office required so that uniformity of drafting and fewer mistakes might be expected.

(4) Did the committee favour stopped cases being returned to the lodging solicitor?

Mr. Jessup expressed his amazement at the fact that there were 25,000 stopped cases awaiting attention and told the committee that in Adelaide, as soon as a case was stopped for some error, the solicitor lodging the case was asked to withdraw it for amendment, the Titles Office there taking the view that it would not keep any document which was not in order. He contended that this practice had a powerful psychological effect on solicitors and prevented delay or neglect in rectifying the error and also put the onus of how the amendment was made on the solicitor, instead of on the Titles Office.

The committee, although startled by the suggestion, agreed that it had much to commend it.

(5) Mr. Jessup produced to the committee one of the books in which titles are bound in South Australia and pointed out that under section 47 of our Act the Registrar was under a duty to bind our titles. He contended it kept the titles in good condition and made it impossible for them to get lost as they do here. Finally, Mr. Jessup informed the committee that he would be presenting a report to the Government making recommendations as to how in his view the present ills of our Tiles Office administration could be remedied. He assured the committee, however, that his recommendations would not in any way whatever effect the present prestige, responsibility, or remuneration of the profession. He also laid great stress on the necessity for a strong feeling of goodwill and understanding between members of the profession and the Titles Office staff, who, in his view, were suffering from lack of leadership and struggling against being overwhelmed by their difficulties, and at the same time were bereft of direction and guidance and with a feeling of having incurred the distrust of the profession.

By the Chairman.—Do you desire to make any further comments on the reports on the Bill?

Mr. Rogers.—Not at this stage.

Mr. Pearce.—I have nothing further to add, as Mr. Rogers has covered everything. Mr. Fox is a lecturer in property and conveyancing at the University of Melbourne and his services have been co-opted by our committee, to enable it to have the benefit of his practical and technical knowledge. Does any member of the committee desire to ask Mr. Fox questions on legal aspects?

The Chairman.—Does Mr. Fox desire to make any general comments before members of the committee ask him questions?

Mr. Fox.—I would prefer at this stage to answer questions.

The Chairman.—Mr. Rylah has gone to some trouble to prepare a number of questions for submission to your sub-committee, and I shall now ask him to proceed.

Mr. Rylah.—Most of the questions I had prepared have already been covered by the evidence of Mr. Rogers. In the first place, he has inspected the Titles Office in South Australia. During that inspection did you, Mr. Fox, ascertain whether there was co-operation between the Titles Office staff and the legal profession in South Australia?

Mr. Fox.—I was informed by Mr. Jessup that there was co-operation. That was confirmed by conversations I had with certain solicitors in Adelaide, I attended the annual meeting and dinner of the South Australian Law Institute during which I discussed the South Australian Titles Office practice with members of the legal profession. They all seemed to be on very good terms with each other.

By Mr. Rylah.—Suppose the Government, with the assistance of this committee, were to implement the reforms suggested by Mr. Jessup. Do you agree that for those reforms to be successful it would be necessary for the legal profession in Victoria to co-operate with the Titles Office staff?

Mr. Fox.—I do.

By Mr. Rylah.—Have you any suggestions to make to the committee on how the legal profession should co-operate with the Titles Office staff to make easier the work involved in the introduction of the reforms?

Mr. Fox.—I have not given particular thought to that aspect. The Council of the Law Institute would like to confer with the Registrar or with other authorities at the Titles Office on the implementation of those reforms. It is willing to give the Titles Office staff any assistance it can in that direction, either by conferences, publicity in the "Law Institute Journal" or by visiting country law associations and telling them what the Titles Office has in mind and that the Council of the Law Institute is behind the Titles Office in that campaign. Another point that Mr. Jessup made was that he thought some scheme should be evolved whereby lectures in Titles Office procedure and practice could be given, either by members of the Title Office staff or by a member of the Council of the Law Institute. Solicitors, solicitors' clerks and Titles Office staff could be invited to attend so that they could obtain an understanding of each other's problems.

Mr. Rylah.—When reading this month's "Law Institute Journal" I was impressed by the full report of the deputation from the Council which waited on the Deputy Director of War Service Homes. The Council of the Law Institute added to the report suggestions on how the legal profession could co-operate with the War Service Homes Division to facilitate the work of the Division. I assume the Council would be prepared to act along similar lines in connection with Titles Office procedure.

Mr. Fox.—We do that now, and have always done so. When the Titles Office introduced some new form of consent for amending transfers in course of registration the facts were published in the "Law Insttiute Journal." The report from our sub-committee to the Council of the Law Institute appeared in the July issue of the Journal, and the recommendations appeared in the August issue. We shall continue to follow that course.

By Mr. Fraser.—The preamble to the Transfer of Land Bill refers to its object as "A Bill to amend and consolidate the law relating to the simplification of the title to and the dealing with estates of land." We have had evidence from the secretary of the Law Department, Mr. C. Knight, Mr. Sutherland and Commissioners of Titles and they have all said "You are overlooking the question of the indefeasibility of titles." You, Mr. Fox, know Mr. Jessup's view on that subject—that there should be a line of demarcation. What are your views on that?

Mr. Fox.—I think the Titles Office witnesses were confused when talking about the indefeasibility of titles. Any title issued by the Titles Office is indefeasible to the extent permitted under the Act. What they were thinking about was the possible destruction of certain rights of the parties. I have heard it said "We have to be careful we do not issue titles which are defeasible," but any title issued by the Titles Office is practically indefeasible, except to the extent set out in the Act. What they were thinking about was that they should be careful when issuing a title that by so doing they were not destroying some equity right. That is what they were looking for.

Mr. Fraser.—They should not be concerned with the equity.

Mr. Fox.—That is so, and I think that is where they became confused.

Mr. Fraser.—The Commissioner took the view that if under a contract of sale an amount of £500 had to be paid at a certain time, and another amount of £500 five years later, and the vendor properly executed the transfer, which was lodged in the Titles Office, the Titles Office should refuse to register it because it contained an executory consideration. Apparently the Commissioner had not heard of certain High Court decisions on the subject.

Mr. Fox.—I do not know that the High Court decisions went so far as to be applicable to such cases. The decisions applied where the consideration for the transfer was an agreement to do something, or to pay something—where the consideration was expressed in the transfer. I think we would need to do a great deal of work on such a question to get any results.

By Mr. Fraser.—Would not the vendor be left to his ordinary remedy?

Mr. Fox.—In the instance Mr. Fraser has given, notwithstanding the issue of the certificate, the vendor might have an equitable lien against the registered property. That would be defeated on the re-sale of the land; he would run that risk. As between the two people concerned, however, it could still be a right against the land, but that has nothing to do with the title.

Mr. Rylah.—Mr. Jessup seems to take the view that his job is to register dealings but that the rights of the parties *inter se* are matters for the parties and their solicitors. If the solicitor lodged for registration a dealing which he should not lodge, then action could be taken against him and his client. In Victoria the attitude of the Titles Office seems to be that of a watch dog.

Mr. Fox.—Yes. That is done to protect interests that may be destroyed by registration.

Mr. Rylah.—In Victoria, the Commissioner has gone to the extent of refusing to register a dealing after an order has been made by the Supreme Court directing its registration.

Mr. Fox.—The Commissioner did not refuse to register the dealing you have in mind, however, he has not recognized the Court's decision in other cases.

By Mr. Rylah.—Do you feel that members of the profession in Victoria are prepared to accept responsibility for lodging the correct dealing for registration, and so do not desire the Titles Office to act as a check upon its own work?

Mr. Fox.—Members of the profession are used to the idea of the Titles Office making a check. If the practice is changed, more care will have to be exercised in some cases.

Mr. Byrnes.—That is an important aspect, because people are used to the present system.

Mr. Fox.—The effects of the change must be understood by the profession. In the event of the present practice being altered, it is essential that a better type of hand book be issued, pointing out the new practice of the Titles Office. That will be the best way to obtain the co-operation of members of the legal profession.

Mr. Thomas.—I think you stated that a printed form would not provide sufficient verbiage to comply with the general needs of all conveyances.

Mr. Rogers.—That is my personal view. In New South Wales, a printed form of transfer is used, and many paragraphs are ruled out. There is a greater risk of making a mistake with a printed form than with a document prepared by a competent typist.

Mr. Rylah.—If the suggestion is adopted that a full description of land is not entered upon the transfer the use of a printed from would be facilitated.

Mr. Rogers.—That would apply in many cases. If the transfer was for other than a monetary consideration, the document could be typed. I do not like the idea of a profession being compelled to use a printed form.

Mr. Pearce.—A lot will depend upon what the office is prepared to accept in the way of consideration. The wording used in Adelaide is simple. A transfer involving five or six titles could not be effected by using a single form.

Mr. Rylah.—In South Australia, no restricted covenants are shown on the transfer and that facilitates the use of the standard form. In New South Wales, restricted covenants are stated briefly. Similar forms could not be used in this State under the present practice.

Mr. Pearce.—The use of standard forms is not practicable here in view of the large number of subdivisions that are taking place.

Mr. Fox.—Members of the profession in Victoria are accustomed to setting out restricted covenants. I do not know what the position will be if that practice is changed and a mortgage must be registered in almost every case.

By Mr. Thomas.—I understand that in South Australia a great deal of conveyancing work is done by land brokers. What percentage of the legal profession would deal with the Titles Office?

Mr. Rogers.—I do not know what the percentage would be. I know that some of the work is done by land brokers.

Mr. Thomas.—It was stated that members of the legal profession were practically unanimous in regard to the dealings they had with the Titles Office in South Australia.

Mr. Rogers.—There is a very good feeling between the members of the legal profession and the Titles Office in Adelaide.

By Mr. Thomas.—In South Australia is the bulk of the work done by land brokers?

Mr. Fox.—I understand that between 80 per cent. and 90 per cent. of the conveyancing work in South Australia is done by land brokers. The reason for that is that the legal profession would not co-operate. In Victoria there is no training of solicitors or clerks in Titles Offices practice, but in South Australia a person who wants to obtain a licence as a land broker has to attend lectures and pass an examination set by Mr. Jessup. In other words, he is in a position to make certain that nearly every one who intends to do conveyancing work knows what the Act requires.

By the Chairman.—Do solicitors as well as land brokers attend those lectures?

Mr. Fox.—No, they can carry on conveyancing work under licence. As a matter of fact, I think solicitors in South Australia receive far less conveyancing training than do those in Victoria.

The Chairman.—I understand that land brokers carry out roughly 70 per cent. of the work in the Titles Office in South Australia and that solicitors deal with the remaining 30 per cent. However, that is affected somewhat by the fact that a number of solicitors have land brokers in their offices.

Mr. Fox.—That is where I might have been led astray.

By Mr. Barry.—I suppose that the land brokers do the majority of the work because they charge a lower fee?

Mr. Fox.—In South Australia there is a flat rate of 30s.

Mr. Rylah.—The Committee was told, both by solicitors and land brokers in South Australia, that the charge is always more than the prescribed fee.

Mr. Fox.—I was not aware of that.

Mr. Rylah.—Mr. Jessup made the point that land brokers attended only to the simpler dealings and that any application to bring land under the Act, or similar type of work, was always undertaken by members of the legal profession.

By the Chairman.—Has Mr. Jessup ever contended that the solution of our problem lies in the introduction of a system of land brokers?

Mr. Fox.—No, but it has been said that some training should be given.

By Mr. Rylah.—Mr. Pearce's suggestion that there should be a course of lectures for the staff of the Titles Office and legal staff appeals to me. If the Government was prepared to introduce substantial reforms to facilitate the registration of dealings which would eliminate the frustration that exists among the legal profession at the moment, do you feel that the co-operation of the profession would be obtained and that law clerks would be required to attend courses of instruction?

Mr. Pearce.—I feel that the legal profession has more or less reached the breaking point so far as Titles Office matters are concerned. I am sure that if reforms were introduced on the lines that even we have suggested in our report there would be a large attendance of solicitors and their clerks at lectures. I might add that when tutorials were introduced at the university with the object of giving solicitors or degree men more practical training in titles work they were arranged by the Law Institute. As a result, I would say that considerable success has been achieved.

By the Chairman.—Is there anything further?

Mr. Rogers.—I should like to produce two articles headed "Titles Office Delays" contained in the July and August issues of the *Law Institute Journal.* The first contains the report of the sub-committee of the Council of the Law Institute, and the second the recommendations of that sub-committee. The report in the July issue reads:—

TITLES OFFICE DELAYS.

For some time the Council of the Institute has been gravely concerned at the time taken by the Office of Titles to register dealings and the uncertainty and delay experienced in searching titles. A special sub-committee was appointed and its report and recommendations are now being considered by the Council.

After certain preliminary discussions with the Registrar and some correspondence with the Secretary of the Law Department, the Committee met the Registrar in conference on the 17th May, 1950. The Committee had previously prepared and handed to the Registrar a list of questions relating to Titles Office dealings, most of which called for the extraction of various figures and their analysis. The Registrar explained that to give all the information sought would have required too much of the time of his staff, but at the conference the following statistics were furnished to the Committee:—

TABLE OF DEALINGS AND EMPLOYEES.

Year	*Dealings*	*Clerical and General Staff*	*Survey Staff*
1899	35112	62	20
1909	53598	72	30
1919	82690	118	55
1929	107670	134	59
1939	91091	123	51
1944	72217	130	54
1946	125107	122	64
1948	126602	140	82
1949	153429	140	82

Analysis of causes of Stopped Cases:—

Dealings examined	*Stopped*		
	Form	*Legal*	
15033	3026	204	(Total 3230).

Average time for registration of:—

(*a*) Transmission Applications	..	1949—33 days.
(*b*) Discharge of Mortgages	..	1949—24 days.
(*c*) Mortgages	..	1949—24 days.
(*d*) Transfers by endorsement	..	1939— 7 days.
		1946—32 days.
		1949—25 days.
(*e*) Transfers with new Certificate	..	1939—37 days.
		1946—65 days.
		1949—42 days.

The Registrar drew particular attention to the numbers of his staff in relation to the number of dealings lodged. From the above figures it will be noted that if the position in 1949 is compared with that of 1944 the number of dealings lodged has more than doubled (the increase is about 112 per cent.), while the staff has increased by only about 21 per cent. The Registrar stated that if he could obtain an additional twenty staff members some impression could be made on the arrears of work, but that if the present position continues delays were likely to become even worse.

The Registrar also stated that the lack of care in the preparation of documents lodged for registration was a serious reflection on the profession. It will be seen from the figures supplied that nearly twenty per cent. of all dealings lodged for registration are stopped because of some error or omission in the form of the document, only about one per cent. being stopped because of some legal or technical point. The figures given are for dealings lodged over the counter only and the Registrar stated that the standard of preparation of documents lodged by correspondence was considerably lower.

The Registrar further stated that in his opinion it was only in about 2 per cent. of dealings lodged for registration that any question of "equities" arose. If the Registrar's estimate is accurate it would therefore appear that any suggestion that delays in registration are caused through the Titles Office going further than it should into questions of "equities" may have little foundation.

In reply to a query as to congestion at the lodging counter, the Registrar stated that the officer in charge of the lodging counter had instructions to put additional lodging clerks on duty if it was apparent that several firms with a large number of dealings had their names down in the lodging book. If any undue delays were experienced in lodging the attention of the officer in charge should be drawn to the position.

While the Committee agrees with the Registrar that the main cause of delay is the serious lack of staff and a contributing cause is the carelessness of solicitors and their staffs in the preparation and checking of documents, the Committee is satisfied that these are not the only causes.

The Committee is of opinion that a more realistic approach might be made to the problem of "stopped cases." More use should be made of the "patent error" provisions of s. 233 (*b*) of the Act and patent errors should be corrected by the Titles Office staff under the direction of an Assistant Registrar. This would considerably reduce the congestion and bottlenecks caused by stopped cases and keep many more dealings running more smoothly along the "production line." The Committee also stress the importance of a proper check of all documents before lodging. The Titles Office clerk in the office of one of the members of the Committee has during the past six months undertaken a personal check of all documents before lodging and he estimates that the number of his stopped cases has been reduced by 75 per cent.

The article in the August issue is as follows:—

TITLES OFFICE DELAYS.

The Council having considered the report of the sub-committee referred to on pages 106-7 of the July issue of the Journal, adopts the following recommendations on 20th July, 1950, as the policy of the Institute:—

1. That the Council recommend to the Attorney-General as appointee for the office of Commissioner of Titles a practising solicitor who not only has a working knowledge of the Transfer of Land Act, but who is vitally concerned at the present delays and uncertainties and who realizes that if they are not arrested and corrected they may well defeat the very purpose of the Act, which as set out in the preamble to the Act, is to facilitate dealings in land. Such an appointee should, in the opinion of this Committee, be someone possessing the confidence of the Council and who is prepared to re-organize the every day routine of the Titles Office, and introduce modern business procedure and methods and up to date office equipment. He should be a man of some vision, drive, organizing ability, and initiative and not afraid to tackle old problems with new weapons.

2. That the Registrar be requested to place a more liberal construction on section 233 (*b*) relating to "patent errors."

3. That the co-operation of the profession be sought in eliminating errors in documents presented for lodging.

4. That urgent representations be made to the Attorney-General for the substantial increase in the staff of the Office of Titles.

5. The Committee has not felt competent with the material at its disposal to present any comparison of the administration of the Transfer of Land Statutes of the various States, but is impressed by the fact that the South Australian Act as administered does "facilitate dealings in land" far more effectually than the Acts of other States. In New South Wales registration is also more expeditious than in Victoria. The Committee therefore recommends that the Attorney-General be requested to try to arrange an inter-State conference of Registrars to which the Law Institute of each State might be invited to send representatives, at least in an observing capacity.

As a first step to converting the policy into action the Council has been invited by the Attorney-General to appoint a deputation to justify and discuss the recommendations. The profession is asked to supply the Secretary immediately with particulars of concrete cases of unnecessary delays experienced in their dealings and searches at the Titles Office. Messrs. Rogers, Pearce and Fox will be the members of the deputation.

The Committee adjourned.

TUESDAY, 6TH FEBRUARY, 1951.

Members present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Crean,
The Hon. F. M. Thomas.	Mr. Mitchell,
	Mr. Reid,
	Mr. Rylah.

Mr. C. F. Knight, Secretary to the Law Department, was in attendance.

The Chairman.—The purpose of our meeting to-day is to hear Mr. Knight's comments on the report submitted by Mr. Jessup.

Mr. Knight.—I have read the report and discussed it with officers of my Department. There is much that is good in the report, but its failure in one respect is understandable, because Mr. Jessup came to Victoria with only one measuring rod, that is to say, the South Australian system. All through his report he implies that we must adopt the system used in South Australia, and credit is not given to the Victorian method because it is not in line with the South Australian practice, which is adequate to cover 54,000 dealings each year. However, it does not follow that the South Australian system will cope with more than 200,000 dealings in one year. The difference between the two States is that in South Australia there are 400 dealings each day, whereas in Victoria the number exceeds 800, and it would be physically impossible to apply many features of the South Australian system here. It is my considered opinion that, if Mr. Jessup's organization was flooded quickly with 800 dealings in one day, his system would break down.

In the report, under the heading "Departmental Machinery," Mr. Jessup states, "Under the rather primitive methods employed here, the staff performs very well." The only primitive method he had in mind was the system of receiving cash. In the same paragraph, he says, "There was an absence of confusion and the pleasant courteous attitude of the young receivers created an easy approach for the public." However, his later remarks contradict that statement for he says, "At the moment, of course, the whole situation is one of confusion and poor administration relative to the housing of the index and progress book and stopped cases."

Mr. Fraser.—I do not think he referred only to the receival of cash. He made a general statement.

Mr. Knight.—There can be little complaint of the work in the receiving room.

By Mr. Rylah.—Are you satisfied that there is no delay in the work of the lodgment room?

Mr. Knight.—There is delay, but not to such a degree that it can give rise to reasonable complaint. That is the appropriate place to establish priorities. A man would be unfortunate if he had only one dealing to lodge and the person preceding him had 80 dealings, although it would not take long to handle 80 dealings.

Mr. Rylah.—From my observations, I found that the longest delay at the Adelaide counter was a matter of minutes. I will make allowance for the greater number of dealings in Melbourne by multiplying the delay time by four, making it 12 minutes. However, delays here run into hours.

Mr. Reid.—I know a man who was not able to lodge his dealing in one day; he had to return on the following day.

Mr. Knight.—That could occur if the Housing Commission lodged hundreds of dealings on one day, but that does not happen frequently. Difficulties of that nature arise no matter whatever practice is adopted. One cannot expect the work to run to schedule in the same way as does an express train.

Mr. Reid.—Before the war, there was no abnormal land boom, but delays occurred.

Mr. Knight.—In 1938 and 1939 the simple dealings were put through in four days. That does not indicate that there were undue delays.

Mr. Reid.—I referred to delays with the reception of lodgings.

Mr. Knight.—I do not think serious delays occurred.

By Mr. Rylah.—Have you statistics to prove that dealings were put through in four days in 1938?

Mr. Knight.—I can produce returns showing that dealings were put through in less than four days.

By Mr. Rylah.—I have returns to prove long delays, but post mortems will not solve the problem. In South Australia, delays are avoided by the housing authority and the Commonwealth Bank lodging documents during slack periods. That meets the convenience of the general public. Has a similar arrangement been tried in Victoria?

Mr. Knight.—Not to my knowledge.

By Mr. Rylah.—Would such a practice be feasible?

Mr. Knight.—No. Priorities depend upon the time of lodging. Once a dealing is lodged, it must be recorded in the interim index as an unregistered dealing. The documents must be received before they can be recorded in the interim index.

The Chairman.—My investigations have led me to believe that the public is dissatisfied with the administration of the Titles Office. This was brought to my attention when I was Attorney-General. A solicitor gave me specific examples of delay with a lost title, a long wait to lodge documents, and delay in obtaining a title to search, which was urgently required. In his report, Mr. Jessup made a number of general comments on the desirability of the Victorian Tranfer of Land Act being approached in an entirely different way from that which has been the traditional attitude in the Titles Office. For instance, he suggested that the administration should be freed from old rulings of Commissioners, and that a number of administrative alterations could be put into effect immediately.

Mr. Knight.—He suggests that they could be, but I contend that the majority of them could not be implemented, for reasons I propose to give.

Mr. Rylah.—I was concerned by Mr. Knight's statement that apparently Mr. Jessup considered that there was not much delay in the lodgment room. The members of the committee know that he is far from happy in that regard.

Mr. Knight.—The committee discussed these matters with Mr. Jessup while I was not present, but I suggest that his report indicates he was happy about the lodgment room for the two days on which he saw it.

Mr. Rylah.—I think it can be said that he was happy about the efforts made by the junior staff to overcome the very great difficulties confronting them.

Mr. Knight.—In his report he does not say specifically that the public are subjected to inordinate delays except so far as the receipt of money is concerned in respect of those dealings. I interpret his report to mean that much of the delay at the lodgment counter is caused by the method by which we take the fees.

Mr. Fraser.—It was evident that Mr. Jessup prided himself on the fact that in South Australia there was a smooth flow, and he showed, by means of a diagram, how ordinary dealings were dealt with in three or four days. He also showed the committee where various delays occurred in Victoria. His criticism was not limited purely to the receiving end, and I think it would be wrong to allow Mr. Knight to retain that impression.

Mr. Knight.—When dealing with the question of delays at the receiving end Mr. Jessup said—

> Whenever an instrument is presented without its accompanying duplicate, the clerk has been instructed to leave the lodgment counter and the client, and search records to see whether there is an authority to use the duplicate concerned.

I am informed that on the average a man has to leave the lodgment counter on only 90 occasions out of 750, which is only 12 per cent. of the cases. Surely that does not contribute greatly to any delay?

The Chairman.—I cannot see that with proper organization it is any more difficult to handle 800 dealings than 400, any more than it is difficult to handle, with proper organization, two divisions instead of one division.

Mr. Knight.—Of course, "proper organization" means everything. First, it means that there must be the necessary staff to handle the extra number of dealings, because one man can handle only a certain number of dealings in a day. For example, in South Australia at present, two men prepare the lists at the receiving counter and mark the original titles. If 800 dealings were handled I doubt whether the work could be done by four men.

The Chairman.—Mr. Jessup reported that in the Victorian Titles Office there would be no problem if the dealings were properly handled. In his opinion, there is a terrific waste of space because the books are spread out instead of being placed in receptacles.

Mr. Knight.—The only way that the heavy books used with our system can be used is to keep them in a permanent position where they can be consulted and written into. If the system used in the index room was altered to conform to that used in South Australia it would take years to transfer our existing entries.

Mr. Rylah.—The change over has been made in South Australia since the war.

Mr. Knight.—The war ended a few years ago. The point must not be overlooked that in South Australia only 54,000 transfers were dealt with last year, and in 1938 the number would probably be only 20,000 to 30,000.

Mr. Rylah.—The fact is that in South Australia there has been a change over from the old archaic system to a new modern loose leaf system, and although there has been shortage of staff an improvement has been made in the time that it takes to get out simple dealings.

Mr. Knight.—I am not speaking of simple dealings, but of the index room.

Mr. Rylah.—My point is that after the war South Australia was faced with the same problem as Victoria—shortage of staff, inadequate accommodation and an archaic system—and despite all the difficulties there has been a change over to a new system. Not only has the back lag been overcome, but there has been an improvement in the time taken to handle dealings. If that could be done in South Australia it should be possible in Victoria.

The Chairman.—The South Australian office has less than half the staff employed in the Victorian Titles Office.

Mr. Knight.—I do not think that is correct. Many of the staff in Victoria are temporary employees, and I consider that they are not 40 per cent. efficient.

The Chairman.—The staff of the Victorian office comprise 125 as against 50 in South Australia.

Mr. Knight.—That is correct if typists and all others are included.

The Chairman.—That is clerical staff.

Mr. Knight.—Mr. Jessup made it quite clear that he included typists as clerical staff. At present we are engaged on the consolidation of our index to get over some of the disabilities mentioned by Mr. Jessup. When a loose leaf ledger is being added to, it is not possible to keep it in strict alphabetical order, and from time to time there has to be a consolidation. I agree that if the South Australian system had been introduced when the consolidated index was commenced it would have been well on the way to completion.

The Chairman.—The first point of criticism of a detailed nature contained in Mr. Jessup's report relates to the lodgment room.

Mr. Knight.—Mr. Jessup is correct in this respect, that the layout of the place probably contributes greatly to the delays. That matter received consideration before Mr. Jessup made his report, and the Public Works Department is preparing plans for alterations.

The Chairman.—The Auditor-General has informed the Committee that a long time ago he made a recommendation that cash-register machines should be installed, but that recommendation has not been implemented. In his opinion, that system would decrease delays and improve efficiency.

Mr. Knight.—Mr. Camier is responsible for the collection of revenue, and any recommendation would be made to him. We have to accept the system adopted by the Comptroller of Stamps.

By the Chairman.—Do you agree with Mr. Jessup's comments in regard to that matter?

Mr. Knight.—Until a cash register machine is tried it certainly cannot be condemned. I think a cash-register system would cut down the time by half, if not more.

By Mr. Fraser.—Is the Comptroller of Stamps responsible for the lodgment room?

Mr. Knight.—He is the officer responsible for the collection of fees in the Titles Office.

By Mr. Fraser.—If the methods adopted by the Comptroller of Stamps led to chaos and unsatisfactory delays, for instance in the Lands Department, would the head of that Department do nothing about it?

Mr. Knight.—I presume that the system operating in the Titles Office was considered to be satisfactory.

By the Chairman.—Whatever responsibility the Comptroller of Stamps may have to the Treasurer, in the administration is not he responsible to the Law Department?

Mr. Knight.—No, he is not responsible to me in any way.

By the Chairman.—Does not the Attorney-General attend to the whole of the administration of the Stamps Act?

Mr. Knight.—Only as a matter of convenience.

By the Chairman.—In point of fact, the control is with the Attorney-General?

Mr. Knight.—Not for the collection of revenue.

By the Chairman.—It should be simple to get the Treasurer to allow the Attorney-General to administer that Act?

Mr. Knight.—I do not think there would be any difficulty about it, but the present system was not considered unsatisfactory until recently when it was criticized.

By the Chairman.—When the Auditor-General made a report would it not be circulated to the various Departments affected?

Mr. Knight.—No. That is a matter entirely for the officer receiving the report. If I made a criticism that affected another Department I would certainly send it along to the head of that Department for his comments and to get the benefit of his views. If the Comptroller received a report he should have forwarded it to me for my comments, but I have received no such report.

The Chairman.—In his report Mr. Jessup also said that there is no need to have a separate caveat index.

Mr. Knight.—The practice that operated whereby an officer had to leave the interim index to go to the caveat room to find out if there was any unregistered caveat against the dealing has been stopped. Cards respecting all caveats that have been lodged but not registered have been put into the interim index. There were some 800 unregistered caveats, the majority of which related to transfers where plans had to be lodged. When plans are lodged it takes some time before a number is allotted and the transfer can proceed.

By the Chairman.—When did that system begin?

Mr. Knight.—In January.

By the Chairman.—Would that cover the notes under the heading "Interim Index" in Mr. Jessup's report?

Mr. Knight.—No, because Mr. Jessup wants to abolish the interim index and to have prepared at the lodgment counter a list of dealings during the day. At certain periods each day officers in the South Australian Titles Office mark on the original titles the nature of the unregistered dealings. The factor which must not be overlooked is that those titles are bound in the register book, and cannot be taken away. There are around the Titles Office in Melbourne 25,000 stopped cases, 4,000 plans of subdivision, and current dealings of all kinds. There are probably 125,000 original certificate of title out of the register book. The suggestion by Mr. Jessup might be valid if I were beginning from scratch but, at the moment, I would have to close the office for a month to get those titles back into the register book; even then, I do not know whether they could all be put back.

The Chairman.—That will have to be done at some time.

Mr. Knight.—I do not know whether it would save any time. At some stage, the original title must be taken from the register book. There are at least 800 dealings a day and all of those titles must come out of the register book.

The Chairman.—They do not come out in South Australia.

Mr. Knight.—They must come out at some time.

The Chairman.—No, they are kept in small books, in which they are endorsed.

Mr. Knight.—That is so. The title does not come out until the final stage of registration.

The Chairman.—It would appear that, by having the titles in books of 50, the possibility of loss would be reduced.

By Mr. Fraser.—Have you seen Mr. Jessup's system in operation?

Mr. Knight.—No.

Mr. Fraser.—It is possible that, having regard to the large number of dealings, Mr. Jessup's system may be unsuitable for Victoria. However, it appears to work effectively in South Australia.

Mr. Knight.—That is because the South Australian staff grew up with the job. Mr. Jessup started from scratch with his system, whereas I am being asked to change not only one horse while crossing the stream, so to speak, but to change the whole team—to introduce a system with which none of the staff is familiar. I do not think that can be done, on the basis of four men to handle 800 dealings daily. One feature of the Victorian system is that, ten minutes after a dealing is lodged, a searcher can ascertain that there is an unregistered dealing in the office. I claim that that would be impossible in South Australia.

Mr. Rylah.—I think the members of this Committee realize that the introduction of the South Australian system would be difficult while loose titles exist. I am inclined to believe that bound titles are essential for that system to work properly. I cannot understand why original titles are taken from the register book in Victoria and distributed around the Titles Office. They appear to accompany each dealing instead of remaining in the register book until the final act of registration. That seems to involve a considerable waste of time.

Mr. Knight.—It also introduces an element of risk in the event of fire. I have commented on that aspect several times. However, the system operating in Melbourne does facilitate examination at the various stages. From the first examination until the final examination, everything with the exception of the current dealing is entered on the original title but not necessarily on the duplicate. I cite, for example, a sheriff's writ.

By Mr. Rylah.—Would it not be possible, when a dealing is lodged, for the original title to be photographed and for the photostatic copy to be used by officers in the Titles Office?

Mr. Knight.—Yes. When Mr. Vance visited England in March, 1950, he endeavoured to ascertain from Somerset House whether an efficient process had been developed to photograph titles in a few seconds. Mr. Vance obtained particulars of a Kodak invention which will do the job satisfactorily at very little cost. The initial cost will be about £1,500. The equipment will pay handsome dividends, and I shall ask the Government to introduce it first of all at the Probate Office. No solicitor then will need to copy a will in his own office; he will obtain a photostatic copy for the parchment. I do not want to try the system in the Titles Office until after it has been tested in the Probate Office. The use of this machine at the Titles Office will reduce the risk of loss of titles in the event of fire and also will mean that originals will not leave the register book, except for endorsement.

By Mr. Rylah.—Assuming the photostatic system works, will there be anything to prevent the titles from going back into the register book?

Mr. Knight.—No, except in respect of those that need final endorsement.

By Mr. Rylah.—Could Mr. Jessup's system be introduced at that stage?

Mr. Knight.—Yes, if Mr. Jessup's system were considered to be superior to that which is now in use. I do not agree that it would be necessary to have his system then because the fault in our present system lies not so much in the interim index as in the fact that the titles are removed from the register book. That weakness always has existed.

Mr. Fraser.—I foreshadow that vested interests will obect to the introduction of the photostatic system at the Titles Office.

By Mr. Rylah.—I believe that Mr. Knight is imbued with a desire to improve the situation as soon as practicable. Is there anything to prevent him from discussing with Mr. Camier and with the Auditor-General the question of the introduction of the cash-register system?

Mr. Knight.—I will do that without delay. It does not matter to me how the fees are collected, so long as they are collected and collected quickly.

The Chairman.—The next recommendation relates to a special policing system.

Mr. Knight.—The abolition of the caveat room has been mentioned. That is a matter of policy. Are we to take a retrograde step and become merely a registration authority? The first complaint about the abolition of caveats would probably emanate from the legal profession. If careful perusal of each caveat as at present was abolished every caveat lodged would be registered whether the caveator had a real interest or not. Once registered it can only be removed with the authority of the Full Court and that process would probably cost the client between £50 and £60.

The Chairman.—I do not understand why the Titles Office should act as a policeman, except in regard to wrongly lodged caveats, the number of instances of which is small.

By Mr. Knight.—It is suggested that we should not do that?

The Chairman.—Yes. I believe that the Titles Office is a registration organization.

By Mr. Knight.—Is it suggested that we should perform that function without making an adequate check?

The Chairman.—No.

Mr. Rylah.—This Committee will wish to discuss with Mr. Knight the survey aspect, particularly in relation to the elimination of delays.

Mr. Knight.—Presumably the reference to delay relates to plans of subdivision. There is no delay in other respects in that branch.

Mr. Rylah.—We believe that is so.

Mr. Knight.—Following the Committee's inquiry at the last meeting regarding the accumulation of dealings dependent upon lodged plans, the matter concerned me greatly, but there is an explanation for the delays.

The Chairman.—That relates generally to the question of the clerks and their duties. On page 15 of Mr. Jessup's report there are specific recommendations for the simplification of the description of property, including one aspect—which members will probably

agree is relatively a minor one—concerning the long numbering of the certificates of title. Various other suggestions are made as to the simplification of the dsecription of property. Of course, this is bound up with the issue by the Titles Office of a simple guide to solicitors, such as is in existence in South Australia, with the general forms.

Mr. Knight.—May I again say that Adelaide is apparently the ideal place, because the Registrar of Deeds is paramount in the conveyancing field. In South Australia 60 per cent. of the dealings are apparently done by land brokers. Before a person can become a land broker, he must pass an examination. In the first place he is lectured by Mr. Jessup, who has issued a text-book on the subject of the transfer of land. Mr. Jessup is also the examiner of prospective land brokers, and he issues the licences to practice, and he may revoke a licence. Therefore, as 60 per cent. of dealings are handled by the land brokers, it is easy to discipline those engaged in that work, as they must follow every little wish of Mr. Jessup so that he may keep his place nice and tidy from start to finish. According to the evidence given by Mr. Jessup, the solicitors in South Australia follow suit. They are presumably also very co-operative. Our legal profession in this State would not, I think, stand the discipline of the kind Mr. Jessup exercises in South Australia. I do not think the 1,100 solicitors in Victoria would accept similar discipline for a moment. Mr. Jessup has trained those engaged in the work in South Australia to a state, not necessarily of fear but at least of obedience, which ensures their dealings are correct before they reach his office.

The Chairman.—We have had representations from the Law Institute which indicates that the profession in this State is in favour of a similar system.

Mr. Knight.—It would be desirable if we could do it here, but the Law Institute's view might not represent that of all members of the profession.

Mr. Rylah.—Under your own administration, Mr. Wilson, in the Probate Office, disciplines the legal profession very effectively.

Mr. Knight.—But 30 or more dealings a day in the Probate Office is a different matter from 800 dealings daily in the Titles Office.

Mr. Rylah.—I agree, but it is still necessary to find an answer to this problem, and I am trying to find one.

Mr. Knight.—I am seeking one.

Mr. Rylah.—I think you would get co-operation at least from a very big proportion of the 1,100 solicitors in Victoria. You would be assured of it in view of the present outlook of the Council of the Law Institute some members of which are young and progressive. The president is intensely interested in this business. The members have indicated that they are prepared to co-operate in any way to help to solve the problem. In addition to the legal profession, there are such bodies as the banks, the Housing Commission and other organizations which lodge a big number of dealings with the Titles Office. It seems to me that, first, the Titles Office should be put in order, and an endeavour made to secure the co-operation of the profession. Then a certain degree of discipline could be introduced through the other organizations, in an endeavour to get them to play the game. The solicitors, if they were to meet the competition, would also have to play the game. It would be a case of the good old game of competition. If dealings are to be registered quickly, it is essential that they should be lodged in correct form.

Mr. Knight.—I wish I could have the same faith in the spirit of emulation as Mr. Rylah has.

Mr. Rylah.—Mr. Knight has explained how Mr. Jessup has disciplined the land brokers in South Australia. The solicitors in that State have to conform to the same requirements.

Mr. Knight.—Precisely.

Mr. Rylah.—I suggest that if the big organizations were disciplined, the solicitors in Victoria would conform.

Mr. Knight.—The question is whether the solicitors would do what their colleagues do in South Australia. There they get their dealing back from Mr. Jessup with the requisition endorsed, and it is returned within 48 hours.

By Mr. Rylah.—Is not the answer to that to be seen in the work of the solicitors who are doing their job properly. If they return their dealings within 48 hours what does it matter about the others, which have been tossed out of the Titles Office? Does it matter to that Office when they are returned?

Mr. Knight.—One suggestion that has been made is the restoration of the old system of rejection after a fortnight if the requisitions are not returned.

By the Chairman.—Why should it not be restored?

Mr. Knight.—Half the fees would be lost. What would the legal profession say to that?

The Chairman.—I have never heard a solicitor or any other member of the profession object to the enforcement of proper discipline.

Mr. Knight.—The Chairman is speaking probably of the organized portion of the legal profession, such as the Law Institute, which is a very strong body, but many members of the profession are not associated with that body. I am speaking more of the position as it was in past years. The results mentioned by Mr. Rylah may be possible.

Mr. Rylah.—I think that they are possible. The Law Institute would co-operate. I am sure that if you make inquiries you will find that many solicitors in Melbourne have pleaded with the Titles Office to reject dealings in which they are concerned in the hope of making another solicitor come up to scratch.

Mr. Knight.—Why then do we not reject plans of subdivision which are not in proper order? Out of decency we accept those plans because the three months is elapsing. If we rejected them, it would be necessary to apply again to the municipal council for approval. The Local Government Act specified a period of one month, but the term was extended to three months. Even three months is scarcely enough time to enable solicitors to do the necessary work. In consequence, we get half-baked submissions. If they are not lodged within three months they are void and the plans must be again approved by the council. To avoid that, we accept them even although they are not in order. It might be a subdivision in which 80 or 90 transfers are involved.

The Chairman.—There is a desire in the profession to have things cleaned up and working on a proper basis. If that were done, a solicitor would not be able to shelter behind the excuse that the Titles Office is at fault. I agree that 90 per cent. of the legal profession are short staffed. However, it is like starting to work at an untidy desk. If you start with a mess, you do not get out of it, but if you clean up and start afresh, you get a new spirit into a place. After all, Mr. Knight admitted that the Titles Office is breaking the law in connection with subdivisions.

Mr. Knight.—No, I do not admit that. We are facilitating the work of solicitors by enabling them to lodge their dealings within three months and thus observe the law; we are not putting them to the necessity of going back to the council for a further consent.

The Chairman.—If the transactions are administered strictly according to law and it is then found that the period of three months is not sufficient, resulting in the Titles Office having a half-baked plan, the question of altering the time limit should be considered.

Mr. Knight.—Probably so; it was previously extended.

By Mr. Fraser.—Why are plans of subdivision allowed to be put in if they are not in order in the first place?

Mr. Knight.—I think members are aware of the number that are stopped because of faults in the survey.

Mr. Fraser.—If that is the case, they ought to be rejected.

Mr. Rylah.—The majority of plans are lodged by surveyors, not solicitors.

Mr. Knight.—I admit that.

Mr. Fraser.—It may well be that surveyors, not solicitors, are the people who should be disciplined.

Mr. Knight.—Once we start this, a solicitor will come in and object because we are holding up a plan on account of what they call frivolous objections. You cannot point to any particular case. Dealings are so interdependent. If we help the profession, we might weaken the administration. I shall give a fair example. I was present at a deputation from the Council of the Law Institute which waited on Mr. Macfarlan, when he was Attorney-General, and sought from him the right to put in dealings before the stamp duty was paid. That is one of the things which Mr. Jessup frowns on. We did help the legal profession to establish their priority, which is important. We accept these dealings into the office, but they clutter up the "mausoleum," as Mr. Jessup calls the office. They are then sent to Mr. Camier at the Stamps Office at whose discretion we get them back.

Mr. Rylah.—There is a point involved in that. There again we have probably a lack of realisitic approach to the question of stamp duty.

Mr. Knight.—I agree with Mr. Rylah on that point.

Mr. Rylah.—If a transfer is more than a month old, the Stamps Office imposes a penalty irrespective of the reason for the delay. It may be that it was dated in error before it was sent out. It might have been signed only three days before it reached the Stamps Office, but irrespective of the circumstances a penalty in inflicted. This is a matter in which probably there should be a certain degree of co-operation between the Stamps Office and the Titles Office. My feeling from the discussions is that if we could get a plan from Mr. Knight this Committee might be able to help to iron out some of the difficulties with other Departments. That, possibly, is not our province, as our main task is to get the Titles Office working satisfactorily.

The Chairman.—And to fit our recommendations for amendment of the Transfer of Land Act into the proposed new system of working.

By Mr. Thomas.—In connection with the period of three months for the lodgment of plans of subdivision, why have the requirements not been complied with?

Mr. Knight.—It is difficult to say. I think there are now 4,000 plans awaiting examination.

By Mr. Fraser.—Does this mean that a go-getter may buy a block of land and because he is lucky enough to get a surveyor to make a plan of subdivision and to get the council to approve of the plan, he can go ahead under a big marquee and sell the land at high prices? Buyers, having paid their purchase money, may be held up for twelve months or two years before they get a title.

Mr. Knight.—Yes.

Mr. Fraser.—If that is so, I think the practice ought to be stopped and plans ought to be in order before sales are allowed to take place, otherwise purchasers may be held up in connection with the financing of their transactions and they may become hopelessly involved.

Mr. Reid.—And there may be arguments about an easement after a purchaser has paid his purchase money.

By Mr. Rylah.—Could Mr. Knight give us the figures relating to the number of dealings held up on account of unregistered plans?

Mr. Knight.—Yes. There are 4,000 plans awaiting examination. Four senior men have been taken from other branches to completely examine smaller plans, and other officers have been formed into a small group to tackle this problem. In addition, I have given instructions that these plans must be seeded. In a few minutes, it can be decided whether a simple or a complex examination is likely to be necessary. I am taking the plans out of their order. Up to date dealings have religiously followed the order of lodgment. I do not think it is right to hold up 50 or 60 dealings because of one complex case which might take a fortnight to examine. For those reasons I am having the plans seeded and in that way I am hoping to get them on the way so that the transfers following on them may proceed.

In addition to the 4,000 plans, there are 2,000 stopped cases, 500 of which are awaiting the production of field notes. The balance have been stopped on account of legal difficulties and survey requisitions. Requisitions consist of, for example, the creation of easement, amendment of titles, strips of land under the old law, justification of road abuttals and other factors. In neglected cases, rejection notices are now being sent. I am insisting on that, and the cases are not being kept in the "mausoleum." Approximately 8,000 dealings are attached to plans of subdivision in the Survey Branch, causing 100 to 200 searches each day.

By Mr. Rylah.—Of the 25,000 stopped cases to which you referred, 8,000 dealings would be in respect of the plans of subdivision?

Mr. Knight.—Yes.

By Mr. Rylah.—And there would be another 8,000 dealings dependent on those plans?

Mr. Knight.—Yes, approximately.

Mr. Rylah.—And there is no estimate of the additional number of "followers" on those dealings?

Mr. Knight.—That is correct.

The Chairman.—Mr. Knight will continue his evidence at the next meeting.

The Committee adjourned.

FRIDAY, 9TH FEBRUARY, 1951.

Members present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. A. M. Fraser.	Mr. Barry,
	Mr. Crean,
	Mr. Reid,
	Mr. Rylah.

Mr. C. F. Knight, Secretary to the Law Department, was in attendance.

By the Chairman.—Has Mr. Knight any comments on Mr. Jessup's remarks concerning the fluidity of the Department and the work of examining clerks and advice officers?

Mr. Knight.—Examining clerks and advice officers are bound by rulings which it is my intention to overhaul. Examining clerks should be under the control of the Commissioner, and a requisition should not leave the office unless it has been vetted by the legal branch. It should be the duty of the Commissioner to go through the standing orders, and discard all that are not required.

Mr. Rylah.—The " red ink " numbers are now in the 5,000,000 stage, involving a lot of work on the clerks. Thought should be given to eliminating excessive figure writing in the future.

The Chairman.—If a system similar to that operating in the Motor Registration Branch were adopted, letters preceding figures could indicate the month of the year when documents were issued.

Mr. Knight.—I can see no objection to cutting down the figures. The difficulty will be the limit of numbers available under a system similar to that of the Motor Registration Branch, which has exceeded its serial numbers.

A question was raised as to the validity of caveats, wills, and so on. I understood that it was the view of the Committee that we should not inquire into the validity of a caveat. In Bond's case, it was stated that it was the duty of the Registrar to see to the validity of the instrument. The case does not give much assistance as to the term " validity." Does it mean that when a crank puts in a caveat without disclosing a caveatable interest, the document should not be registered, or does it refer to " validity " only so far as the form of attestation is concerned?

The Chairman.—This raises the question of the misuse of legal process. The Titles Office is asked to perform a judicial function that should rest with the Supreme Court. The Committee feels that the detection of the few cases in which misuse is made of legal process will retard the general fluidity of the process or registering caveats. Millane abused legal processes, and he was prevented from issuing writs, except in certain circumstances.

Mr. Knight.—There is doubt as to whether the office should register a caveat, without first looking into its substance.

By Mr. Rylah.—Would you object to the Titles Office being relieved of that responsibility?

Mr. Knight.—No, I would welcome such action. But that would place upon land owners the burden of approaching the court with respect to vexatious cases, which are few in number.

By Mr. Rylah.—If the Act is amended to take the present responsibility from the Registrar, it may be well to give him power to reject a caveat which, prima facie, is vexatious, subject to the right of appeal to the court?

Mr. Knight.—All caveats would have to be examined. The community would be advantaged by the speed of registration of caveats, because so few would be vexatious.

Mr. Rylah.—If the Registrar is given the powers that have been suggested, he should issue a booklet to guide members of the profession when lodging documents.

The Chairman.—The next matter dealt with by Mr. Jessup in his report related to description of property, and he suggested that the provision of a " Precedent Book " would be of great assistance. He also referred to the long descriptions of volumes and folios.

Mr. Rylah.—There is the further point that the description of the land seems to be unnecessary when it is the whole of the land referred to on the certificate of title. It is considered in the Titles Office that by inserting the full description the chance of a wrong dealing being lodged is removed. However, no transfer can be lodged unless the title is lodged with it or there is an order to register on the particular title; if an error is made it will be picked up very quickly.

Mr. Knight.—I cannot see any pitfalls in the system suggested by Mr. Jessup. It makes possible the avoidance of an error that is always inherent in describing property under transfer.

By Mr. Rylah.—Do you agree that it would relieve the staff of the Titles Office considerably?

Mr. Knight.—Unquestionably.

By Mr. Rylah.—Is there any practical difficulty in instituting the three figure folio number immediately?

Mr. Knight.—I would prefer the Registrar to answer that question. Prima facie I cannot see any difficulty in altering the present system.

By Mr. Rylah.—Would Mr. Knight discuss that matter with the Registrar?

Mr. Knight.—Yes.

Mr. Rylah.—I would like to see the three-figure system introduced from a fixed date, which would be advertised. The renumbering of the old titles could be considered at a later date.

Mr. Knight.—Renumbering would be a tremendous task.

Mr. Rylah.—That is so. However, I do not think renumbering would be necessary if the Titles Office would permit the last three figures of the folio of the old titles to be used.

Mr. Knight.—If the numbers of the original certificates were altered it would lead to confusion, unless it were possible to get all the duplicates in order, which would be absolutely impossible.

Mr. Rylah.—My point is that as from a fixed date new titles would be issued with only three-figure numbers on them, and from that date the Titles Office should permit the last three figures of the folio to be used on all old titles.

Mr. Knight.—That would require a legislative amendment.

Mr. Rylah.—I do not think so.

Mr. Knight.—Does not the Transfer of Land Act require the volume and folio right through?

Mr. Rylah.—That is so, but nothing is laid down that to find the folio the volume number has to be doubled and three figures added.

Mr. Knight.—At present the folio number comprises six or seven figures.

Mr. Rylah.—The system of using the last three figures is adopted for internal dealings in banks and solicitors' office. For instance, the girl in my office would never think of writing the full number in the office book, but when it comes to preparing a document all the figures have to be inserted or the Titles Office will not accept it.

Mr. Knight.—That is so. I shall certainly discuss that matter with the Registrar. As I have mentioned before, I think the transposition of figures is a cause of mistake, and that is a source of error that can be eliminated.

By The Chairman.—What is Mr. Knight's opinion of Mr. Jessup's suggestion that the full description, such as sections, numbers, name of parish, and so on, could be avoided?

Mr. Knight.—I do not see how that can be avoided.

The identification of property is very important. The fault lies in the system of cutting up Crown lands in the first instance.

The Chairman.—The parish of Boroondara, for example, is always in the County of Bourke.

Mr. Knight.—I agree that nothing could be done to take a parish out of a particular county, and if the parish were named the county could be dropped.

Mr. Rylah.—Personally I should like to see the South Australian system adopted and reference made the whole of the land in certificate of title, number so and so.

Mr. Knight.—That could be done where the whole of the land was being transferred, but what would be the position when there was a transfer of only part?

Mr. Rylah.—That would be shown as being that part of the land described on the map and the transfer.

Mr. Knight.—I think that would be possible.

The Chairman.—By insisting on the full description the possibility of making an error is increased.

Mr. Rylah.—From a checking point of view I should think the work of the staff of the Titles Office would be decreased almost two-fold if the South Australian system was adopted. At present, the description of an allotment may be " being lot No. 7, block ' B ' on plan of subdivision No. 7152 lodged in the Titles Office and being part of section 4 at Williamstown, Parish of Cut-paw-paw, County of Bourke." If it were shown as " Lot No. 7 on the plan of subdivision so and so " everything would be covered.

Mr. Knight.—The purpose of a certificate of title is to enable an owner to identify his land at short notice. I think the description Mr. Rylah has mentioned would enbale any one to find land just as quickly as is now possible.

The Chairman.—The next matter dealt with by Mr. Jessup related to covenants. In South Australia a covenant is referred to by a number and if one wants to know the contents of the covenant one has to refer back to the original document. In Victoria the Titles Office will, I think, accept a description of a covenant merely by a reference to a number, but in point of fact for some reason or another shortened descriptions of covenants, and sometimes rather weird ones, are given. To facilitate the work and eliminate errors Mr. Jessup recommends that a shortened description should be given.

Mr. Rylah.—Are there not two ways of doing that? There is the New South Wales system where only certain types of covenants are registered, and a schedule to the Act provides that if certain words are used, such as " no quarrying on the land," perhaps 50 or 60 words relating to quarrying will be implied. Then there is the South Australian system where the covenants do not appear on the transfers at all. If a person wants to lodge a covenant it has to be lodged by means of a charge—a mortgage on the land—and all the reference to the covenant is contained in the mortgage. The only thing that appears on the title is, " Charge number so and so." One has to look up the charge to find out what the covenant is.

Mr. Knight.—Is not that passing the burden, as it were, because you still have to go back to the original title?

Mr. Rylah.—If a covenant is registered by way of a charge it does not appear on the title and therefore when the title is searched all those details do not have to be copied. At present each restrictive covenant has to be copied from transfer to transfer. I should like to see introduced a system whereby once a covenant was registered and dealt with it would be placed in a file where it could be searched by anybody who desired to do so.

Mr. Knight.—A person would make that search as a result of some reference on the original certificate.

Mr. Rylah.—Yes.

By the Chairman.—Would it be possible to have a provision in the Act so that it would no longer be necessary to repeat upon the title those archaic references, for instance, to special railway conditions contained in the original Crown grant?

Mr. Reid.—I would be opposed to that provision. I believe that the conditions should be repeated to a greater extent. In certain certificates of title the words, " Special railway conditions " do not appear, and certain conditions which appear on old Crown grants might not be copied on to some certificates of title.

The Chairman.—Yes, if a decision were made to construct a railway, the land covered by any certificate of title could be utilized, irrespective of whether or not the title contained any reference to " special railway conditions."

Mr. Reid.—I have endeavoured to secure an explanation from the Lands Department, but the position is obscure. I believe the amount of compensation is involved.

The Chairman.—The question arises whether the situation should be rectified by enactment. The special railway conditions which apply to certificates of title to land in certain parts of South Yarra are repeated every time a transfer is made, irrespective of the fact that there is no possibility of a railway being constructed. The solicitor must explain to his client that the conditions exist because they appeared on the original Crown grant, in the same way as mineral rights. What does it matter if the old Crown grants did not reserve certain mineral rights whereas the new ones do? The Crown has the right under other provisions to deal with the matter.

Mr. Reid.—I think it will be found that the quantum of compensation is affected.

The Chairman.—That situation is wrong. A person should not receive a larger measure of compensation in the event of a railway being constructed through his property merely because the certificate of title contains a provision relating to special railway conditions.

Mr. Knight.—Such a provision is an encumbrance which might well affect the value of the property.

The Chairman.—In Melbourne those conditions do not have the slightest effect upon the value of the property.

Mr. Knight.—That is because of the passage of time.

The Chairman.—My contention is that if a suitable factory site were available a lesser price would not be paid for it because the certificate of title contained a covenant relating to special railway conditions.

Mr. Knight.—The mere fact that the covenant is not mentioned on the certificate of title does not eliminate the encumbrance.

By the Chairman.—Should not the Crown surrender those encumbrances?

Mr. Knight.—That is an aspect upon which I cannot comment.

Mr. Reid.—The surrender of encumbrances might not be a simple matter because of section 72 and the provisions contained in Crown grants, against which no protection is given by the ordinary certificate of title. Again, there are certain conditions which are wider in their application than the special railway conditions. For example, owners of certain properties in St. Kilda and South Melbourne are restricted in respect of the type of building that may be erected. I agree that the position should be rectified, but difficulties are involved.

Mr. Rylah.—Additional information on this aspect is desirable. I suggest that Mr. Knight depute one of his officers to examine the position relating to covenants that are cluttering up certificates of title and then furnish a report to this Committee which should include a suggestion about how the system of land registration could be simplified.

The Chairman.—I agree.

Mr. Knight.—Whatever is done by legislation, as suggested by Mr. Jessup, would not eliminate the existing covenants as registered on Crown Grants and certificates of title. They would have to be repeated.

Mr. Rylah.—I think it would be feasible to provide that, after the commencement of operation of the Act, any future covenant would be recorded as a charge on the certificate of title.

Mr. Knight.—I do not know how that could be achieved because we have no separate registry for covenants as such. They are contained in various titles or other instruments. We have millions of covenants registered under the present system. To cut off at a certain date would not help. We could not go through all the old instruments and give them reference numbers.

The Chairman.—But, from a certain date, each new covenant could be registered as a charge. By that means the old ones would gradually be eliminated.

Mr. Knight.—Admittedly, but the necessity would never be overcome in the old cases of having to repeat the covenant, unless legislation were passed to that effect.

Mr. Rylah.—There is something in the Chairman's suggestion because many restrictive covenants are archaic. For example, in Altona there is a covenant that no house shall be erected which has a value of less than £200. If, by legislation, there is placed upon the transferor of that land the onus of preserving his covenant by registering it as a charge, he will say, "That is no good to me."

Mr. Knight.—I appreciate the point that every time an old covenant arises a new charge should be made. I could possibly agree with that.

The Chairman.—Perhaps in about ten years' time, when the Titles Office is running smoothly, clerks could go through the old documents and prepare the necessary charges.

Mr. Knight.—I do not think that would be necessary. Each charge could perhaps be prepared on the occasion of the next movement in respect of any certificate of title. Future movements will bear only the reference number. Elimination will be achieved by the effluxion of time. The position is somewhat like the proposed system to bring land under the Act. At first it was thought that the best system would be to make it compulsory for each conveyance of land under the old law after a prescribed date to be accompanied by an application for the land to be brought under the Act so that, in due course, every piece of land in Victoria would come under the Act as it was dealt with, even on a transmission. If the compulsion were restricted to the next conveyance, as suggested, the situation would ultimately be met.

The Chairman.—That lends weight to the discussion. One-third of the land in Victoria is under the old law. If the present method is continued, all the covenants will appear on the new titles. On one-third of the titles, however, a start could be made with charges.

Mr. Knight.—Subject to certain suggestions which I might be able to make regarding old covenants, I feel that Mr. Jessup's recommendation could be adopted by the introduction of legislation to compel the registration of covenants by way of charges. On the next transfer after the commencement of the Act, a covenant should not be repeated in the transfer but should be the subject of a special charging instrument to which reference on the title would be by way of a number only. That would solve all difficulties and would apply to all Departments. Probably the Railway Department and the Lands Department would not persist with those covenants, and they could be eliminated.

The Committee adjourned.

TUESDAY, 13TH FEBRUARY, 1951.

Members present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. P. T. Byrnes.	Mr. Barry,
	Mr. Crean,
	Mr. Reid,
	Mr. Rylah.

Mr. C. F. Knight, Secretary to the Law Department was in attendance.

The Chairman.—Will Mr. Knight please continue his statement.

Mr. Knight.—I had previously dealt with the interim index and had concluded my remarks on covenants. I propose to furnish a memorandum on Part I. of the Bill, on which I have some definite ideas. I have made inquiries about the special railway conditions attaching to certain titles and have found that when a new title is issued automatically those conditions are dropped. It is only in cases of transfer by endorsement that the covenants appear because they are on the original and duplicate copies. That has been done under administrative power, leaving it to the covenantor to protect his rights as he thinks fit.

Mr. Reid.—Under section 72 of the old Act, as well as in the consolidating Bill, one exception raised to the validity of a certificate of title is the exclusion of reservations contained in a Crown grant. I sought the views of Mr. McKinnon during his evidence on this aspect. If railway conditions are to be completely deleted from a new certificate of title it will be a matter of great concern to a person searching a title. To protect himself the onus would then be on him to go back to the original Crown grant. I also raised the point with the Registrar of Titles but I did not get a definite expression of opinion from him. I suggest that special railway conditions should be retained. If they are to be obliterated then the relevant clause in the Bill, which contains the exception of reservations incorporated in a Crown grant, must be amended.

Mr. Knight.—Do you think a special railway condition on a title could be taken as a reservation or exception? Possibly it refers only to limitations as to depth, reservation of minerals, and so on, which would be mentioned in the Crown grant and not repeated thereafter except in the description.

By Mr. Rylah.—I should like special railway conditions dropped altogether. The policy adopted in the Titles Office is a good one, from an administrative point of view, but I should like to make certain that the public is protected so far as the legal position is concerned. Would it not be desirable for the Crown Solicitor to consider the legal aspects?

Mr. Knight.—Assuming we had to indemnify a person for expense involved by the omission or for the loss of some interest in the land, that would be a proper case for compensation from the Assurance Fund.

Mr. Rylah.—I would prefer a more positive approach. The restrictions are archaic and a nuisance, and if we could be sure that no one would be injured by leaving them out of the title then I suggest that section 72 should be amended.

Mr. Knight.—I shall submit the question to the Crown Solicitor and ascertain his views on the danger of omitting the conditions.

The Chairman.—I do not think it is desired to retain the conditions in a title, but the important question is how the present position can be protected. A similar position arose with regard to certain temperance covenants that were included in titles applicable to land in the Mildura district.

Mr. Knight.—What I have proposed will overcome the difficulties raised. A short reference to the covenants could be included, rather than making it necessary to repeat the covenant each time. That could be done administratively. The Titles Office will accept a reference to the number of the registered instrument in which the covenant appears. Whether it be a charge of mortgage or a transfer in which the covenant appears the searcher will be permitted to refer to " Charge No. . . . "; " Covenant under Transfer No. . . ." or " Mortgage No. . . .". No searcher would search a certificate of title without going back to the mortgage, where a mortgage is mentioned. He must do that and in so doing he would discover any covenants. Brewery covenants relating to tied houses usually cover from ten to twelve pages of typing. Invariably they are registered as charges, and on the title appears " Charge No. . . .". When one looks at an instrument in which there are covenants one finds that they appear under a registered number and the Titles Office is willing to accept a transfer in which the number of a registered document is given. It would avoid the necessity for repeating the covenants at length, which practice only increases the margin of possible error. The suggested procedure would give the examining clerks more time for other duties by obviating the necessity for checking lengthy covenants on each occasion.

By Mr. Rylah.—Could Mr. Knight arrange for the Law Institute of Victoria to publish that fact?

Mr. Knight.—The only method we have of contacting the profession is by displaying a notice on the notice board in the Titles Office, or by having it published in the *Law Institute Journal.* As all members of the legal profession are now members of the Law Institute and get a copy of the *Journal* I think that would be the proper place to publish it. It would be made clear that restrictive covenants, in whatsoever form they are lodged, will be registered without examination as to their legal validity. That was a point raised by Mr. Jessup. He considered that the Titles Office should not have to decide for an owner whether his restrictive covenant was drawn so as to be of any worth. In many cases it was decided that it must be negative in form, not positive. At present we examine the documents to see that the principles laid down in those cases are obeyed, which takes considerable time. I suggest it is no concern of the Titles Office to look into the validity of convenants; however, it is an additional service to the public. The covenants should go on the title and the owner should then protect them. If they are not properly drawn the transferee can take action to remove them, in the same way as is done with caveats.

Mr. Rylah.—Covenants are becoming less used as time goes on. The modern practitioner is inclined to tell his client, " This covenant is no good to you."

Mr. Knight.—I suggest that it should be made the subject of a circular for promulgation in the Titles Office, and that a letter be sent to the Law Institute for publication in its journal. I do not think it necessary to amend the Transfer of Land Bill to provide for any different method for the registration of covenants. If the practice is known, members of the legal profession will accept it and will take greater responsibility, knowing that the Titles Office is not there to check their work. The Titles Office will take the document as submitted and the onus will be on the solicitor to satisfy the covenantor or the covenantee whether it is right or wrong. That would also apply to caveats. It would therefore become unnecessary to compel persons to lodge any covenant, with which they desire to blister a title, in the form of a charge.

Mr. Rylah.—From your point of view, and having considered Mr. Jessup's ideas on the subject, do you think the procedure you have suggested will save time in checking and typing? Even if the Titles Office has to accept the responsibility for the typing of covenants on titles, Mr. Knight is satisfied with the present position?

Mr. Knight.—Covenants will not be repeated on titles; they appear in other documents to the registered number of which reference will be made—for example, " Covenant—see transfer No. . . . ."

Mr. Jessup frowns on " red ink " numbers, but he warns against a radical change taking place suddenly. The system of numbering is practically the same in the two States. In South Australia they are termed registration numbers, whereas in Victoria they are " red ink " numbers. A symbol must be used to identify a dealing's progress through the office, and in practice we use only five numerals of the present seven. Members of the profession use the seven numerals, which they write probably only once. A man lodging 80 dealings puts down the full " red ink " number for the first document, and needs to write not more than one or two figures on his list for the balance, which follow in sequence. At this stage, an alteration of our " red ink " numbers would be too drastic.

The writing of numbers is not done to any extent in the office. The officer dealing with the interim index cards stamps in advance of dealings hundreds of cards with " red ink " numbers, and he completes the details as lodgments are received. He does not therefore need to write the numbers at that stage, and there is in consequence no risk of error on his part.

On the top of each page of the progress book appears the complete " red ink " number, which is not repeated in full for the entries that follow in sequence. Therefore time is not lost through the need of writing long numbers instead of using a symbol. I presume that the Committee does not recommend any change in that procedure.

Mr. Jessup has a system of bound volumes but he also uses volumes and folios. Contrary to our practice, he uses only three-figure folio numbers. In the letter to the Law Institute, it is proposed to state that the Titles Office will accept a transfer with a reference to " the whole of the land referred to in certificate of title No. . . ., Volume . . ., folio (three numerals)." Further we will not stop a transfer if the name of the county is omitted. As I pointed out previously, it is merely an act of supererogation to include the county because a parish does not move from county to county.

The Committee adjourned.

FRIDAY, 16th FEBRUARY, 1951.

Members Present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. A. M. Fraser.	Mr. Barry,
	Mr. Crean,
	Mr. Reid,
	Mr. Rylah.

Mr. C. F. Knight, Secretary to the Law Department was in attendance.

The Chairman.—Mr. Knight, would you care to comment on the section of Mr. Jessup's report dealing with stopped cases?

Mr. Knight.—Yes. The Adelaide system is ideal because it does not become cluttered up with stopped cases. Immediately a case is stopped it is endorsed with the reason for the stoppage and is referred back to the solicitor. According to Mr. Jessup, a stopped dealing is returned to the Titles Office with the requisition complied with within 48 hours. That would not be possible in all cases because it might take some weeks to obtain the proofs required in some requisitions. Presumably a large number of stopped cases in South Australia are in a category where the requisitions can be complied with in a short time. Further, when dealings are stopped they do not lose their priority.

One weakness of the system is that when a solicitor wishes to search a title and finds there is an unregistered dealing he cannot inspect that dealing in the Titles Office but has to search it in the office of the solicitor who lodged the stopped dealing. Of course, that practice is all right from the official point of view, but it puts the profession and the public to a lot of bother in chasing unregistered dealings. On the other hand, although the Titles Office in Melbourne is cluttered up with 25,000 stopped cases, ultimately any unregistered dealing can be found and searched. I would relish a system of returning stopped cases to solicitors, because one of our greatest difficulties is to find room for the storage of those documents. In addition, it takes time to find an unregistered dealing, and that wastes both the time of the solicitor and our staff. I admit that that is one of the major causes of delay in the Titles Office.

By Mr. Reid.—Did Mr. Jessup advance any suggestion to overcome the difficulty of searching unregistered dealings?

Mr. Knight.—Mr. Jessup was most unhelpful regarding the Adelaide system. He did not pay me the courtesy of saying even five words to me; when he criticized our system, and senior officers, including Mr. Sutherland, asked him what was done in Adelaide he replied that he was here to ask questions and not to answer them.

By Mr. Reid.—When a dealing was stopped would it be possible to furnish advice as to the reason for the stoppage?

Mr. Knight.—That would be transferring the labour from the profession to the Titles Office. I agree that the South Australian system is ideal in that the advice paper on the dealing contains the requisitions. When a dealing is stopped the solicitor takes it away and the reason for the stoppage does not have to be written out by the solicitor; therefore there is no margin of error.

By Mr. Rylah.—Is there any reason why all the officers who have to handle a dealing should not do so before requisitions are made out?

Mr. Knight.—I would say no to that question, with some small reservations.

By Mr. Rylah.—Would it be feasible for the requisitions to be recorded on an advice paper on the dealing?

Mr. Knight.—They are now.

By Mr. Rylah.—In principle is there any objection to a lead being given by the Titles Office as to the method of complying with certain requisitions?

Mr. Knight.—That is done also.

By Mr. Rylah.—You see no reason why in ordinary cases the Titles Office should not give a lead?

Mr. Knight.—I think the Titles Office should give a lead. There are officers who are not helpful, but strictly speaking it is their duty to explain the requisitions to solicitors and what proofs will be accepted, unless the requisitions are obvious.

By Mr. Rylah.—If all those things were done it might be possible to work under a similar system to that operating in South Australia, but the unregistered plans present a difficulty?

Mr. Knight.—Yes. Of course, most of the 15,000 transfers awaiting on unregistered plans are ready for automatic issue as soon as the plans receive a number. We have gone as far as possible on the registration side, but a description of the land cannot be given because the lodged plans have not been checked and a number given thereto. Most of those plans would not have to go back to solicitors, but would require amendment in the office by surveyors.

By Mr. Rylah.—With the existing staff, do you see any prospect of the plan position being improved in the next six months?

Mr. Knight.—I would not say that it could be improved extensively in that time with the present staff. I have put the maximum number of men capable of examining plans on that work. That has been the position since the beginning of this year. However, that will not overcome the lag for probably two or three years. As a matter of fact, we find difficulty in coping with the intake.

By Mr. Rylah.—Which branch deals with the plans?

Mr. Knight.—They are dealt with in the plan of subdivision room in which three surveyors are employed. However, ten surveyors dealing constantly with plans would be required to do any real good.

By Mr. Rylah.—Is that part of the survey branch?

Mr. Knight.—Yes.

By Mr. Rylah.—In his evidence Mr. Arter gave the impression to the Committee that all the work, except that done in the plans division, was so much up to date that his job was easy.

Mr. Knight.—That is correct, and that is why I am able to transfer surveyors from other work to the plan of subdivision room.

By Mr. Rylah.—Although Mr. Arter gave the impression that some sections did not have sufficient work, he did not seem to feel that it was his job to see that the work in the plan of subdivision room was brought up to date.

Mr. Knight.—He may have given that impression, but Mr. Arter is not the type of man to sit down complacently when the arrears amount to 7,000 unregistered plans.

By Mr. Rylah.—I am concerned with the fact that you had to step in and give instructions regarding that work.

Mr. Knight.—That should not have been necessary. It is not my duty to look into the details. Work is delegated to officers and it is their duty to see that the work is kept up to date. If certain work falls into arrears I should then be told. However, this serious position was not brought to my attention until within the last six months.

By Mr. Fraser.—Is there any statutory prohibition on the sale of subdivisional land before the plan has been sealed by the local council?

Mr. Knight.—No. As a matter of fact land can be sold before it is surveyed, but the question then arises as to what the council will do when it receives the plan. Most sensible people go to the council with the plan of subdivision before they attempt to sell the land. However, if the council approves it does not follow that the Titles Office will accept the plan and give it a number.

Mr. Rylah.—I had a case where a small property had been left to two persons; it had to be surveyed and the plan passed by the local council, but it was then at the Titles Office for 27 months before the title was registered.

Mr. Knight.—The Titles Office would not insist on a survey in such a case, but the local council might.

Mr. Rylah.—Even if the local council was prepared to waive the provisions of the Local Government Act, in accordance with its usual practice of policing the law the Titles Office would not accept the plan until it contained the seal of the local council.

Mr. Knight.—The municipal seal is essential.

Mr. Crean.—Property with a frontage of less than 66 feet cannot be subdivided under the uniform building regulations.

By Mr. Rylah.—With the present intake of work at the Titles Office do you see any prospect of the plans position being brought up to date in the near future?

Mr. Knight.—Since I put on extra men the output in the last fortnight increased by 125 plans, and nothing like that quantity of new work had been received in that time. I shall again survey the position at the end of this month. I gave instructions that the easy plans were to be dealt with immediately and any that caused delay or trouble were to wait. That increased output might not last at the same rate but I am watching the position carefully.

By the Chairman.—Is there a subdivision of land boom at the moment similar to that which occurred in 1920?

Mr. Knight.—No, but it is rapidly developing that way.

By Mr. Rylah.—Could you supply the Committee with information regarding the proportion of plans received over a period of a month that represent the subdivision of vacant allotments, and what proportion are merely the splitting up of properties into two or three lots? By a modification of the Local Government Act it might be possible to relieve the Titles Office of a considerable amount of work in dealing with smaller allotments.

Mr. Knight.—I would be in a better position to answer that question at the end of the month, to indicate what percentage are not speculative subdivisions.

By Mr. Fraser.—Mr. Rylah put four questions relating to dealings with requisitions along the lines of the South Australian system. With the legal profession playing its part, could we not go further by placing a time limit on dealings? Could it not be provided that unless something were done promptly with the dealings they would be thrown out of the Titles Office?

Mr. Knight.—Mr. Jessup is in the fortunate position that apparently he does not care how long dealings are out before answers to requisitions are received as they are then out of his office. One difficulty would be that unless the South Australian Titles Office went through the cases seriatim it would probably not be possible to ascertain how many of the cases were back in the solicitors' offices. On page 360 of Mr. Jessup's book he said that 30 per cent. to 35 per cent. were stopped cases that were back in the solicitors' offices, but if they come back within 48 hours they progress to registration and are dealt with immediately.

By Mr. Rylah.—Could not the South Australian system be instituted here?

Mr. Knight.—It would save considerable clerical and administrative work if the advice note went back to the solicitor with the requisition attached and was then returned to us promptly with the particulars sought. One weakness would be that if the advice note was lost in the solicitor's office we would have to start afresh, unless a duplicate advice note was available. However, duplication could easily be arranged.

Mr. Rylah.—I favour the adoption of the South Australian system, both as a means of saving time and of ensuring that dealings are lodged in a proper manner. Duplication of the advice note would not be difficult, and it would enable the record to remain in the Titles Office. A copy would go to the person making the requistion; it could be suitably marked for identification purposes and the parties recorded in the interim index, but it would ensure that there would always be a record in the Titles Office. It would catch not only dilatory solicitors but also many private individuals who lodge their own dealings and take up much of the time of the Titles Office staff in getting legal advice on how to amend the dealings.

Mr. Knight.—If any such system were introduced I suggest the Titles Office should not hand back the duplicate title. In South Australia when a person gets a transfer as to a part of the subdivided land in a title the duplicate is not handed back, it is kept in the office. There must be thousands stored there and the owners cannot get them back.

By Mr. Rylah.—Your suggestion is that the duplicate certificate of title should remain with the advice note in the Titles Office?

Mr. Knight.—It might be an extra precaution to keep the duplicate, but there is the fire risk to be considered. If there were a fire the office would lose both the original and the duplicate. It might be safer to hand it back to the solicitor. The fire risk is one of my bugbears.

Mr. Fraser.—The extra work does not only manifest itself in solicitors' offices; it also affects those who handle their own dealings.

Mr. Knight.—Some persons lodge their own dealings, thus saving the cost of legal assistance.

Mr. Rylah.—The requisitions might be made on the dealings in the Titles Office, but in many cases the requisitions might require attention by solicitors on the other side and the applicants are entirely in their hands as to when they deal with them. Surveyors are very busy men and they may have to deal with them. Normally solicitors would soon see that requisitions were returned to the Titles Office without undue delay.

By the Chairman.—Could not the Law Institute deal with solicitors who failed to take action within a reasonable period?

Mr. Rylah.—I refer mainly to the hundreds of small cases. It would not be feasible to report all cases of delays to the Law Institute in those instances.

Mr. Knight.—Difficulty could be experienced in the case of followers. The follower may be 100 per cent. correct, but the dealing on which it follows could possibly be stopped for a series of reasons. The Titles Office would send the original dealing back, but would still have to keep the follower.

Mr. Rylah.—Once the Titles Office gets up to date with the applications probably the followers will not have been lodged by the time the dealings are dealt with.

Mr. Knight.—The Titles Office bases its requisitions on the advice paper. Assuming we made the requisitions in duplicate, and still kept the dealing, instead of giving out a card we would give out the duplicate advice paper.

Mr. Reid.—A statement of the reasons should be issued.

Mr. Knight.—My suggestion would prevent duplication, as the solicitor would have before him the requisition as noted on the advice.

Mr. Reid.—The Probate Duties Office issues a statement of requisitions, and a warning letter is sent to the solicitor if an answer is not received. If the letter is not replied to the requisitions are forwarded to the client. That is the best way to discipline tardy solicitors.

Mr. Knight.—It is easy to implement that system in the Probate Duties Office, which has fewer dealings than the Titles Office.

Mr. Fraser.—After a warning has been issued, the next step is to inform the solicitor's client on the matter.

Mr. Knight.—If the work of the office was up to date, that would be an excellent plan. There has been much criticism of the work of the Titles Office by solicitors, but few helpful suggestions have been forthcoming.

Mr. Rylah.—The members of this Committee have been carrying out propaganda work on behalf of the office, and now we have an opportunity to solve a big difficulty. If you will let us have your considered views on the " stopped cases " aspect, doubtless we will be able to influence members of the profession to assist you in cleaning up the present difficulties. The Committee is deeply interested in the control of the Titles Office under Part I. of the Bill, and we feel that we can help you in that respect from a legislative point of view.

Mr. Knight.—That will have a good effect. Of course, solicitors personally do not visit the office very often and most of the work is done by their clerks.

Mr. Reid.—That depends upon the size of a legal firm.

Mr. Fraser.—Mr. Jessup says that the listing of names of dilatory solicitors is effective.

Mr. Knight.—Our main complaint is that some members of the profession will not deal promptly with requisitions, the majority of which can be adjusted easily.

By Mr. Fraser.—Are cases stopped owing to duty difficulties?

Mr. Knight.—The percentage of such cases is not large. A requisition would be raised if we felt that the Comptroller of Stamps had not collected sufficient duty.

By Mr. Rylah.—Would that have anything to do with you?

Mr. Knight.—If we saw an obvious instance of loss of duty, our training would not permit us to allow it to go by default.

By Mr. Reid.—Do you deal with country solicitors by correspondence?

Mr. Knight.—Yes. We set out a statement of reasons for such requisitions.

Mr. Reid.—I think that system should be applied to dealings lodged over the counter.

Mr. Knight.—It is all a question of having sufficient staff. Country solicitors represent only a small percentage of the total number of members of the profession.

By Mr. Reid.—Have you much trouble with requisitions issued to country solicitors?

Mr. Knight.—The position is much the same as with city solicitors, to whom verbal explanations can be given. A country solicitor may procrastinate in the matter of replying to a letter.

By Mr. Rylah.—Would it be possible for you to issue an instruction that requisitions must be dealt with at once?

Mr. Knight.—I know of no practical difficulty to prevent my doing so.

By Mr. Rylah.—Will you also direct that unnecessary requisitions are to be eliminated?

Mr. Knight.—That cannot be done at once. That will need centralization and involve the perusal of all requisitions before they are sent out. No requisition should leave the office before it has been vetted by the legal branch. A great weakness lies in the fact that the lay examiners and legal examiners are working apart from one another.

By Mr. Fraser.—It is a matter of obtaining the proper man to place in control of the Titles Office?

Mr. Knight.—I would prefer an administrative officer, trained in the office but not necessarily qualified as a lawyer, to be in charge of the Titles Office. In my opinion, the legal staff should be in a separate branch and should be referred to when the need arises.

By Mr. Rylah.—If a competent administrator with legal qualifications were placed in charge of the Titles Office, would not that clear up the whole position?

Mr. Knight.—Administrative ability can be proved only by the trial and error method.

The Committee adjourned.

WEDNESDAY, 21ST FEBRUARY, 1951.

Members present:

Mr. Oldham in the chair,

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Crean,
The Hon. F. M. Thomas,	Mr. Reid,
The Hon. D. J. Walters.	Mr. Rylah.

Mr. C. F. Knight, Secretary to the Law Department was in attendance.

The Chairman.—Mr. Knight, are you in a position to discuss now the question of divided controls?

Mr. Knight.—I conferred with another officer of my Department on the subject yesterday morning, but I am not yet in a position to give the Committee my final views.

Mr. Fraser.—Commenting upon certain sections of Part I. of the Transfer of Land Bill, Mr. Jessup suggests, for instance, that the words " of the Commissioner of Titles " should be deleted and that the powers should be placed in the hands of the Registrar. In the South Australian Act there is provision for " solicitor " and not " Commissioner." Mr. Jessup does not suggest that " solicitor " should be inserted in this Bill, but he proposes that the Registrar should be a legally qualified officer.

Mr. Knight.—I would prefer to follow the New South Wales system. The Registrar need not be a lawyer, but the Chief Examiner of Titles and examiners who are subordinate to him should be qualified men who can do the legal work involved.

Mr. Rylah.—Weight should be given to Mr. Jessup's proposition that the Registrar should have some legal knowledge so that he can exercise control over the examiners.

By the Chairman.—Will Mr. Knight now come to that section of Mr. Jessup's report which deals with the registration room?

Mr. Knight.—In the Registration Branch there is not one permanent trained officer; they are all temporary officers, the majority of whom are not 50 per cent. efficient. The branch is understaffed.

The Chairman.—There are men doing endorsing work which could be efficiently performed by a junior officer.

Mr. Knight.—I do not agree. With the existing system it is necessary to have some one with intelligence to identify the documents and to make reasonable endorsements thereon. Many alterations have to be effected now because wrong endorsements, involving careful checking, are being made. If I had permanent juniors, properly tutored in the work, there would not be the trouble that arises in the Registration Branch in present circumstances. Staff is not available and work has to be done by temporary officers.

The Chairman.—Mr. Jessup's report stated "In other words, half the time of the officer who is called on to do the relatively important work of endorsing the original is wasted on the duplicate. This, of course, should be discontinued, and any officers who are sufficiently capable should be used exclusively on the original."

Mr. Knight.—That is a sound suggestion. Some time before Mr. Jessup came into the field I thought that time was wasted by each clerk having a set of stamps and having to fill in all the details on the title. Experienced men should fill in the original document, do the stamping, and then forward the document for less experienced men to fill in the details. I tried that method for a week, but the experienced men almost went mad because of the monotony of the work and their efficiency tapered off. Although the method is the ideal one, unfortunately the human element entered into it and I had to abandon it. I could follow up the suggestion of experienced men doing the work on the original, but they are all temporary officers now and the permanent officers must do the checking. There are several vacancies on the staff of the Titles Office and there are no clerks available to fill them. Of the officers in the Survey Branch 40 per cent. are officers of long experience, whilst 60 per cent. have been employed only for a relatively short time. The majority of the permanent officers therefore have had less than two years' experience. Officers in the Survey Branch require a much longer period.

By Mr. Reid.—Is that a reflection of the general shortage of staff in the Public Service, or is it related to peculiar conditions at the Titles Office?

Mr. Knight.—I do not think it is applicable to peculiar conditions obtaining in the Titles Office. That office presents the best of the opportunities offered by any section of my Department for rapid advancement —outside of the Petty Sessions Branch. I think the conditions should attract juniors rather than repel them.

By Mr. Fraser.—That is, if the conditions were known?

Mr. Knight.—That is the point.

By Mr. Reid.—Staff amenity conditions at the Titles Office are poor and unattractive for young people. The staff has no place at which to eat meals?

Mr. Knight.—The provision of suitable amenities requires space.

By Mr. Rylah.—Is there anything substantial in Mr. Jessup's suggestions, particularly in regard to the big books that are lying around the office? Is there not an opportunity to create additional space by introducing modern shelving and filing methods? Would that not provide space for the introduction of more congenial working conditions and for the provision of minor amenities.

Mr. Knight.—I do not think it would provide sufficient room to install a dining room for the staff.

Mr. Reid.—Most modern firms provide such facilities for their staffs.

Mr. Knight.—Awards provide that firms must provide suitable amenities.

By Mr. Rylah.—Is this not an appropriate time to seek the installation of suitable amenities?

Mr. Knight.—It would probably be at least six years before construction works could be completed. Before we can have filing and shelving facilities we shall need to alter the existing system.

By Mr. Rylah.—As staffing conditions will probably get worse before they get better, should not everything possible be done now to improve conditions in order to attract additional staff?

Mr. Knight.—In view of the number of entries that have already been made in the Index Book, it would take some years to change the index system to accord with that in vogue in Adelaide.

By Mr. Fraser.—Could not the new system be installed gradually?

Mr. Knight.—It would have to be done in that way. The office has been working for some years on the consolidated index.

By Mr. Rylah.—Have you considered whether it might be wise to scrap the present method and commence a modern loose-leaf system?

Mr. Knight.—I have considered that matter, but I do not think the advantage to be gained would warrant the huge expenditure, the time that would be wasted and the lag that would necessarily be created. In his report, Mr. Jessup made a feature of the room taken up by the index books and suggested that time was wasted when a search was made. However, I would say that the difference between the searching times in South Australia and in Victoria would hardly be a matter of minutes.

Mr. Rylah.—I gathered that Mr. Jessup's main concern was the amount of room being taken up by the index books. His opinion was that the space could be used to greater advantage—for the better administration of the office and in providing improved conditions for the staff.

Mr. Knight.—That may be so, but assuming that his suggestion were adopted the shelving required around the index room would probably take up more room than is now occupied by the tables. Further, it would take years for people to get used to the system, and, at the most, it would mean that they would be saved from searching two and a half pages of the index, which does not take three minutes. The index room would not be large enough to divide into two, one part to be used for the index room and the other for staff amenities. It is my experience, too, that staff rooms are very seldom used.

By Mr. Fraser.—Is it necessary to retain index books of such magnitude?

Mr. Knight.—The present books could be split up into folios of 50, and rebound so that they could be placed in racks around the wall. The change over would take time and while work was being carried out

there would be a further delay in searching. One must not lose sight of the fact that we have to keep the machine rolling. While a transfer from one system to another takes place the public is put to grave inconvenience, and dealings passing through the office are still further delayed.

By Mr. Rylah.—The machine is rolling so slowly now and the congestion is increasing at such a rate that the position may have to be allowed to get much worse so that ultimately it may be better. There is a general feeling among the profession and the public that the stage has been reached when the machine has almost stopped rolling. I do not mean that no dealings are coming out of the Titles Office, but is it not a fact that the time taken for them to come out is increasing every week?

Mr. Knight.—In the last three weeks the time for dealings to pass through the Titles Office has been reduced from 89 to 76 working days.

By Mr. Rylah.—But the time increased from 41 to 76 days in a matter of three months?

Mr. Knight.—I agree, but there was a reason for that increase. Land sales controls were lifted suddenly in 1949, and the Titles Office was flooded with dealings when it was not ready for them. Because of increased values properties are changing hands at a ridiculous rate and no system could possibly handle the flood.

Mr. Rylah.—The system operating in South Australia was faced with exactly the same conditions and it has functioned.

Mr. Knight.—It was not flooded to the same extent as was Victoria where there is a demand for property from a population of 2,000,000 as against 1,000,000 in South Australia. The percentage increase in South Australia would not be nearly as high as in Victoria. I do not know what the South Australian figures were for 1939, but I think only 54,000 dealings a year are being dealt with in that State now.

Mr. Rylah.—Land sales controls were lifted in South Australia at approximately the same time as in Victoria, and prices have increased in a similar way, although I do not think they have spiralled to the same extent. That must have meant an increase in the number of dealings, yet the system in South Australia seems to have coped with that increase and also enabled a modernization of the system to take place. Compulsory registration has been undertaken in that State and the position from a time point of view is as good as, if not better than, it was before the war.

Mr. Knight.—Of course, one does not know what the difference in staff is in South Australia. A number of men were away from the Victorian Titles Office during the war, and they had not returned when land sales controls were lifted. Not all of those men returned when they were discharged. As a result of the Commonwealth rehabilitation system some did not come back to the Titles Office, and others are still undertaking courses.

By Mr. Rylah.—Would not the same condition operate in South Australia?

Mr. Knight.—That might be so. According to the details which Mr. Jessup gave of various branches a 100 per cent. increase in the dealings could not be handled in South Australia without the system becoming clogged.

Mr. Rylah.—The space problem in South Australia is more critical than in Victoria.

Mr. Knight.—We had no space problem in 1939.

The Chairman.—Mr. Jessup contends that you have none now.

Mr. Knight.—It is not critical now. If space could be found elsewhere for the Stamps Office, the Government Statist's Office and the Public Solicitor there would be plenty of room for staff amenities and so on without altering the present accommodation of the various sections. I have been trying for years to get those three activities out of the building. In 1936 or 1937 the sum of £10,000 was set aside for the erection of a building in Little Lonsdale-street for the Stamps Office, but a start has not yet been made, because the Comptroller of Stamps says the light would be bad. It would now cost about £40,000 or £50,000 to construct a building of the type visualized in 1937.

Mr. Rylah.—On page 25 of the report Mr. Jessup refers to the use of a rubber stamp. It appears that a lot of unnecessary work is carried out with the use of that stamp.

Mr. Knight.—The endorsement has to be made, and no one could suggest that it would be better for the whole of the endorsement to be made in handwriting.

Mr. Rylah.—I should think the use of the large stamp for the endorsement would take up time.

Mr. Knight.—The only alternative would be to have the certificate of title divided into, say, four columns, and to have a series of printed endorsements. However, when a search was being conducted one would have to look from one column to another to ascertain the order of endorsement.

By Mr. Rylah.—I take it that Mr. Jessup was referring to the stamp used for the endorsement?

Mr. Knight.—Yes.

By Mr. Rylah.—Could the present large rubber stamp be eliminated in favour of a smaller impression?

Mr. Knight.—Using a smaller stamp would not save time.

By the Chairman.—Does the large stamp lead to the recording of unnecessary information?

Mr. Knight.—That is a matter of opinion. We try to make available all information needed by members of the public. The present method of stamping documents is not the cause of real delay. However, I shall investigate the question. Mr. Jessup's report is based on his opinion of the South Australian system, to which he is wedded. He criticized our system, but did not offer helpful suggestions, even when discussing matters with our senior officers.

Mr. Rylah.—When the new Registrar is appointed, he should visit Adelaide to see if he can learn from the system in vogue there.

By Mr. Fraser.—Part I. of the Bill is the foundation of Mr. Jessup's recommendations?

Mr. Knight.—That is true. The Act should deal with principles, and the details of organization should be worked out in the light of the Act's provisions. Mr. Jessup contends that my control under the Public Service Act is not a good system, but I beg to differ. If it is desired to make the Department independent, the Act must be amended accordingly. Until that is done, I must continue to act as I am at present.

Mr. Fraser.—Mr. Jessup puts it that permanent heads should have direct contact with the Minister in order that matters can be attended to quickly.

Mr. Knight.—Mr. Jessup says that he sees the Minister infrequently; I doubt whether he is ever required to carry out a Ministerial direction. There are ten permanent heads in the Law Department in Adelaide, and every branch there similar to that over which I exercise control has a permanent head.

By Mr. Reid.—For how long has it been our system for the Secretary to the Law Department to be the overriding permanent head of all its different branches?

Mr. Knight.—I think the system has always applied; it was modelled on the English practice. We have a buffer between the heads of branches and the Minister.

By Mr. Reid.—Would it cause a serious upset if the functions of the Registrar of Titles were divorced from the administration of the Secretary to the Law Department?

Mr. Knight.—I do not think that would lead to improvement. At present, the Titles Office is not hampered in any way. In fact, I have been able to assist in overcoming many difficulties. Of course, when the necessity arises, the head of a branch and I can see the Minister.

Mr. Rylah.—When there are conflicts between the Commissioner and the Registrar there seems to be something radically wrong with the present position. If some one could be appointed to control the Titles Office, subordinate to Mr. Knight, would not that be advantageous? That officer could control the legal and administrative work of the office; he could approach the Secretary to the Law Department as his permanent head, and then take appropriate action. This investigation would not have been necessary if Mr. Knight had had one officer at the Titles Office to whom he could have directed questions on matters relating to the general working of the office.

Mr. Knight.—Frequently the Commissioner and the Registrar have differences of opinion and there has always been some antagonism between the Survey Branch and the Registrar's section.

Mr. Rylah.—If there were one officer in charge he could direct the work of the several sections. If the Survey Branch was not getting the work done he could say, "Leave the ordinary services and bring the plans up to date." He could also ensure that the registration room work was up to date.

The Chairman.—In view of what Mr. Knight has said about the desirability of having one permanent head for all branches of the Law Department, instead of a number of permanents heads, as is the case in South Australia, I take it that when he gives his report on the Registrar and the Commissioner they will have difficulty in submitting that there should be divided control in the Titles Office?

Mr. Knight.—No one could successfully criticize the administration of the larger branches in my Department, such as the Petty Sessions Branch. I defy any one to say that that branch is not working smoothly.

By the Chairman.—Is there any statutory provision that makes it mandatory for the Secretary to the Law Department to give certain sections certain work?

Mr. Knight.—No.

Mr. Fraser.—The trouble seems to have arisen from the Commissioner being theoretical rather than practical, requiring his officers to spend hours on legal points that do not really matter and which, if they were found to be wrong, would not cost the Assurance Fund more than a few pounds to settle?

Mr. Knight.—If that were done in every case there would be chaos. Actually we hold up about 20 per cent. of the cases, as against 35 per cent. in Adelaide.

Mr. Rylah.—The Registrar seems to have been relegated to well nigh an inferior position in his own branch. The Committee saw how Mr. Sutherland approached, almost with temerity, any questions other than those relating to registrations and dealings. He is given discretion under the Act, but it seems that he is becoming reliant on the Commissioner in all things. The Registrar is responsible for the administration of the staff in the Titles Office, yet the Chief Surveyor and the Commissioner can completely clog up the works by refusing to carry out some of their functions. I think this matter should be carefully considered.

The Committee adjourned.

FRIDAY, 23RD FEBRUARY, 1951.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Barry,
The Hon. F. M. Thomas,	Mr. Crean,
The Hon. D. J. Walters.	Mr. Reid,
	Mr. Rylah.

Mr. C. F. Knight, Secretary to the Law Department, was in attendance.

The Chairman.—On the subject of "Delivery", Mr. Jessup suggests that, when a dealing is lodged, a small slip should be signed and attached to the dealing. The claim is made that that would obviate keeping a cumbersome set of books.

Mr. Knight.—That system might be all right for a single dealing, but it is unsuitable when many dealings are lodged by one solicitor. Members of the legal profession would not be too happy if they had to sign many slips. Furthermore, the multiplicity of slips would increase the possibility of error. Slips could be lost more easily than books. The saving in time—if any—would not be advantageous to the administration.

The Chairman.—The entries on the slips would not have to be duplicated.

Mr. Knight.—That is so, but a solicitor collecting six dealings would have to sign six times and check the information on each slip with the title.

The Chairman.—He would have to do that in any event.

Mr. Knight.—Admittedly, but he would have to sign only once in the book. Mr. Jessup's suggestion would result in transferring the labour from the Titles Office to the legal profession.

By the Chairman.—Should a solicitor sign in the Titles Office for six titles included within a bracket, what proof would there be that six titles were signed for?

Mr. Knight.—If any alteration to the bracket were made, it should be evident.

The Chairman.—There is always the possibility of inaccuracy.

Mr. Knight.—That is so, but the question arises: Does that possibility warrant giving the legal profession and the Titles Office extra work? Mr. Jessup has approached the situation from the viewpoint that no system could be better than his own. That is a matter of opinion. My view is that his system, in this regard, is cumbersome.

The Chairman.—Mr. Jessup claims that filing is saved and that unnecessary books are dispensed with.

Mr. Knight.—The slips would have to be filed and there is always the possibility of their being lost.

By Mr. Walters.—Does not Mr. Jessup suggest that the slips should be gummed to the documents?

Mr. Knight.—Yes.

By Mr. Fraser.—What is the meaning of Mr. Jessup's suggestion that the receipt should be filed with the instrument?

Mr. Knight.—The dealing might consist of a transfer. On that transfer would be the office search note, upon which all requisitions are raised. When the requisitions had been satisfied, the slip would be attached to the search note which the solicitor would sign in return for the certificate of title. The title would then be replaced in the register book, which would be taken apart and bound separately.

The Chairman.—By that means there would be a receipt with the original document at the Titles Office, where it might as well be in an entirely separate calf-bound volume.

Mr. Reid.—I am not clear what Mr. Jessup wants to reform. At present, when a person collects titles at the Issue counter of the Titles Office, he signs a foolscap sheet of paper upon which appears a list of the titles collected. Apparently, those foolscap sheets are kept for an interminable period of time because I have traced through the records to ascertain which solicitor had picked up a particular dealing many years previously. I presume that it is that system which Mr. Jessup wishes to reform.

Mr. Rylah.—I have discussed this matter with Mr. Jessup. His suggestion is not very clearly explained in the report. Mr. Jessup's practice is to gum the slip to the document which he accepts back, such as a duplicate certificate of title or a mortgage. If a transfer is involved, he will not get that back, so the slip is not attached.

Mr. Knight.—The slip has to be torn off at the time, and kept at the Titles Office. Would not that leave small pieces of paper stuck to the deeds?

Mr. Rylah.—I think not. I consider the idea to be excellent because it means that when a solicitor lodges a dealing, he fills in a form and lodges it with the document. He then knows to whom the document is going. If he wants it back, he says so. That sticker remains with the dealing during its peregrinations through the Titles Office. When the document is handed over, it constitutes its own receipt. Apart from saving work in the preparation of receipts at the delivery counter, the system might save the Titles Office from some embarrassing experiences arising out of the delivery of certificates of title to the wrong persons. There is much merit in Mr. Jessup's suggestion, and I should like Mr. Knight to consider it further.

Mr. Knight.—I am not diametrically opposed to the proposal, but much work would still be involved in filing receipts.

Mr. Rylah.—They would still have to be filed somewhere, under the present system.

Mr. Knight.—That is true, but the number would be smaller because we would have a collection of them on one document. If we were to take six documents, we would have six slips. I presume they would be filed with the instrument in the Titles Office. Therefore, strictly speaking, there would be no separate filing. The slips would be stuck to the transfers. There is merit in the proposal.

By Mr. Fraser.—Is one page of foolscap used for one document?

Mr. Knight.—Yes. The reason for that is to secure uniformity of size for filing purposes.

The Chairman.—The next subject for consideration is the Index Room. The suggestion has been made that the indexing could be done in the old Caveat Room and the Index Room made available for other purposes.

Mr. Knight.—With minor qualifications, I agree with Mr. Jessup's suggestion. I should like to have his system here. It saves a tremendous amount of time, facilitates searching and cuts down searching space. My difficulty is that we now have such a huge number of transfers.

By Mr. Rylah.—Would it not be feasible for the present system to end at the 30th June, 1951, and the new system to begin from that date?

Mr. Knight.—If this system were to be introduced, it could commence from 1st January, 1952.

By Mr. Rylah.—Would it be possible for Mr. Knight to send to Adelaide to look at Mr. Jessup's system an officer of the Titles Office who has shown some aptitude for filing?

Mr. Knight.—That would be unnecessary. The system speaks for itself. Peacock Brothers Proprietary Limited have supplied Mr. Jessup with the covers and they are available for our use. All that is required is a visit to Peacock Brothers Proprietary Limited to ascertain the form in which Mr. Jessup is filing his records.

The Chairman.—The next subject is "Correspondence Branch." This seems to involve the introduction of a modern system to replace the old wet press, and an arrangement for the most senior men in that particular branch to open letters. That is more a matter of office routine than of principle.

Mr. Knight.—That is true. I have always been opposed to the wet press. Only about one-eighth of the dealings are handled in that way. It seems ridiculous to have two systems when one would suffice. A carbon copy is as good as a press copy, because it would be possible to alter a letter after it had been copied and before it had been despatched. The press copy system was discontinued by Mr. Vance but was re-introduced when Mr. Sutherland became Registrar of Titles.

Mr. Rylah.—I think Mr. Vance mentioned that in his evidence.

Mr. Knight.—Yes. Mr. Vance introduced some short-cuts, but as soon as he retired and a new Registrar of Titles was appointed, it would appear that there was a reversion in some directions to the old system. It is certainly difficult to get men to make changes during their last few years of office. They usually have been brought up in an atmosphere of conservatism and are wedded to old practices.

Mr. Rylah.—Mr. Jessup's suggestion that a secretary should be appointed for the Registrar might assist in the achievement of modern reforms.

Mr. Knight.—It would, if a suitable appointee could be found.

Mr. Rylah.—Dealings in the Correspondence Branch could be improved. In one case recently when my office was dealing with a certain piece of land, my clerk was asked to place the application in the form of a letter. Once the matter had started on a correspondence basis it had to continue along those lines. Even when it came to a settlement with the Acting Commissioner he would not accept a cheque or issue a receipt because a forwarding letter did not accompany the cheque. The Acting Commissioner wrote a note for my clerk who was handling the matter, "Herewith please find cheque for settlement in this matter", and then had it signed by the clerk. The cheque was taken to the cashier, but my clerk was then informed that a receipt could not be issued immediately, but would be forwarded in a few days' time because it would be a correspondence matter under the Registrar's control.

Mr. Knight.—That appals me. Why could he not have made a minute on the files?

Mr. Rylah.—The branch will not depart from the long established conservative methods, and similar happenings will occur in the future unless a strong

direction is issued by Mr. Knight. When Mr. Vance was the Registrar he introduced modern methods, but on his retirement the branch lapsed into the old system.

Mr. Knight.—In adverse possession cases ten declarations may be necessary over the prescribed period, and the examiner laboriously makes out a précis of each of those declarations. I did that work when I was an examiner of titles and I considered it ridiculous that a senior qualified officer should be required to do the copying. When I took charge of the Department I issued a direction that typists should copy the affidavits or declarations.

Mr. Rylah.—It would not be a burden on the legal profession if applicants were required to file duplicate copies of all declarations.

Mr. Knight.—Many of the declarations are hand-written documents forwarded by country solicitors. Under the old procedure the notes of the searcher who searched the titles did not go to the examiner, but they do now.

By the Chairman.—Is not the work of the examiners of titles now twelve months in arrears?

Mr. Knight.—It is not, and at the time Mr. Jessup's report was made the work was nine months in arrears. By the end of June, 1951, the lag in the work will not exceed six months, and it will be progressively reduced because of certain improved methods that have been introduced. It is important that a title should be sketched, and the sketch record must be retained permanently. The searcher obtains the memorials, sketches the titles, and makes his search notes. Those notes do not go to the examiner. All the searcher need do is to sketch the memorial and leave a space for the comments of the examiner. At present the examiner sketches the title from the deeds and the searcher does it from the memorials.

By the Chairman.—Would an extension of the use of the photostat system assist in expediting the work?

Mr. Knight.—It would not.

By Mr. Rylah.—Is your reference to the sketching of the title from the description of the land in the conveyance?

Mr. Knight.—It applies not only to the land but also to the legal and equitable title of the owner. It is legal work. The deed is perused to discover the person who has legal and equitable title in the property. Then a search is made for anything else that might affect the title, and therein lies the source of many requisitions. Perhaps by reason of a mistake on the part of the conveyancer all interests in the land have not been transferred to the transferee. That is why the examiner must ensure that the person applying to have the land brought under the Act is entitled to a certificate of title. The examiner must go back over the chain of documents to ensure that the legal and equitable interest has been transferred to the present owner. In many cases that has not happened.

By Mr. Reid.—In the event of the introduction of a compulsory system, will there be sufficient examining staff to cope with the position, even with the short-cuts that have recently been instituted?

Mr. Knight.—Definitely no; and that is why I have always advocated that if there is to be a compulsory bringing of land under the Act it should not be done by the method proposed in the Bill. I suggest that an equally efficient way of dealing with it would be to provide that any movement of land under the old Act on and after the 1st of January, 1952, must be accompanied by an application to bring it under the Act. For instance, land at Geelong might have been in the possession of the one owner for 50 years; the only important aspect is where there is movement in the ownership of that land. If the owner died and the executors then had to deal with that land, surely that would be the appropriate time to bring it under the Act. There should not be a blanket direction bringing all land held under the old Act within the provisions of the new Act. Where are the surveyors to be obtained to deal with all cases? As the period would have to be extended every five years, would it not be preferable not to disturb the *status quo* except where there is a movement of legal ownership of land held under the old Act?

Mr. Fraser.—By doing it piecemeal eventually the stage could be reached when all the titles would not be in order so far as boundaries are concerned. Under the proposed amendment of the Act all blocks of land would be properly surveyed and the titles would represent them with accuracy.

Mr. Knight.—The method of completing one zone at a time would have virtue.

By Mr. Fraser.—If your suggestion were given effect, the surveyors would be concerned only with one parcel of land, the subject of the Crown grant at the time, and much attention would not be paid to other lands in the same locality?

Mr. Knight.—No matter when it might be done, that would arise. Suppose there were six blocks in a particular zone, which were not under the Act, and one at a time was dealt with during the next 25 years. All that would be done under the Bill would be to jam all the amendments of the various titles into a period of five years, instead of 25 years.

The Chairman.—After all, the five-year-period was based on the advice I was given when I was Attorney-General, and I made the speech prepared by the Law Department on the subject.

Mr. Knight.—The "five years" was put in after discussion. I think you, Mr. Chairman, gave the last word.

The Chairman.—I did, but the speech I made was based on the notes prepared for me to read.

Mr. Knight.—I beg to differ.

By the Chairman.—The five-year-period might be amended to 20 years. In South Australia, the Titles Office authorities started in the south-east corner near the Victorian border and worked back. It seems to be only common sense that if a properly planned team of surveyors are put to work on an area they must accomplish the task very much more quickly by mass production than if individuals were doing blocks spasmodically here, there, and everywhere. Would not that be so?

Mr. Knight.—Yes, but where are the surveyors to be obtained?

The Chairman.—They could be trained.

Mr. Knight.—The training of surveyors would take at least six years. We are training them now and we are also losing them.

The Chairman.—The standard required of surveyors are very drastic and unnecessarily inelastic. There could be degrees of the qualifications required of surveyors. Persons who are learning to be surveyors could be given a status which they are not accorded at present. Mr. Arter suggested many improvements.

Mr. Knight.—He would be the last men to break down the existing standards.

The Chairman.—His suggestions did not involve a breaking down of the existing standards. Mr. Merrifield, who is a surveyor, agreed with the evidence of Mr. Arter.

Mr. Knight.—In my opinion, Mr. Arter is a most capable man; you could not get a better one.

The Chairman.—The answer seems to be that a mass survey should not be started until the necessary staff of surveyors was available for the work.

Mr. Knight.—It would be silly to do so unless the staff could be obtained.

The Chairman.—It would be foolish to start "landing" until the landing forces were ready.

Mr. Knight.—It would depend on the statute. If the time limit were fixed at five years, the proclamation of the Act would have to be postponed.

The Chairman.—That is only a question of time.

Mr. Fraser.—"Five years" is mentioned in the Bill.

Mr. Knight.—In the South Australian legislation there is a discretionary provision.

The Chairman.—If any amendment of the five-year-period is thought to be necessary, that is one of the points which should be considered by this Committee. Possibly, five years is too short a period.

Mr. Knight.—Geodetic surveys are being undertaken throughout the Commonwealth. The Co-ordination of Survey Department also operates. All services in connection with surveys were co-ordinated so that, when necessary, reference could be made to the various bodies concerned, such as the Melbourne and Metropolitan Board of Works and the Country Roads Board, to avoid duplication. The system of going into one zone at a time is ideal, because it is then possible to call into assistance the central index of all surveys made in that particular zone, and in that way probably speed up the surveys. A Chief Surveyor, having charge of a big staff, could be employed solely on field work.

Mr. Rylah.—The "five years" is mentioned in the proposed Bill. We spent some time discussing this aspect of the matter with the two young and enthusiastic examiners in South Australia, who had been doing this work, and we were rather startled by the progress they had made. When the Act was brought into operation in 1946, it was done on a sort of faith basis, in the hope that it would be possible to expedite the work. At the time, the South Australian authorities were faced with a shortage of staff, including surveyors. The two examiners to whom I have referred were put on the job and told to do the best they could. With the co-operation of the legal profession, and the surveyors, they started on a very ambitious programme, and they achieved much more than they had anticipated. I cannot see any objection to this system, assuming that the five-year-period is deleted. It is a matter of giving the Titles Office a charter to do the job when it can.

Mr. Knight.—That is so.

Mr. Rylah.—That would mean that there would be on the statute-book some means of doing the work. The details would be a matter of administration, depending on the availability of staff.

Mr. Knight.—That is so.

Mr. Rylah.—I fondly hope and believe that if a number of the reforms Mr. Knight and other persons have suggested were introduced into the Titles Office, certain sections of the work, including that of the Examining Branch, would be quickly brought up to date, and it may be that in twelve months' time examiners would become available to tackle the problem.

Mr. Knight.—I have no difficulty in getting the Governor in Council to approve of new appointments if I can show the necessity for them. I was surprised when I read Mr. Jessup's report on the bringing of the land under the Act that one examiner is capable of handling all the work under the zoning system, because it must just pour into the office. It was mentioned that under the mass production method you would get a great area of land in very quickly, but that is not half the battle, because the examination of the legal title is a long process.

The Chairman.—When I refer to mass production I mean that, instead of instructing a surveyor to go to, say, Gawler, and survey a block, three or four surveyors would be sent there, and they would do sixteen blocks.

Mr. Knight.—Sixteen times more work?

The Chairman.—It would not mean that.

Mr. Reid.—Assuming that it would be possible to overcome the difficulty concerning the surveyors, and to have all the survey work done, would it be possible to get enough examining staff to keep pace with the surveyors?

Mr. Rylah.—I think it works the other way around in South Australia. The examining staff, under Mr. Jessup, direct the amount of survey to be done. The intake from the surveyors is regulated by the speed of the examiners.

Mr. Knight.—In other words, the application is lodged with the examiner and, after looking at the legal title, he directs the survey.

Mr. Rylah.—I think the Registrar-General, on the recommendation of his examiner, decides that he will deal with a particular zone, and then the surveyors start to work on that area. The applications are examined as they are received, and if the work is coming in too fast for the examiner, it is closed down for a time.

By the Chairman.—We are a little off the track; we are not dealing at this stage with the applications, but with the modernization of the system under which the examiners work for their ordinary purposes. Does Mr. Knight substantially agree with the comments made in this section of the report?

Mr. Knight.—Definitely. As I stated earlier I feel that there is too much regard for legal forms and solemnities in respect of land which does not warrant so much attention. In my opinion, the value of the land should determine the care and attention that is directed to some applications. A block of land might be worth only £50, or it might be valued at £5,000. We must take risks to get speed, but the risks are almost infinitesimal.

Mr. Reid.—There is the other point of view: the block of land worth £50 is as important to the owner as is the land worth £5,000 to its owner.

Mr. Knight.—It must not be forgotten that we are helping the owner of the less valuable block by not putting him to the disability of supplying proofs, proofs, proofs. The Titles Office would say to the owner of a block: "You are the present owner; here is your title. If any person other than the owner considers he has an interest in the land, let him put in his claim."

Mr. Barry.—If it is a matter of financial interest, provision is made for protection against loss due to a mistake, but the point is whether the "small" man will still suffer a loss.

The Chairman.—If there happens to be a mistake, the assurance fund—in other words the Government—pays for it. Therefore, risks could be taken.

Mr. Barry.—But it might cost the small man a good deal of money before he could establish his claim for compensation.

Mr. Reid.—There is this point: A man who owns a block of land worth £100 is entitled to the same amount of administrative care as the man who owns a block worth £5,000. If a payment is to be made from the assurance fund, it means that some person

will be paid cash. Why should the poorer man be fobbed off with cash compensation while the wealthier man gets the land?

Mr. Knight.—It does not mean that. The position is, for instance, that a man owns a city block and another has a block in the country worth £250. Both apply to have the land brought under the Act. We would be helping the farmer who owns the country block by giving him a title, although we might be taking a little risk in that there might be a remote equitable estate. If we put that farmer to the vexation and expense of having to clear up that outstanding equity, it might cost him a good deal of money and cause delay. Therefore, my suggestion is: Be hanged to the outstanding equity that might be 25 years old. Let us give the present owner a clear certificate of title, and if the owner of the outstanding equity comes to light, pay him cash. The same position would apply in respect of the city property. It would be only once in a million cases that anything like that would happen. In New Zealand a provisional certificate of title is issued. There may be some blots on the title. The owner of a "blot" on the legal title of the land has to approach the court and prove his right to the interest in the land represented by the "blot." Very few provisional certificates of title in New Zealand are not converted into absolute certificates of title. In other words, the owners of the "blots" do not approach the court to prove their interest; probably they do not know that the "blots" exist.

By Mr. Barry.—Should not the owner of a small area of land in a back lane in Carlton be treated in the same way as is the owner of a property in Collins-street?

Mr. Knight.—He is. As a matter of fact, we are helping him.

Mr. Reid.—When rights of various kinds are being dealt with there should not be a double standard of administration depending on the economics of the situation.

Mr. Knight.—It is really not so distinct as that. We are not going to slum over every case where the land is worth only £100. However, if the same attention had to be given to a piece of land worth £100 and involving six deeds as to a property worth £100,000 and involving 65 deeds, it would not be good administration or good economy. The assurance fund was established to compensate people in cash when they were inadvertently damnified under the Act. That must happen, because the inspection of deeds and the tracing of the legal and equitable interests in land is not an exact science. Some cases must occur where hurt is occasioned, but that does not happen very often.

Mr. Fraser.—When one considers the number of claims that have been made on the assurance fund, one must pay a tribute to the staff of the Titles Office for the minute way in which they have looked at all the dealings.

Mr. Knight.—The number of claims has been negligible.

Mr. Barry.—The fund could be dispensed with because people having a small equity outstanding would not press their claims.

Mr. Knight.—Very often the people who have these outstanding equities do not know they have them. That has been proved in New Zealand.

Mr. Rylah.—If they knew they had them, they would not want them in any case.

Mr. Knight.—That is so.

By Mr. Fraser.—I expect that in the majority of cases outstanding equities would be barred because of the lapse of time?

Mr. Knight.—Yes. Take the case where a certificate issues without showing a certain registered easement. If the registered proprietor in that certificate built on the easement, the owner of the easement would be damnified and could claim compensation.

Mr. Barry.—Some compensation would have been given when the easement was built on.

Mr. Knight.—Probably the owner would not know that the easement existed. If he did know, probably not a large amount of compensation would be involved, because the extent of the damage would have to be proved.

Mr. Barry.—If a person had to prove that when he made a claim on the assurance fund he might feel that it was not worth it.

Mr. Knight.—That is possible, and I think the New Zealand experience is the best guide to that possibility.

The Committee adjourned.

WEDNESDAY, 28TH FEBRUARY, 1951.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Reid,
The Hon. A. M. Fraser,	Mr. Rylah.
The Hon. F. M. Thomas.	

Mr. C. F. Knight, Secretary to the Law Department, was in attendance.

By Mr. Fraser.—What underlies the reference by Mr. Jessup to the drafting section?

Mr. Knight.—I do not know. The set-up in Adelaide differs from the Melbourne practice. Someone has to do the drafting and it does not matter where it is done. Sufficient staff must be employed to keep pace with the dealings.

By the Chairman.—Does the report not imply that there should be further printed material, to which information could be added in specific cases?

Mr. Knight.—Many of Mr. Jessup's objections will be overcome when the proposed instructions appear in the *Journal of the Law Institute.*

The Chairman.—His criticism of the strong room is lack of supervision.

Mr. Knight.—Additional staff is being provided by the Public Service Board. In Adelaide, a searcher in the strongroom is in charge of a bay, from which he must not move. We discarded that system because we found that one bay was busier than another. Now we pool the services of the searchers.

By Mr. Fraser.—When we inspected the Melbourne strongroom, we saw hundreds of titles on the table. Would that condition delay searchers?

Mr. Knight.—Those titles would be the accumulation from the previous day. They are supposed to be replaced when the office is not open to the public. There is a lag in replacing titles.

The Chairman.—This matter leads us to the question of bound volumes of titles, and Mr. Jessup's suggested reorganization of the Melbourne strong room.

Mr. Knight.—In Victoria, numerous endorsements on original titles do not appear on the duplicates. When the original is placed with a dealing, time is saved by comparing the original with the duplicate.

By Mr. Fraser.—Why do endorsements not appear on duplicate titles?

Mr. Knight.—The Office does not call for the duplicate when a caveat is lodged, nor when a Department lodges a charge for wire netting, and so on. When the original and duplicate titles are associated, the process of registration is facilitated.

By Mr. Fraser.—Are cancelled titles placed in the bags with other documents?

Mr. Knight.—Yes. Cancelled titles are referred to frequently. Of course, a bag will hold only 200 documents.

By Mr. Thomas.—Is the bag system an efficient means of filing documents?

Mr. Knight.—In South Australia, titles are bound in volumes of 50, and at any given time I would say that at least 200 books could not be on the shelves.

Mr. Fraser.—Our inspection of the South Australian system did not disclose such a state of affairs.

Mr. Rylah.—The location of displaced volumes was recorded on a black-board. I accompanied an officer to the strong room, where he could not find the volume he needed. He then went to the location recorded on the black-board and obtained the book.

Mr. Knight.—I am looking at the matter logically. In Adelaide, there are 300 dealings each day, which involve the handling of 300 original titles. Therefore, I assume that 300 volumes must be taken out of the strong room each day.

Mr. Rylah.—Not more than 30 books are in use there at any one time. Here, the strong room is not functioning efficiently.

Mr. Knight.—I agree that it is not, mainly because of the vast volume of stopped cases.

Mr. Rylah.—The first factor is the personality of senior members and the ability of junior members of the staff; the second factor is the lack of modern lighting facilities.

Mr. Knight.—With reference to the latter, an inspection was made and plans were approved over twelve months ago to instal new lighting facilities, but the work has not been commenced.

Mr. Rylah.—The third factor is lost titles. I consider that some one with the necessary ability should make an appreciation of the position—preferably after investigating the South Australian system—and decide whether, on the balance of efficiency, it would be better to bind the titles or find some other method of removing the bottle-neck that exists in Victoria.

Mr. Knight.—First of all, it might be necessary to remove stopped cases. One of the best features of Mr. Jessup's report was his recommendation in relation to stopped cases. It may be best that from a certain date no dealing will be placed in the stopped cases bundle but all dealings will be returned to the solicitors concerned.

By Mr. Rylah.—Would that achieve the purpose desired?

Mr. Knight.—Not at once.

Mr. Rylah.—Another factor is that many dealings which are theoretically stopped cases are not progressing because a title has been lost.

Mr. Knight.—In such an instance, provided a reasonable search has been made, I would give a direction for the expenditure necessary to create a new certificate of title from the triplicate which is filed in the Titles Office.

Mr. Rylah.—Probably Mr. Knight will find that many certificates of title and other documents have been lost for months.

Mr. Knight.—I should be astounded and appalled if that were a real factor in the non-progression of cases to registration. I shall look into the matter.

Mr. Fraser.—Some time must elapse before a determination can be made whether a title is lost or mislaid.

Mr. Knight.—The question arises whether it is feasible for the Titles Office to refuse to accept transfers of land until the subdivisional plan has received a number.

By Mr. Rylah.—That suggestion is fraught with danger. If the Titles Office were reasonably up to date the proposal might be acceptable but, under present conditions, when it takes up to 27 months for a plan to pass through the Titles Office, an extraordinary state of affairs arises. Would it be practicable to seek assistance from other Government Departments or even from outside the Public Service to catch up on the plans of subdivisional land?

Mr. Knight.—The preparation of some plans by outside surveyors in a slovenly manner has added to the difficulties of the Titles Office.

Mr. Rylah.—I know of a delay of approximately twelve months from the time when a plan was lodged until it was dealt with. That is not an isolated instance, and cannot be due to slovenly work by outsiders.

Mr. Knight.—I agree, but many plans are stopped for survey reasons.

Mr. Fraser.—I would favour preventing persons from selling subdivisional land until a title had been issued by the Titles Office.

Mr. Knight.—I agree.

Mr. Rylah.—When Mr. Arter gave evidence to this Committee, he conveyed the impression that his section was entirely up to date and that no problems existed. It might be as well for Mr. Arter to be recalled.

Mr. Knight.—That is a good suggestion. Since Mr. Arter gave evidence there has been a different approach. There is now a seeding of plans and the simple ones are dealt with more expeditiously than those that are complex.

Mr. Rylah.—The last plan in which I was interested was not stopped, yet it took more than twelve months to pass through the Titles Office.

Mr. Knight.—A new attack is now being made on accumulated plans of subdivision. Within a day or two I should know what effect the transfer of staff is having on accumulated arrears.

Mr. Rylah.—I understand that the amount of overtime worked at the Titles Office is limited by a Public Service regulation which precludes officers from earning more than a certain amount in any one period.

Mr. Knight.—That is so.

By Mr. Rylah.—Would not the seriousness of the position warrant the granting of a dispensation to the Titles Office staff?

Mr. Knight.—That would be a sensible attitude, but personally I do not favour overtime because I believe it does not yield adequate results.

Mr. Rylah.—I contend that a serious situation demands drastic action.

Mr. Knight.—I doubt whether the Public Service Board would make an exception for one branch. The existing regulation stipulates that no officer shall receive more than approximately £43 a fortnight, including overtime. That excludes officers higher than Class "C." Experienced senior officers must check the work performed by temporary men working overtime, because the temporary men are to some extent unreliable.

Mr. Rylah.—Junior officers are paid to work overtime, but senior men are required to work overtime without payment to supervise the work.

By Mr. Fraser.—It is twelve months since the question of stopped cases first arose. A seeding method has since been introduced, together with a change in the way of dealing with small subdivisions. Can Mr. Knight inform the Committee how that work is now progressing?

Mr. Knight.—One of the most serious criticisms of the work of the Titles Office has been the delay in dealing with plans of subdivisions.

By Mr. Thomas.—Is that work in arrears because incompetent surveyors have been performing the work? Do not municipal surveyors play some part in dealing with subdivisional plans?

Mr. Knight.—Municipal surveyors deal only with the over-all lay-out of a subdivision; they do not go into closures. They carefully watch aspects relating to town planning, drainage, sewerage, easements and so on, but once they consent to a plan it does not necessarily mean that the plan is 100 per cent. correct from a surveyor's point of view.

By Mr. Fraser.—Do the surveyors in the Titles Office check plans from the field notes supplied, or do they make check surveys?

Mr. Knight.—Titles Office surveyors make check surveys in the field, but not more than 20 or 30 annually. In the main they rely on the field notes to check the plans.

By Mr. Fraser.—If the plans submitted disclosed slovenly survey work could not they be rejected and returned?

Mr. Knight.—I have previously made tentative suggestions along those lines. The margin of error on those plans is small, but they are stopped if they are not perfect. Would it not be feasible to accept the plan as lodged and if a question involving the amendment of title arose later then the Crown and the owner could share the cost involved? If a person purchased 35 acres of land and subdivided it, surveyors or independent contractors would prepare the plan. If the plan was not perfect surely the owner should be responsible for at least a share of the cost involved in dealing with later amendments to title found necessary as a result of that plan. If, as a result of inaccuracies on the plan, amendments to the title become necessary the owner should pay at least 50 per cent. because, in the interests of the public, it accepted the plan in the first place.

Mr. Fraser.—The owner should pay the whole of the cost involved and then recover from the surveyor who caused the trouble.

Mr. Knight.—That was my first view, but the Crown must accept some responsibility for allowing the plan to go through in the first place. It would be done to benefit the public and the public should pay a share of the added cost involved. The Surveyor's Board has successfully endeavoured to raise the standard of the work of surveyors in Melbourne and it claims that what I now propose would result in again lowering the standard.

The Chairman.—The introduction of a cadet surveyor system would be advantageous.

Mr. Knight.—More than 50 per cent. of our staff consists of cadets and women, and they have had less than two years' experience. It takes from six to seven years to train a competent surveyor, but as soon as the Department has trained one his services are "pirated" by other Departments. The Titles Office has lost a number of trained personnel to the State Electricity Commission, the Railway Department, and other State and Commonwealth instrumentalities. They offer the men £2 or £3 a week more than the surveyors are receiving from the Titles Office. I have frequently directed the attention of the Public Service Board to the relatively inadequate remuneration paid to survey officers and have cited cases where they have been attracted from the Service by more remunerative offers from other sources. It is departmental cannibalism.

By the Chairman.—Cannot more cadets be employed?

Mr. Knight.—Examinations for cadets are held every year. Mr. Arter personally attends technical schools seeking candidates. The Public Service Board cannot get cadet surveyors and I authorized Mr. Arter to take the necessary action. He sets and checks the examination papers, interviews applicants, and then trains them, only to lose them to other Departments when they become competent.

By Mr. Reid.—Regarding the staffing of the Draughtsmen's Branch, I gathered from what Mr. Knight said previously that arrangements have been made independently for Mr. Arter to deal with this matter?

Mr. Knight.—Yes; it has been proved hopeless for the Public Service Board to attempt to do it. The Public Works Department obtains the services of architectural draughtsmen without acting through the Board and the appointments are endorsed automatically by the Board. The Titles Office is adopting a similar procedure with survey draughtsmen. We recruit them, train them, and then lose them. Had the Titles Office not lost those officers throughout the years I would be in a happy position to-day.

By Mr. Rylah.—Has any progress been made toward installing a cash register?

Mr. Knight.—I spoke to the Auditor-General on that point and he has undertaken to provide me with the file, which contains the reports of the inspectors and comments by the Auditor-General and the Assistant Auditor-General. I propose to go more fully into the subject when I have perused the file. The Auditor-General is 100 per cent. in favour of it. I believe the opposition came from the Comptroller of Stamps; certainly it did not come from my section. I had no idea that the Auditor-General had made a report on the subject.

By Mr. Fraser.—How is it that the report did not reach you?

Mr. Knight.—I understand it is a matter between the Auditor-General and the Treasury.

By the Chairman.—How did the matter arise in connexion with the Transfer of Land Bill?

Mr. Thomas.—It arose from a remark during an inspection. People were coming to the counter, and some one asked, "Could not a cash register be installed?"

Mr. Knight.—The present method is certainly primitive. It would, however, be a mistake to run away with the idea that the South Australian system is perfect. Their system could not be perfect in the absence of the charging of uniform fees. That point was raised at the last meeting of the Committee. The Public Works Department has in hand the reorientation of the whole of that part of the room used by the public.

By Mr. Thomas.—There are certain rules and regulations with which private surveyors have to comply, but they do not always observe them. That creates more work for the Titles Office. Does Mr. Knight think anything ought to be done about that?

Mr. Knight.—I can answer the question by saying that, generally, the private surveyors comply with all the legal requirements; it is in matters of detail that

they are inaccurate. It may be found that the original subdivision on the ground does not accord with the title, and there may be in such cases errors to the extent of feet. In that event, a case has to be stopped and amendments have to follow.

By Mr. Thomas.—That was the point I had in mind. Should there be a regulation requiring those concerned to comply with details when submitting plans? If they have not the ability to submit their plans in the correct form, they should not be entitled to practise.

Mr. Knight.—Assuming that we did know those things, we would still have to police the work by checking the plans.

By Mr. Thomas.—If the Titles Office finds that the plans are wrong, they are returned, and that causes further delay. If a penalty were imposed for faulty work, it might have the effect of making the surveyors more careful?

Mr. Knight.—That is an idea.

Mr. Thomas.—At present there is probably an inclination on the part of surveyors to say, "If there is anything wrong, the Titles Office will discover it."

Mr. Knight.—The weakness is this: Although surveying is a mathematical proposition, it is not necessarily an exact science, because the survey instruments are being used on undulating or rugged land or the like, and that could create problems.

Mr. Thomas.—But your Department has to cope with all the difficulties experienced by the other man, and ultimately it has to bring the work to perfection?

Mr. Knight.—That is so. Certain surveyors lodge plans which are perfect; they close internally and externally.

The Committee adjourned.

FRIDAY, 2ND MARCH, 1951.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barry,
The Hon. A. M. Fraser,	Mr. Reid,
The Hon. F. M. Thomas.	Mr. Rylah.

Mr. C. F. Knight, Secretary to the Law Department, was in attendance.

The Chairman.—The subject to be dealt with by Mr. Knight is Part I. of the Bill.

Mr. Knight.—If it is agreed that there should not be dual control of the Titles Office it would appear that the position of Commissioner of Titles should be abolished and that the independent powers of that officer, as well as those now reposing in the Registrar, should be vested in the Registrar of Titles as such; further, that there should be a Chief Examiner in charge of one branch, a Surveyor and Chief Draftsman in charge of another, and an Assistant Registrar of Titles in charge of administration. If that position is to obtain it is obvious that company matters should be removed entirely from the administration of the Titles Office. In New South Wales there is a Registrar of Companies who is divorced entirely from land registration. It was only a matter of convenience, I think, that the registration of companies was brought under the control of the Registrar of Titles. Only a minor amendment of the Companies Act would be required to alter the title of Registrar-General to that of Registrar of Companies. If that were not done there would, in my opinion, be confusion between the Registrar of Titles and the Registrar-General. The title of Registrar of Titles would be sufficient to indicate that the officer dealt only with land.

By Mr. Fraser.—What are the duties of the Commissioner of Titles?

Mr. Knight.—In addition to certain defined statutory duties he is concerned mainly with the giving of advice where questions of doubt arise.

By Mr. Fraser.—From where does he derive that authority?

Mr. Knight.—Apart from his statutory duties you will not find it specifically in the Act.

By Mr. Fraser.—It appears to me that the Commissioner must have clothed himself with many of his powers?

Mr. Knight.—There is nothing in the Transfer of Land Act requiring the Commissioner of Titles to give legal advice in relation to what we term "red ink numbers", but he is vested with specific powers in regard to the bringing of land under the Act and other specific matters.

Mr. Rylah.—The Commissioner of Titles acts as adviser in regard to matters that should be the sphere of the Registrar of Titles, and also when the Registrar is exercising his function as Registrar-General.

Mr. Knight.—That may be because the Registrar of Titles requires some legal assistance.

By Mr. Rylah.—Because the Commissioner of Titles is required to be a legal man, probably over the years successive Commissioners have "put it over" Registrars who have been afraid to move in case it was said, "You are breaking the law."

Mr. Knight.—The Registrar of Titles may take a certain legal view on a question of registration of land, and if the solicitor does not agree with his view the Commissioner of Titles acts as arbitrator; hence he grasps authority in all disputed cases.

By Mr. Rylah.—Would you, Mr. Knight, be in favour of deleting all reference to specific functions being given to the Commissioner and to examiners, and vesting all power in the Registrar?

Mr. Knight.—I think that must follow if unified control is desired.

Mr. Fraser.—I am not sure about that. Even in South Australia, where the Registrar-General is supreme, certain duties are given to the solicitor. For instance, when land is being brought under the Act it is the duty of the solicitor to advise the Registrar-General.

Mr. Knight.—Clause 225 of the Bill makes provision for special powers to be given to the Commissioner and the Registrar.

Mr. Rylah.—I agree that to make unified control effective only the Registrar of Titles should have powers under the Transfer of Land Act.

Mr. Knight.—On legal matters the Chief Examiner of Titles and the examiners could advise the Registrar who could then formally give his final decision. Subclause (1) of clause 282 gives power to the Commissioner to make a vesting order in cases of completed purchase. If unified control is desired, I can see no difficulty in giving that power to the Registrar who can take whatever advice in the matter he requires and make his vesting order according to the results.

By Mr. Fraser.—Section 31 of the South Australian Act which relates to the registration of land is similar in its wording to section 20 of our Act.

Mr. Knight.—I can visualize no difficulty arising if the report were made to the Registrar, who could at his discretion register a certificate of title.

Mr. Fraser.—Unless the Registrar is able to obtain legal advice from a specified officer, the Act must make it mandatory for the Registrar to be a legal practitioner.

The Chairman.—My view is that the Registrar must be the supreme authority, acting on the advice of his legal consultant.

Mr. Knight.—That would ensure that the Registrar was responsible for the functions of the Titles Office.

Mr. Fraser.—Only a few sections of the South Australian Act provide for reference by the Registrar to his solicitor.

Mr. Knight.—I do not favour the requirement that the Registrar shall necessarily be a legal practitioner, because he must control the administration side of the office. Few solicitors gain experience to fit them to control and organize a large staff of officers.

By Mr. Barry.—Then, it follows that a solicitor must be appointed to the Titles Office?

Mr. Knight.—That is not my opinion, but, of course, the examiners must be solicitors.

Mr. Rylah.—This issue must be examined carefully, because I fear that, if we do not delete the present judicial functions of all officers other than the Registrar, we will perpetuate the present difficulties in a different form. I consider that the Registrar should have legal qualifications, and possibly an officer of the Law Department or of the Examiner's Branch is fitted to occupy the position. I do not favour the appointment of an outside practising solicitor.

Mr. Knight.—It is questionable whether any officer possesses the necessary dual qualifications.

Mr. Rylah.—Perhaps it will be better if the Act does not specifically provide that the Registrar must have legal qualifications because, doubtless, an outstanding legal officer would be appointed.

Mr. Knight.—That may be so. I suggest that the appointment of the Registrar should be made by the Public Service Board. At present the Governor in Council selects the Commissioner of Titles, and determines the salary of the position. Under Public Service Board procedure, the position will be advertised, and applicants will be interviewed. That will enable the Board to select the applicant with the best qualifications for the position.

By Mr. Thomas.—Do many dealings involve legal interpretations?

Mr. Knight.—Yes. There are frequent references of "red ink" numbers for legal advice.

By Mr. Rylah.—If the Registrar was in complete control, would the references of "red ink" numbers be reduced?

Mr. Knight.—Not necessarily, unless the Registrar had had experience in that direction. Under the proposed set-up, an examiner may be appointed to the position of Registrar, and he may have had little or no experience of "red ink" numbers. Another officer with the necessary knowledge could solve such difficulties expeditiously, although he may not be a lawyer.

The Chairman.—I believe the Committee is in agreement that there should be one permanent head, who should have the benefit of legal assistance.

Mr. Fraser.—I still think that one specific legal man should be made responsible for the final report in regard to certain applications.

Mr. Knight.—Mr. Fraser probably has in mind something along these lines: There shall be appointed a Registrar of Titles who shall be responsible for the administration and carrying into effect of the provisions of the new Act, the conduct of the general business of the Titles Office and the matters dependent thereon, and the performance of such duties and the exercise of such powers and authorities as are imposed or conferred upon him by this or any other Act. All the officers in this Part named shall, in the performance of their statutory duties under this Act, conform to his directions.

By Mr. Fraser.—The Chief Examiner would have to be a lawyer?

Mr. Knight.—Yes, that must always be insisted upon.

Mr. Fraser.—Mr. Wiseman may have to review the Bill in the light of that view.

Mr. Knight.—If this Committee desires to incorporate those principles, that is the next step.

The Chairman.—I believe Mr. Wiseman has drafted a new Part I. on the principle of unified control.

By Mr. Thomas.—Has there been much conflict about divided control?

Mr. Knight.—Not in that sense, but there has been subservience of the Registrar to the Commissioner on matters relating to duties of the Registrar of Titles as such.

The Chairman.—This Committee agrees with respect to unified control. There is also agreement that the head should have legal assistance. Until specific amendments to the Act are suggested, it is useless to proceed beyond an assertion of those principles.

The Committee adjourned.

WEDNESDAY, 7TH MARCH, 1951.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barry,
The Hon. A. M. Fraser,	Mr. Reid,
The Hon. F. M. Thomas,	Mr. Rylah.
The Hon. D. J. Walters.	

Mr. Frank William Arter, Surveyor and Chief Draughtsman, Titles Office, Melbourne, was in attendance.

By the Chairman.—Have you perused Mr. Jessup's report? If so, will you now make any general comments you so desire on it.

Mr. Arter.—I should first like to outline the position in the Survey Branch, with special reference to delays in dealing with plans of subdivision. So far as the Branch is concerned it is a team job with all the superintending draughtsmen co-operating, and we have left no stone unturned to make it an efficient unit in the Titles Office. We have carefully analysed all units of work and available man power and, apart from the plans of subdivisions, all work is now up to date. A new title of case could now be started in the morning and completed by the evening, a condition which has never previously obtained. At present we have no new title cases awaiting examination.

Ours is a technical staff and all senior officers must be highly trained. The objective is to train juniors in survey technique and survey draughting, a course

which covers five subjects at the Melbourne Technical College and usually involves four or five years' study. I produce a chart setting out the staff establishment of the office. The ratio between fully trained and partly trained staff is 40 to 60.

We obtained fifteen new members of the staff last year, and to do so I personally attended at every secondary school in the metropolitan area to interview prospective applicants. Any of my officers who lived in a particular district, such as Mentone or Dandenong, attended schools in their districts for the same purpose. Schools in Ballarat, Geelong, and other country centres were also visited in an attempt to recruit junior staff. The best we could do last year was to get fifteen juniors, and of that number five have since resigned to take other positions. To recruit staff and hold them has been a job of complete frustration. One reason is that the salaries now paid by the State Electricity Commission are again higher than those paid in the State Public Service for similar work.

Since 1946 the staff, which normally consists of 100 persons, has never been up to strength. We have lost by resignations and retirements from January, 1946, five superintending and assistant superintending draughtsmen, three surveyors, nineteen draughtsmen, experienced but not fully trained, and seventeen female draughting assistants. At present there are ten vacancies for draughtsmen, seven vacancies for female draughting assistants, and two vacancies for licensed surveyors, one of which will shortly be filled. If the Committee will consider those figures it will appreciate that at last we are achieving some benefit from obtaining juniors who are being trained as rapidly as possible. Their training is under my personal supervision from the time they enter until they complete the course. Each junior is called into my office at least once in every two months for report. The juniors are placed under the control of a senior officer and they are instructed by our licensed surveyors, in their private time, on the practical survey project that they must complete at the college.

The group system adopted in our office is unique in Australia. I claim to have a fair knowledge of the working of all Titles Offices in Australia, with the exception of Queensland and Western Australia, and I have seen the New Zealand system. A new title case in our office is under the direction of a highly trained officer from start to finish. It is the only effective way in which we can do the work, by utilizing the time of all senior officers on the more technical aspects and using the young men to do the spade work. As I have said there are only 40 trained and 60 partly trained officers on the staff.

The following list of plans of subdivision received and waiting examination is of interest:—

—	Plans of Subdivision Received.	Plans of Subdivision Waiting Examination.
1935	455	13
1936	526	32
1937	745	63
1938	961	100
1939	877	69
1940	743	34
1941	692	59
1942	338	120
1943	275	71
1944	317	144
1945	648	268
1946	1,702	409
1947	2,339	1,265
1948	2,436	1,812
1949	2,836	3,511
1950	3,010	4,179

In that period the number of plans received increased from 455 in 1935 to 3,010 in 1950. We were able to keep up with the work until 1946. With the number of plans received increasing sixfold it is obvious that the staff should have been considerably increased, but the fact is that the staff has not been greatly augmented. As soon as additional staff have been recruited and trained they have been lost to other Departments and elsewhere. The office is becoming a training ground for other organizations. No one is more bitterly disappointed about that than I am. Since Christmas, at the expense of other work, I have put four senior officers on to subdivisional plan work and have taken one complete section off new title work for the same purpose. We have analysed every unit of work that a man does, taken every phase of the work on a plan of subdivision, such as examinations, lodgings, requisitions, &c., and carefully recorded all particulars. The number of man-days taken to complete a plan of subdivision in 1949 was 3·01 actual units of work; we have now reduced that to a fluctuating time of 2·07 to 1·70. That reflects the value of the training of the juniors, two years ago the majority of whom were still school boys. Unfortunately, juniors cannot be expected to replace trained men, who have had up to 40 years' experience in the work.

I have discussed the subject of dealing with plans of subdivision with the superintending draughtsman, Mr. McDonald, and I am also basing my suggestions on my experience in New Zealand. In that Dominion the set-up is exactly the same as applies in the Victorian Titles Office. It is the only country that has a properly unified and controlled survey system. Examinations of plans of subdivisions are undertaken in exactly the same way as in Victoria; the functions of the survey draughtsmen are exactly the same, with this one difference; their surveyors and survey draughtsmen are attached to the Surveyor-General's Department, whereas in Victoria they are attached to the Titles Office. The New Zealand Government is justly proud of its title survey and title systems. It has practically concluded the work of bringing all land under the operations of the Real Property Act, and New Zealand claims that its titles are guaranteed. I am not speaking of the titles brought under the Act without survey, but of the ordinary surveying of titles as we know it here. They guarantee that they can be re-established from the reliable unified control survey, which is related to permanent marks.

The New Zealand authorities attach so much importance to the system that last year an Act of Parliament was passed providing that if an owner cannot have his title related to a proper unified survey, he shall be issued only with a title limited as to description. On the face of the certificate of title an endorsement is made to show that the title is so limited. I am not speaking of titles brought under the Act from the old law, but of transfers made directly out of parent titles registered and guaranteed under the Land Transfer Act. Some people would not favour that method, but I think it is a very good one.

With that in mind, I wish to make a suggestion, which may be somewhat revolutionary. In connection with plans of subdivision, I am of the opinion that it would be possible to dispense with the examination of the internal work from a mathematical point of view. However, the examination of the plans, as to the outer boundaries and the adoption of alignment of streets is most essential, having regard to the fact that original surveys might not be exact and that in Victoria excesses over title dimensions usually occur. The functioning of the Survey Branch demands that we should make sure that the title has been

re-established as well as we can do it. To that end, I direct attention to a recently issued book on the subject entitled *Title Surveys in Rural Areas,* by Mr. E. R. Inglis, Superintending Surveyor of the State Rivers and Water Supply Commission.

If, for the interim, the examination of the plan of subdivision were dispensed with, a title could be issued to a transferee in this way: The plan of subdivision lodged would be examined by a superintending draughtsman, or one of his deputies. The examiner might say, "On the face of it, that plan looks as if it could be registered without very much alteration. We will number that plan right now." In other words, there would be no big excesses, and the plan would appear to be more or less correct as to title re-establishment. Plans of that sort would comprise about 80 per cent. of the total number lodged for registration. Then, without further ado, a title could be issued on the basis of plan of subdivision so-and-so, together with a diagram—perhaps not a connection. On the top of the certificate there would be an endorsement indicating that this title had been based on plan of subdivision so-and-so, which was being examined in the Office of Titles, and that should any error be found the title would be rectified. That is the principle of the plan adopted in New Zealand.

By Mr. Fraser.—It would be necessary to have statutory authority to do that?

Mr. Arter.—Yes. At present we sometimes issue a title without a survey, if the owner consents, and without some measurements being shown on it. On occasions, we have to deal with cases in which it is clear that the original survey is hopelessly erroneous. I am considering the matter from the cold practical point of view. I have made a study of titles and Titles Office procedure in every way, and am sure that, if my suggestion were adopted, the system would work, because in most cases no alterations of the titles would be necessary. It is far better from a legal point of view, and also that of the owner, to have a title based on survey than a title not based on anything, as in the latter case one would be reverting to the practice that obtained in the dim ages.

It would be interesting for any one who has not done so to read the evidence taken by the Royal Commission on Land Titles and Surveys in 1885. The object of the Royal Commission was to stabilize titles which were not based on survey, or on very faulty surveys. That was the genesis of section 215 of the Transfer of Land Act. I submit my suggestion very seriously, as I feel sure that the system would work to advantage.

By Mr. Rylah.—Is not the basis of your suggested system virtually this: It would be better for a person to be given a limited title than the type of title issued at present?

Mr. Arter.—Definitely.

Mr. Rylah.—At present it really amounts to this: Lot number so-and-so, on plan of subdivision lodged by Mr. Surveyor so-and-so, and we hope it is all right.

Mr. Arter.—I try to consider the matter from the point of view of a private citizen. I might quote my own personal case. I have an acre of land at Sassafras. For eighteen months I had been trying to get a plan of subdivision lodged by a surveyor. All that time was taken in tying together loose ends in relation to bits and pieces and easements. It took eighteen months to get a plan of subdivision into the Titles Office, notwithstanding that a personal friend of mine made the survey. It will be two years before I will be able to get a title to the land. However, we are doing our utmost to expedite the work in the Titles Office, and we cannot do anything more.

I have no desire to lower the standard of the survey work. If ever that were done it would be a retrograde step from the point of view of both the Titles Office and the community. But a title could be issued stating that the land had been so described pending the final examination of the plan. I should think that the only titles which might have to be altered would be those of blocks abutting on a street, or a connection. Mr. Jessup took me to task for saying that the South Australian titles were sketchy, but I think the Victorian titles show too much. I consider that titles to Victorian land are too finite in the measurements. Surveying is not an exact science, and the Crown grants state that the measurements are only approximate. I defy any surveyor in suburban work to get the same results all the time.

By Mr. Fraser.—You mentioned the case of your own block of land at Sassafras. If the surveyor was not at fault, what was the case of the delay?

Mr. Arter.—In the first place, it was necessary to buy blocks of land from a number of owners to complete the subdivision, and then there were difficulties arising out of easements and roads.

By Mr. Fraser.—The delay was not due to any surveying by the Titles Office; it was taken up in doing the preparatory work necessary to complete the plan of subdivision?

Mr. Arter.—I practically designed the plan of subdivision in that instance. I approached the estate agent and he asked me if I could do anything to expedite the transaction. By my own knowledge of the subject, I was able to make a number of suggestions regarding provision for roads, &c., which would normally not be done until a later stage. That having been done, the plan could have gone through in five minutes, but it will take its turn.

By Mr. Thomas.—Would not that be an isolated case?

The Chairman.—No, it would be fairly general.

Mr. Arter.—That is so. The subject of roads is a vexed question. Roads are one of the biggest causes of delays, and they create much embarrassment. In New South Wales and South Australia, all roads on plans of subdivisions are public roads, which are vested in the council or the Crown. For that reason, one owner cannot stand over another or refuse to agree to the creation of an easement. The roads all link automatically. In my opinion, the system in operation in those States is far preferable to the Victorian method. In South Australia, private surveyors have for 24 years past been putting in permanent marks. Once that is done and the surveys are tied to the permanent marks, the examination work and the surveys can be done much faster.

I should like at this stage to read part of an introduction which I wrote to the book written by Mr. Inglis, *Title Survey in Rural Areas,* which is relevant to the subject we are discussing, that is, the re-establishment of title based on survey. The passage is as follows:—

> In his treatise on the re-establishment of title surveys, Mr. E. R. Inglis has made a most valuable contribution to the survey profession.
>
> The absence of permanent marks or monuments in a properly co-ordinated and controlled survey structure demands that the surveyor possess not only skill in measurement, but an analytical mind, capable of building up from the physical features, a relationship between the old and the new—the wall that may be accepted, the fence that is unreliable—and so on.
>
> It is only by a careful comparison of the features disclosed by surveys over the years that reliable re-establishment may be affected beyond the bounds of conjecture, and with a reasonable guarantee that the adopted boundaries may be accepted, having regard to the practical differences of interpretation.

It will be noted that Mr. Inglis has deliberately confined his remarks to the re-establishment of titles originally based on survey; and in this I think he has shown considerable wisdom and admirable restraint.

From the point of view of location and description, titles are only as good as the information from which they are derived. This was fully realized at the Royal Commission 1885, where expert evidence was called from all available sources. Arising out of this Commission was the introduction to the Transfer of Land Act of the present section 215 which, subject to certain conditions, enables a registered proprietor to stabilize his title on the basis of re-survey.

A fallacious impression or belief has grown and is now generally held that the measurements on a certificate of title are absolutely accurate and the connection to the street corner equally so. If this impression could be dissipated and a true evaluation gained from the dispassionate viewpoint of practical surveying, a great number of amendments of title and other irritations would be avoided. The measurements of the title and its connections should be considered as being reasonably accurate, having regard to the normal practical differences in survey. The connection is primarily a means of location and cannot be accepted as giving precise fixation without further checks.

Complete accuracy cannot be guaranteed because of the many varying physical factors—heat, wind, and other climatic conditions, instruments, topography, &c. This is fully realized in the issue of Crown grants which definitely state that the measurements shown on the map in the margin are approximate, and in both the Property Law Act and Transfer of Land Act where provision is made for a limit of error and an apportionment of excess in Crown dimensions.

It must also be borne in mind that there are in existence many thousands of titles based merely on paper subdivision, and no survey has ever been made either of the street alignments of the land itself. This is particularly so in cases where land has been subdivided under the general law and subsequently brought under the operation of the Transfer of Land Act without the support of a survey plan.

When re-establishing these titles, the surveyor is obliged for his own protection to make an extensive survey of perhaps a whole section, picking up all existing occupations in order that a comprehensive picture may be obtained that will ensure that the various registered proprietors are fully protected. It is in these cases that a careful analysis must be made of all fences and other boundaries in an endeavour to fix an alignment that will as nearly as possible conform to a pattern whereby the titles can be placed in their original relationship. As stated earlier, in the absence of permanent survey marks, or other authentic basic information, the conclusions cannot be given with complete certainty.

If permanent marks existed there would be no necessity to trace surveys back. Yesterday, I received a survey from a reliable Melbourne surveyor, who laid out land worth £40 a foot, and from all the evidence before us it appears that the land has been laid out 4 inches north of the true position. Possibly the original survey was wrong; the surveyor cannot be held responsible for the error as on the face of it the survey seems perfect. If we are to re-establish a title we must do it properly; there is too much at stake.

By Mr. Walters.—What will happen in that case?

Mr. Arter.—I hope it will be proved that there was an error in the original survey. A surveyor from the Titles Office will probably make an inspection. Of course, certain difficulties may arise. For instance, hot or windy days have a definite bearing on a survey. The steel tape used expands and contracts according to climatic conditions, and in the past no allowance was made for changes of temperature, which cause a heavy co-efficient. Further, when a slope of say 8 degrees is reduced to the horizontal there is an allowance of 11½ inches in every 100 feet. To obtain a precise survey many factors have to be taken into consideration and no commercial surveyor could afford to be so precise.

By Mr. Thomas.—How would instruments used in earlier days compare with those in use at present?

Mr. Arter.—There has been an improvement in tapes and instruments, but the old instruments were quite good. The instrument work is usually very accurate.

By Mr. Rylah.—In general, do surveyors perform reasonably efficient work?

Mr. Arter.—Yes.

By Mr. Rylah.—Do you receive co-operation from surveyors?

Mr. Arter.—Every co-operation.

By the Chairman.—You are not setting too high a standard for the examination?

Mr. Arter.—No, I have not at any stage set the standard higher than it has been in the past.

By the Chairman.—My recollection is that when you submitted evidence to the Committee previously you said that you had in mind some kind of cadet system, and that much of the work in the Survey Branch or in the field could be done by people not so highly skilled as the qualified surveyor.

Mr. Arter.—No. If I remember correctly, I stated that we were training our own surveyors in the field and that they go to the Lands Department as well. I also discussed the bringing of land compulsorily under the Act and suggested that the alignments of streets should first of all be fixed by Government surveyors and permanent marks laid down, and that the rest of the work should be done by private surveyors. I said, too, that surveyors could be trained quicker than draughtsmen. A surveyor has to pass an examination and gain outside practical experience, which covers a period of perhaps five years, but I contend that it takes twelve years to train a highly-skilled survey draughtsman. He must serve many years in the transfer section to become a land tenure expert, and from there he goes to the subdivisional section and finally to the specialist section amending titles.

By Mr. Rylah.—Would you agree with the statement that the main reason for the delay in the registration of plans of survey is the bad work of private surveyors?

Mr. Arter.—I do not subscribe to that view. The work done by private surveyors is of very high standard, but it must be realized that the younger surveyors have not had the experience of the more senior surveyors and the officers of the Department. When dealing with re-establishment of titles it is not a matter of carrying out surveys but of applying the survey information with regard to titles. Our job is to safeguard the public.

By Mr. Rylah.—Do the factors mentioned in the introduction which you wrote to Mr. Inglis's book and in the portion which you read to the Committee all militate against the work of young and inexperienced surveyors being 100 per cent. accurate?

Mr. Arter.—They learn by experience.

By Mr. Reid.—If a private surveyor is slow in answering a requisition, what action is taken?

Mr. Arter.—I have written personal letters to certain surveyors and also officially communicated with them. Some cases have been reported to the Surveyors' Board. However, there is nothing in the Land Surveyors Act whereby we can force a surveyor to answer a requisition.

By Mr. Reid.—Could you reject a plan of subdivision?

Mr. Arter.—Yes, but that would only affect the solicitor in charge of the dealing.

Mr. Rylah.—My experience has been that surveyors usually attend to these matters fairly promptly. If a plan of subdivision is stopped the solicitor presses the surveyor to attend to the matter.

Mr. Arter.—I have no quarrel with the surveyors. In the main we receive full co-operation from them.

Mr. Rylah.—From reading your previous evidence I gained the impression that although the Survey Branch was very efficient and most of its work was in extremely good condition, the plan section was slipping behind. Is there any difficulty in the office administration which hinders the examination of the plans?

Mr. Arter.—No, nothing in the office militates against the examination of plans. The procedure for the withdrawal of the lodging of plans might have created a difficulty but that has been overcome.

By Mr. Rylah.—There is evidence before the Committee that the plans of subdivision are causing a bigger bottle-neck in the Titles Office than any other factor. Have you any suggestion how to eliminate that bottle-neck?

Mr. Arter.—Obviously, if we have 4,000 plans, many titles are out and a number of dealings are in various branches. Three of my junior draughtsmen are engaged full time in dealing with the public in regard to those cases. Further, the subdivisional room is crowded. Approval has been granted for the purchase of presses in which to keep those cases, but I do not think the contract has been let. In fact, I understand that no one will take the contract.

By Mr. Fraser.—The evidence is that there are 25,000 stopped cases, and that 65 per cent. of that number are due to plans.

Mr. Arter.—There are about 8,000 transfers stopped in our branch.

By Mr. Reid.—What priority do you give when dealing with plans; do you take them in their order of lodgment, irrespective of the number of subdivisional lots that might be concerned? For example, would you defer a plan involving the subdivision of one block into two until a large subdivisional plan was dealt with?

Mr. Arter.—The number of cases for the subdivision of land into two blocks is in the minority. For the last six weeks one of my most experienced officers, Mr. Pollard, has been going through the cases and deciding those that can be dealt with. We are trying to push the simple ones through. That was done once before but it was not altogether successful as the difficult cases banked up.

By Mr. Reid.—As far as the administration of the Titles Office is concerned, there would be greater relief if the large subdivisional plans were dealt with first, because a greater number of dealings would be freed?

Mr. Arter.—I have endeavoured to keep the ordinary new titles up to date. Many people who buy land on the bigger subdivisional plans do so for investment purposes and not with the intention of building. In the 1930 period, practically the whole of outer Melbourne was subdivided and a great deal of the land was sold, but very little building took place. I have tried to make sure that new plans have been kept up to date. Unfortunately the plans have got away from us. If I did the best thing for everybody probably I would deal with the large plans first and leave the small ones aside. It is difficult to make a decision on that point.

By Mr. Fraser.—It seems to me that the Titles Office exists to facilitate the operations of the land speculator at the expense of the public. If a person buys a large tract of land, subdivides it and gets the plan of subdivision passed by the local council, then sells 500 or 600 blocks and sends the plan into the Titles Office, all those titles are held up. The purchasers may have to wait from twelve months up to perhaps three years before they receive their titles, but the speculator receives his money. A plan should be given a number and all authorities should be in agreement as to its correctness before a speculator is permitted to hold a public auction sale. I understand that 500 stopped cases are awaiting the production of field notes, which should have been lodged in the first place. A further 1,500 or 1,600 cases have been stopped owing to other difficulties, such as the creation of easements, and so on. It appears that the Titles Office is expected to work for people who anticipate reaping untold benefits.

Mr. Arter.—I think the idea of numbering plans and immediately issuing titles containing a diagram will overcome many problems.

By Mr. Thomas.—Does that principle apply in New Zealand?

Mr. Arter.—Yes, and it is most satisfactory. The Dominion has a most efficient survey system in operation, with eleven self-contained regional offices.

By the Chairman.—Is there a survey under which each of those offices can act?

Mr. Arter.—Yes. The set-up is ideal. All records are kept separately, except where land abuts on two centres, and then particulars are filed in the adjacent offices.

By Mr. Rylah.—Is there power under our present Act to endorse a title in the way that has been suggested?

Mr. Arter.—I do not think so, but it is a practical idea.

By Mr. Rylah.—Particulars of the survey would be endorsed on the title?

Mr. Arter.—Yes, at the interim stage.

By Mr. Fraser.—A limited title will be issued?

Mr. Arter.—It will be less limited than a title based on nothing.

By Mr. Fraser.—Will it come within the description of a limited title in the proposed compulsory provisions of the Bill?

Mr. Arter.—Many thousands of titles of that description now exist, and they are taken at their face value.

By Mr. Fraser.—In New Zealand, do mortgagees lend money on a limited form of title?

Mr. Arter.—Yes. The Registrar-General informed me that the system was working like a well-oiled machine.

By Mr. Reid.—Does the Victorian office issue limited titles?

Mr. Arter.—I have adopted a formula so that everybody will be treated in the same way. With the subdivision of an area into two parts, we will allow the matter to go through without a survey, if the interested parties request us to do so. Then, cases involving a series of titles joined from corner to corner are allowed to go through, provided that the areas are definitely fixed. Although not stated, these might well be limited as to description.

By Mr. Rylah.—You would not permit a case to go through if the plan was completely bad?

Mr. Arter.—We would not. The formula applies to plans that are substantially correct. I assure the Committee that any delay with titles is not the fault of my staff, as full co-operation exists in the Survey Branch. We have done all we can to cope with the position, but it has got out of hand.

The Committee adjourned.

FRIDAY, 9TH MARCH, 1951.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Rylah.

Mr. Frank William Arter, Surveyor and Chief Draughtsman, Titles Office, Melbourne, was in attendance.

Mr. Rylah.—At our last meeting, on the question of transfers not being lodged until a plan of subdivision had been approved by the Titles Office, I asked whether a title bearing an endorsement suggested by Mr. Arter could be issued under the existing Act.

Mr. Arter.—Upon reflection, I cannot see why, in many cases, that limitation should be expressed on the title because, normally, if a title is issued and a mistake is subsequently found, the title is called in for rectification. My intention is that titles should be issued with a big degree of exactitude. If a title were in doubt, it would not be issued until the examination had been brought to finality. There are three factors to be considered. First, to issue titles without survey; that would be utterly impossible from my point of view as the title would have no better qualification than an old law conveyance. Second, to examine on the basis of the plan of subdivision, without any examination in the Titles Office; that would reduce the Titles Office to an office of registration. Third, to examine the plan of subdivision properly; in the interim, the owner will hold a title which probably will never be altered because it will be correct and the land will be delineated by pegs driven in the ground.

Mr. Rylah.—I believe the answer to the problem associated with speculative plans of subdivision is in the hands of municipalities, which can refuse to seal plans of subdivision until roads have been formed and the areas drained.

Mr. Arter.—Some shires now insist on roads being formed before they will seal a plan of subdivision. If the Titles Office were to examine plans of subdivision before any transfers were lodged, the work of that office, both in regard to surveying and administration, would be lightened considerably.

By the Chairman.—If that practice were established, could the Titles Office deal expeditiously with transfers, provided that the co-operation of the solicitors concerned was assured?

Mr. Arter.—I feel confident that, with the present practice, if we could put a red line under the plans awaiting examination—the number is approximately 4,000—we could cope with the position, so long as we did not lose too many officers from the Titles Office.

By the Chairman.—How much time do you estimate would be required for registration?

Mr. Arter.—That depends on the staff situation. At present, the time occupied from the inception to the conclusion of registration would be about 2.1 days per plan. It should be borne in mind that a tremendous load of responsibility is placed on the senior officers in the Titles Office. To achieve adequate control I have detailed one senior officer to take charge of eight juniors, for whose training he is responsible.

By Mr. Rylah.—Would the position be assisted if for twelve months the Public Service Board were to place no limit on the amount which an officer of the Titles Office could earn in overtime?

Mr. Arter.—Yes, that might help, although I do not favour consistent overtime for the reason that it impairs overall efficiency and lowers the daily output.

By Mr. Rylah.—Has the possibility been explored of securing temporary assistance from other Departments —particularly the Lands Department?

Mr. Arter.—Yes. Every avenue has been explored, but we cannot get temporary officers. The Lands Department is also short of men.

By Mr. Rylah.—Would Mr. Arter agree that a greater difficulty arises in relation to plans of subdivision under the old law than that associated with the lodgment of plans of subdivision under the Transfer of Land Act before the plan of subdivision is registered?

Mr. Arter.—Yes. We do not even see the subdivisional plans lodged under the old law. I venture to say that at a later stage that situation will become an embarrassment to the Titles Office.

By Mr. Rylah.—Would you favour some statutory provision to prohibit the subdivision of land under the old law?

Mr. Arter.—The Surveyor-General in Tasmania endeavoured to have introduced some such compulsory legislation, but eventually he compromised to the extent that any person subdividing land under the old law should first bring it under the Act on the basis of a plan of subdivision.

Mr. Rylah.—The Committee has not yet considered questions relating to the subdivision of old law land, which is at present permitted in Victoria and is becoming more prevalent. I think we should recommend the immediate stopping of the practice. Mr. Arter has pointed out that dealing with land under the Transfer of Land Act is bad enough, but what will happen in the future when the Titles Office has to compete with bringing under the Act the subdivision, without supervision, of old law land?

Mr. Arter.—I do not say the surveys of subdivisions are not as accurately performed as are the surveys of other land; but whether those lands fit in with the adjacent patchwork title system is another matter. No doubt the reason why the Branch has been submerged with plans of subdivisions of recent date is that in 1946 or 1947 plans bearing the consent and seal of a municipal council had to be lodged within a month, and that caused a rush. The period for lodging has since been extended to three months. Where plans previously were held for six or twelve months before they were acted on they are now put into the Titles Office immediately and we have to take them.

Mr. Fraser.—You mentioned the figure of 2.1 working days as the period over which an officer would examine and complete a plan of subdivision. That presupposes that the field notes are in order and that all the necessary preliminaries have been done.

Mr. Arter.—I referred to the clerical work in our branch—examinations, final comparisons, lodgings, payments of fees and so on. The actual examination is performed more rapidly than in 2.1 working days. To show that I am not on my own in the matter of title survey, I refer the Committee to the recommendations made by the Royal Commission on Land Titles and Surveys. On page xi of the report appears the following:—

(5). As remedies for these defects and difficulties, it is suggested—

(*a*) That an Act should be passed in this colony declaring that the boundaries, as originally set out on the ground, and that are represented by the original marks, buildings, fences or other improvements, are the true boundaries of allotments, notwithstanding any discrepancies in the measurements that may be found to exist between the boundaries so marked and the description of same in the titles; and so to validate the boundaries as they exist on the ground and are recognized by adjoining owners, and enable the titles to be brought into harmony therewith.

The present section 215 of the Transfer of Land Act was the result of the adoption of that recommendation. The report continued—

> (*b*) That in future the certificate diagram should show the abuttals as well as the dimensions of the property, and that the former should govern the latter, so as to limit the effect of incorrect measurements . . .

The abuttal should take precedence as a means of locations, not the precise fixing of boundaries, because the starting point has not been sufficiently or permanently marked.

By the Chairman.—Is that something your office can do within the powers contained in the Transfer of Land Act?

Mr. Arter.—Yes, and we are doing it.

By the Chairman.—Were you given specific instructions to do it, or have you the power to lay down that rule?

Mr. Arter.—As Chief Surveyor my job is to assess the value of a certificate and decide how it affects properties immediately adjoining the land under consideration. I am taking action if the connection is within the bounds of practical limits if there is sufficient land to satisfy the abutting titles and everybody concerned. I have been doing that for twelve months. If a title is almost right, or a re-survey is practically in accordance with the title, the lodging of the plan without taking the step of immediately amending the title is permitted. Manpower, work of the office and public money are being saved in that way.

By the Chairman.—Are there many improvements of that nature that you can put into effect in your branch under the existing Act?

Mr. Arter.—With due regard to the general procedure of the office as it is to-day it might be a little difficult.

By the Chairman.—Who is your immediate chief?

Mr. Arter.—On the registration of titles under the Act the Registrar of Titles is the head of the office.

By the Chairman.—Before you made any major change in practice, would you have to receive his approval?

Mr. Arter.—I would not do otherwise. I would submit my proposal and probably it would then be placed before the Commissioner of Titles.

By the Chairman.—Have you made it a practice of submitting a minute with any suggestions made?

Mr. Arter.—It has been done. Administrative changes have already been made in relation to plans of subdivisions and they have greatly accelerated the work. A 1951 business cannot be run on an 1850 basis. There should be a direct card index system introduced to overcome the necessity for continual searching of the strong room and elsewhere for details. I have had cards printed for four or five years, to show the present volume and folio of titles and how they were issued. It would pay the Government to employ a number of officers to go through the records and establish the card index system. That would result in the saving of time to the office and to the public. In a smaller office it is easier to control the work. I would divide the Titles Office into 4, 5, or 6 divisions and the complete work would be carried on for a particular area in the appropriate section. A man working in the eastern division would then be familiar with the work in that area, and it would flow smoothly.

By the Chairman.—Does that mean that there would be a division located in the Mallee, or in Gippsland?

Mr. Arter.—If a member of the public came into the office to inquire about land in a particular area he would go to the appropriate division. It would save overlapping and continual searching.

By Mr. Rylah.—Are you proposing that the Titles Office should be divided into a number of regional offices?

Mr. Arter.—Within the Titles Office, yes.

By Mr. Rylah.—There would not be a Titles Office division in Bendigo, another in Ballarat, and so on?

Mr. Arter.—Not at this stage. Most of the work comes to the centralized city office. What applies in this regard in New Zealand, where the population is well distributed, does not apply in Victoria. The New Zealand office can examine a transfer while the party waits and a senior officer can give a prompt decision on whether or not the transfer will be registered. If divisions were adopted here the Titles Office would more speedily be able to trace where a particular transaction was being dealt with. In New Zealand there are not the big record books that are in use in the Victorian Titles Office. We have endeavoured to work on that basis in the new title section with four separate sections to deal with the initial examination, the preparation of the sketch, the title, and the final examination. Instead of having four markings in the record books we have grouped them to enable the work to be done with some continuity. A case is marked to a group and within a reasonable time is completed under the supervision of a senior officer. In an experiment that lasted over six months it was estimated that it would save 25 per cent. of the work and about 300 per cent. in the time involved. Eventually, we were able to do 33 per cent. more work with the same amount of labour. Now we have reached the stage where, if work on a new title is started in the morning, it can be completed the same day. That is possible because, if necessary, these men give a direction to the case before it is begun.

By Mr. Rylah.—Apparently, from your experience in the Survey Branch, your view would be the same as that expressed by members of the Committee regarding the overtaking of arrears of work in the Titles Office. Would you say that if the back-lag in the Titles Office could be removed, it would be possible not only to give better service to the public, but also for the staff to do their work more efficiently and expeditiously? Does not the banking up of the work result in a great deal of the time of the staff being taken up in getting things out and putting them back again, keeping them sorted, and searching for misplaced dealings?

Mr. Arter.—Almost as much time is occupied in getting out records and chasing titles as in doing the actual work in connection with the titles.

By the Chairman.—Did you have any discussion with Mr. Jessup when he was recently in Melbourne?

Mr. Arter.—Yes. He suggested that we should more or less dispense with our field notes, but I am not in favour of that. If I may, I shall proceed to another point, as contained in recommendation (*c*), which is relevant. It is as follows:—

> That a skeleton survey, establishing permanent marks near the corners of all public streets and roads in Melbourne and suburbs, should be undertaken forthwith, so as to supply data for the accurate definition of properties and for the preparation of proper record plans for the use of the Titles Office, as well as for the alignment of streets. And it is the general opinion of the experts examined that such surveys should be made at once, and should be based, as regards the principal lines, on the trigonometrical survey of the colony, so as to ensure accuracy and uniformity in the work, and render the surveys valuable for sanitary, water supply, and all other public purposes.

The trigonometrical survey was completely suspended as from 1872; it was resumed only during and after the last war.

By Mr. Thomas.—What was the reason for dispensing with the trigonometrical survey?

Mr. Arter.—The Government could not supply the money for the work. Even the trigonometrical survey, as the major triangulation, would be of little benefit

unless the property surveys were connected to subsidiary marks which, in turn, would be tied to the triangulation. There was a suggestion that a skeleton survey should be made, and further that the cost of such survey should be paid for out of the assurance fund, also that no action should lie where the difference of measurement in question in towns did not exceed two inches and in country districts one in a thousand.

Recommendation (*h*) provided—

> That, in order to ensure that the surveys made by the licensed surveyors for the public in connection with Titles Office business shall be properly and accurately made and marked on the ground, an inspecting surveyor should be appointed to inspect and check such surveys from time to time.

An inspecting surveyor was appointed some years ago. Private surveyors are not obliged to put in permanent marks, but during the last fifteen years they have been required to put in reference spikes, such as a piece of water piping, or standard survey marks a foot in length. Usually, those marks are not protected in any way, and when footpaths are being made they are sometimes removed or covered with bitumen.

As I explained previously, our job is to correlate the surveys on the basis of whatever physical indentification can be picked up over a period of years. Take an ordinary suburban survey for instance. What was a post and rail fence a few years ago might be a picket fence or a brick wall to-day. When the survey peg was driven in, there was, perhaps, no physical feature of that kind, and there would be no way of re-locating the survey. If I made a precise survey of an acre of land and drove in four pegs, but did not relate the survey to anything else, and then if somebody removed those pegs, the value of the survey would be nil, because the pegs could not be replaced correctly unless the survey was repeated.

By the Chairman.—What is the position if anyone removes a survey peg?

Mr. Arter.—The removal of a peg or a permanent mark by an unauthorized person is an offence under the Surveyors Act.

By Mr. Rylah.—Assuming you were permitted by the Registrar to take all the short-cuts you have suggested, including the production of a title with an endorsement that it was based on a plan that had not been finally checked, would you think there would be any prospect, with the existing staff, of overtaking the back-lag within a reasonable period?

Mr. Arter.—If we issued titles, as suggested, no one would be greatly hurt except ourselves, and the Titles Office staff would not be so flustered in trying to do the work within a specified period. The plans would be examined gradually as the work eased off, because it is reasonable to assume that plans would not continue to be presented in the same numbers for years and years.

By Mr. Rylah.—In other words, it would enable you to spread the work over a longer period?

Mr. Arter.—Exactly.

By Mr. Rylah.— Would it mean that there would be a trained staff available for the work when the plans were not being received in such numbers?

Mr. Arter.—That was the object of the proposal. Another aspect of our work which I have not touched on is that of the preparation of our record plans, which constitute the index to the whole of the office. The more of those we have and the clearer they are, the better and quicker the service to the public. The preparation of those plans was completely suspended from the time of the depression until I took control eight or nine years ago. I started immediately to produce those compiled charts again, and a great number of them have been completed. Previously the plans were in shocking state.

By Mr. Rylah.—Why was the work suspended?

Mr. Arter.—Because, owing to the depression, the staff was decreased. We are still suffering from a lack of staff, but we are trying to build it up again. There were no re-appointments and very few promotions during the depression.

By Mr. Rylah.—Have you a sufficiently big establishment at present to bring that work up to date, if you could get sufficient staff?

Mr. Arter.—Yes. I think I could do it if I had another half a dozen staff. Of course, if we were required to undertake additional activities, more staff would be required.

By Mr. Rylah.—That half a dozen additional staff would be sufficient only if the titles were issued, with the endorsement you have suggested?

Mr. Arter.—No. If we were " on top " of the work, we would have almost enough staff, provided they were properly trained.

By Mr. Rylah.—Apart from the Registrar agreeing, perhaps, to your suggestions for short-cuts, would a cleaning-up and re-organization generally of the Titles Office assist in catching up with the back-lag?

Mr. Arter.—No. I do not think it would have any effect whatever on the examination of subdivision plans.

By Mr. Rylah.—It appears to be more or less a case of the dog chasing its tail, because on account of the shortage of staff the plans of subdivision cannot be brought up to date, and until the arrears of work can be overtaken the rest of the Titles Office work cannot be brought up to date. At the moment, the Titles Office output seems to be so much dependent on those 4,000 plans?

Mr. Arter.—I do not know how many stopped cases there are in the Titles Office at present.

By Mr. Rylah.—We were told that 15,000 of the 25,000 cases would be due to plans.

Mr. Arter.—There would still be 10,000 out.

By Mr. Rylah.—In your previous evidence you suggested that you were getting the co-operation of the surveyors generally and that their work was of a good standard. To what extent is your branch being hindered by lack of co-operation from the legal profession?

Mr. Arter.—I do not think we are being hindered by the lack of co-operation of the legal profession, which itself is hampered by the disability of lack of trained staff. It would be useless for a legal firm to send a girl of seventeen or eighteen years to the Titles Office and expect her to get professional advice from us, and take it back to the firm, because she would not understand it. I do not think very much could be done in the Survey Branch that would have a bearing on the work of the clerical sections. I am happy to say that most of the necessary work has been done.

By Mr. Rylah.—Probably it would not be unfair to say that has been due partly to your keenness to keep the work of your branch up to date at all costs?

Mr. Arter.—It has been due to the keenness of all officers in the branch. There is a suggestion file in the office and if a good suggestion is offered an endeavour is made to adopt it.

By Mr. Rylah.—Perhaps it is not a coincidence that in the report on the Titles Office the comments on the Survey Branch are extremely favourable and those with regard to the remainder of the office have been anything but favourable?

Mr. Arter.—There is a certain history about the matter. I was transferred from the Titles Office to the Lands Department, where I served for two years. I was placed in control of the Survey Co-ordination Office and was closely associated with the Deputy

Surveyor-General, Mr. Clark, who was one of the survey authorities in the State. I was ultimately promoted back to the Titles Office with a definite charge to reorganize the Survey Branch. As a result, a great deal of procedure that was carried out formerly has been dispensed with.

By Mr. Rylah.—In the course of that re-organization have you been able to obtain modern equipment to facilitate the work of the Survey Branch?

Mr. Arter.—Yes, and that equipment was very necessary. However, we have not been able to obtain presses in which to keep the plans of subdivision; they would make a great deal of difference to our work.

By Mr. Thomas.—On page x of the report of the Royal Commission on Land Titles and Surveys appears the following statement:—

> That the surveys made in the early days of the colony were for the most part, extremely faulty and unreliable, and that, as a rule, the dimensions of allotments, as marked out by the surveyors on the ground, differ from the dimensions of the same as given in the grants.

Does that relate to free titles?

Mr. Arter.—The faulty surveys made prior to 1862 would relate to Crown leases and those made after that time to freehold Crown grants. In all the country areas there are big discrepancies between the title and the present surveys. However, that is not to the discredit of the old time surveyors, who opened up the country in a very short space of time during which roads and railways were constructed and the gold rush occurred. Those men did a tremendous amount of work between 1850 and 1900.

By Mr Thomas. —From where does the Town and Country Planning Board commence to issue its acquisition orders?

Mr. Arter.—The acquisition orders would be based mainly on the survey of property boundaries. A departmental body would tie those surveys to permanent marks.

By Mr. Rylah.—Actually the work of the Town and Country Planning Board is still in a very elementary stage?

Mr. Arter.—That is so.

The Committee adjourned.

WEDNESDAY, 21ST MARCH, 1951.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Reid,
The Hon. F. M. Thomas.	Mr. Rylah.

Alfred Ernest Rasmussen, Commissioner of Titles, was in attendance.

By the Chairman.—Have you, Mr. Rasmussen, read Mr. Jessup's report?

Mr. Rasmussen.—No, I have seen none of the evidence that has been given before the Committee. As Commissioner of Titles I am appointed to the position for two-monthly periods. Before I became Commissioner I was Chief Examiner of Titles for about ten years.

The Chairman.—The Committee desires you to offer any comments you wish to make on the question of unified control in the Titles Office.

Mr. Rasmussen.—From time to time I have heard what has been suggested along those lines and, in my view, unified control in the hands of the Commissioner is necessary. I have no axe to grind personally as I retire in four years, but I believe it would be some time before this legislation could be implemented. I cannot see the advisability of placing more work on to the staff of the Titles Office in its present terrible mess. Unified control should be in the hands of the Commissioner because the Registrar would be only the nominal legal head if he had complete control of the office. It would take one officer all his time to decide the numerous legal questions that arise in the office. All examinations, including those by the clerical staff, should be in the hands of the Commissioner. The Registrar should be the chief administrative officer under the Commissioner who, in turn, would be directly responsible to the Attorney-General. Under that arrangement the various branches of the office could be co-ordinated and staff transfers readily made from one section to another. I do not think the Commissioner could effectively administer the work of the legal staff unless he had the absolute right to transfer officers. Whoever is appointed, he must be a man of even temperament and personality, and able to administer a staff and investigate titles in a liberal manner.

By the Chairman.—Do you agree that the officer in control of the Titles Office would need to possess administrative ability for the efficient conduct of a big organization of this kind?

Mr. Rasmussen.—Yes, particularly the Commissioner and the Registrar. The Commissioner would be the final arbiter.

By the Chairman.—With that in mind it is obvious that the head officer would also have to make final decisions on legal matters. Under the Transfer of Land Act it is not necessary for the Commissioner to be a qualified legal practitioner; it was provided that the first Commissioner was to be a qualified legal practitioner, but from that stage it lapsed. In South Australia there is legislative provision for a solicitor to be appointed to advise the Registrar-General. In addition to being a good organizer, should the Commissioner of Titles in Victoria be a lawyer or would it be sufficient if he were fortified by the appointment of a qualified legal officer to his staff?

Mr. Rasmussen.—The Commissioner should be a qualified legal officer. Whatever system is adopted there will always be a final appeal to the head man. Should the Registrar be in charge, he may decide to rely on the advice of the Chief Examiner, or some other officer; or possibly he would flood the Crown Solicitor's office with work in order to get legal guidance on particular points.

By Mr. Fraser.—At the moment, is it the practice to take the opinion of the Crown Solicitor on legal questions?

Mr. Rasmussen.—No, it is not the present practice. I think the background in South Australia is different from the background here. The present Victorian system has been followed for years; it has grown up in the State. We have a very expert legal profession, but I do not know that those who prepare instruments are as expert in South Australia. Sixty per cent. of the work in South Australia is done by land brokers.

Mr. Fraser.—The number of stopped cases in South Australia is considerably less than the number in Victoria.

Mr. Rasmussen.—That is because titles in South Australia are not investigated to the same extent as they are in Victoria. In addition, the land brokers receive their training from the Registrar-General, who conducts the examinations. If they do not keep up to the required standard I understand they can be deregistered.

Mr. Fraser.—Lawyers in South Australia are fully qualified and it does not require considerable brains to effect a simple transfer.

Mr. Rasmussen.—It is not the simple transfer cases that cause the trouble; the main difficulty arises from the involved cases. In South Australia the officers do not investigate the titles from the registered proprietors; therefore, they have few stopped cases. I disagree with that practice. I think all titles should be investigated.

By Mr. Thomas.—The question of equity does not arise to the same extent in South Australia?

Mr. Rasmussen.—No.

By Mr. Fraser.—What do you mean by your statement that they do not investigate titles in South Australia as is done in Victoria?

Mr. Rasmussen.—Should a devise in a transfer case come into the office in South Australia they do not look at the will to see that the devisee is entitled to the transfer.

By Mr. Fraser.—Because a transfer says that a transferor, as the executor, is fully clothed with legal authority to effect the transfer he then passes the land to the transferor, under consideration of the devise in a will of such and such a date. What is wrong with that practice?

Mr. Rasmussen.—We find that at times errors occur.

By the Chairman.—Is it your job to worry about that, if you regard the Transfer of Land Act solely as a system of land transfer?

Mr. Rasmussen.—I think that the Act means this: Once a name is on the title, that is finished with, and you cannot go beyond it, but I think a dealing by that registered proprietor should be investigated.

By Mr. Fraser.—Do you think that the Titles Office should be the watchdog for all transactions between the multitudinous number of subjects? The document shows that a certain person is executor of the will of so-and-so, and in proof thereof the probate granted by the Supreme Court is produced. The executor says "I transfer to John Jones", who is the devisee under the will. What more do you want?

Mr. Rasmussen.—There have been numerous cases on that matter, the most important being that of *Templeton* v. *Leviathan Proprietary Ltd.*

By Mr. Fraser.—In *Templeton* v. *Leviathan* it is stated that if a trust is brought under notice, it must be investigated?

Mr. Rasmussen.—I am speaking of a trust dealing by a registered proprietor where he is entitled in his beneficial capacity. There is no doubt in that case. But I would say that a transfer or dealing of that nature could be investigated liberally without people being required to dot i's and cross t's.

By Mr. Fraser.—What investigation would be required?

Mr. Rasmussen.—We would see whether the proper person was the devisee: We would look at the will.

By Mr. Reid.—That is to say, you would look into the question of identity?

Mr. Rasmussen.—We would endeavour to determine whether the transferee was the proper person. On rare occasions a transfer has been received and the transferee has not been the devisee.

By Mr. Reid.—In your research, you endeavour to satisfy yourself, first, that the devisee and the transferee are identical and, secondly, that the terms of the will are such as to really entitle that person to the transfer?

Mr. Rasmussen.—Yes. I think we must still carry out the ordinary common law provisions regarding investigation of title by a registered proprietor.

By Mr. Rylah.—Would you say that, on the authority of *Templeton* v. *Leviathan,* when an executor is transferring pursuant to a devise under a will, and a trust is brought under your notice, you are bound to investigate that trust to make sure it is being properly carried out?

Mr. Rasmussen.—Yes.

By the Chairman.—You consider that if a trust is apparent, you must investigate it?

Mr. Rasmussen.—Yes.

By Mr. Fraser.—If the Titles Office is given notice of a trust, it is the duty of the Titles Office to investigate it, but until anything of that sort is brought under notice, the Office is justified in accepting the documents?

Mr. Rasmussen.—We have always held that an investigation should be made in the case of a trust, when the trustees are dealing with land. For instance, if the trustees were giving land away, we would look into that. We would do likewise if a trustee were purchasing land. If a trustee is either disposing of or acquiring land, he is supposed to sell at the highest price, or to purchase at the lowest figure.

By Mr. Fraser.—Do you think that it is the duty of the Titles Office to be the watchdog of trustees concerning the sale of land under their control?

Mr. Rasmussen.—I would not put it that way. I do not think that the Act absolves us from that obligation. The Act brings us up to the registered proprietor, and you cannot go beyond that.

By the Chairman.—I shall put it this way: There are many settlements in which the trustee is an ordinary person, and there are other settlements in which the trustee is a trustee company. If a transfer comes through from John Jones to William Smith, there is nothing on the face of it to show that the transferor is the trustee, and you would just register the transfer?

Mr. Rasmussen.—Yes.

By the Chairman.—But, I take it, if a transfer was received from a trustee company, in consideration of so much paid to them by William Smith, you would automatically investigate that case?

Mr. Rasmussen.—Not unless we knew that they were trustees.

By the Chairman.—Must they not always be trustees?

Mr. Rasmussen.—No. We would not assume that they were trustees if that fact were not evident on the face of the title.

By the Chairman.—The Equity Trustees Company probably owns its own building, but probably nothing else in the way of real property. I suppose it is fair to say that every transaction received from a trustee company would be in pursuance of a trust, but I am glad to learn that you do not assume that the transferor is a trustee.

Mr. Rasmussen.—We would be sure that the Equity Trustees were the executors of the will of so-and-so, if the title said so.

By Mr. Rylah.—Even then, it would be merely a sale by the Equity Trustees Company to Bill Jones for cash. You would not investigate that?

Mr. Rasmussen.—No.

By Mr. Rylah.—You would investigate only where it is a transfer by the Equity Trustees to Bill Jones, pursuant to a devise under a will?

Mr. Rasmussen.—Yes.

By the Chairman.—Suppose that the Equity Trustees Company is the trustee of a settlement in a case in which there is a life tenant and residuary beneficiaries, and that, with the consent of the other interested parties, one of the residuary beneficiaries buys the property at a price agreed upon. There would have been a transaction originally when the settlement was made, at which time somebody, in pursuance of the settlement, transferred the property to the Equity Trustees. Do you go back to that point?

Mr. Rasmussen.—No.

By Mr. Fraser.—You would not go back beyond the name on the title?

Mr. Rasmussen.—No.

By the Chairman.—There would be nothing in that transfer which would show anything but a sale by the Equity Trustees to an individual?

Mr. Rasmussen.—It would not matter what they did: if they gave the land away we would not investigate it, because they are registered as absolute owners—no trust being disclosed.

By the Chairman.—You would investigate the question whether the trust had been complied with only in cases in which, on the face of the title, there was some doubt——

Mr. Rylah.—In the case of a transfer pursuant to a devise under a will.

By the Chairman.—On the title there must appear only the name of the registered proprietor?

Mr. Rasmussen.—The title could show that the trustee company held as trustee, or that it held in its beneficial capacity.

By the Chairman.—How would that be shown?

Mr. Reid.—It is stated on the title that John Jones died on such-and-such a date, and that probate of his will was granted to "so-and-so."

By the Chairman.—A new title would never show that somebody was executor of the will of "so-and-so."

Mr. Rasmussen.—No, but if it were known, the title would be marked with an S.O. or a King's caveat lodged, to draw attention to the fact.

By the Chairman.—All that is shown on the front of the title is that, say, John Jones is the registered proprietor. On the back there would, perhaps, be the relevant entries concerning a number of dealings. The last dealing would show that John Brown—who had bought the land was dead and that probate of his will had been granted to William Smith. In that case William Smith, by paying the appropriate fee, could get a new title, and that new title would merely show that William Smith was the registered proprietor?

Mr. Rasmussen.—That is so.

By the Chairman.—And he could deal with that title?

Mr. Rasmussen.—But when he took out his new title, we would put a King's caveat on the back to show that he was holding as executor.

By the Chairman.—There must be many anomalous cases, some of which you investigate and a number of which slip through?

Mr. Rasmussen.—We do not allow the trustee cases to slip through.

By the Chairman.—Is there very much difference between the case of William Smith as trustee, who has the King's caveat on his title, and a title in the name of a trustee company, except in an odd dealing where they were beneficially entitled?

Mr. Rasmussen.—Of course, solicitors will keep a trust off the register if they can.

By Mr. Rylah.—The position is still inconsistent. The Transfer of Land Act keeps trusts off the register wherever possible. If there is an indication of trust, the case is investigated. Would you say that the Commissioner of Titles should accept the responsibility of investigating?

Mr. Rasmussen.—There are certain matters which we must deal with if they are referred to us.

By Mr. Rylah.—Are you responsible also for an investigation of a transfer between two persons of the same name to satisfy yourself that stamp duty has been paid?

Mr. Rasmussen.—No. That is done downstairs. The transfers are referred to us by the Registrar only in connection with matters of legal difficulty. I could not go to the Registrar and say, "There are certain cases which I wish you to refer to me."

By Mr. Rylah.—If a piece of land were transferred from, say, T. Jones to J. Jones, an investigation would be made to ascertain that a proper consideration had been paid?

Mr. Rasmussen.—I believe so.

By Mr. Rylah.—Would that investigation be made by your branch?

Mr. Rasmussen.—No.

By Mr. Rylah.—Do you think that is a proper matter for the Titles Office to investigate?

Mr. Rasmussen.—My own view is that the Titles Office practice has grown into a vast system of "case law" or "case Titles Office practice," most of which I do not know.

By Mr. Rylah.—Would you agree that some of the strange things that happen in the Titles Office are a result of old rulings of Commissioners?

Mr. Rasmussen.—I could not say whether that is so or not. My experience dates back to 1910 when Mr. Templeton was Registrar and Mr. Guest, Commissioner, and I believe that during their régime they dealt with this question of requisitions. Then followed Mr. Currey, a non-legal man, who relied on Mr. Guest to a very large extent. Mr Ross was the next Commissioner, and he was an easier man altogether. I would not care to express an opinion on Commissioners later than Mr. Ross.

By the Chairman.—Would you agree that over the years the Titles Office has followed practices that were initiated 50 years ago and which certainly require to be reviewed?

Mr. Rasmussen.—Yes. Of course, a number of requisitions have also been initiated by Registrars. Mr. Templeton initiated a number of requisitions, and when Mr. Betts was appointed as Registrar in 1932 Mr. Templeton said to him "Do as much of the work as you can. When I was Registrar I did not refer too much to the Commissioner." I do not think Mr. Sutherland referred a great deal to the Commissioners. When I was appointed Commissioner I could see the state of the work as a result of the thorough examinations that were made. I instructed the examiners not to bother too much about old conveyances, mortgages and so on, but to make requisitions only on the more important matters that had occurred in later years. As a result, in the twelve months since my appointment there has been a saving of anything from six to eight months in the time taken to handle a dealing. I have spoken to the Registrar about the question of requisitions, and have suggested that it will be necessary for such questions as complicated devises and executory considerations that are now dealt with in his branch to come to us, and for us to go over them again, first, because I do not believe that laymen can deal with

some of the matters, and, secondly to find out whether some requisitions that are now being made are out of date.

By Mr. Reid.—Earlier you stated that you dealt with these questions of devises and so on when the Registrar referred them to you.

Mr. Rasmussen.—We get very few of them.

By Mr. Reid.—Do you know whether the Registrar deals with certain classes of those matters without reference to you?

Mr. Rasmussen.—The senior clerk deals with them, and anything of a difficult nature is referred to the Registrar. That is the end of most applications.

By Mr. Reid.—Some may not come to you at all?

Mr. Rasmussen.—Most of them do not come to us.

By Mr. Thomas.—If you receive an application for transfer of a general law title, you do not bother with the old conveyances but take into consideration only the more recent ones?

Mr. Rasmussen.—That is so.

By Mr. Thomas.—Do you know whether cases have been stopped because of old conveyances having been taken into consideration?

Mr. Rasmussen.—They have been in the past, but they are not stopped for that reason at present. When an application is made to bring land under the Act it is dealt with in a liberal manner. I do not mean that we "O.K." anything that comes along, but we deal sensibly with the applications.

I have always opposed a mountain of requisitions on cases, as most matters can be attended to liberally without calling upon the assurance fund. However, an officer dealing with issues in that way must have wide exeperience. I submit the following statement for the information of the Committee:—

The relationship between the various Commissioners and Registrars of Titles has, on the whole, I think, been of a cordial nature. Speaking for myself I must say that I have enjoyed working with Mr. Sutherland and Mr. Daniels.

I have held the office of Commissioner for approximately twelve months and for the prior ten years had acted as Deputy Commissioner for three weeks in each year.

There are certain dealings which, of course, must be submitted to the Commissioner. The Act says so. In those cases the Commissioner is the final arbiter. The vast majority of dealings, however, are dealt with by the Registrar's staff and should any of them involve interpretation of difficult questions of law or of equity it is for the Registrar to say whether or not he will refer the case to the Commissioner. I believe that he does so and does not himself make decisions in very difficult cases.

I feel, however, that the relationship existing between these officers may best be explained when giving evidence before the Committee.

At present there are three examiners of titles, who not only consider applications to bring land under the Act, but also deal with such matters as powers of attorney, difficult red ink numbers submitted to them by me, questions raised by the Survey Branch for legal interpretation, various applications under sections 78, 79, 102, 109, 215, 227, 228, and 233 of the Act, applications under the Religious Successory and Charitable Trusts Act, draft transfers and documents from the Registrar-General as representing defunct companies to purchasers whether they acquired property before or after dissolution. Such work is distributed among the three examiners, the bulk being given to the Chief Examiner. Most of the Chief Examiner's time is taken up on this kind of work and a great portion of the time of another examiner on powers of attorney; e.g., in January and February, 163 and 215 powers of attorney cases were submitted to this branch. I consider that almost half of the time of the examiners is taken in work of this nature and the other half upon applications to bring land under the Act and section 87 applications, which are claims by adverse possessors of land already under the Act.

At the present time the examiners hold for consideration the following dealings:—

(*a*) 10 applications to bring land under the Act.
(*b*) 15 red ink numbers.
(*c*) 2 cases submitted by the Survey Branch.
(*d*) 2 applications under section 102.
(*e*) 2 applications under section 215.
(*f*) 5 applications under the Religious Secessory and Charitable Trusts Act.
(*g*) 5 defunct company applications.

I would like to point out that when I was appointed Commissioner on 12th April, 1950, the examiners were dealing with applications to bring land under the Act which had been lodged fourteen months previously; that gap has now been reduced to six months. In the year 1950 the examiners dealt with 189 new applications; so far this year 42 applications have been picked up by them. Should this rate be maintained the 200 mark should be reached and by the end of the year there should be no delay in dealing with applications. This is due to the fact that I have instructed the examiners not to make, as formerly, such thorough investigation of title over 30 years old. Requisitions of no import have also been abolished. I have also been instructed by the Secretary of the Law Department to have the searches typed and used by the examiners as their sketch of title. This saves time formerly occupied by them in sketching title. The further saving of time by using this method is obvious.

The Committee adjourned.

WEDNESDAY, 28TH MARCH, 1951.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Reid,
The Hon. G. S. McArthur,	Mr. Rylah.
The Hon. F. M. Thomas,	
The Hon. D. J. Walters.	

Mr. Alfred Ernest Rasmussen, Commissioner of Titles, was in attendance.

By the Chairman.—Mr. Rasmussen, will you please give the Committee a summary of the activities of the Legal Branch of the Titles Office?

Mr. Rasmussen.—The principal functions of the Legal Branch concern applications to bring land under the Act, to examine powers of attorney, and to deal with applications under the following sections of the Transfer of Land Act: Sections 78 and 79, missing titles, mortgages, and so on; section 102, removal of easements; section 109, cul-de-sacs; section 215, amendments of titles, section 227 and 228, vesting orders; and section 233, amendments of titles. In addition, various legal questions are submitted by the Registrar, and others arise under the Religious Seccessory and Charitable Trusts Act concerning the changing personnel of various trusts. At present, there are many dealings, involving the purchase of land in the names of defunct companies; these transactions have to be examined closely.

When I became Commissioner twelve months ago, I set out to try to bring the work up-to-date. I had a discussion with the examiners and told them that it was my intention to let up on requisitions, and that it would not be necssary to go to great lengths in sketching titles that were 30 or 40 years old. Formerly the work was about fourteen months behind; now it is about six months in arrears.

By the Chairman.—Is there much hand copying of titles by the examiners?

Mr. Rasmussen.—Examiners did that work until recently, when the practice was changed; the copying is done now by a typist. I do not think we can be more up-to-date with the work for some time to come. To do so would mean transferring staff downstairs from examining work to general searching work. I have told the Registrar that I wish to have the more complicated red ink numbers sent to me, and the matter will be discussed at a conference between the Secretary of the Law Department, the Registrar and myself. If the red ink work of my branch is increased, I think it is advisable now to appoint two additional examiners, so that they will be familiar with the practice of the office when the new Act is proclaimed.

By Mr. Fraser.—Have you considered rejecting subdivisional plans that have been cluttering up the office for many years?

Mr. Rasmussen.—That would require an increase in the present staff, as each case should be decided upon its merits.

By Mr. Fraser.—If the person lodging a plan fails to fulfil some requirements of the Office, why not reject the plan?

Mr. Rasmussen.—I agree that plans of that description should be rejected. There is power to do so under the present Act.

By Mr. Fraser.—Why has that power not been exercised?

Mr. Rasmussen.—The matter does not come within my jurisdiction, but I presume that the power has not been exercised owing to shortage of staff.

By Mr. Rylah.—You contend that two additional examiners should be appointed at this stage so that the branch will be able to handle compulsory acquisition cases when the new Act is proclaimed?

Mr. Rasmussen.—Yes. All examiners are over 50 years of age, and other men must be trained to do the work of the branch.

By Mr. Thomas.—Statistics of the work of the Titles Office appear in the *Victorian Year-Book,* and for 1947 there were 125,393 dealings, including 22,664 "other dealings." What would the latter cover?

Mr. Rasmussen.—I cannot say off-hand, but I shall make inquiries and advise the Committee later on that aspect of the work of the Titles Office. Lodgments average from 750 to 800 daily, over the counter.

By Mr. Fraser.—Has your experience been that the Commissioner of Titles keeps himself behind a tin fence and does not worry about the rest of the Office?

Mr. Rasmussen.—He has been purely a legal officer.

By Mr. Fraser.—Has he concerned himself only with those matters that the Registrar refers to him, or those duties that the Act specifies he shall perform?

Mr. Rasmussen.—Yes.

By Mr. Reid.—What would be the procedure if you wanted additional examiners appointed; to whom would you apply?

Mr. Rasmussen.—I would apply through the Secretary of the Law Department and he would forward the application to the Public Service Board. I have already mentioned to the Secretary of the Law Department that I would like extra examiners appointed, and he has agreed to support my request.

By Mr. Rylah.—Would you like to make any suggestions on ways and means of bringing the work of the Titles Office up to date, or at least of reducing the existing leeway?

Mr. Rasmussen.—The office is at present in a drastic state, therefore drastic methods of relieving the position must be adopted. Although I have been discussing means of easing requisitions I think the primary cause of delays in the office is lack of staff.

The Chairman.—Mr. Jessup reported that there is nothing in that claim; in his opinion the Titles Office is overstaffed.

Mr. Rasmussen.—I disagree with him there. In this connection we should consider the Public Service as a whole. The staffing position is not too bad in some Departments, and I suggest that the Departments should be combed with a view to obtaining an officer here or there for the Titles Office. In addition, after the next Public Service examinations the staff requirements of the Titles Office should be met so that delays could be overcome and the office could catch up with its work.

By Mr. Rylah.—Has there been any increase in staff in your office since you took charge?

Mr. Rasmussen.—When took over I had two examiners on the staff, but one was absent on sick leave for some time. For about six months I had three examiners. At one time there were seven examiners in the office.

By Mr. Rylah.—Your evidence has been that you have reduced the leeway in the work from fourteen months to six months by adopting different methods and with no increase in staff. Could not that be done generally throughout the office?

Mr. Rasmussen.—I do not think so, although I am not conversant with what goes on downstairs in the Titles Office.

By Mr. Fraser.—Is any one familiar with what goes on in any part of your branch?

Mr. Rasmussen.—The Registrar should be familiar with the working of the branch, but on past performances, I cannot visualize the leeway being further reduced without extra staff.

Mr. Rylah.—The main cause of delay has been that plans of subdivision have got so far behind that they clog up the work in all parts of the Titles Office. Dealings are stopped until the plans are registered; numerous titles are out of position because the plans are unregistered, and there has been general waste of time because the staff has to chase the dealings that otherwise would not have to be chased?

Mr. Rasmussen.—Even if we get a move on with the dealings, the office is still up against the registration; that is the outlet. I suggest the outlet should be cleared first.

Mr. Rylah.—In his report Mr. Jessup has made a number of suggestions on that aspect. For instance, a big stamp has to be placed on all dealings, and there are two certificates that must be signed before they go out. In the 1865 inquiry considerable evidence was given about time wastage in the Titles Office caused through the signing of documents. The trouble that led to the appointment of the Select Committee in 1865 was that documents that were ready for issue were delayed for sixteen day because the then Assistant Registrar, Mr. Hughes, did not have time to sign them. Surely the duplicated signature and endorsements with the big stamp, which is hard to put on, could be eliminated.

Mr. Rasmussen.—If Mr. Rylah is referring to the seal of the office I see no objection to its elimination. This is the first time I have heard the suggestion made, and I can see no objection to short-cutting the work in the registration room.

By Mr. Rylah.—Would there be any objection to the Commissioner being the head of the Titles Office and being responsible for the whole of the administration of titles?

Mr. Rasmussen.—That is a reasonable suggestion. The Commissioner is the legal head, but the Registrar, if made responsible for the whole of the administration of the office, would be merely the nominal head of the legal branch. It seems to me ridiculous for him to be the nominal head because he would have to act according to directions from the Chief Examiner or the Commissioner. I think the Commissioner should be the legal head with an administrative Registrar under his jurisdiction. The Commissioner would be responsible for the smooth working of the office.

By Mr. Rylah.—Under the Act as at present framed, do you think there would be anything to prevent the Commissioner from being the head of the Titles Office?

Mr. Rasmussen.—No.

Mr. Fraser.—Many sections of the Act would need amending if that had to be done. The Act provides that upon application being made the Registrar shall forward the same to the Commissioner, who shall then direct whether so and so should happen.

Mr. Rasmussen.—That is at present a matter of administration. I think it could be done by the Secretary of the Law Department or the Public Service Board defining the administrative duties of the Registrar and the Attorney-General those of the Commissioner, specifying what each shall be required to do in the administration of the Office. There are sections of the Act which define the legal duties of the Registrar and the Commissioner.

Mr. Rylah.—Perhaps Mr. Rasmussen is right. The Act could intend that the Registrar should be the officer carrying out administrative duties under the guidance of the Commissioner.

Mr. Rasmussen.—That is my view.

By Mr. Rylah.—We agree that under the Act it would be impossible to make the Registrar the head of the Titles Office because the Commissioner must exercise judicial functions placed upon him by the Act. Could it not work the other way, with the Commissioner as the head and the Registrar as the chief administrative officer under the Commissioner?

Mr. Rasmussen.—The power of dealing with staff matters would be in the hands of the Commissioner instead of the Registrar. That would not violate the provisions of the Act in any way.

By the Chairman.—Have you any further suggestion for speeding up the work of the Titles Office and overcoming the arrears?

Mr. Rasmussen.—I have already stated that I would commence with the registration room. I would have to look into the matter that has been raised with regard to the stamping of documents, because I have been concerned with my own legal work for 25 years.

By Mr. Rylah.—Would you agree that at present the Titles Office is in a state of disorganization?

Mr. Rasmussen.—Yes.

By Mr. Rylah.—Would you also agree that the Titles Office is cluttered up by rulings of past Commissioners and Registrars, many of which are considerably out of date and cause unnecessary delays and give needless work to the Titles Office staff?

Mr. Rasmussen.—Yes.

By Mr. Reid.—Has your advice ever been sought as regards the preparation of any of the proposed amending legislation?

Mr. Rasmussen.—No.

By Mr. Walters.—If the unnecessary work were eliminated would the present staff be sufficient?

Mr. Rasmussen.—I consider that for a start more staff would be required.

By Mr. Walters.—You believe that extra staff would be required at least temporarily to bring the work up to date?

Mr. Rasmussen.—Yes, and not only temporary staff but intelligent staff.

By Mr. Rylah.—Would you agree that the whole staff position should be reviewed and, where possible, permanent officers appointed to the staff so that people who are interested in the job and in promotion can be attracted?

Mr. Rasmussen.—Yes. I also suggest that a dealing of a complicated nature should be dealt with by one person instead of being handled by perhaps three or four officers, as is the present practice.

By Mr. Fraser.—Where are the past rulings of Commissioners to be found?

Mr. Rasmussen.—Possibly the Registrar would have a copy of them. I have not.

By Mr. Fraser.—How do you follow out the rulings?

Mr. Rasmussen.—The rulings are not followed out in my branch, but in the Registrar's branch.

By the Chairman.—The Commissioner's rulings as well as the Registrar's?

Mr. Rasmussen.—Yes. The rulings in my branch relate only to legal matters.

By the Chairman.—Where are the rulings of Commissioners and Registrars held?

Mr. Rasmusssen.—They are contained in books held by the examining clerks; they are their own private property. The examining clerks take a note as the various rulings are given.

By the Chairman.—What happens when the Commissioner makes a ruling?

Mr. Rasmussen.—Probably the Registrar takes a note of it and instructs the examining clerks what to do.

By the Chairman.—That is the origin of a ruling, which becomes a common rule?

Mr. Rasmussen.—Yes, or the Registrar may issue a ruling on his own initiative.

By the Chairman.—If a ruling was made on the 5th of March, 1916, how is that known physically?

Mr. Rasmussen.—Only as a result of private notes.

By Mr. Fraser.—Is it possible that one examiner might have a ruling not in the possession of another?

Mr. Rasmussen.—I think so. I am referring to examining clerks under the Registrar and not examiners in the Commissioner's branch.

By the Chairman.—But are not examiners of titles guided by the rulings of the Commissioner?

Mr. Rasmussen.—Not by rulings, by matters of law.

By the Chairman.—In regard to dealings upon which the Commissioner has made a ruling?

Mr. Rasmussen.—The Commissioner has probably given a decision.

By the Chairman.—Over the years have not many rulings become established as standards in the Titles Office?

Mr. Rasmussen.—Yes, they have become Titles Office practice.

By the Chairman.—Where are they recorded?

Mr. Rasmussen.—They are not recorded in any official document. As a matter of fact, if I had to prepare a transfer a little out of the ordinary I would have to consult some one in the Registrar's branch to see that I complied with the practice. I have never had occasion to study the work of that branch.

By Mr. Fraser.—Does an examiner who inherits a large tome follow the rulings contained therein?

Mr. Rasmussen.—I think the practice is followed that a precedent has been laid down or is supposed to have been laid down.

By Mr. Fraser.—There is no authoritative ruling book in the Titles Office?

Mr. Rasmussen.—No.

By Mr. Fraser.—There is just a heterogeneous collection of rulings by individuals?

Mr. Rasmussen.—Yes. As a matter of fact, I heard it said some years ago that there must be some sound legal rule behind the rulings even if one does not know what it is.

By Mr. Fraser.—If the Commissioner were the head of the Titles Office there would be no need for clause 20 of the Bill which provides that the Registrar shall refer any application to bring land under the Transfer of Land Act to an examiner who shall report on the title and submit the same and the papers to the Commissioner for his direction?

Mr. Rasmussen.—That is so.

Mr. Fraser.—It appears to me that under clause 54 of the Bill the Registrar will have discretion to say, "I do not think all documents have been surrendered to the Commissioner, and although he directs the issue of a certificate, I will not issue one." Clause 68 refers to the giving of notice by the Registrar.

Mr. Rasmussen.—If the Commissioner is to be the chief officer, those provisions will need to be amended.

Mr. Fraser.—Clause 109 of the Bill is the re-enactment of section 78 of the present Act, which provides that the Registrar may dispense with the production of a document, with the consent of the Commissioner.

Mr. Rasmussen.—In practice, the Commissioner deals with all applications under section 78.

Mr. Fraser.—Clause 110 refers to lost certificates, and clause 111 relates to fraudulent transactions. In the latter case, the Registrar only is to be satisfied as to the circumstances.

Mr. Rasmussen.—I shall study those aspects of the Bill. I have no jurisdiction over the matter. I think patent errors should be corrected in the Titles Office. That would be a step in the right direction to help solve the present difficulties in the Titles Office.

By Mr. Fraser.—Are the books containing office rulings the private property of the examiners?

Mr. Rasmussen.—Yes.

By Mr. Walters.—What guarantee is there that the rulings are correct?

Mr. Rasmussen.—I previously pointed out that I do not agree with the system. All these rulings stand until they are revoked. I think some of them are out-moded.

Mr. McArthur.—The position may arise that there will be no rulings in the office, if all examiners take their books with them when they retire.

Mr. Rasmussen.—I think the books are passed on from one to another. A great value is placed upon them.

By Mr. Fraser.—If the books were destroyed, would the office have to start *de novo* with its rulings?

Mr. Rasmussen.—The examiners have memorized many of the rulings.

By Mr. Fraser.—In the Commissioner's office, is there a book containing the rulings?

Mr. Rasmussen.—Not the rulings, but there is a book referring to points of law that have been determined. I take a note of the decisions in the different cases. The book is my own property; I have had it since I was appointed as an examiner.

By Mr. Fraser.—If you give a decision against me, and I ask you how you arrived at your decision, can you say, "A similar matter was decided by Mr. Commissioner So-and-so" or "In such-and-such a case, an authoritative decision was made?"

Mr. Rasmussen.—Not in the Legal Branch.

By Mr. Fraser.—Are there no rulings on practice?

Mr. Rasmussen.—Yes, in the Registrar's branch. In the Commissioner's branch, the examiners take their own notes.

By Mr. Fraser.—Is there an official book containing rulings on practice?

Mr. Rasmussen.—I do not know of such a book, unless the Registrar has one.

By Mr. Fraser.—Has each clerk similar information in his book of rulings on practice?

Mr. Rasmussen.—I think some of the officers would have more information than others.

Mr. McArthur.—They have no access to the rulings of the others.

Mr. Rasmussen.—That is true, but I think they confer with each other. In the past, officers who did not take notes on the Titles Office practice were frowned upon.

By Mr. Fraser.—Could we examine a book of rulings on law and also one containing rulings on practice?

Mr. Rasmussen.—I will make available my own private book, and will inform the Registrar of the Committee's wish. He can produce the books at the next meeting.

The Committee adjourned.

FRIDAY, 30TH MARCH, 1951.

Members Present:

Mr. Oldham in the Chair;

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Barry,
The Hon. F. M. Thomas.	Mr. Reid,
	Mr. Rylah.

Mr. Groves Harold Daniels, Registrar of Titles, was in attendance.

By the Chairman.—Mr. Daniels, the Committee desires to inspect the books containing the Commissioner's rulings on questions of law and the Registrar's book of rulings on practice. Will you now produce those books for inspection?

Mr. Daniels.—Yes. I produce a copy of a circular containing the only official list of rulings that has been complied to my knowledge. It has been in force for 30 years, having been brought up to date after the passing of the 1928 Transfer of Land Act.

By the Chairman.—This circular includes some rulings on practice in the Titles Office; were copies made available to members of the legal profession?

Mr. Daniels.—It was issued about 25 years ago and made available to any member of the public who desired it.

By Mr. Reid.—Was the information contained in the circular included in Currey's *Manual of Titles Office Practice in Victoria?*

Mr. Daniels.—Yes. I produce also Mr. Rasmussen's personal book of notes and rulings. There is no official rulings book in the Titles Office, but each member of the staff keeps a note book in which he records from time to time rulings or instructions issued by the Commissioner or the Registrar.

By the Chairman.—The staff notes the rulings but how do they arise in the first place? Are they issued in the form of a memorandum to the staff?

Mr. Daniels.—If a member of the staff is examining a dealing and a point arises on which he has some doubt, he submits it to an Advice Officer or the Registrar. If there should arise a legal question with which the Registrar feels he is not competent to deal he will submit it to the Commissioner for a ruling. The Commissioner would then append a minute indicating the procedure to be followed in similar cases in the future.

By the Chairman.—Is that ruling appended to the dealing under consideration?

Mr. Daniels.—It is noted on the search paper which is afterwards kept in a separate place in the Titles Office. The search papers are always available to the staff. The Committee will find recorded in the note books of both the Commissioner and the Registrar matters referred to in the circular I have produced. I have also included in my book notes that I have taken from annotations on search papers.

By the Chairman.—When a ruling is given by the Commissioner or the Registrar is it communicated to each examiner on the staff?

Mr. Daniels.—Since I took charge of the Examining Branch in 1936 the rulings have been communicated to everyone concerned. Before that time if an officer wanted to find out what had happened in a particular case he would initial the progress book and when the ruling had been given he would get the case and note it in his note book. I have instituted the practice of circularizing a typewritten statement on the subject so that everyone concerned becomes aware of it. For instance, with a transfer under devise a specific question may arise on which a ruling is necessary. The matter is referred to the Commissioner or the Registrar and the transfer number is noted against the note book entry on that dealing.

By the Chairman.—Individual recording by officers seems to be a loose method of compiling a record of official rulings.

Mr. Daniels.—With the most important rulings the officer handling the transaction probably considered that he did not have the power to deal with a legal question that arose. In such cases he would examine all other aspects of the transfer and then submit it to one of the three of four Advice Officers in the Department.

By the Chairman.—Are they legal officers?

Mr. Daniels.—No, they are officially termed "Advice Officers ".

By Mr. Fraser.—Are they equivalent to lawyers in the Department?

Mr. Daniels.—The system has grown up from time immemorial; they always seem to have been there.

By Mr. Fraser.—Would each Advice Officer have his own note book on rulings?

Mr. Daniels.—Yes. I was an Advice Officer before I became Registrar.

By Mr. Fraser.—Is that something entirely different from the Commissioner? Would the Advice Officer give legal advice upon matters that come purely within the jurisdiction of the Registrar?

Mr. Daniels.—Yes.

By the Chairman.—Did you start your note book when you were an Advice Officer?

Mr. Daniels.—It was taken from an old note book I had before I became an Advice Officer.

By the Chairman.—There is a gap that the Committee is attempting to bridge. We know that invariably precedent is followed in the Titles Office, but we cannot discover how those precedents were established and recorded. Each officer keeps a note book; sometimes as an act of courtesy a retiring officer will hand down his note book to the new appointee, but is there any official record of the rulings on which the precedents are created? If a solicitor presented an unusual case for decision, how would the officer dealing with it discover what previous ruling had been given on a similar case?

Mr. Daniels.—We sometimes deal with questions which apparently have never previously arisen. We cannot find any record of similar cases, although we peruse our note books to see if a precedent can be found.

By Mr. Fraser.—Would the note books of all members of the staff be called in for examination purposes?

Mr. Daniels.—No.

By Mr. Fraser.—If a legal question arose on whether the consideration had been truly stated in an application lodged where would you go to for advice?

Mr. Daniels.—To the Advice Officer.

By Mr. Fraser.—The Advice Officer would apply his own knowledge, in addition to what he could gather from his note book and then try to work out if the consideration had been truly stated?

Mr. Daniels.—Yes. If he had any doubt he might consult the Deputy Registrar or the Registrar and, where necessary, the latter would consult the Commissioner.

By the Chairman.—Is there a screening officer who deals with the difficult cases?

Mr. Daniels.—It was my duty in common with other Advice Officers to advise the staff or the public. If the officer did not feel competent to act he would come to me. The Registrar would look to his deputy to deal with most cases, but difficult questions on which there was some doubt would be referred to the Registrar, who has the last word.

By the Chairman.—Does the Registrar approach the Commissioner on any of these matters?

Mr. Daniels.—If the Registrar was not sure naturally the first man he would consult would be the Commissioner.

By the Chairman.—The first comment by the Select Committee which considered the working of the Titles Office in 1866 was " Your Committee consider that the whole Department has for a long time been in a state of disorganization." Do you think that comment would apply to-day?

Mr. Daniels.—What is meant by " disorganization "? It could arise from many causes, not necessarily because of lack of proper administration.

By the Chairman.—It could arise from the influx of work?

Mr. Daniels.—That is what has happened. Shortage of trained staff and lack of room are the main causes of the present position at the Titles Office. We are swamped with work.

By the Chairman.—Would you go further and say that there is a want of method in the Titles Office, without which the business cannot be carried on efficiently?

Mr. Daniels.—I do not think the system is at fault. It had operated satisfactorily for more than 60 years. When the Titles Office handled between 1,400 and 1,600 cases a week and had an adequate staff the office could deal with a simple case in less than a week.

By Mr. Fraser.—For how long have you been employed at the Titles Office?

Mr. Daniels.—For 45 years.

By Mr. Fraser.—Can you cite three innovations that have been introduced in that period to facilitate the working of the Titles Office?

Mr. Daniels.—Yes. The office has dispensed with the checking of signatures on documents lodged for registration.

By Mr. Fraser.—Has not that innovation been introduced since this Committee has been conducting its investigations?

Mr. Daniels.—Yes. We now no longer require proof as to validity of claims in connection with caveats lodged.

By Mr. Fraser.—Is that the statutory declaration?

Mr. Daniels.—No. We do not make any inquiry as to whether or not the claim made in the caveat is valid.

By Mr. Reid.—When was that change instituted?

Mr. Daniels.—It was introduced lately. Further, we do not police the covenants on transfers. That is also a recent innovation.

By Mr. Fraser.—Can you furnish examples of three innovations made in the administrative methods in the last 15 years to make the organization more businesslike and efficient?

Mr. Daniels.—No, I cannot recollect any great change in the system.

By Mr. Rylah.—I take it that the changes to which you have referred have been introduced in the last few months?

Mr. Daniels.—Yes. The whole system was working smoothly until controls were lifted.

By Mr. Reid.—Was not there a good deal of complaint about delays in the Titles Office as far back as 1925?

Mr. Daniels.—Yes, I believe there was. There was a boom at that period, too.

Mr. Rylah.—There was quite a considerable delay in the Titles Office even during the depression period.

Mr. Daniels.—I do not think there was any exceptional delay.

By Mr. Rylah.—What would be the average time for the registration of simple dealings in, say, 1935?

Mr. Daniels.—I could not say without looking up the records.

By Mr. Rylah.—Would it be reasonable to say that the legal profession has been complaining about the Titles Office for many years, including the depression years?

Mr. Daniels.—I would not like to say that. I know that complaints were made in 1925 when the office was swamped with work.

Mr. Rylah.—I have been in practice since 1932, and I do not remember one year when the Titles Office has not been regarded by the profession generally as the most difficult Government Department to deal with.

Mr. Daniels.—Some one will always make a complaint, no matter how things are going.

Mr. Rylah.—I am not referring to individual complaints but to the general feeling in the legal profession.

Mr. Daniels.—I cannot say what the feeling of the profession has been.

By Mr. Fraser.—In 1885 a Royal Commission was appointed to inquire into the working of the Transfer of Land Statute, and in the report the following observation was made:—

> It was stated that the delays in registering transfers, mortgages, and leases arose from several causes—
> First. From the instruments not being properly prepared.
> Second. From an insufficiency of officers.
> Third. From the insufficiency of accommodation in the office.

Mr. Daniels.—To a large extent, those same reasons apply at present.

By Mr. Barry.—Do you consider that anything can be done to overcome that situation?

Mr. Daniels.—If all officers worked overtime a couple of nights a week and were paid an overtime rate appropriate to their salary we would start to overtake the back lag.

By Mr. Thomas.—What do you mean when you say that the officers should be paid the appropriate overtime rate?

Mr. Daniels.—Officers in receipt of more than a certain salary are not paid overtime rates appropriate to their ordinary salary. Officers classified in C (2) division and under receive overtime at the rate of time and a half appropriate to their salaries, but officers in higher classifications receive only the rate applicable to the C (2) division and can earn only a certain amount in each fortnight.

By Mr. Fraser.—If a simple transfer is lodged, is it given to an officer who puts it at the bottom of a bundle?

Mr. Daniels.—Yes.

By Mr. Rylah.—What delay will there be before that simple dealing is dealt with for the first time?

Mr. Daniels.—Probably 10 or 12 weeks.

By Mr. Rylah.—Does the original title remain out of its bag for the whole of that time, or is it removed when the dealing is reached?

Mr. Daniels.—As soon as a dealing is lodged and entered it is supposed to be fitted up.

By Mr. Rylah.—For every simple transfer lodged a title is out of its bag for 10 or 12 weeks and placed in a heap, before anything is done with it?

Mr. Daniels.—It may be.

By Mr. Rylah.—If one of those titles was required for any purpose a search by a member of the staff of the Titles Office would involve some additional time?

Mr. Daniels.—Yes, definitely.

By Mr. Fraser.—Has a system of selection at the time of lodgement been tried?

Mr. Daniels.—Who would make the selection, and why should one person have any advantage over another?

By Mr. Thomas.—Would not it be an easy matter to divert dealings into various channels according to their simplicity or difficulty?

Mr. Daniels.—An officer would have to decide into which channel the various dealings should go. At present, when a dealing is lodged it is not examined except to see that it is signed and there is a title.

By Mr. Barry.—Surely it would not be difficult to decide which were the simple dealings?

Mr. Daniels.—That would involve detailing an officer to scan the documents with the view of determining which of them could be sent on. A careful examination is necessary to discover whether a dealing is simple or complicated. If documents are taken haphazardly out of their lodgment order, difficulties will arise.

By Mr. Rylah.—Has the list of office instructions been published in a form readily available to solicitors?

Mr. Daniels.—The instructions appear in Currey's *Manual of Titles Office Practice in Victoria* but the list has not been published by the office. A copy is supplied to any solicitor applying for one.

By Mr. Reid.—Doubtless you will agree that members of the public and legal practitioners are not generally aware of the existence of the instructions?

Mr. Daniels.—Perhaps that comment is true today, but the public and the legal profession were informed of the instructions when they were first issued.

The Committee adjourned.

TUESDAY, 5TH JUNE, 1951.

Members Present:

Mr. Mitchell in the Chair.

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Oldham,
The Hon. A. M. Fraser,	Mr. Reid,
The Hon. F. M. Thomas.	Mr. Rylah.

Mr. Louis Voumard, K.C., was in attendance.

The Chairman.—The Committee desired to obtain some further views on various points along the lines of Mr. Fraser's research.

Mr. Fraser.—I had a discussion with Mr. Voumard yesterday on the points that were troubling me and other members of the Committee. Having regard to the present situation in the Titles Office, the question is whether the laudable scheme propounded in clauses 104 and 240 of the Bill could be implemented. Mr. Jessup, the South Australian Registrar-General, does not think that there is any necessity for clause 104 to disclose all the interests indicated, and he seems to think that it would be sufficient if a person were issued a title, leaving the persons interested to fight out in the courts of law their equities and other matters.

As I pointed out previously, the state of the law is rather unsatisfactory, having regard to the decisions of the courts, including that of the High Court in the case of *Clements* v. *Ellis* (1934) 51 *C.L.R.* 217. In that decision the Court was equally divided, and the lower court decision stood. The Privy Council caused an upset in the case of *Lapin* v. *Abigail* (1930) 44 *C.L.R.* 166. I think Mr. Rylah has some views to express.

Mr. Rylah.—I think that Mr. Jessup's view is that the law of equity should remain undisturbed, as he believes that the law of equity is in a satisfactory state. We, as a committee, feel it would be desirable that all the legal rights affecting the land should appear on the title, such as acquisition orders, easements under drainage Acts, and matters of that sort. But we cannot make up our minds concerning equities. The big snag which we have struck in discussing this aspect of the matter, if a distinction is to be made between what should go on and what should not go on, is where the line of demarcation should be drawn. On the question of legal interests we, as a committee, feel that is would be absolutely impracticable that all tenancies, down to weekly tenancies, should go on. On the other hand, we rather favour the idea of putting on things which strictly affect the title, but we do not want to disturb the law of equity, if the law of equity as it stands at present is in a satisfactory state.

Mr. Reid.—There is one point which concerns me and about which I should like Mr. Voumard to comment. I have in mind the case of *Clements* v. *Ellis,* also certain judgments, and that case to which Mr. Fraser referred. Those cases have given me a good deal of concern. I think the emphasis of the school of thought which is represented in the judgments that prevail is that no protection is given to a person unless such person actually becomes the registered proprietor. There is a very practical difficulty that has presented itself to me. I was reading through one or two of the judgments in these cases and I think there has been a certain confusion of thought as a whole as to what is meant by "being registered." That has particular point in view of the long delays in the Titles Office in effecting registrations. The question is whether "being registered" means lodging a title for registration or coming away from the Titles Office with a properly registered document, which might involve a lapse, under conditions now existing in the Titles Office, of two or three years. That is an important point to be considered.

I note that in clause 240 of the Bill the expression "lodging his dealing" is actually used. The reason why I raise the point is that I think a decision was given by the Chief Justice two or three years ago on the question under the Landlord and Tenant Act as to when a person became registered. I think the trend of that decision was that the registration was not actually effected until after all the formalities of the Titles Office, up to registration, had been completed and the title was available. I should like Mr. Voumard to give some attention to the possibility of there being distinctions between the terms "registration" and "lodging the dealing."

Mr. Voumard.—Dealing first with the point raised by Mr. Reid, I think the authorities make it clear enough that under the present law, namely, section 179 of the *Transfer of Land Act* 1928, a person who has lodged his dealing is not protected completely until the act of registration actually takes place in the Office of Titles. I understand the act of registration to mean the final act whereby the Registrar, or a Deputy Registrar, stamps his name on the dealing, or puts the memorial on the title indicating that that dealing has been registered.

In the case of *Templeton* v. *Leviathan,* reported in 30 *C.L.R.,* Mr. Justice Higgins in his judgment pointed that out, and that up till the point of time when a transferee has actually acquired registration, it is open to any person who claims that he has a prior and a better right to registration to move the court for an injunction to restrain the Registrar from registering the transfer which was first lodged. It is in that sense, as I read clause 240 of this Bill, that a very drastic change in the law is proposed. If that change were made, it would negative the doctrine of the *Leviathan* case, and I think it would obviate the need for litigation such as went to the Privy Council in the case of *Lapin* v. *Abigail,* by giving security to the transferee immediately his dealing had been lodged for registration.

I think the confusion which arises on the matter is due to the fact that another section of the Act provides that once the act of registration has actually taken place, then it is deemed to have taken place at the date on which the dealing was lodged; in other words, it relates back. It is a very similar position to that of the title of a person who seeks a grant of administration. Until the grant is actually made by the Court, he has no title, but when he does get the grant under section 8 of the Administration and Probate Act, his title relates back to the date of death. Under section 179 of the present Act, a transfer can be stopped by an injunction, and as Mr. Reid pointed out, on account of the present delays in the Titles Office, a transferee could be kept in jeopardy for a couple of years.

Considering the matter from that aspect, my view is that clause 240 of the Bill would work a vast improvement in the law, because that clause, as its terms indicate, would give protection as from the time a person lodged his dealings.

By Mr. Byrnes.—There has been a good deal of discussion on this aspect since the Bill was first considered, and I thought we had arrived at some degree of finality. I thought that was why we were so keen to retain this clause, as it removed many of the inherent disabilities in land transactions. Now, we appear to have thrown the question open again. Is the administration of this clause so difficult that it is impossible to put it into effect?

Mr. Voumard.—It is not, but the other question which has been raised this morning, namely, whether clause 104 should stand in its present form, raises different considerations, because if this clause is retained in its present form, the result would be that

a great number of transactions, which are not now dealt with in the Titles Office, would find their way into that office.

By Mr. Fraser.—Is not that Mr. Jessup's objection?

Mr. Voumard.—It is, but that is a question of administration with which I am not very familiar. However, I can say that it would enormously increase the number of transactions which the Titles Office staff would be required to handle. Looking at it from a lawyer's point of view—and that is the only point of view from which I view the matter—I am thoroughly in accord with the principles involved in clauses 104 and 240 of the Bill. Doubtless, members of the Committee are aware that clause 104 differs from the present section 72 of the Transfer of Land Act in that it omits all reference to the rights of tenants in possession, and it also omits all reference to certain governmental charges. Again, it modifies the provision as to easements. They are the three ways in which clause 104 differs from the present section 72. Although I approved of this clause in principle when the matter was being considered by the Chief Justice's Committee a few years ago, I think it could be improved. If it is to be put into operation, my own view is that it should be enacted subject to certain modifications. I think it would be unwise to omit all reference to the rights of tenants in possession. I agree with Mr. Rylah in thinking that certain periodic tenancies, that is, from week to week, month to month, quarter to quarter, and perhaps from year to year, ought to be protected merely by reason of the fact that the tenants are in possession, and that no periodic tenant ought to be required to lodge a caveat.

I regard as important the matter of options to purchase. Legal members of this Committee no doubt remember the decision in the case *McMahon* v. *Swan* reported in the 1924 *Victorian Law Reports*. In that case, a tenant in possession of land had an option to purchase and a subsequent transferee of the fee simple of the land was held to be bound by the option to purchase because of the construction of what is now section 72 of the Act. Section 72, in its present form, protects the rights of a tenant in possession, and the court held that one of those rights was an option to purchase contained in the tenant's lease. My view is that if the rights of a tenant are to be protected at all—and they should be protected to some extent—protection should be given merely to that person's rights as a tenant and there should be no protection, merely by reason of possession, for any collateral right such as an option to purchase. Therefore, I believe that clause 104 could be improved by restoring the present words of section 72 relating to the rights of a tenant in possession, but modifying the clause to the extent that a person who claims an option to purchase must lodge a caveat and that the tenant rights which are thereby protected are limited to those under periodic tenancies and possibly tenancies for a short term not exceeding two or three years.

By Mr. Byrnes.—Would the option to purchase still be protected?

Mr. Voumard.—Not unless a caveat were lodged at the Titles Office.

Mr. Byrnes.—That aspect is very important for those tenants who wish to protect themselves.

Mr. Voumard.—That is so. My own reaction is that an option to purchase is a sufficienty important right to make it not unfair to require the possessor of that right to protect it by lodging a caveat. In effect, such a person is in a similar position to one who has a contract of sale. He has merely to say "I exercise the option", to complete a contract of sale. When a person is in a position, merely by an act of his own will, to become a purchaser, it is not unreasonable to require that he should notify the Titles Office of that fact by the lodging of a caveat.

I should like to refer to paragraph (*d*) in the proviso to clause 104. If that clause were enacted in its present form, a certificate of title would be subject to any easements acquired by enjoyment or user, without those easements being notified on the register. In those circumstances, if a person acquired the right to an easement by long user, that easement would be protected even though no reference were made to it on any certificate of title. The present section 72 of the Transfer of Land Act goes somewhat further and adds, I think, "any easements acquired by enjoyment or user or subsisting upon or affecting the same." The point I desire to make is that, to prevent an inconsistency with clause 98, it is necessary to modify paragraph (*d*) of the proviso to clause 104. Clause 98 provides that the rules of law and of equity relating to the acquisition of easements by implication or construction of law, including the doctrine of the lost modern grant, shall apply and be deemed always to have applied to land under the operation of the Transfer of Land Acts.

The principles embodied in clause 98 include the rules relating to what lawyers term continuous and apparent easements. Clause 98 will make applicable rules relating to what are termed easements of necessity and also will make applicable a miscellaneous set of rules relating to other circumstances in which easements are deemed to arise by implication. If the whole comprehensive set of rules under clause 98 is to be made applicable to land under the Transfer of Land Acts, it seems to me that, for the sake of consistency an easement arising in any of these ways should be protected, even though it is not notified on the register. Perhaps I can illustrate my argument by citing an example. Let us assume that a person "A" owns two blocks of country land under the General Law—that is, not under the Transfer of Land Acts. These blocks of country land are side by side and, to gain access to a public road from one block, the owner has worn a track across the other block; in other words, he uses the track over one of his blocks as a convenient appendage to his other block. If he sells one block to X and the other to Y, the purchaser of the block over which the track exists will acquire it subject to the right of his neighbour to use that track in the same way as "A" did when the two blocks were in common ownership. That right arises merely because of the sale to different persons of two blocks of land which had been in common ownership, one of which had a track giving access to the other. In such circumstances, it is not necessary to make an express grant of the right of way; the law implies and gives an easement by implication.

By Mr. Thomas.—Would not that easement cease to exist?

Mr. Voumard.—It would not. The principle of the doctrine of continuous and apparent easements is that a person who buys a block over which a track exists, acquires it subject to that easement; a person who buys a block which has the advantage of a right of way over another block acquires that advantage as an easement. The question whether the doctrine is applicable under the present form of the Transfer of Land Acts is debatable. For that reason, I heartily commend to this Committee clause 98 which I think clarifies an issue upon which there has been much debate among certain members of the legal profession.

By Mr. Fraser.—Would not the provisions of paragraph (*d*) of clause 104 extend to easements acquired in the circumstances you have narrated?

Mr. Voumard.—I should have thought, without any doubt, that clause 104, if it were enacted in its present form, would relate merely to easements acquired under the doctrine of the lost modern grant—that is by length of user.

By Mr. Rylah.—What amendment do you suggest, Mr. Voumard?

Mr. Voumard.—I think we should get back substantially to the present position.

By Mr. Rylah.—By the wording of section 72?

Mr. Voumard.—That section would have to be modified in some way to ensure the protection of continuous and apparent easements, but I should not be disposed to discard any of the wording of the existing section 72 relating to easements. On the contrary, I favour a suitable addition—I am unable to suggest the precise words—to put beyond doubt the fact that paragraph (*d*) of the proviso to clause 104 is coextensive with clause 98, because I think there is now an inconsistency between them.

Subject to those remarks, I think that in principle clauses 104 and 240 represent a great improvement in the law. My reason for that view is that during the last 20 or 30 years there has been a great enlargement of the scope of governmental activity, not only by the State but also by bodies which have been granted statutory powers; and as far as I can judge, that state of affairs has come to stay. Many authorities now have powers of acquiring land. Within the last 15 years there have been enormous extensions in the law in that regard. In 1937 or 1938 powers of acquisition were conferred on the Housing Commission; in 1944 the Town and Country Planning Act was passed, the importance of which, I think, has escaped many members of the legal profession, at all events up to the present time; and last year considerable extension in the power to acquire land was given to the Railways Commissioners. The present conditions are very different from those which prevailed when section 72 of the Transfer of Land Act was passed.

It seems to me that when a citizen is proposing to purchase land he ought not to be called upon to inquire in a dozen different places whether the land is subject to any governmental or semi-governmental charge or whether any steps have been taken to acquire it compulsorily. I consider that all such matters should be noted in the Titles Office.

I suggest that in one regard clause 224 of the Bill does not go far enough. In its present form it requires a caveat to be lodged by the acquiring authority when the resumption or acquisition has been made. In my view, the caveat ought to be lodged at an earlier stage of the proceedings, because often a great deal of time elapses between the initial steps to acquire land compulsorily and the actual acquisition. I suggest that if clause 224 is to be adopted, the notification to the Titles Office ought to appear on the register the moment the notice to treat is given, or, in cases where that notice is not given, as soon as possible after the analogous step is taken. For example, in the case of a compulsory acquisition by a municipal council a notice to treat under the Lands Compensation Act is not essential although it is often given.

Mr. Fraser.—That might create some difficulty. A Government Department may have in mind the acquisition of a number of blocks for a particular purpose, for instance, the erection of post offices. The various owners may be notified and asked whether they are prepared to sell the land and at what price. The department may not take the block it originally intended to acquire and may select some other block. If Mr. Voumard's suggestion were adopted it would mean that some notification would have to be put on every title in the Titles Office.

Mr. Voumard.—The notification of which Mr. Fraser speaks is an informal one and is not given pursuant to any statutory provision. I was referring to the formal notice to treat which is given under section 9 of the Lands Compensation Act.

By Mr. Fraser.—Is not the notice generally given after acquisition by a proclamation in the *Government Gazette?*

Mr. Voumard.—No. Under the Local Government Act the proclamation in the *Government Gazette* comes right at the very end of the procedure, after the Minister has approved and the final order is made by the council.

By Mr. Fraser.—In the Commonwealth sphere does not the acquisition commence with the notice published in the *Government Gazette?*

Mr. Voumard.—I am not as familiar with the Commonwealth procedure as I am with that under Victorian law.

By Mr. Reid.—In the case of the Town and Country Planning Act you suggest that an interim order should be notified?

Mr. Voumard.—Yes.

Mr. Reid.—I raised the point because I read in a local paper last week that the City of Camberwell has taken out an interim order and has applied it to the whole of the municipality. I think that registration is highly desirable but, of course, a tremendous amount of administrative work would be involved if a note had to be made on all titles within the boundaries of the City of Camberwell.

Mr. Rylah.—I think if some such provision as clause 224 were in force it would put a stop to the silly blanket orders that are issued by both municipalities and instrumentalities.

Mr. Voumard.—I can cite an injustice of the type which I think ought to be prevented. A few months ago the council of a northern suburb made an interim order under the Town and Country Planning Act, the effect of which was that a large area of land could be used for no purpose except a playground, and no doubt the council intended to resume the land for that purpose. The natural result was that the land lost a great deal of its value. A purchaser was induced to buy the land in the belief that it was available for subdivision and that he could make a good profit out of the subdivision. After he had signed the contract he learned quite by accident of the interim development order which prevented the land from being used for subdivisional purposes. In my opinion, it is only fair that if a restriction has been placed upon the use to which any particular piece of land may be put, that fact should be noted in the Titles Office at the earliest possible point of time.

By Mr. Thomas.—It seems to me that the Titles Office is accepting a dual role. It is an administrative branch which also sets itself up as a court of jurisprudence. Is there any possibility of relieving the Titles Office of some of the work of legal interpretation which may detract from the effectiveness of its administration?

Mr. Voumard.—I think not. On the contrary, I would say that although the Commissioner has been described as a judicial officer, one complaint made against him is that in the past he has sometimes not been prepared, in appropriate cases to exercise the powers vested in him. I think one of the faults in the administration of the Titles Office is that at times there has been a little too much timidity in administration, a too stringent adherence to forms, and an unwillingness to exercise sufficient initiative or to make important decisions which involve the exercise of discretion.

By Mr. Fraser.—Is not that precisely Mr. Jessup's complaint?

Mr. Voumard.—I believe so. I might say that my view is that the administration of the Titles Office would be improved if it were wholly in the charge of a Commissioner who had had long experience in the practice of the legal profession outside the public service.

By Mr. Thomas.—And he ought to make decisions, and not leave them to members of his staff?

Mr. Voumard.—Exactly. If the Commissioner had such experience, he would be able to deal with cases, knowing the difficulties of the legal profession. I think it is unwise to have a Commissioner who has graduated solely from the ranks of the Public Service. In such circumstances, the Commissioner might not understand the point of view of the legal profession, and there would be a tendency for him to be hide-bound and to get into the state of mind where he would be afraid to exercise the powers that rightfully belong to him.

Mr. Fraser.—You would not want the Commissioner to get into a sheltered bay? The Commissioner should be in charge of the whole department. At present the Registrar of Titles functions separately from the Commissioner, who regards himself as being in a separate compartment, and the two officers do not work closely enough together. If the Registrar says to the Commissioner, "You are holding up this dealing", the Commissioner replies "The law lays on me a responsibility to do a certain thing, and it is my duty to see that the law is complied with."

By Mr. Oldham.—Is Mr. Voumard aware that the Committee has agreed that under Part 1 of the Act there should be provision for unified control?

Mr. Voumard.—Yes.

By Mr. Thomas.—Do you think that such a system would overcome many of the existing difficulties?

Mr. Voumard.—To a great extent, yes, but it would depend largely on the person who was appointed a Commissioner of Titles.

By Mr. Fraser.—Do you think that we ought to leave clauses 104 and 240 in the Bill subject to the modification you have suggested?

Mr. Voumard.—I do, but in speaking of that I am not taking into account any administrative difficulties involved. If the Titles Office could cope with the increased work, I would certainly say "yes".

Mr. Fraser.—If the Housing Commission is to be required to lodge a caveat in respect to every separate allotment, and if it blankets an area such as the land for the East Preston housing scheme, I do not know how the Titles Office would handle it.

Mr. Rylah.—But the Housing Commission might not blanket the area.

By Mr. Reid.—Regarding clause 104, have you given, or did the Chief Justice's Committee give consideration at any time to a question which may be arising a great deal in the future, that is, the right by airways companies to pass over properties?

Mr. Voumard.—I do not recall any consideration being given to that point.

The Committee adjourned.

FRIDAY, 8th JUNE, 1951.

Members Present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barry,
The Hon. A. M. Fraser,	Mr. Reid,
The Hon. F. M. Thomas.	Mr. Rylah.

Mr. Louis Voumard, K.C., was in attendance.

By the Chairman.—Does any member desire to ask Mr. Voumard any questions before he proceeds with his statement?

Mr. Rylah.—I should like Mr. Voumard to read certain passages from the evidence given by Mr. Jessup on the 5th of December, 1950, commencing "The principle of making the Transfer of Land Bill a code does not appear to be good policy."

Mr. Voumard.—Having read the extract referred to, I should say that I have some difficulty in understanding precisely what Mr. Jessup meant when he used the word "code". On the one hand, if all that he is saying, in effect, is that the whole of the law relating to conveyancing and real property should not be put into statutory form then I agree with him. That appears to be the substance of what he said. On the other hand, the Committee should bear in mind that although the prime objective of the Torrens system was to simplify titles to land it did, from its inception in Victoria, bringing about considerable changes in the substantive law relating to the conveyancing of real estate; therefore, it has altered the rules relating to real property. I agree with Mr. Jessup that the whole of the law relating to the transfer of real property should not find its way into the Transfer of Land Act. For example, section 179 of the existing Act affects very markedly the principles of equity relating to priorities between competing equitable interests, and it effects a substantive change in the principles of equity law relating to real property. Similarly, proposed clause 240 would bring about further changes. In my view the Transfer of Land Act should effect some changes in the substantive law and not be merely procedural. The question is, to what extent is it wise to go in altering the substantive law? That is the problem the Committee has to face.

By Mr. Rylah.—Would you agree that if clauses 104 and 240 were adopted the law relating to competing equities would be further changed?

Mr. Voumard.—Yes.

By Mr. Rylah.—The rights of a person having an equitable interest will depend entirely upon whether he has or had not lodged a caveat?

Mr. Voumard.—I think that is so.

By Mr. Rylah.—In other words, a man who lodges a caveat for a later equitable interest will get priority over a person who does not lodge a caveat, although that second person has an earlier equitable interest?

Mr. Voumard.—I think so.

Mr. Fraser.—Throughout his evidence Mr. Jessup expressed the broad view that the Transfer of Land Act—he referred to it in general terms as the Torrens system—should be an administrative or machinery Act, only for the purpose of actually registering documents, and that the legal effect of it should be more or less left to other tribunals to determine; save and except that in a case where the registration is outside that ambit, the parties should be left to their own remedy.

Mr. Rylah.—On more than one occasion Mr. Jessup expressed the opinion that the Transfer of Land Act should be an Act for the purpose of facilitating registrations and not an Act that would affect the substantive rights of the parties.

Mr. Voumard.—That primarily was the purpose, but it must be remembered that another fundamental principle of the Torrens system is that the State guarantees the validity of a title, whereas if it is a mere system of registration such as we have at present in Victoria under the Property Law Act, one can register deeds and give them priority over unregistered deeds; but the State gives no guarantee

that those deeds are of any legal effect whatever. That is where the system of registration of dealings in the Registrar-General's Office is so fundamentally different from the registration of dealings in the Titles Office under the Transfer of Land Act.

By Mr. Rylah.—Apart from the modification that you suggest with regard to tenancies are you still strongly of the opinion that we should adopt this scheme as a whole, as incorporated in clauses 104, 224, and 240?

Mr. Voumard.—That would be my view.

By Mr. Rylah.—If the Committee is not prepared to accept in full the proposals contained in clauses 104, 224, and 240, which deal particularly with the registration or notice of all instruments, do you feel that it will be desirable for us to let the situation remain as it is at present until such time as we think the Titles Office can handle the extra work involved in giving effect to the recommendations of the Chief Justice's Committee?

Mr. Voumard.—In answer to the question, I feel disposed to say "Yes." My reason is that the amendments as framed by the Chief Justice's Committee were one consistent whole, so far as we were able to make them so. If one part is to be adopted and another is not to be adopted, I feel that there may be dangers involved in taking one part without its component. Therefore, if the Committee feels that considerations of administrative matters in the Titles Office make it unwise to adopt the Bill as a whole, it will be better to leave the law stand as at present and to give further consideration to the Bill as a whole when matters reach the stage at which it is found that the Titles Office can cope with the extra work.

By Mr. Rylah.—If the Committee felt disposed to introduce a modification of the existing administrative set-up in the Titles Office by placing full power in the hands of the Commissioner, I presume that that would not affect your remarks?

Mr. Voumard.—That is so.

By Mr. Rylah.—You are dealing with substantive changes in the law involved in clauses 104, 224, and 240?

Mr. Voumard.—That is true.

By Mr. Fraser.—Clauses 104 and 240 are complementary, one to the other?

Mr. Voumard.—They are.

By Mr. Rylah.—If the Committee is prepared to adopt clauses 104 and 240, I presume that you will agree that we should also adopt clause 224?

Mr. Voumard.—Yes.

Mr. Rylah.—It would not be of much use providing that all the rights of private individuals have to appear on a title if Government and semi-governmental instrumentalities were placed in such a position that they could have rights that were not disclosed in a title?

Mr. Voumard.—I agree with that comment.

Mr. Fraser.—An increased army of public servants will be required to implement the proposals. If a caveat is to be lodged in respect of each title affected under a "blanket" acquisition made by the Housing Commission, the work of the Commission and the Titles Office will be increased tremendously.

Mr. Rylah.—Mr. Jessup indicated that no difficulty has arisen in South Australia by requiring Government and semi-governmental authorities to notify such interests. It has been done by means of printed forms and rubber stamps. In South Australia, Government authorities have got out of the habit of "blanketing" large areas; they merely acquire the land that they want. Then they give notice on the prescribed form to the Titles Office, which endorses the title by means of a rubber stamp. There is full co-operation between Government authorities and the Titles Office so that the lodging of notices is done in a manner which fits in with the work of both Departments. Mr. Jessup said that there has been no great increase in work under the South Australian system.

The Chairman.—I wish to record my concurrence with the remarks of Mr. Rylah. From time to time, I have pointed out that some of the difficulties in regard to the transfer of land system arise from the fact that too many easy ways are adopted by various public authorities respecting various interests in land. In the course of our deliberations, that matter has been mentioned on a number of occasions. Mr. Voumard, have you any further comments to place before the Committee?

Mr. Voumard.—No. I have read the report of the previous proceedings, and I do not wish to add anything.

By Mr. Reid.—Does Mr. Voumard think that Table A. of the Twenty-fifth Schedule of the Transfer of Land Bill should be revised?

Mr. Voumard.—In the main, Table A. works satisfactorily, but, in my opinion, some of its clauses require revision. For example, I consider that clause 5, which gives the right of rescission or resale in the case of default, ought to be revised.

By Mr. Fraser.—Did the Chief Justice's Committee give consideration to that matter?

Mr. Voumard.—No.

Mr. Fraser.—That has been a thorny subject for many years. When one is confronted with that problem it is difficult to know what to do.

Mr. Reid.—It has been the subject of numerous articles in law journals.

Mr. Rylah.—Table A. is now used in a modified form in the copyright conditions of sale, which, I think, clears up the position.

Mr. Voumard.—I hope it does, because I drafted the clauses in the copyright conditions of sale.

Mr. Rylah.—In fact, nobody ever uses Table A. as contained in the Twenty-fifth Schedule.

Mr. Reid.—The point is that a number of contracts in use provide for the adoption of Table A., with certain modifications. That makes for more confusion that would arise if the table were used as it is printed.

By the Chairman.—Could not Table A. be brought up to date?

Mr. Voumard.—Now that the Committee has opened up this subject, I should like to mention one matter about which I have felt very strongly for a long time, that is, whether it would be wise to make a legislative change in the rule that where time is the essence of the contract the vendor is entitled to rescind the contract and forfeit the deposit immediately a purchaser makes default in payment of his purchase money. The present law is that if a contract of sale provides that time is the essence of the contract and the purchaser is one day late in making a payment of any part of his purchase money, the whole of the deposit he has paid may be forfeited by the vendor and retained by him and the contract rescinded. Nowadays, the stipulated deposits under contracts of sale are generally of a substantial nature, and it appears to me to be unjust that such a rule should operate, particularly when purchasers sign printed forms containing the term "time is the

essence of the contract" without having any notion of the legal effect of what they are doing. In practice it is found that unscrupulous vendors take advantage of their strict legal rights and endeavour to forfeit deposits and rescind contracts merely because purchasers are one day late in the payment of the purchase money. I have always thought that that rule of the common law should be altered so as to give a purchaser whose contract has been rescinded an opportunity within a stipulated time to make his payment and have his contract restored. To add such a provision would not be revolutionary as there are at least two similar instances in the statute law at the present time. For example, every well drawn lease contains a provision that if any rent is in arrear the landlord is entitled to re-enter and put an end to the lease. Even if that happens a tenant, upon paying the rent up to date, can obtain relief against the forfeiture of his lease. In 1936, a similar provision was embodied in the hire-purchase agreement legislation. Prior to that time if a default were made by the hirer an agreement could be terminated and, of course, the hirer was not entitled to get back any instalments he had paid. The law now provides that if there is a default and the goods are repossessed the hirer has a certain period, which I think is 21 days, in which to pay the unpaid instalments and get the goods back.

Mr. Fraser.—The ingenuity of those people who hire out goods has got over that to a large extent.

Mr. Voumard.—That is so. It might be well worth while for this Committee to consider whether there ought not be some provision to give relief against forfeiture under a contract for the sale of land, similar to that contained in the landlord and tenant legislation. There is legislation of that kind in Queensland, which might be looked into. It appears to me that frequently a grave injustice is done when a man loses a substantial deposit merely because he forgets or does not know he has to pay an instalment on a particular day.

Mr. Fraser.—Apart from extension of time in which to secure purchase money, it should be remembered that deposits range from £500 to £1,000, and the question arises whether, in the event of a breach of contract, damages to be received by a vendor should be limited. It is unfair that a vendor should receive £1,000, out of which he may have to pay only £100 agency commission.

Mr. Voumard.—As the law stands now, the defaulting purchaser must forfeit the whole of his deposit, even if he could have paid the balance of the purchase money on the day following that upon which it was due.

By Mr. Rylah.—May I assume that clause 214, which relates to the securing of a good title by a purchaser from the sheriff, is part of the general set-up about which discussion has taken place to-day?

Mr. Voumard.—I think so.

By Mr. Rylah.—Do you agree that, if clauses 104, 224, and 240 are not introduced, neither should clause 214 be introduced?

Mr. Voumard.—Yes.

Mr. Fraser.—That is my view also.

By Mr. Thomas.—Sub-clause (2) of clause 98 reads:—

> A registered proprietor claiming any easement otherwise than by express grant may apply to have the same notified upon the certificate of title to the land of which he is proprietor and upon the certificate of title, if any, to the land over which such easement is claimed and the Commissioner, if satisfied that such an easement exists may notify the same upon the certificates of title of the proprietors of the dominant and of the servient tenements.

Is notification optional or obligatory?

Mr. Voumard.—Sub-clause (1) of clause 98 provides for the application to land under the Act of those principles of law and equity that relate to the creation of easements by implication of law. Therefore, in appropriate circumstances, an easement by implication will be obtained, irrespective of whether steps are taken to have it notified on the title. Sub-clause (2) states that, having acquired the right which rests only on an implication of law a person may gain added protection by having the easement noted on the title, but he is not compelled to notify the easement.

By Mr. Thomas.—Does that mean that the Registrar may say "yea" or "nay"?

Mr. Voumard.—No. Sub-clause (2) of clause 98 means that, if a person entitled to an easement makes application to have it noted on his title, the Registrar is bound to comply with that application if he is satisfied that the easement has come into existence under the provisions of the sub-clause.

By Mr. Rylah.—In view of the reluctance of some Commissioners to do what they appear to be bound to do under the Transfer of Land Acts, is there any objection to an alteration of the word "may" to "shall"?

Mr. Voumard.—I believe that alteration of "may"—second time occurring in sub-clause (2)—to "shall" is desirable. Compliance with the application then would be mandatory.

The Chairman.—That is a valuable contribution.

By Mr. Fraser.—Can Mr. Voumard make available the references he mentioned about the Queensland cases in relation to deposits?

Mr. Voumard.—I shall be able to find them without difficulty.

The Chairman.—I desire to have recorded in the minutes an expression of thanks to Mr. Voumard for the extremely valuable evidence he has tendered, which has greatly assisted this Committee. We are particularly indebted to Mr. Voumard because he was a member of the Committee which first raised the question that we have been discussing.

The Committee adjourned.

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

1950-51

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

STATUTE LAW REVISION BILL

TOGETHER WITH

MINUTES OF EVIDENCE AND AN APPENDIX

Ordered by the Legislative Council to be printed, 28th August, 1951.

By Authority:
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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

TUESDAY, 20TH JUNE, 1950.

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

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 28TH JUNE, 1950.

23. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barry, Mr. Crean,* Mr. Mitchell, Mr. Oldham, Mr. Reid, and Mr. Rylah be appointed members of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—put and agreed to.

TUESDAY, 3RD JULY, 1951.

9. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Holt be appointed a member of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—put and agreed to.

WEDNESDAY, 25TH JULY, 1951.

10. STATUTE LAW REVISION BILL.—Motion made, by leave, and question—That the proposals contained in the Statute Law Revision Bill be referred to the Statute Law Revision Committee for consideration and report (*Mr. Mitchell*)—put and agreed to.

* Resigned as a Member of the Legislative Assembly on 17th March, 1951.

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 Statute Law Revision Bill—a Bill to revise the Statute Law and for other purposes—which was initiated and read a first time in the Legislative Assembly on the 11th July, 1951. When the second reading was moved on the 25th July, 1951, the Legislative Assembly referred the proposals contained in the Bill to the Statute Law Revision Committee for consideration and report.

2. Mr. Andrew Garran, Acting Parliamentary Draftsman, who appeared before the Committee, gave valuable assistance in supplementing the information in the Explanatory Paper circulated with the Bill. Mr. Garran's evidence and a memorandum prepared by him are appended to this Report.

3. In the course of his evidence, Mr. Garran referred to further matters brought to his notice since the Bill was drafted, and suggested that the Committee might think it proper to consider the following amendments to the Bill :—

(*a*) Schedule, page 4, in the column headed " Nature of Amendment " opposite the reference to " No. 4382 *Stock Foods Act* 1936 " omit " Department of of Agriculture " and insert " Department of Agriculture ".

(*b*) Schedule, page 6, after the items relating to No. 5055 *Co-operative Housing Societies Act* 1944, insert—

" No. 5125	*Teaching Service Act* 1946	In paragraph (*a*) of section fifty-four, as amended by section two of the *Teaching Service (Amendment) Act* 1950, for the words ' who they deem ' there shall be substituted the words ' whom they deem '."

(*c*) Schedule, page 8, in the column headed " Nature of Amendment " opposite the reference to " No. 5470 *Nurses and Midwives Act* 1950 " and after the word " remuneration " insert—

" In sub-section (2) of section twenty-six the words ' financial statement and ' shall be repealed."

The first and second amendments are to correct verbal errors. With respect to the third amendment, Mr. Garran supplied the following explanation :—

> Sub-section (2) of section 26 of the *Nurses and Midwives Act* 1950 is a transitory provision to provide for the Board's annual report for 1950–51 in view of the amendment in period covered by the report and date of its presentation to the Minister. The financial statement was inadvertently included in the transitory provision and the Auditor-General desires that the position be clarified.

4. The Committee have examined the proposals in the Bill and the further proposals in paragraph 3 above, and they generally fall into three classes, namely, the correction of verbal errors, the alteration of the designation of certain public offices to meet changed circumstances, and the consequential amendment of Acts affected by subsequent legislation. The Committee, however, consider that special attention should

be drawn to the proposals to amend the *Education Act* 1928, the *Free Library Service Board Act* 1946, and the *Crimes Act* 1949, which go beyond the ambit of a Bill to revise the Statutes, and, in fact, make changes in the law. The Committee, after hearing Mr. Garran's evidence, consider that these proposals should be adopted, but express the opinion that, where a substantive change in the law is desired, the change normally should be effected by an amending rather than a revising Bill.

5. The Committee recommend that the Bill be proceeded with and passed into law with the amendments set out in paragraph 3 above.

Committee Room,
22nd August, 1951.

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STATUTE LAW REVISION BILL.

MINUTES OF EVIDENCE.

WEDNESDAY, 15TH AUGUST, 1951.

Members Present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Holt,
The Hon. G. S. McArthur,	Mr. Reid,
The Hon. F. M. Thomas.	Mr. Rylah.

Mr. Andrew Garran, Acting Parliamentary Draftsman, was in attendance.

The Chairman.—This Committee is now resuming its consideration of the Statute Law Revision Bill. Unfortunately, I was not able to be present at the last meeting at which this particular Bill was under discussion, but I understand that the Committee asked the attendance of the Acting Parliamentary Draftsman, Mr. Garran, who is here this morning, and is prepared to answer any queries that members of the Committee may desire to put to him.

Mr. Fraser.—I think the Committee at its previous meeting on this subject went through the schedule to the Bill, and there were two or three items in the schedule as to which we wanted some clarification. The point was whether or not what was set out was an alteration of the law in some way. I think, Mr. Chairman, that was our position.

Mr. Rylah.—Yes, that is right. The first point that rather troubles the Committee, and perhaps Mr. Garran could tell us something about it, was with respect to this need to alter all this legislation in order to comply with a change in nomenclature used by the Public Service Board. We were wondering how that came about and we thought that Mr. Garran might be able to help us.

Mr. Garran.—That is something that worries me too, but unfortunately it is a fact that in lots of Acts there are references to certain people by their titles, and these are people who are within the Public Service. Take, for example, a gentleman—the Committee will note the reference on page 2 of the Bill, and the third Act set forth in the schedule, the Fertilizers Act No. 3680—referred to as the "chemist of the Department of Agriculture." Now the Public Service Board has power to create offices, to abolish offices and to alter titles of offices. I wake up every day and find the name of my office changed. It has had perhaps four different names. I do not know why this is but we are never catching up with them. However, in regard to this title under the Fertilizers Act it was found in the Agriculture Department that they wanted more than one chemist. There is a gentleman referred to in the Acts as I have said, as "chemist of the Department of Agriculture." So, for normal administrative reasons the Public Service Board altered him to "Chief Chemist of the Department of Agriculture." That is why this appears in the schedule to the Statute Law Revision Bill. Unfortunately, the gentleman to whom the Acts refer was the gentleman who was the chemist of the Department and who is now the Chief Chemist. We have to chase him in order to catch up on all these things, and it is a difficult position. I do not see any answer to it except to eliminate names of people from Acts and call them "persons for the time being performing certain duties prescribed." I do not like this, but Mr. Normand and I discussed the matter and decided that we could not do anything about it but catch up. However, we also asked the Public Service Board what they could do so as not to land the legislation in this position.

Mr. Rylah.—We thought that was probably the position.

Mr. Garran.—It was not so much the matter of an alteration of classification as of the name. Sometimes we get references to non-statutory bodies, e.g., dealing with motor car insurance. You might find certain insurance companies or organizations have the right to nominate somebody to a Board. An Act instead of naming them could say "such a body as the Governor in Council determines is representing such an organization." But Parliament likes to get this name in print, and so you are caught on the horns of a dilemma. Whatever you do will be wrong.

Mr. Fraser.—Extracts from the *Government Gazette* that are sent out, embodying increases in salaries or alterations of classifications, are such that you get almost daily references to things like "delete 'botanist' add 'Chief Botanist'".

The Chairman.—I understand that there were one or two specific matters that the Committee desired Mr. Garran to comment on. I invite you, Mr. Garran, to look at page 2 of the Bill, and, in the schedule, refer to Act No. 3671, the *Education Act* 1928. The nature of the amendment here is—In section thirty-nine for the words "Ten shillings" there shall be substituted the words "Twelve shillings and six pence."

Mr. Garran.—As to that, Act No. 4993, section 6 (*d*), raised the amount from 10s. to 12s. 6d. weekly. This was the weekly sum payable by parents of children at reformatory schools. The principal provision regarding that, which was amended by Act 4993, appears in this Act No. 3671, section 38 (2) (*d*). But in section 39 of the Act there is a further mention of this sum of 10s. That section provides for the variation of the amount to be paid by parents of children in a reformatory school, having regard to the means of parents, but it says that the amount is not to exceed 10s. As the amount in section 38 was increased to 12s. 6d. it should be also 12s. 6d. in section 39.

Mr. Fraser.—We noted that at our last meeting when considering this Bill and we saw that it might have been overlooked. But are we not now, in effect, in this Act altering that position, and what is our authority? Can we assume that the legislature made a mistake or that it overlooked it?

Mr. Garran.—I cannot answer that. All I know is that the Education Department requested the amendment as an oversight when the amending Act was passed, and I think that is the position.

Mr. Rylah.—That it was an oversight?

Mr. Garran.—Yes.

Mr. Fraser.—It means that we are imposing a further liability on people.

Mr. Garran.—It does not alter the principal liability but only places the same variation as was placed on the original sum.

Mr. Holt.—Well, provided we are being consistent with the amendment, it is on the Government to whom our recommendations are made to disagree with it, is it not?

Mr. Rylah.—Is it not the effect that the Court of original hearing can alter the amount of 12s. 6d. but that if it varies it it cannot vary to more than a sum of 10s.? If the amount is 12s. 6d. and it leaves it alone, the old section holds. If it wants to reduce the amount, say, to 11s. 6d., it cannot do that but would have to reduce it to 10s.

Mr. Garran.—If a person was ordered to pay 12s. 6d. and went to the Court it would have to come down to 10s. anyway.

Mr. Holt.—It would be inconsistent if we left the matter as it is.

The Chairman.—That seems to have disposed with that point. The next item to which we would like an expression of opinion from Mr. Garran is to be found on page 3 of the Bill and it refers to Act No. 3721, the *Mental Hygiene Act* 1928. The nature of the amendment there is an alteration of "Master-in-Equity" to "Master of the Supreme Court of Victoria".

Mr. Garran.—The amendment in section 268 is the main point in relation to that Act there, I think. That section relates to the control of property of mental patients in other British possessions. The amendment as set out is that for the words "this Act" (wherever occurring) there shall be substituted the words "the Public Trustee Acts". Originally that section and the sections associated with it were administered by the Master-in-Equity under the Mental Hygiene Acts, but by Act No. 4654, section 3, that was amended to transfer the administration of that section and the related sections to the Public Trustee, who now acts under the Public Trustee Acts and not under the Mental Hygiene Acts. This amendment was overlooked. It is a reference in section 268 to this Act, whereas actually the Public Trustee whose name has been put into section 268 can only work under the Public Trustee Act because the relevant sections originally referred to have been repealed and not re-enacted.

Mr. Rylah.—The point that was worrying me about this particular amendment was that it provides that the Public Trustee—I am quoting now from section 268—"shall have and may exércise over and in respect of such property all his powers of collection management sale disposition administration and inquiry and all the provisions of this Act shall apply in respect to such property to the like extent and in the same manner as if such lunatic patient were a resident of Victoria and a patient within the meaning of this Act"—now becoming the Public Trustee Act. I would have thought that this Act defined the patient but that the powers of the Public Trustee were in the Public Trustee Act.

Mr. Garran.—That is so. All his powers are there.

Mr. Rylah.—But this individual is still a lunatic patient within the meaning of the Public Trustee Act and not within the meaning of the Mental Hygiene Act.

Mr. Garran.—The word is "patient". There is a definition of "patient" in the Public Trustee Act. You will find that it is like the definition of "patient" in the Mental Hygiene Act.

Mr. Rylah.—That covers the point that I wanted to get at. Now, Mr. Chairman, was there not another point on page 3 of the Bill? It is perhaps rather academic, but can we ask Mr. Garran why we are departing from the usual practice of not using commas in this Act that I am now referring to—the *Settled Land Act* 1928, No. 3771?

Mr. Garran.—This amendment as set out in the schedule reads:—In sub-section (1) of section one hundred and one for the expression "exchange, partition lease, mortgage" there shall be substituted the expression "exchange, partition, lease, mortgage". The reason for this amendment is that the position of the comma makes the expression a little bit difficult. There are so many commas, but one is missing so that it looks as if there was here something called "a partition lease"—whatever that is. Actually there are two distinct things, a partition and a lease. We have no absolute rule as to whether commas shall or shall not be used. We put them in where we think that the drafting seems to require them, and of course over a hundred years different draftsmen have different ideas about this.

Mr. Rylah.—In this instance the comma is very necessary because if you eliminated them altogether you would still have some doubt as to whether "partition" and "lease" were two different words.

Mr. Garran.—That is so. Much of this Act was copied largely from the English legislation, and with the copying we have taken their punctuation. I might mention that in Commonwealth legislation the draftsman seems to have what I might call a comma pepper pot. After he has drafted his Bill he shakes the commas over the page. I said just now that we had no rule about punctuation. However, generally we feel that if much punctuation is required it is bad drafting.

The Chairman.—Well, that seems to have cleared up the missing comma. What is the next query?

Mr. Rylah.—I have another query in regard to Act No. 4157, the *Mental Hygiene Act* 1933. This reference is at the bottom of the schedule on page 3 of the Bill. Describing the nature of the amendment it says:—In sub-section (1) of section seven for the words "as he thinks fit" there shall be substituted the words "as the Chief Secretary thinks fit".

Mr. Fraser.—There is some ambiguity here. The point is as to whom that word "he" refers, and to make it clear the draftsman has put in the expression "as the Chief Secretary thinks fit". I take it that that is so.

Mr. Garran.—Yes, that is the position.

The Chairman.—The next matter that was queried at the previous meeting of the Committee is in regard to the second item in the schedule, on page 5 of the Bill. I think it is more by way of explanation that we should like Mr. Garran to comment here.

Mr. Fraser.—Before passing on to page 5 and that portion of the schedule, there is a query arising on page 4 where there are two words "of".

Mr. Garran.—I have a suggestion to put before the Committee upon that, and, later, I will raise further suggestions.

The Chairman.—Very well. We shall pass on to the Act No. 4712, the *Weights and Measures Act* 1939. What is the query as to that? Or is it that the members of the Committee want to have the proposed amendment explained?

Mr. Rylah.—I think we have cleared that up.

Mr. Garran.—This is one of the problems arising from piecemeal legislation.

The Chairman.—Now let us proceed to the bottom of the schedule on page 5 where there is an amendment set out in connection with the *Education Act* 1943, No. 4993.

Mr. Garran.—The position here is that section 3 of Act No. 4993 is to commence on the proclaimed day and that it has not yet been proclaimed. This section increases the school leaving age from 14 to 15 years and it makes necessary amendments in the Principal Act. But these necessary consequential amendments overlooked section 46 of the Act of 1928, as amended by Act No. 4850, section 2. Section 46 of the Act of 1928 deals with regulations as to the expulsion of pupils before they attain the school leaving age, and it really requires an amendment *in futuro*, as it were, when the school leaving age is put up to 15 years by proclamation.

The Chairman.—Let us pass on now to the next matter. I have a query in respect to the amendment proposed in the *Co-operative Housing Societies Act* 1944, No. 5055. If the Committee will look at the second portion of the amendment they will see that it reads:—In section twenty-four for the words "legal representatives" there shall be substituted the words "personal representatives",

Mr. Garran.—The words "legal representatives" in that Act should be either "personal representatives" or "legal personal representatives". What was intended was that the executor or administrator, who are called alternatively "personal representatives" or "personal legal representatives".

The Chairman.—Is there anything in the Acts Interpretation Act which covers that at all?

Mr. Garran.—There is nothing in the Acts Interpretation Act, but in section 4 of the *Administration and Probate Act* 1928 the term "personal representative" is defined as meaning "the executor original or by representation or administrator for the time being . . .".

The Chairman.—So we shall be quite safe in leaving out the word "legal".

Mr. Garran.—I can put the word in if you like.

The Chairman.—No. We do not want it. The words "legal representative" were put in there in error. The real meaning of a legal representative is a lawyer, but what is meant here is not a lawyer but the person who represents a dead person—his executor or his administrator. That clears up that particular point. There was some query in regard to the second portion of the amendment to Act No. 5180 as set out on page 6. The reference is to the *Free Library Service Board Act* 1946, and the query was raised in regard to the proviso.

Mr. Rylah.—I think that in this case it was merely curiosity on the part of the Committee as to why these amendments were necessary. I refer to both amendments 1 and 2 in Act No. 5180.

Mr. Garran.—My recollection of this—and I would like to refresh my mind upon it—is that this possibly goes a little beyond statute law revision. The amendment is in the proviso to sub-section (2) of section 3, and it is that, for the words "a member of the Victorian Branch of the Australian Institute of Librarians" there shall be substituted the words "a professional librarian and a member of a body which in the opinion of the Minister represents the interests of librarians and which is by notice published in the *Government Gazette* from time to time designated by the Minister for the purpose". The trouble is that the Australian Institute of Librarians has changed its name, and the second trouble is that, whereas the member of the Victorian Branch of the Australian Institute of Librarians had to be a professional librarian, when they varied the name and wanted to get away from the statement of a definite name of somebody, they also wanted to be certain that the representative chosen by that body should be a professional librarian. It does not in fact alter the law.

Mr. McArthur.—What is a professional librarian?

Mr. Garran.—One who earns his money from library work.

Mr. McArthur.—He would not have to pass an examination?

Mr. Garran.—No.

Mr. Fraser.—Can Mr. Garran tell us where this amendment came from?

Mr. Garran.—It came from the Department.

Mr. Holt.—Actually, it is not an amendment. It is a clause giving effect to what was achieved by the nomination of the Australian Institute of Librarians.

Mr. Garran.—That is the intention of it, but on the face of it it looks like an amendment. I support it, but I do not want to support it willy-nilly.

The Chairman.—It does not matter much, but we must guard against this becoming a legislative weapon.

Mr. Rylah.—Would it be desirable if Mr. Garran gave us a short memorandum and we could incorporate it?

The Chairman.—We can say that we do not offer an objection but that care must be exercised to see that this is not an easy method of altering existing legislation.

Mr. Fraser.—If we are going to make any reference to this I think we ought to get a memorandum from Mr. Garran so as to be clear as to what we are doing.

Mt. Rylah.—That is in reference to both of those matters.

Mr. Garran.—Yes. I will undertake to see to that.

The Chairman.—Now let us turn to page 7 and look at Act No. 5379, the *Crimes Act* 1949. Will Mr. Garran give the Committee an explanation of the amendment, which reads:—In paragraph (*b*) of section thirteen for the words "is a girl under the age of sixteen years who is" there shall be substituted the words "was at the time when the offence is alleged to have been committed a girl under the age of sixteen years who was".

Mr. Garran.—Now, this is something that arose from the *Crimes Act* 1949, most of the aspects of which were recommended in the first place by a Chief Justice's Committee presided over by His Honor Judge Book. After it had been passed Mr. Lynch was a little worried as to the exact wording of the section, and he discussed it with Judge Book, who agreed that an amendment along these lines was desirable. The position is this:—Section thirteen of the *Crimes Act* 1949 contains provisions regarding a wife as a competent but not compellable witness against her husband in certain cases, including mainly offences against daughters under sixteen years by the husband. As the Act is drafted, the wife is a competent but not compellable witness if the girl is under the age of sixteen at the time when the wife goes into the box. The idea of this amendment is to make her a competent but not compellable witness if the girl is under sixteen years at the time of the offence. You might get a retrial. In the first trial the wife can be a witness and in the second she cannot be. You might get an actual day in the trial when she would cease to be, and by a little delaying action the defence could see that the evidence of the wife went over to the next day. This is definitely a matter that the Committee should put its mind to, and I think this amendment is a proper one to be made.

Mr. Rylah.—I think the Committee feels it to be a proper amendment, but greatly doubts whether it should go into the Statute Law Revision Bill.

The Chairman.—Our attention having been drawn to it, and this Committee having originally sat on the Crimes Act and having had the advantage of the evidence of His Honor Judge Book, it would be perhaps a little cumbersome if we removed it from this Bill and asked that it be passed as a special amendment to the Crimes Act. We should consider it further and comment in our report on it, but I think that at the moment we might just as well clear it up here. It is important and might be used at any time.

Mr. Fraser.—This is in effect altering the law entirely.

Mr. Garran.—It is altering the law.

The Chairman.—It is a matter whether we should consider that in the way that I have suggested. Now let us pass on to the next point arising.

Mr. Garran.—Might I impose here on the generosity of the Committee by passing round some suggested amendments for consideration? Some time has passed since this Bill was drafted. I have here three suggestions for amendments which I want to put before the Committee at this stage. One has to do with the matter that Mr. Fraser has already mentioned and it is to be found on page 4 of the Bill. In that part of the Schedule headed "Nature of Amendment" opposite the reference to Act No. 4382, the *Stock Foods Act* 1936, there is this:—In sections five, eight and fourteen for the words "chemist of the Department of Agriculture" there shall be substituted the words

" Chief Chemist of the Department of of Agriculture". My suggested amendment is to omit " Department of of Agriculture " and insert " Department of Agriculture". It will be seen that what has happened is that the word " of " is printed at the end of one line and is repeated at the beginning of the next. We should eliminate the appearance of the word " of " twice. Two other suggestions have been brought to my notice, and I put them before the Committee for its consideration. I have here an amendment on the front page of this note which I have circulated, and the suggested items for inclusion in the explanatory memorandum, if thought necessary by the Committee, on the second page. The first suggested amendment is one to the *Teaching Service Act* 1946, which unfortunately contains a grammatical error. The proposed amendment is in these terms :—In paragraph (*a*) of section 54, as amended by section 2 of the *Teaching Service (Amendment) Act* 1950, for the words " who they deem " there shall be substituted the words " whom they deem." I have not the changed text before me, but here is this grammatical error and the Education Department is worried. The relevant portion of section 54 of the Act of 1946 reads :—The committee of classifiers shall in the month of February in every year from the first sub-class of each class select and record in order of seniority in the list to be known as the promotion list the names of those teachers whom on grounds specified in section thirty-two of this Act they deem to be most worthy of promotion . . . . And so on. The word " who " would have been all right, of course, if the paragraph had read " who . . .they deem shall be most worthy " &c. The next suggested amendment for the consideration of this Committee is in the Schedule on page 8. In the column headed " Nature of Amendment " opposite the reference to Act No. 5470, the *Nurses and Midwives Act* 1950, and after the word " remuneration " I suggest the insertion of " In sub-section (2) of section twenty-six the words ' financial statement and ' shall be repealed." Now, the *Nurses and Midwives Act* 1950, section 26, altered the date of the end of the year in respect of which the annual report of the Nurses Board was to be made. Section 27 of the Nurses Act provided that the Board shall as soon as practicable after the 30th of June in each year prepare a financial statement, and so on. Then, in sub-section (2) it says that the Board shall submit a copy of the statement so audited to the Minister and shall present to the Minister on or before the thirtieth day of September in each year a report of its proceedings under this Act up to the preceding thirtieth day of June. The Nurses Act amended the provisions of section 27 relating to the report of its proceedings only, and not to the financial statement. It amended the provisions regarding the annual report by saying that this report shall be presented on the thirtieth day of June and shall relate to its proceedings up to the preceding thirty-first day of March, but it deliberately left unaltered the provision that the annual statement shall follow the ordinary financial order from the 1st of July to the 30th of June. In section 2 of the 1950 Act we state that the first financial statement and report of proceedings made after the commencement of the 1950 Act shall relate to the preceding nine months. That is to say, we did not alter the financial report period, so in sub-section (2), where we are trying to sew up a temporary period of one year, we should not have mentioned the financial statement. I would say that this is now spent, but the Auditor-General asked that it be put on record that it was a full year's statement that he was auditing, and not a nine months one. And so, at his request, I submit this proposed amendment to this Committee. It is, I think, a reasonable request.

Mr. Thomas.—In connexion with this *Nurses and Midwives Act* 1950, the schedule contains a reference to the substitution in paragraph (*a*) of sub-section (1) of section 17 of the word " remuneration " for the word " renumeration."

Mr. Garran.—Yes. Since that mistake occurred in that Act I have found several people using the one word when, of course, they meant the other.

The Committee adjourned.

APPENDIX

MEMORANDUM BY MR. ANDREW GARRAN, ACTING PARLIAMENTARY DRAFTSMAN

In accordance with the request of the Statute Law Revision Committee, I forward for the Committee's information the following details relating to the proposed amendments to the *Free Library Service Board Act* 1946, which appear on page 6 of the Statute Law Revision Bill.

Taking the second amendment first—The Australian Institute of Librarians has been reconstituted under a new name. It is now called the " Library Association of Australia ". Whereas by its former constitution only professional librarians could be members, now membership is open to corporate bodies and persons interested in libraries and library promotion. Accordingly the second amendment not only avoids the problem of change of name by non-statutory bodies, but also safeguards the present position under the *Free Library Service Board Act* 1946 that the representative member of the body concerned should still be a professional librarian.

As to the first amendment—The Library Association of Victoria still exists under the same name. However, it was considered desirable to remove any express reference to the body by that name from the Act, particularly as it has recently joined the Library Association of Australia as a corporate member and many of its own members have ceased membership to join individually the Library Association of Australia. In these circumstances, it is considered that the continued existence of the Library Association of Victoria is problematical. Accordingly, the opportunity was taken to remove the name of that body from the Act and to replace it with a provision having general reference to bodies of the like nature.

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1950-51

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

WORKERS COMPENSATION BILL

TOGETHER WITH

APPENDICES AND MINUTES OF EVIDENCE

Ordered by the Legislative Council to be printed, 26th September, 1951.

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

TUESDAY, 20TH JUNE, 1950.

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

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 28TH JUNE, 1950.

23. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barry, Mr. Crean,* Mr. Mitchell, Mr. Oldham, Mr. Reid, and Mr. Rylah be appointed members of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—put and agreed to.

TUESDAY, 3RD JULY, 1951.

9. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Holt be appointed a member of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—put and agreed to.

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* Resigned as a Member of the Legislative Assembly on 17th March, 1951.

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 Workers Compensation Bill—a Bill to consolidate the Law relating to Compensation to Workers for Injuries arising out of or in the Course of their Employment—which was introduced and read a first time in the Legislative Assembly on the 26th June, 1951. An Explanatory Paper issued with the Bill contains a Table of sections affected.

2. Appended to this Report is the evidence given by the following witnesses who appeared before the Committee :—

Mr. J. J. Lynch, Assistant Parliamentary Draftsman ;

His Honour Judge Gamble, Chairman of the Workers Compensation Board ; and

Mr. J. Alan McKie, representing the Fire and Accident Underwriters Association of Victoria.

A memorandum by His Honour Judge Gamble appears as Appendix A, and a memorandum by Mr. H. F. Dawson, Insurance Commissioner, State Accident Insurance Office, appears as Appendix B. A written submission was made by the Victorian Chamber of Manufactures, but, for the reason mentioned in paragraph 7 of this Report, is not appended.

3. The original draft of the Bill was prepared by the then Chairman of the Workers Compensation Board, His Honour Judge Stretton. The draft Bill passed to the Parliamentary Draftsman for checking and incorporation of later amendments to the law. Mr. J. J. Lynch, Assistant Parliamentary Draftsman, in his evidence, described the stages in the preparation of the Bill and the methods employed to ensure that the Bill would be a proper consolidation of the existing law.

4. The Committee are satisfied that the Bill is a true consolidation of the existing law relating to Workers Compensation, containing only such minor alterations as are necessary to re-state accurately the law. A typographical error occurs in Clause 81, page 67, line 19, namely, the word "in" appears instead of the word "an." The Bill considerably alters the arrangement of the matter in the Acts consolidated, notably in omitting certain Schedules and including the provisions formerly contained therein as appendages to clauses in the Bill.

5. The Committee are indebted to His Honour Judge Gamble, Chairman of the Workers Compensation Board, who attended a meeting of the Committee and gave valuable comments on the form of the Bill and on points of difficulty in the present law. At the request of the Committee, His Honour submitted a memorandum, which is appended hereto, in relation to two apparent anomalies in the law resulting from the passing of the *Workers Compensation Act* 1950, and a third anomaly which became apparent following the judgment of the Full Court in *Croft* v. *A. G. Healing Ltd.*, 1950, V.L.R. 120. His Honour stated that the members of the Workers Compensation Board concurred in the comments made by him in the memorandum, and he later gave evidence before the Committee.

6. The Committee consider that, for the reasons given by His Honour Judge Gamble in his memorandum and in evidence, and by Mr. Lynch in evidence, the anomalies referred to should be removed from the law by the following amendments :—

(*a*) Clause 3, interpretation of "Dependants," line 35, omit "accident" and insert "death of the worker".

(*b*) Clause 9, page 13, paragraph (*a*), sub-paragraph (i), lines 4 and 5, omit "who have been born and are".

(*c*) Clause 9, page 13, paragraph (*a*), sub-paragraph (iii), line 19, omit " death " and insert " accident".

(*d*) Clause 12, line 40, insert the following sub-clause :—

" (2) Where a certificate has been given under and for the purposes of the last preceding sub-section, then any claim arising thereon or in connexion therewith shall not be barred, avoided or invalidated by reason only of any defect, omission or irregularity, whether of substance or form, in the certificate if, upon proceedings for the determination of the claim, the Board is satisfied, on such material as seems to it adequate and without regard to the rules of evidence, that the worker is or was suffering from a disease, that he is or was thereby disabled from earning full wages at the work at which he was employed and that the disease was due to the nature of the employment."

7. The Fire and Accident Underwriters Association of Victoria requested that a representative of the Association be heard by the Committee in relation to the practical working of the Workers Compensation Acts, undertaking in no way to oppose the benefits thereunder. The Committee acceded to the request, but are of the opinion that the matters raised in evidence by Mr. J. Alan McKie, on behalf of the Association, are largely matters of policy, to be distinguished from the anomalies referred to in paragraphs 5 and 6 of this Report. The concluding portion of Mr. Dawson's memorandum also raises a question of policy. The Committee have not deliberated on these matters, as the amendments suggested are not within their functions. The submission by the Victorian Chamber of Manufactures referred to in paragraph 2 of this Report covers substantially the same ground as Mr. McKie's evidence, and in the circumstances the Committee consider it unnecessary to reproduce the letter in this Report.

8. The Committee believe that Parliament will desire to correct the anomalies in the law referred to in this Report, but are of the opinion that this should be done by separate legislation, as the Bill now being considered is solely to consolidate the law. The Committee therefore recommend—

(*a*) That legislation to give effect to the amendments set out in paragraph 6 of this Report be introduced and passed before the consolidating Bill, so that the amendments of the law thus made could be incorporated in the consolidation.

(*b*) That the consolidating Bill be proceeded with and passed into law during the present Session.

9. The Committee express appreciation of the services of the Officers of Parliament who assisted the Committee in their deliberations and in the preparation of this Report.

Committee Room,
5th September, 1951.

APPENDIX A.

Memorandum by His Honour Judge Gamble, Chairman of the Workers Compensation Board.

CHILD *EN VENTRE SA MERE* AT DATE OF WORKER'S DEATH.

The amendment made by Act No. 5522, section 11, to clause 1 (1) (*a*) (i) of the Second Schedule to the Workers' Compensation Act, now embodied in clause 1 (1) (*a*) (i) of the clauses referred to in clause 9 of the Bill, by substituting the word "death" for the word "accident", made the death of the worker and not the date of the accident the relevant time for determining the monetary entitlement of the widow in relation to her children under the age of sixteen, and by adding the words "who have been born and are" denied to a widow any payment in respect of a child *en ventre sa mere* at the date of the death of the worker.

The intention of the clause in question is to make provision for the widow and children of the worker and it seems fitting and proper that the amount of compensation should be calculated on the basis of conditions existing at the time Parliament considered it desirable that the benefit should be received—not on the basis of conditions existing at some anterior date which has no relation to the plight or condition of the widow at the time it is considered proper for her to receive compensation. The substitution of the word "death" for the word "accident" achieves this but the amendment goes further and includes the words "who have been born and are." This has the effect of taking away from the widow the right to receive compensation for a child *en ventre sa mere* at the date of the worker's death. This right has been granted to widows in all prior Workers Compensation Acts in this State and both in England and in the other States of the Commonwealth rights to compensation exist in relation to a child of the worker *en ventre sa mere*.

The only suggestion of which I am aware made to your Committee in support of this amendment is that in some way matters are or may be held up or delayed for a considerable period by the existence of this right in the worker's widow and that in some way the payment becomes "speculative." This seems to me to be without foundation. Until the death of the worker occurs, the existence and the amount of the liability of the employer under the Act cannot in any case be determined and on the happening of that event, i.e., the death of the worker, the amount of the liability of the employer is determinable immediately whether a child *en ventre sa mere* is included or excluded in the calculation. If the child *en ventre sa mere* is included in the basis of calculation the sum of £50 is simply added to the basic sum. This cannot cause any hold up or delay or give rise to any "speculative" payment as suggested.

I should mention that when the date for the determination of the rights of the widow of the worker in respect of her children was altered from the date of the accident to the date of the death (which is as I have said the appropriate date) children born after the accident and before the death would be included in the calculation of the amount. This was not the position under the clause as it stood before the amendment. It had been thought that the original draughtsman did not consider it possible that a worker who was too injured to work would either be able or have the desire to engage in siring a family. Though this is generally true, there have been exceptions. However the same situation arises in the case of weekly payments to an incapacitated worker. His incapacity may continue for a long period and provision is now made in the Act (clause 1 (1) (*b*) (i) appended to clause 9 of the Bill) for the weekly payments to be increased on the birth of any further child or children born after the accident but during the incapacity. If the worker is to receive weekly payments calculated on a basis which includes children born after the accident there would appear to be no reason why the widow when she becomes responsible for supporting the children should be permitted to claim compensation for such children only at the price of giving up her right to claim in respect of her child *en ventre sa mere*.

As the right to claim in respect of the child *en ventre sa mere* has been established for so long and appears to be universally recognized it might be considered that that part of the amendment referred to which takes away this right could properly be deleted. This could be effected simply by omitting the words which were added by the amendment namely the words "who have been born and are." This will have the effect of restoring the relevant part of the clause to the form in which it was prior to the amendment.

DEATH OF A WORKER UNDER THE AGE OF TWENTY-ONE YEARS.

The amendment made by Act 5522, section 11, to clause 1 (1) (*a*) (iii) of the Second Schedule to the Workers' Compensation Act, now embodied in clause 1 (1) (*a*) (iii) of the clauses referred to in clause 9 of the Bill omitted the word "accident" first therein appearing and substituted the word "death."

The effect of this amendment is accurately set out in the memorandum placed before your Committee by the Hon. A. M. Fraser and does cut down the rights of the family of an infant worker as they existed prior to that amendment. I do not understand the purpose of the amendment and I agree that it appears strange that the dependency of the family of a worker under the age of 21 years who has an accident is to be determined according to whether or not such worker dies as the result of the accident before or after he attains the age of 21. An example perhaps illustrates the matter more clearly. A worker who has been contributing to his family finances has an accident on his twentieth birthday and is seriously injured. He is sent to hospital where he remains till his death which results from the accident. If his death occurs before he is 21 his family is deemed dependent; if his death occurs after he is 21 the family is not deemed to be dependent. It is difficult to understand why his age at death should be a relevant matter to consider.

The purpose of the clause appears to be to give legislative approval to the notion that if a boy (i.e. a person under 21 years of age) is contributing to the family fund his contribution is to be regarded a financial aid to the family without going into the almost unanswerable question of how much it cost to maintain each individual member of the family and then ascertain if the deceased paid more or less than his share.

The clause makes the contribution made by the infant worker *at the time of the accident* the evidentiary basis for the presumption of the dependency of the family and it is difficult to understand why this presumption should be maintained only if his injuries kill him before he attains 21, but is to be defeated if his injuries take a longer time to kill him and he attains the age of 21.

However it may be that this was the intention of Parliament.

MEDICAL CERTIFICATES—INDUSTRIAL DISEASES.

In view of the decision of the Full Court in *Croft* v. *A. G. Healing Ltd.* 1950 V.L.R. 120 the purpose of clause 12 of the Bill will be frustrated.

Originally there was a small panel of specially appointed medical men who were authorized to issue certificates under the corresponding section in earlier Acts. They had the special forms and were familiar with the legal requirements of the certificate.

It was found desirable to extend the power to all medical practitioners to issue certificates under the section and the section was amended accordingly. For the most part such medical practitioners are quite ignorant of the legal niceties surrounding the precise form of certificate required with the result that since the Full Court has held that the wording of the Section must be meticulously followed, very few certificates issued are valid.

The attempt to overcome this difficulty by the passing of a regulation that medical certificates shall be issued in the form required by the Act is quite useless. The great majority of medical practitioners will remain ignorant, both of the form required by the Act and of the existence of the regulation, and their certificates though clear and explicit in intention will continue to be void for want of observance of the particular form prescribed.

The printing and circulation of forms to all medical practitioners in Victoria, many of whom would never be called upon to issue one, would not only be economically wasteful but practically useless.

It is suggested that the proper method of meeting the difficulty is by the amendment of clause 12 (*a*) by inserting after the word "and" the words "the Board is satisfied on such material as it thinks fit and without regard to the rules of evidence that the worker is or was" and by omitting the word "is" secondly appearing in the said sub-section.

APPENDIX B.

Memorandum by Mr. H. F. Dawson, Insurance Commissioner, State Accident Insurance Office

I have perused a copy of the memorandum which the Statute Law Revision Committee is considering in connexion with the law relating to Workers Compensation and I would advise as follows regarding the three proposed amendments.

SECTION 9, CLAUSE 1 (1) (*a*) (i) OF THE BILL.

The necessity for an amendment of the existing law arose out of the Workers Compensation Board decision in *Eckhardt* v. *K. L. Distributors Pty. Ltd.* (4899/49) where it was held that the addition of 10s. was to be made to the *weekly compensation* in respect of a child *en ventre sa mere.*

There are obvious administrative difficulties in ascertaining whether there is an unborn child in respect of every one of the numerous claims for compensation that are made, moreover the child may be stillborn or not born at all. It was also considered that the legislature intended to provide the payment of the additional amount only in respect of children under sixteen years who were born and dependent at the time of the accident. Suitable amendments to remedy this difficulty are not contained in the revised clause 1 (1) (*b*) (i) and children born and becoming dependent during the period of disability were also provided for in the 1950 Amendment (*vide* section 11).

The amendments made to clause 1 (1) (*a*) (i) were regarded as consequential and whilst it is appreciated that this it not entirely the position the amendment made does remove the possibility of paying compensation in respect of a child who might be stillborn or not born at all and never becoming dependent. It is suggested that if the words "who have been born" are to be deleted compensation in respect of unborn children should be limited to those in existence at the time of death and who are subsequently born alive. This would still leave the matter of the determination of the compensation until such time as the facts could be ascertained, and would cause delay; it is therefore recommended that the position be allowed to stand as at present.

SECTION 9, CLAUSE 1 (1) (*a*) (iii) OF THE BILL.

As in the former case the amendment made was regarded as being consequential on the amendment to Clause 1 (1) (*b*) (i) and whilst it does alter the basis of entitlement to compensation it does not appear to produce any more anomalies than existed before. I cannot agree that the purpose of the clause is entirely as stated in the first paragraph on page 4 of your memorandum, as a reference to the Workers' Compensation Board decision in *Davey* v. *Richards* (4520/47) makes it clear that the question of the degree of financial aid has to be considered in every such case. In Davey's case the Board decided that it might reasonably be anticipated that contributions would be received until the injured worker reached the age of 25. If the "time of death" is replaced again by the "time of accident" a case might easily arise where a badly injured worker dies as a result of the accident many years after the accident, at which time had the accident not occurred his family would not have been dependent on him in any way. In this case as he would receive compensation during incapacity no further amount should be payable.

SECTION 12 OF THE BILL.

When the claim which was the subject of the Full Court decision in *Croft* v. *A. G. Healing Ltd.* was made, the Regulations as to the form of Certificate had not been revised to meet the altered position created by the passing of the *Workers' Compensation Act* 1946. As far as I am aware since the new Regulations were gazetted practically all the Certificates coming to hand from medical practitioners in respect of industrial diseases do comply with the requirements of the Regulations. It is considered that the question whether a worker is disabled from earning full wages at the work at which he was employed, is a medical question, to be decided on medical evidence, and I understand on that ground the Government rejected the amendment now proposed when the Workers' Compensation Act was being revised last year.

If section 12 (*a*) were to be amended in the way suggested this would obviously involve the amendment or deletion of sections 19 and 20 of the Bill as the medical certificate would then be limited to the fact that a man was suffering from a disease, and quite often a worker may have some disease and not be disabled by that disease, and it would be quite wrong for the date of the certificate to be taken as the date of disablement, or to impose on the medical practitioner the necessity to certify to a date of disablement if the matter of disablement is to be determined by the Board under section 12 (*a*). If section 12 is amended as suggested it is recommended that consideration be given to the deletion of the words "and is thereby disabled from earning full wages at the work at which he was employed" appearing in sub-clause (*a*) and that the words "totally or partially incapacitated for work" be substituted. Entitlement to compensation rests on total or partial incapacity for work of any kind and not on disability from earning full wages at the work at which the worker was employed.

SECTION 3 (1) OF THE BILL—DEFINITION OF DEPENDANT.

I would agree that the "time of death of the worker" should be substituted for the "time of the accident" in sub-clause (*b*). This definition as it stands amended does not tie in with clause 1 (1) (*a*) (i) of section 9 of the Bill and it is recommended that consideration should be given to amending it to bring it into line. In this connexion, see the following paragraph.

ALTERATION OF DEFINITION OF "DEPENDANTS" IN SECTION 3 (2) (*a*) WORKERS' COMPENSATION ACT 1946 No. 5128—PAYMENTS TO WIDOW.

The definition of "Dependants" ((2) on page 4) is so set out as to create a position which Parliament did not intend.

The setting out is—

"'Dependants' means—
(*a*) the widow of the worker;
(*b*) the children, including children born out of wedlock, of the worker who were under sixteen years of age at the time of the accident; and
(*c*) such other persons as were wholly or in part dependent upon the earnings of the worker at the time of his death or would but for the incapacity due to the injury have been so dependent."

But the intention of Parliament as explained by Mr. Slater when the Bill was before the House was to provide—

"'Dependants' means—
(*a*) the widow of the worker;
(*b*) the children, including children born out of wedlock, of the worker who were under sixteen years of age at the time of the accident; and
(*c*) such other persons—

as were wholly or in part dependent upon the earnings of the worker at the time of his death or would but for the incapacity due to the injury have been so dependent."

The effect of the setting out of the definition in the 1946 Act is to give, for example, £1,000 to a widow who may, years before the accident, have deserted the husband and who is in no sense dependent upon the earnings of the husband—may even be living with another man. Instances of this effect have occurred, and the result is to make a present of £1,000 of the community's money to a person probably thoroughly undeserving, and therefore not compensation but a gift which is a profit out of a death.

CONCLUSION.

In conclusion might I add that whilst the amendments made by the 1950 amendment contained in section 9, clause 1 of the Bill might have the effect of limiting the right to compensation in a few cases, other amendments have considerably widened the basis of entitlement and no great hardship would be done in allowing the matter to stand as at present.

I would be pleased to give evidence before the Committee if desired.

9

WORKERS COMPENSATION BILL.

MINUTES OF EVIDENCE.

WEDNESDAY, 18TH JULY, 1951.

Members Present:
Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Holt,
The Hon. G. S. McArthur,	Mr. Reid,
The Hon. F. M. Thomas,	Mr. Rylah.
The Hon. D. J. Walters.	

Mr. John Joyce Lynch, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—Mr Lynch, this Committee is considering the Workers Compensation Bill, the purpose of which is to consolidate the law relating to compensation to workers for injuries arising out of or in the course of their employment, that is to say, a consolidation of the Workers Compensation legislation. Would you tell us the history of the Bill so far as the Drafting Department of the Crown Law Department is concerned? We first want to find out whom we should hear in evidence as to its being a proper consolidation.

Mr. Lynch.—The consolidation of the Workers Compensation legislation was undertaken by Judge Stretton, who had been the Chairman of the Workers Compensation Board, and it came to our Office from him; and he had effectively put all of the then existing legislation into the Bill. Mr. Normand, the Parliamentary Draftsman, handled the matter in our Office after it came in, and he made certain re-arrangements—I think all of them with the concurrence of Judge Stretton. Certain matters were gone into between them—matters of a minor character. Mr. Normand is now abroad, and it has fallen into my charge. I was familiar with what was going on with regard to it before that time, and I have been the draftsman of practically all the legislation since 1935 or 1936 which has been incorporated into the Bill now before this Committee.

By the Chairman.—Can you remember approximately when this Bill came into your Department from His Honor Judge Stretton?

Mr. Lynch.—I think it would be two years ago—something up to two years ago, at all events. I did not come here this morning advised as to what you would be wanting, Mr. Chairman.

By the Chairman.—Then it came to your Office before the amendments passed by Parliament in the Act of last year?

Mr. Lynch.—That is so.

By the Chairman.—And you have incorporated that amending Act into the consolidation?

Mr. Lynch.—Mr. Normand did that before he went abroad. I have checked them, read through the Bill, and looked up the different sources from which it came, and I have gone carefully through this explanatory table as to sections of the Act which are affected—and which table your Committee has before it in printed form—and I have checked them all by what is shown there.

By the Chairman.—Can I now put to you the question that is customarily asked by this Committee in regard to consolidations? It is this: Are you of the opinion that this Bill is a correct consolidation of the legislation in relation to this matter to date?

Mr. Lynch.—Yes.

By the Chairman.—You are not conscious of any departure from the law as laid down in the various statutes?

Mr. Lynch.—No. There are one or two minor alterations that have been made which are referred to in the explanatory table. The various parts of this Bill, having been enacted at various times, made reference to matters then in the law which, when we are re-enacting it now, require some alteration. For instance, the old Act says that the Governor in Council may appoint a Registrar under the Public Service Acts. Since that was enacted the Public Service Act has been altered so that appointments to positions in the Service are no longer made by the Governor in Council. Small alterations in wording are made to comprehend matters of that sort.

By the Chairman.—And these are all referred to in the explanatory table here before us?

Mr. Lynch.—Yes, in the table of sections affected.

By the Chairman.—Have you previously been concerned in the consolidation of legislation?

Mr. Lynch.—Yes, I have handled several consolidations.

By the Chairman.—Can you instance one of these?

Mr. Lynch.—I may mention the Goldbuyers Act.

By the Chairman.—Can you remember one that came to the Statute Law Revision Committee?

Mr. Lynch.—No, I do not know of one.

By the Chairman.—You did not handle the Stamps Act or the Local Government Act?

Mr. Lynch.—No. The latter was handled by a committee of outside counsel.

The Chairman.—Well, gentlemen, I think I have asked the Assistant Parliamentary Draftsman the questions that are customarily to be asked in regard to consolidations—that is, to the best of my recollection. If there are any other matters now upon which any member of the Committee would like to question Mr. Lynch, it is open to you to do so.

By Mr. Reid.—Has the Bill as finally drafted by you been examined by the Judge presiding over the Workers Compensation Board and by the Registrar?

Mr. Lynch.—Do you mean the present Registrar?

Mr. Reid.—Yes, and the Judge.

Mr. Lynch.—Not to my knowledge. My instructions are from the Chief Secretary's Office.

By Mr. Reid.—You personally have not conferred with either of those officers in regard to the terms of this Bill?

Mr. Lynch.—No. On certain matters I have spoken to the Insurance Commissioner. These were matters that concerned his end of it rather than that of the Workers Compensation Board; and in regard to one or two matters I have had a word with him—having to do with these minor alterations that were necessary in order to put this measure into its present

form. One of the previous parts of the law incorporated here was an authority to the State Accident Insurance Office to spend money on a building. Of course, when that kind of thing is enacted it is prospective—they may expend the money. When the legislation comes to be consolidated, the money is already expended; minor things like that need to be watched in a consolidation. It is in regard to such cases that the wording of the law needs some alteration.

By Mr. Reid.—In regard to the rule-making power dealt with in clause 88 of this Bill, rules that might be made by the Workers Compensation Board would not necessarily be referred to the Parliamentary Draftsman's staff for consideration?

Mr. Lynch.—They would not be. It is not customary for us to handle the making of rules at all, except by some special commission.

By Mr. Rylah.—When you were instructed to complete this consolidation were there any recommendations on the file in regard to any particular matters that have not been taken into account?

Mr. Lynch.—No.

By Mr. Rylah.—Were there any matters that would not normally go into a consolidation that you were asked to consider?

Mr. Lynch.—I inherited this Bill practically in its present form, and the only things that I have been instrumental in altering are some few matters such as dates of Acts referred to and so on that I discovered in going through the Bill itself.

By Mr. Fraser.—I notice that in clause 59 of this Bill there is an amendment contained in sub-clause (1), having to do with the application of the Act to accidents to seamen employed on Victorian ships. That amending provision must have been overlooked in the 1947 amending measure. I refer to the words "if the accident arises out of or in the course of his employment" and so on. In the 1949 and 1950 Bills the word "and" instead of "or" was overlooked, evidently.

Mr. Lynch.—Yes, that is so. At that time the general provision, section 5, was altered so that the words "arising out of and in the course of his employment," which was the previous basis of compensation were altered to the expression "arising out of or in the course of his employment," and in one place, a remote portion of the Act regarding seamen, the old words were suffered to remain. That is mentioned in this table.

Mr. Fraser.—Yes. I was wondering why the seamen were put in a different position, and I saw that it was a pure oversight. I presume, Mr. Chairman, that Mr. Lynch has before him copies of the typed notes which have been distributed to the Committee in connexion with the unborn child. I think that if he had an opportunity to have a look at those two matters—that as to the unborn child, and the other which has been distributed with it as to the death of a worker under the age of 21 years—in the calmness of his office he might have some comment to make to us upon them.

Mr. Lynch.—I have seen these notes and am aware of the position in regard to those two matters, and I am able to speak to them now if the Committee wishes.

Mr. Holt.—With regard to this matter as to the unborn child, this was referred to the present Premier last year, I think, and he agreed to its being incorporated in a Bill amending the Act.

Mr. Fraser.—I think this position in connexion with the unborn child was probably a mistake.

Mr. Lynch.—There is nothing in this aspect of the matter that represents any mistake at the present time. There was an alteration made by Act No. 5522 in regard to the time at which some of these questions of dependency were to be determined. They were shifted forward from the time of the accident to the time of the death, and that had the effect of being in favour of the workers' dependants in some cases and of not being in their favour in others.

Mr. Fraser.—But I have no doubt that it was not intended to exclude the unborn child.

Mr. Lynch.—The words "who have been born" were put in specifically to exclude the unborn child.

Mr. Fraser.—That is not what I understand.

Mr. Lynch.—That was the position. I drafted the Act and the instructions were clear as to what the intentions were.

Mr. Fraser.—In the consideration of that I think that they overlooked the unborn child.

Mr. Lynch.—No. The unborn child was held specifically in view. The suggestion for this alteration was made by the Insurance Commissioner. He said, in effect, that from the insurance point of view they did not care who the persons to be compensated were, or how large the class or what the amount that was to be paid, but that they wanted a certain rule applicable at the time when the proceedings were brought. They did not want to be required to make speculative payments in respect of a child to be born in the future. Previously, the questions of dependency were determined as at the time of the accident, and if the child was *en ventre sa mere* at the time of the accident the payment would be made according to the English cases to which this typed statement on the matter refers. Now it is shifted forward to the time of the death which might be a considerable time later—even longer than the necessary nine months. In shifting it forward to the death you would bring in any children born between the time of the accident and the time of the death. But you do not shift it further forward again on a speculative extra nine months.

By Mr. Fraser.—What is the position of the child *en ventre sa mere* and not born prior to the death?

Mr. Lynch.—If the child is not born prior to the death it is excluded under this, so that the sum of £50 is not payable.

By Mr. Fraser.—That is the position?

Mr. Lynch.—The £50 is not payable.

By Mr. Fraser.—I think this amendment is designed or suggested to deal with that particular case.

Mr. Lynch.—No, that is not so. The amendment made was deliberately designed to cut both ways. It made a new point of decision, and it was known at that time that it would be in favour of the workers in the majority of cases and not in their favour in others.

By Mr. Holt.—If it was possible for the child to be conceived after the accident and before the date of death, that was taken into consideration and knowingly excluded from the Act.

Mr. Lynch.—Yes, that is so. It was in effect, intended to be a consistent plan. Similarly, in cases of incapacity, as the Act stood previously the question of those children for whom the payment could be made was determined as at the time of the accident; and in this Act (No. 5522) it was specifically altered to enable a payment to be made in respect of children who were born during the period of incapacity, to be paid only from the time when they were born. Previously they were not in it at all. Generally, so far as death cases were concerned, the point of making up the determination was made to be at the time of death instead of at the time of the accident. That might be a matter of years, and it might require newly born children to be included who would not have been before. In the one case, where the accident and the death happened at or near the same time and the child was already *en ventre sa mere,* that child would be excluded. I would point out that a lump sum is paid in respect of the death cases, and you are not certain in regard to the child who is not yet born. The insurance people thought they had no real means of checking the fact, as it would always be possible for the wife to say that she was pregnant. Similarly, with the question of those under the age of 21 years, the time is shifted forward, and that has the effect of being opposed to the interests of some family, possibly. In principle, you can have it at the time of the accident or of the death. You cannot make the determination at the time of the accident if that is favourable to the dependants, or at the death if that is favourable. One or the other has to be chosen, and in this case the time of death was chosen as being generally in favour of the worker's family.

By Mr. McArthur.—I presume that if we recommend an alteration of this Act the insurance companies may be forced to increase their premiums on this particular type of thing, on account of the element of uncertainty?

Mr. Lynch.—I think it is hardly important enough for that. I do not think it would matter.

By Mr. Rylah.—You have to fix a definite line of demarcation. It must be one way or the other. You cannot provide in certain cases where it would be favourable to the worker and then in another where it would be unfavourable.

Mr. Lynch.—Actually, although the English case is of 1907, this determination in favour of the unborn child that we were speaking of just now was made by Mr. Justice Barry three or four years ago.

Mr. Fraser.—Yes. That was in a common law case.

Mr. Lynch.—Until then the matter was in doubt here, and I do not think workers' compensation payments had been made in these circumstances. Since the case I refer to some years back the payments had been made, so this was really obviating a fairly recent decision so far as Victoria was concerned.

By Mr. Rylah.—Do you know of any difficulty arising in regard to the definition of "Worker" in Clause 3 of this consolidating Bill? It has been suggested to me that the definition as it stands at the moment has been interpreted as excluding a person employed by a proprietary company who is also a shareholder in the company—that is, unless there is an express agreement of service between the company and the person working for it. The question arises in regard to small proprietary companies, such as where a plumber or a jobbing builder has turned his business into a proprietary company and is drawing a salary as an employee of the company and is at the same time a substantial shareholder of it.

Mr. Lynch.—I have not heard of a case of the kind. This definition had been very considerably amended but the Bill represents the effect of all the present amendments on it. I would have thought that that definition was probably wider than that particular case, but it is a matter of interpretation.

Mr. Fraser.—They are quite distinct entities—the company and the shareholders.

Mr. Lynch.—Yes, but I think that sometimes the Courts take a more realistic view than that.

By Mr. Rylah.—The Taxation Commissioner has become much more realistic over the position in recent years, and he has taken the attitude that a person employed by a proprietary company is entitled to a reasonable salary for his services. He treats a substantial shareholder in a proprietary company as an employee. I would have thought that in that definition as it stands the same interpretation could be placed by the Board. At any rate, this has not been brought to your attention?

Mr. Lynch.—No, I have not heard of it.

Mr. Rylah.—What I want to say now is not intended in any way in criticism of your drafting, but some legal members of the House are very much concerned with the clauses such as clause 2 of this Bill, and we were wondering whether such a lengthy clause is necessary in a Bill of this kind, or whether it could not be shortened and put in language that would be more understandable to the layman.

Mr. Lynch.—This particular clause has given our Office a good deal of thought—this kind of clause in this and other similar Bills. When the consolidated Acts are passed, as in 1928, there is also operative in regard to them the Acts Enumeration and Revision Act, and that Act says, in general terms, a number of things that are applicable to all the Acts consolidated at that time; and it says these things a good deal more lengthily than this clause does. There is also, for local reasons, a shorter saving provision in each of the consolidating Acts itself. But when you put through a consolidation not as part of a general consolidation and with no Acts Enumeration and Revision Act, you need more than the ordinary saving clause. At common law, if you repeal an Act, the whole thing goes and it is deemed never to have been. That is more or less the general effect. The saving clause is put in particular Acts to say that that will not happen. The old regulations and so forth that were made are not to be regarded as having been completely wiped away. These provisions that are in the Acts Enumeration and Revision Act are intended to give continued operation to those matters, in order to form the bridge from the old Act to the new Act. You are never able to consolidate in the clear. There are cases that are half on and half over, and you have to make a bridge between the old Act and the new. And that is what is intended to be done here.

By Mr. Walters.—And just what does it mean?

Mr. Lynch.—It means that things continue under the new Act to have the same effect as if the old Act had continued, so that they run on from one to the other.

By Mr. Rylah.—In particular, sub-clause (4) of clause 2 seems to be a rather nasty sort of expression, don't you think?

Mr. Lynch.—As to the operation of the provisions of section 6 of the Acts Interpretation Act?

Mr. Holt.—Those words—"as in aid of and not in derogation from"—do not seem to fit in with any of the set rules of interpretation.

Mr. Lynch.—If you make two provisions in different Acts with regard to allied subject matters they may set up different procedures. Now, one of them is passed before the other and there may be an argument that the later one is intended to supersede the former—to repeal either in whole or in part what has been said in the previous Act. When you put this provision in, it indicates that is a separate procedure intended to operate wholly as well as the other. The phrase—"shall be read and construed as in aid of and not in derogation from"—occurs very frequently.

By Mr. Holt.—What is the history of this phrase? Where does it come from?

Mr. Lynch.—It is very old. I do not know where it came from.

Mr. McArthur.—It is very proper verbiage. If you were to argue in these matters and these words were not in the particular Act, it might cause confusion. These are very proper words; they make the position unambiguous.

Mr. Lynch.—The Acts Interpretation Act deals with the operation of an Act which has been repealed and is not necessarily re-enacted, and in that case it enables proceedings that have already commenced on acts already done to be subsequently prosecuted. If you breach an Act the day before it is repealed you can, under the Acts Interpretation Act, be properly prosecuted after the repeal. These provisions here are intended to do something similar to that. But here the law is proceeding; it is shifting from one Act to another but that is not to interfere with the continuity of things. You do not make a break between them, you go straight ahead. But this last sub-clause is put in to save the Acts Interpretation Act in so far as it is necessary to be saved. The clause is not to be regarded as in substitution for but as in addition to that Act. Section 6 of the Acts Interpretation Act deals with a definite matter, and in so far as there is any necessity for that Act to operate, we are not in conflict with it by any of the prior sub-sections of this section.

By Mr. Holt.—Would you say that this Act was to be read and construed as being subject to section 6 of the Acts Interpretation Act?

Mr. Lynch.—No, I would not.

By Mr. Holt.—Well, what is the difference between what you are saying and that?

Mr. Lynch.—If you and I are partners, you are not subject to me nor am I subject to you. We stand in aid of and not in derogation from each other. That is so here. Section 6 is not reckoned to be interfered with by this, and this is not reckoned to be interfered with by section 6.

Mr. Fraser.—This section 6 is expressly made to provide for its application to any Act. I say that you would have to make some reference to it. It is intended to apply to all statutes passed after the Acts Interpretation Act. It is to be used generally for all Acts hereafter, so you would have to make some reference here to it.

Mr. Holt.—Yes. I do not think these words achieve the desired result.

Mr. Lynch.—It is a very usual phrase.

By The Chairman.—Our attitude in this matter is to satisfy ourselves that this Bill is a proper consolidation and I now propose to ask again this question: Are you satisfied that this Bill is a true consolidation, containing no alteration in the existing law with respect to workers compensation nor any alteration in the language of the Acts consolidated except where such alteration is necessary to accurately re-state the existing statutory provisions in the consolidating Bill?

Mr. Lynch.—Yes, I think I can say that. I think it perhaps might be said that the material of the Principal Act as amended has been very considerably altered in its arrangement. Two Schedules which appeared at the end of the old Act are taken from that position and placed in different positions in the Bill. The old Second Schedule is cut into pieces and distributed here and there, and while I cannot see that that has affected the law in any particular matter that I can refer to, and while I can see that it has improved the form of the law in many respects, I cannot swear that those alterations may not give rise to some altered interpretation in future cases. There are some other minor matters that perhaps would not come strictly within those words of your question although they would not need to be referred to as specific matters.

The Chairman.—That is not inconsistent with what you have already said, and the re-arrangement will be referred to in the report of the Committee.

The Committee adjourned.

TUESDAY, 14TH AUGUST, 1951.

Members Present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Holt,
The Hon. G. S. McArthur,	Mr. Reid,
The Hon. F. M. Thomas,	Mr. Rylah.

His Honour Judge Gamble was in attendance.

The Chairman.—In connection with the Workers Compensation Bill, the Insurance Commissioner of the State Accident Insurance Office, Mr. H. F. Dawson, has made certain submissions, and we have with us this morning His Honour Judge Gamble, whom we have asked to attend here again in connection with that submission. I now invite His Honour to make his comments, after which perhaps members of the Committee may wish to ask further questions.

Judge Gamble.—These statements of the Commissioner were posted to me only on Friday last, and as we do not sit on Saturday I did not receive them until yesterday morning. I have had copies of my comments typed and will distribute them now to members, and will make observations upon them as we go through the matter. The first matter that arises is in section 9, clause 1 (*a*) (i) of the Bill. It will be recalled that we discussed this the last time I was in attendance here. The Insurance Commissioner in the first paragraph of his memorandum dealing with the amendment which added the words "who have been born and are" to this clause states that the necessity for this amendment arose out of the decision of the Board in *Eckhardt* v. *K. L. Distributors Pty. Ltd.* This is a complete misapprehension. The case quoted dealt only with weekly payments, and the legislature has amended the law to cover this matter by the addition of the words "who have been born and is" to the relevant clause dealing with weekly payments. It will be recalled that when we were discussing those words "who have been born and are" on the last occasion here I said that I could not tell why they had been added to section 9. They were an alteration of the law. I see that Mr. Dawson, in his memorandum, says, "The necessity for an amendment of the existing law arose out of the Workers' Compensation Board decision in *Eckhardt* v. *K. L. Distributors Pty. Ltd.*, where it was held that the

addition of 10s. was to be made to the weekly compensation in respect of a child *en ventre sa mere.*" That in fact was the decision of the Board, and the Board at the time when it gave its decision thought it undesirable that the 10s. should in fact be paid until the child was in fact born. But as the law then stood there was a series of English cases and a decision of the Full Court of New South Wales which made it obligatory on us so to decide. Then it was thought desirable that the Act should be amended, and the section dealing with that is on page 14 of the Bill before us, at line 11— " . . . and where applicable, the sum of Ten shillings in respect of each child under the age of sixteen years who has been born and is wholly or mainly dependent on the earnings of the worker at the time of the accident or is born and becomes wholly or mainly so dependent during the incapacity . . ." That deals with the amount of 10s., and the words that were put in were properly put in there, in paragraph (*b*) dealing with incapacity. As I say, the Act was amended by the insertion of the words "who has been born and is ". That seems to be reasonably clear, but it has nothing to do with the leaving of a widow and children who have been in fact born. The decision we gave did not deal with it. The only comment I have to add is, as I have said, that the Commissioner is under a complete misapprehension. I do not understand him when he says that the amendment to the clause was "regarded as consequential" or when he states that "this is not entirely the position." The two matters are completely unrelated. I do not think that I can usefully add to what I set out in my memorandum of the 27th of July last. In the paragraph relative to weekly payments it is expressed in the singular—"each child"—but, dealing with "children" the word is "are". These provisions are dealing with entirely different things and are quite unrelated.

The Chairman.—Your Honour's next comments are in relation to section 9, clause 1 (1) (*a*) (iii).

Judge Gamble.—That is so.

Mr. Fraser.—Before we pass on from the previous point I would like to make an observation on the provision in line 11 on page 14 of the Bill. By leaving that there, that gets over the very difficulty that the Insurance Commissioner was suggesting in his memorandum.

Judge Gamble.—Of course it does. No one criticizes that. It did in fact arise from this decision, and everyody agrees that it ought to be there.

Mr. Fraser.—But he puts an argument that otherwise there would be a great difficulty in determining the right of the employer.

Judge Gamble.—Yes. As I say, I do not understand. It was regarded as consequential. But then he adds, "This is not entirely the position." Well, of course it is not. It is not even related. Now, the next matter is in relation to section 9, clause 1 (1) (*a*) (iii). The Commissioner's comments on this are that this is consequential also. He says, "As in the former case the amendment made was regarded as being consequential on the amendment to clause 1 (1) (*b*) (i) and whilst it does alter the basis of entitlement to compensation it does not appear to produce any more anomalies than existed before." My only comment on that is this: This section is purely evidentiary and the Insurance Commissioner states in his memorandum that the amendment substituting the word "death" for "accident" was "regarded as being consequential" on the amendment discussed above. In fact, the amendment is wholly unrelated to it. It simply amends the law by cutting down the evidentiary presumption in favour of the family of an infant deceased worker who had contributed to the family fund during his lifetime. As to the purpose of the amendment, I cannot improve on the words of my brother Judge Stretton in the case of *Davy* v. *Richards* referred to in the memorandum of the Insurance Commissioner. He was the Judge who was Chairman of the Board at the time, and I think it was probably as the result of a suggestion of his that this was in fact put in. This is the explanation that he gives: "The provisions amend the law as it stood before the passing of the 1946 Act. Then, it was necessary that the applicant in a case such as this should prove that a profit had been made from the contributions made by the deceased, thereby establishing actual dependency. As a result of the amendment, it is sufficient to show that the deceased had been contributing towards the maintenance of the family home, the legislation having apparently assumed that the contributing having begun, it would continue and increase, as the minor's earning capacity increased, until a profit would be made and continued during such time as might fit the circumstances of a particular case. In effect, the provision contemplates the paying of compensation for the loss of one who would probably have become one of the bread-winners of the family. Under (ii) of the paragraph the amount of compensation is to be 'such sum as in the opinion of the Board is reasonable and appropriate to the injury to the said dependants'." Well now, the only amendment in that is the substitution of the word "death" for the word "accident" in line 19 on page 13 of the Bill. I do not see that there is anything in it. It is merely procedural, and apparently it was the intention of Parliament that even a lad, say, of 14 years earning 16s. up to 25s. a week and paying that into the family fund should be brought in. But on the law as it existed you would say "Yes, but this boy's father spent all his time in gaol and the mother is hardly able to keep herself. But the boy is devoted to the mother and has expressed his intention to look after her, and in a few years he would have finished his apprenticeship and would have looked after the mother." And you say that as a matter of common sense, although at the time of the accident or death he might not have been of financial advantage to the mother, there was such a potential advantage that it was only right that he should be considered as contributing to the family funds. They were dependent on him. It is for the Board to estimate how long he would continue to make payments to the mother. He might become married, or there might be questions of injury or of general health in regard to which his earning capacity might be affected. Then you arrive at a sum as best you can.

By the Chairman.—And do you also take into consideration the health and condition of the mother?

Judge Gamble.—Yes. If the medical evidence is that she is not likely to live for more than three years you take that and all the circumstances into account. But I do not see any basis or justification for the amendment, and I do not think I can add anything to what I set out in my previous memorandum, when we were dealing with this matter.

By Mr. Fraser.—Would it exclude this case: There was an accident when the worker was twenty years and ten months old, and death took place from the accident after his attaining the age of 21 years?

Judge Gamble.—If you have my original memorandum, you will see that it clears that all up. In that memorandum I say that the amendment made in the

sub-clause by Act 5522, section 11, omitted the word "accident" first therein appearing and substituted the word "death". I point out that the effect of the amendment does cut down the rights of the family of an infant worker as they existed prior to the amendment. In my earlier memorandum I say: "I do not understand the purpose of the amendment and I agree that it appears strange that the dependency of the family of a worker under the age of 21 years who has an accident is to be determined according to whether or not such worker dies as the result of the accident before or after he attains the age of 21. An example perhaps illustrates the matter more clearly. A worker who has been contributing to his family finances has an accident on his twentieth birthday and is seriously injured. He is sent to hospital, where he remains till his death, which results from the accident. If his death occurs before he is 21 his family is deemed dependent; if his death occurs after he is 21 the family is not deemed to be dependent. It is difficult to understand why his age at death should be a relevant matter to consider." I do not understand it. However, as I say, the purpose of the clause is very well set out by my brother Judge Stretton and it is the policy of Parliament, and I can see no reason why it should have been altered.

The Chairman.—This will be a matter that we shall have to consider in our report. We shall have to discuss it fully.

Mr. Holt.—We do not know why it was altered either.

The Chairman.—No. We think we know what it should be.

Mr. Fraser.—Mr. Slater, when he introduced the 1946 Bill, had a difficult job.

Judge Gamble.—Yes, and that Bill seems to have been rushed through. The Commissioner starts off in his memorandum by saying that the amendment was regarded as being consequential. It is not consequential, but wherever they saw the word "death" they seem to have put in the word "accident".

Mr. Fraser.—I think that observation is perfectly true because I remember the circumstances in which that Bill was being dealt with.

Mr. Holt.—I think that is true of most legislation passed through this Parliament.

The Chairman.—Especially of that passed in the month of December when most of the legislation is rushed through this Parliament—at the end of the session. Now, shall we pass on to the next matter on which His Honour is to comment.

Judge Gamble.—Now as to clause 12. This is more substantial. The Commissioner's view on this is: "When the claim which was the subject of the Full Court decision in *Croft* v. *A. G. Healing Ltd.* was made, the regulations as to the form of certificate had not been revised to meet the altered position created by the passing of the Workers' Compensation Act 1946." That seems to suggest that the form of certificate has been altered. That is not so. The new regulations have exactly the same certificate. If the Commissioner's words mean what they say, they are not accurate. The form of certificate is set out in the *Commonwealth Government Gazette* No. 34 of 17th January, 1951, at page 263. And that form is identical with the form set out in the regulations made under the Workers' Compensation Act in the *Government Gazette* dated the 14th of January, 1942, at pages 151 to 169. Then the Commissioner says, "As far as I am aware since the new regulations were gazetted practically all the certificates coming to hand from medical practitioners in respect of industrial diseases do comply with the requirements of the regulations." It will be well, I think, to refer to what I say here in my memorandum submitted to-day: "The amended Regulations referred to by the Insurance Commissioner require as the original regulation did a form of medical certificate beyond that required by section 12 of the Act." There are a number of words added to the certificate which are not even asked for in the section, and in the case of *Croft* v. *Healing* even the section was not complied with. In my comments now submitted I continue:— "I make no comment on the question of the legality of the regulation but am able to state that no certificate which has been submitted to this Board has complied with this regulation which was gazetted in January of this year."

A doctor never sees this regulation. Originally there were only two doctors in Victoria who could certify as to a disease. They had special rates of pay and fees. They had the regulations and they had printed forms. So there was no difficulty as to those certificates being in the required form. However, it was thought undesirable that the powers in this respect should rest in the hands of just two doctors. So any doctor in Victoria can now give a certificate under the Act, but not one doctor in 10,000 would be aware of the existence of the regulations or the section of the Act or its form. And to suggest that in some instinctive way they have been able to follow the details of this form is to ask rather more than one can accept.

Mr. Thomas.—I assume that those two doctors were specially qualified.

Judge Gamble.—They were selected, I presume, because they were thought to possess the necessary qualifications. Not only that, but they were in close touch with the whole organization and had these printed forms and knew what was required. But to say that a medical practitioner has to copy out this regulation and put it in this form—well, it just does not happen. It goes quite beyond the requirements of the section. In the case of *Croft* v. *A. G. Healing Ltd.*, a man had been working at Healing's with batteries and had been handling the lead and had suffered from lead poisoning, and he had subsequently died. The medical certificate said that this man who had been employed by Healing's was suffering from lead poisoning and was not fit for work. One would have thought that a sufficiently good certificate, but the Full Court said that the man being described as not fit for work does not comply with the Act because the Act says that it must state that he is "disabled from earning full wages at the work in which he is employed." The medical practitioner says, "That is what I have said." He says, "I have said that he is not fit for work." But no, you have to follow the exact form in the section, and the section has become entirely unworkable. So now, if the amendment suggested is approved, so long as the doctor certifies that this man is suffering from this disease, it can then be left to the Board. So far as concerns the first part of the Insurance Commissioner's comment, he says: "As far as I am aware since the new regulations were gazetted practically all the certificates coming to hand from medical practitioners in respect of industrial diseases do comply with the requirements of the regulations."

I can make no comment on that other than the fact that I have not seen one and it seems highly improbable that a medical practitioner who had never

seen the Act could follow this form. Well, maybe he could. The Commissioner goes on to state: "It is considered that the question whether a worker is disabled from earning full wages at the work at which he was employed, is a medical question, to be decided on medical evidence . . ." The Board decides medical questions every day. We have three doctors on one side and three on the other, and we decide who is right. The Commissioner says, further, "If section 12 (*a*) were to be amended in the way suggested this would obviously involve the amendment or deletion of sections 19 and 20 of the Bill . . ." That is an overstatement, but there is, in fact, a verbal difficulty. My comment which I have placed before the Committee this morning is: "The verbal difficulty referred to in the second paragraph of the Insurance Commissioner's comments on section 12 of the Bill is sound and the words 'hereafter referred to as a certificate of disablement' would have to be inserted after the word 'certifies' in section 12 (*a*)." They refer to that as a certificate of disablement, and if the amendment suggested were not put in there would not be anything that is a certificate of disablement. It is only a certificate of disease. So all you say is that "Where a medical practitioner certifies" and so on. That is a verbal difficulty. I agree with that. There is then this further comment by the Commissioner that because a certificate of disablement is given, a worker is immediately entitled to compensation because he says that the man may be disabled from earning full wages at the work at which he was employed. Say that a man has an allergy dermatitis from working in a chemical works and that he goes to a doctor and he has this dermatitis over his wrists and hands, and the doctor says, "You are being exposed to certain things there, where you work. You cannot work there. Go and get another job," and that man's dermatitis was not sufficient to prevent him from doing ordinary labouring work. If he can go to another job immediately he is not entitled to compensation. If his wages under the new job are the same as he was previously getting he would not be entitled to compensation. It is not the fact that he is suffering from the disease that gives the right to compensation but the fact that he is unable to earn the same money in that or any other employment. In my comments presented to the Committee to-day I state: "Every application for compensation for an industrial disease must, in the absence of agreement, come before the Board and it is for the Board alone to determine—

(*a*) whether the disease was due to the nature of his employment,

(*b*) the amount (if any) of compensation due to the worker.

The Commissioner is apparently under the erroneous impression that compensation is paid to a worker who is disabled by a disease from earning full wages at the work at which he was employed. That is not so—the section stating that such a worker shall be paid compensation 'under the Act' as if the disease were personal injury by accident arising out of or in the course of his employment and the disablement shall be treated as the happening of the accident."

"The effect of this is that compensation would be payable under the Second Schedule, which applies only to cases of death or total or partial incapacity for work—not for any particular kind of work."

When you look at the Second Schedule now incorporated under the Act, you will note that in section 9 it says "work" and not any particular kind of work. Now look at page 13 of the Act. There must be incapacity; otherwise there is no scheme for payment at all. Any other view of this would be absurd. A man who gets dermatitis in one factory because of the particular work there gets full compensation and goes away and earns higher wages elsewhere. To say that he continues to receive compensation is just absurd. He would have a delightful income by that sort of thing. The Commissioner says that if we do make the amendment suggested a further alteration will have to be made, and I agree with that. But I do not agree that you wipe out sections 19 and 20. But you cure that by merely describing the certificate that the doctor gives as a "certificate of disablement".

The Chairman.—Although you have this rigid form of medical certificate, which is repeated in the latest regulations, in point of fact the Board has not been keeping to that regulation.

Mr. Rylah.—What is the position of the Insurance Commissioner?

Judge Gamble.—Under the Act he has certain powers and duties but nothing whatever to do with the general administration of the Act. For example, there is a specific question that I might instance of any new industrial diseases being gazetted. The Minister does that on the advice of the Board. Before the Board was formed there was an Insurance Commissioner who, in addition to his other duties, was a sort of policeman. It was his work to police everything. He actually went out to courts and prosecuted employers who had not insured, and so on. That has all been handed over to the Board. The Registrar of the Board now does that. The present Insurance Commissioner is the manager of the State Accident Insurance Office and is in competition with the other insurance companies.

Mr. Thomas.—In regard to the case of a person who is suffering from a disease and has got a job somewhere else, I should like a little more information. Say that a man is working for Healing's on electroplating and that he contracts a disease. While he is incapacitated he cannot continue to carry on the work of electroplating, but he could do labouring work and could get a margin between the two sets of wages. What is the position in relation to that man?

Judge Gamble.—He would not get the same full compensation but only a percentage. Say that he was earning £10 at the one job and £5 in the labouring job. Then he is partially incapacitated to the extent of 50 per cent. So instead of his getting £5 compensation he would get £2 10s. Which would still not bring him back to his original wage, but it is compensation.

There is one remaining matter on which I have a brief comment in my memorandum. The Draftsman, Mr. Lynch, has pointed out that it would be desirable to amend section 3 (1) of the Bill. I agree with his suggestion that this is a desirable consequential amendment. It is contained in clause 3. in the interpretation of "Dependants". Paragraph (*b*) reads—

> "the children, including children born out of wedlock, of the worker who were under sixteen years of age at the time of the accident . . ."

The proposal is to omit the word "accident" and to insert the words "death of the worker". That is necessary as well as desirable, and I agree with that entirely.

The Committee adjourned.

TUESDAY, 21ST AUGUST, 1951.

Members Present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. G. S. McArthur,	Mr. Holt,
The Hon. F. M. Thomas.	Mr. Reid,
	Mr. Rylah.

Mr. John Alan McKie, representing the Fire and Accident Underwriters Association of Victoria, was in attendance.

The Chairman.—Mr. McKie, at the last meeting of the Committee dealing with the matter now before it, a letter from Mr. Vines, Secretary of your association, was read. Therein he stated that those whom he represented wished to suggest amendments to the Bill now receiving our attention. Their desire was to improve the Bill, not by way of cutting down any of the benefits conferred by this legislation, however. You understand, of course, we are a Statute Law Revision Committee engaged in the consideration of a consolidation—not to make alterations in the existing law, but to see that this Bill is a correct consolidation of it. At the same time I might point out that we have power to make reports and recommendations in regard to matters of a nature ancillary to the consolidated legislation, but not as to matters of high policy. We have power, in our reports, to make recommendations to Parliament, and if such recommendations come from this Committee they undoubtedly receive very sympathetic consideration. In your letter it was clearly mentioned that the evidence to be given would not be in any way in opposition to the benefits set forth under the principal legislation. I mention that because I think the Committee would have great difficulty in regard to suggesting any amendments that would cut down any of the privileges conferred by the Workers' Compensation Acts.

Mr. McKie.—Believing that you were dealing solely with a consolidation of the Act, we were not quite sure whether a communication to this Committee was a proper approach. As a matter of fact, it was not until we heard that certain amendments were contemplated that it was decided that we should ask for an opportunity to state our views to you. Our approach, therefore, was made on that basis, and with the emphasis on the point that it has never been our policy to oppose the benefit provisions under Workers Compensation legislation. I am in attendance, therefore, solely for the purpose of stating our views on one or two provisions of the principal Act which from our practical experience we feel might be useful to this Committee. These may possibly impinge on the question of policy to some extent; but as to this, you will of course either disregard or take notice of them according to the scope of your powers. However, they are matters which, from my own personal knowledge, have given rise to conjecture as to the intention of the legislature. I recall that at the time when the 1946 Bill was being put through Parliament, the then Chief Secretary, Mr. Slater, had a number of conversations with me, and there were consultations with other members of Cabinet. I think it will be best to direct your attention to the few points I have noted on my copy of the Bill.

The Chairman.—If you have not any prepared matter to place before the Committee perhaps you had better proceed as you propose. You have not a written statement?

Mr. McKie.—No. My first comment is in connection with the definition of "Dependants," in which—under clause 3—the widow of the worker is deemed to be a dependant irrespective of the need for proving dependence. Now, whether that was ever the intention of the legislators I am extremely doubtful, because this was a matter that was discussed very fully with the Chief Secretary. He was under the impression that the position could be safeguarded by a later section giving the Board the power to determine dependence. I felt that it did not do that but that in fact it gave the widow an absolute right to compensation irrespective of whether she was dependent or not. That has been the case. It was held, quite rightly legally, that the widow, even though she might have deserted her husband and might have been away from him for years, and even living with another man, could claim and prove her right to compensation. Now, the only reason why we direct attention to this position is that it seems to us to be contrary to the whole purpose of the Act, and that if its scope is so broadened as to bring in people who have no right to compensation it may have the effect of sending up the cost of Workers Compensation to such an extent that any Government might be diffident about extending it in directions which might be justified. I have always felt that to give the widow such rights was never intended. The effect is, however, that such people can claim the full amount of compensation even in instances where there is not a semblance of dependency.

Mr. Holt.—Of your own knowledge can you give any instance in which such a widow has successfully claimed?

Mr. McKie.—Yes, definitely. The Board can confirm that, too. The Board has a certain amount of discretionary power where there is a *de facto* wife as well as a widow.

Mr. Holt.—Has the Board knowledge of payments having been made to a non-dependent widow?

Mr. McKie.—Yes, but as I have just mentioned, the Board has a certain amount of discretion where there is also a *de facto* wife.

The Chairman.—And where it has to choose between them?

Mr. McKie.—Yes. The Board has a power to exercise, and it does in fact exercise it with proper discretion, in favour of the *de facto* wife.

The Chairman.—Can you show me a section of the Act under which the then Chief Secretary felt that there has been covered the question of the dependency of the widow?

Mr. McKie.—I refer to clause 34 (2) (*c*) of the Bill.

Mr. Holt.—I suppose that the Board also exercises its discretion under the provisions of paragraph (*c*) of the interpretation of "Dependants" in clause 3—"such other persons as were wholly or in part dependent upon the earnings of the worker at the time of his death or would but for the incapacity due to the injury have been so dependent."

Mr. Rylah.—That would not entitle them to exclude the widow and substitute the *de facto* wife, but it would enable them to pay to the *de facto* wife. And if the widow came along later and claimed, she presumably would be entitled to compensation.

Mr. McKie.—But the Board, in its discretion there, has, I understand, definitely found as I have stated.

The Chairman.—We will not delay further as to that point. Your view has been expressed, Mr. McKie, and is recorded, and we can look into it.

Mr. McKie.—There is the power for the Board to determine the degree of dependency where there is more than one person who is entitled to compensation.

Mr. Thomas.—Is there a right of appeal?

Mr. McKie.—No, except on questions of law.

The Chairman.—Now let us pass on to the next point. What have you to put before the Committee further?

Mr. McKie.—The *de facto* wife aspect I have merely mentioned as a controversial question, and it is purely one as to the right of the *de facto* wife being entitled to compensation. It is something upon which we do not express any view at all. In clause 3 there is the definition of "injury," but it is tied up with sub-clause (1) of clause 5, on page 8 of the Bill. This is, of course, one of the most important provision of the legislation, because it is the basis on which the liability to pay compensation arises. The wording used to be "personal injury by accident arising out of and in the course of the employment." It was amended to "arising out of or in the course of the employment." This amendment brought about an extreme widening of the scope of the grounds on which a person is entitled to receive compensation. It is not now necessary to be an accident arising out of the employment which causes the injury. If "a worker" is at work and in the course of his employment is injured he can obtain compensation even though it was not an accident that was incidental to the nature of the work that he was carrying out. Previously there had to be the two qualifications—one, arising out of the employment and, two, in the course of the employment.

Mr. Holt.—The object of that was to include benefits under the Act where a latent defect was aggravated by the conditions of employment.

Mr. McKie.—Not quite that, but to avoid cases where there was a controversy as to whether the particular occurrence was something incidental to the nature of the employment or something that was extraneous to the nature of the employment. To quote an example—an irate fellow employee returns to the factory and shoots one of his colleagues. They had had some personal argument. When the wording of the legislation was "arising out of and in the course of the employment," that would not have been a case where the dependants were entitled to compensation, because it was not an accident arising out of the employment. But when the change was made to the use of the word "or" it brought a case such as that in, because it was in the course of the worker's employment that it occurred.

Mr. Thomas.—Do you want it to be changed back?

Mr. McKie.—I am not suggesting that, but I am commenting in order to lead to another aspect. That particular amendment has gone too far to expect any change and it has been accepted in legislation in other States. I do not think anything can be done now, even though the old provision had desirable safeguards. But, tied up as that section is now, with the new section 8, which was incorporated in the Act of 1946, those words "personal injury by accident arising out of or in the course of the employment" have more than ordinary significance because this section 8, sub-section (2), particularly refers to "Without limiting the generality of the provisions of sub-section (1) of section 5 of this Act"—the one that I quoted a moment ago—"but subject to the provisions of sub-section (1) of section 6 of this Act"—that is as to the wilful misconduct of the worker—"an injury by accident to a worker shall be deemed to arise out of or in the course of the employment if the accident occurs"—and this is rather the relevant part—"(*a*) while the worker on any working day on which he has attended at his place of employment pursuant to his contract of employment—(i) is present at his place of employment. . . ." Now, the effect of this section is that if a workman has arrived at his place of employment, he no longer even has to prove that the accident arose out of or in the course of the employment because it is *deemed to arise* out of or in the course of the employment if it occurs once he has arrived at his place of employment. That never gave any great concern, as possibly the significance of it was not appreciated until the recent case of *Willis* v. *Moulded Products Limited* where the Board found in favour of the applicants. This was a "heart" case in which a man was due to die from his condition at any time. The effect of the Full Court decision, as far as I can understand it, is that those words "injury by accident" have been interpreted by the various Courts to mean anything fortuitous so far as the individual is concerned; that is to say, if the worker has suffered a coronary occlusion, that is an "injury by accident." That term, "injury by accident," has been so interpreted by the Courts over the years that it is wide enough now to include such a thing as a coronary occlusion or a cerebral haemorrhage. The effect of the judgment in that case, therefore, is that if an injury by accident—in other words, any physiological change—occurs, whilst the man is at his place of employment or is going to or from his work, it is deemed to arise out of or in the course of his employment. He is even relieved from proving that it did arise out of or in the course of employment. In our view, that is something that is going far outside what was ever intended by Workers Compensation, and is tantamount to a social service benefit. If a man dies from coronary occlusion before leaving his own home, his relatives receive no compensation. If on his way to work he steps outside his house on to the footpath or the road in front of it or sits down on a seat awaiting a tram or is seated in a tram and dies while there, his relatives receive compensation. That seems to be unsound from the point of view of public policy. It does not affect us as insurers, and I want to make that quite clear. Eventually all the additional cost will be picked up on a premium basis. It seems to my association that an unintended broadening of the field of Workers Compensation which increases considerably the number of people who are entitled to receive a benefit may ultimately be to the detriment of workers who may be victims of true industrial accidents or diseases and who expect to have the compensation provided in such cases on the highest possible scale.

Mr. McArthur.—It would pay an employer to sack anybody in his employ who had a slight "heart."

Mr. McKie.—It would, if you looked at it in a cold-blooded way. That could easily be the effect, although I do not say that it would be. The employer thinks he is still insured, and so he is. He forgets that eventually he is going to pay for it in premiums.

The Chairman.—The Commonwealth Government pays for most of the things of this kind. Workers Compensation does not worry any business firms, I think.

Mr. McKie.—Not as such, but the public eventually pays.

The Chairman.—I think Workers Compensation is the cheapest charge on any business, and a good liberal Workers Compensation scheme in Victoria as against a less liberal one in another State might well attract employees to Victorian industry.

Mr. McKie.—I am not saying a word against the desirability of a liberal Workers Compensation Act.

Mr. Holt.—The Act is designed to cover any aggravation of an existing condition.

Mr. McKie.—Yes, but on the assumption, I submit, that there is an accident such as exertion or strain at work. The effect of that decision referred to is that there does not need to be anything of that kind; that so long as physiological change takes place while the man is going to or from his work or while he is at work, that constitutes injury by accident, because the section states that it shall be deemed to arise out of or in the course of employment. This decision, I feel sure, produces a different slant to that intended under the Act. The Act as generally understood always contemplated that the injury must be related to the employment. Even if it aggravated a previous condition the legislation intended that the worker should be compensated; and rightly so. The effect of the decision in *Willis* v. *Moulded Products Ltd.* seems to remove the necessity of proving that the physiological change was due to an incident of the employment.

Mr. Holt.—I do not think the 1946 legislation said that there should be an actual event or incident that could be postulated in time. Otherwise the gradual onset of an injury would not have been covered.

Mr. McKie.—Was it not always contemplated that the employment should be the contributing factor?

Mr. Rylah.—To put an extreme case under the Act, a young doctor who develops a heart condition would be wise to give up practice and take up employment with Moulded Products, knowing that he was going to die of his condition and acting in the hope that his heart condition would cause him to die either while working or while travelling to or from his work at Moulded Products.

Mr. Holt.—He would be wiser to take out a personal accident policy.

Mr. Rylah.—Of course, I have merely mentioned an extreme case.

Mr. Thomas.—Additional medical evidence would prove that he was suffering from heart failure and had been for a long time.

The Chairman.—Yes, and would support Mr. Holt's suggestion that the accident was not the cause of death.

Mr. Rylah.—But as Mr. McKie points out, it would presumably be the cause of death, and if it happened during the day while this man was at work there would be a reasonable chance of compensation. But if it happened at night, while he was in his own home, there would be no compensation.

Mr. McKie.—That is the point, exactly. It seems to be inequitable from a social point of view. The effect of the whole point that I make about that section is that it should be related to incidents in respect of which the employment is a contributing factor—injury by accident in which the employment is in some way a contributing factor.

The Chairman.—You wish to pass on to another point now, I think.

Mr. McKie.—Yes, Mr. Chairman. My next point is in regard to the provision which again says that the accident *shall be deemed* to arise, &c.—as in clause 8, sub-clause (2), paragraph (*a*) (ii)—"while the worker on any working day on which he has attended at his place of employment pursuant to his contract of employment . . . having been so present, is temporarily absent therefrom on that day during any ordinary recess and does not during any such absence voluntarily subject himself to any abnormal risk of injury;". This is the section dealing with the worker's right to compensation during any ordinary recess. Again, the governing clause states that it shall be deemed to arise out of or in the course of the employment, and so on as in paragraph (*a*) (ii). As you can appreciate, gentlemen, that brings in every type of accident once the worker leaves the employer's premises. The employer has no right to control or discipline him in any way. Take as an example where a man takes half an hour out of his lunch period to dash to his nearby home and carry on a job that he has been working at on week nights —a job such as a mechanic overhauling a motor cycle; and in the course of doing that he suffers an injury which is quite foreign to his employment. Now, that is one of the incidents that make it appear wrong to broaden the scope of the legislation to bring in incidentals of that kind. That must ultimately be to the detriment of the workers as a whole when it comes to real cases of industrial accidents. There are cases in which a man, through negligence of his own, or through his foolishness, sustains injury during a period of recess. The New South Wales legislation had a protecting clause to the effect that it excluded the worker's right to compensation where the injury was the result of his own wilful act or default. That gave some protection in cases due to the workers' own acts of negligence often outside the control of the employer.

The Chairman.—Well, those comments appear to conclude your points as to that. Will you pass on now to the next?

Mr. McKie.—The next note that I have is in regard to hernia. Actually, there is no section of the Act dealing with this. There has never been in our Act any special provision dealing with it. But with the broadening of the governing words of the section as to the liability to pay compensation, the actual effect is that practically all hernias are now being claimed for as personal injuries arising out of or in the course of employment. The New Zealand Act had a number of protecting clauses which seemed to be thoroughly reasonable from the point of view of protecting the worker's interests completely but at the same time making sure that hernia arising completely outside the employment and not due to the nature of the employment in any way would not be brought in. That was the New Zealand legislation.

Mr. Thomas.—But would that be taken not to include a form of rupture by a man lifting heavy materials in the course of his employment?

Mr. McKie.—He would be entitled to compensation in such an event, without doubt. There would be no question as to his rights.

Mr. Thomas.—But the condition might be delayed. He sustains a rupture while lifting some heavy materials, but that is not discovered until, say, a month afterwards. How about a circumstance such as that?

Mr. McKie.—I do not think that anything I might suggest would make any difference to those cases. There is no question about that.

Mr. McArthur.—The dependants of an employee living on the premises would be compensated under these provisions if he died from natural causes?

Mr. McKie.—That is the effect as long as there is something in the nature of a physiological change. The only distinguishing case that I can imagine would be one of senile decay in which the worker died without anything ever having happened, if that were possible.

Mr. McArthur.—Say that a farm hand was living on a farm and that he died from old age. What then?

Mr. McKie.—The Board would say that there must be some physiological change. There would be few cases in which a doctor could not find such a change had taken place. And that would be injury by accident so far as the worker was concerned, and his death would be deemed to have arisen out of his employment. Now the next point that I should like to raise is in regard to clause 7, sub-section (1), on page 17 of the Bill. This reads—

An employer shall not otherwise than in pursuance of an order of the Board end or diminish a weekly payment except where—(*a*) a worker in receipt of a weekly payment in respect of total incapacity has actually returned to work;

This is a clause that has caused a good deal of concern in actual practice. And it is purely a matter of practice. Paragraphs (*b*) and (*c*) of that sub-clause read—

(*b*) the weekly earnings of a worker in receipt of a weekly payment in respect of partial incapacity have actually been increased; or (*c*) the medical practitioner who has examined the worker pursuant to sub-section (2) of section twenty-seven of this Act has certified that the worker has wholly or partially recovered or that the incapacity is no longer due in whole or in part to the accident and a copy of the certificate (which shall set out the grounds of the opinion of the medical practitioner) together with notice of the intention of the employer at the expiration of ten clear days from the date of the service of the notice to end the weekly payment or to diminish it by such amount as is stated in the notice has been served by the employer upon the worker:

Now, the effect of that is that really an insurer or employer is not entitled to end weekly payments unless the worker has returned to work. There are many cases where in actual fact he is examined by the company's medical officer, probably supported by a certificate from his own medical officer. He is fit to resume work as from a certain day and is paid compensation, but he may not have actually returned to work. He may have found that he was not as well as had been thought, and he did not go to work. The effect of the insurers not continuing compensation in such a case is that they would be guilty of a breach of the Act. However, the penalty is one that has not been imposed because the Board knows that in every case insurers would act in a bona fide way. But the clause requires that the worker shall be given ten days' notice of intention to cease payment of compensation. Now, in actual practice the position is that if the worker does not return as from the date certified as fit the insurers have to give him another ten days' notice of intention to stop payment and he gets another ten days' compensation that he may not have any right to whatever. It is a clumsily worded clause. The matter is one, I think, as to which the Board would be the best to advise upon, and would be the best qualified to give an opinion as to how it could be more correctly provided for, so as to safeguard the worker, but in such a way that it does not leave the matter open to the particular abuse or to the risk of the company concerned being guilty of a breach of the Act when it is innocent of any such intention.

Mr. Thomas.—Would that business with respect to weekly payment also include a man who was working on piece work?

Mr. McKie.—Yes, that would be so. Those, Mr. Chairman, are the main points that I desired to bring before this Committee.

The Chairman.—We thank you for your attendance, Mr. McKie. The evidence you have given will be studied, and if there is any point on which we require further illustration or elucidation we will ask you to attend again, or we might ask you to forward your further views by letter.

The Committee adjourned.

TUESDAY, 4TH SEPTEMBER, 1951.

Members Present:

Mr. Oldham in the Chair.

Council.	*Assembly.*
The Hon. A. M. Fraser,	Mr. Holt,
The Hon. G. S. McArthur,	Mr. Reid,
The Hon. F. M. Thomas.	Mr. Rylah.

Mr. John Joyce Lynch, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—We have with us this morning Mr. Lynch, the Assistant Parliamentary Draftsman, who will be putting before the Committee a proposed new sub-clause of clause 12 of the Workers Compensation Bill, dealing with compensation for disease due to employment. In regard to this matter it so happened that I met His Honour, Judge Gamble, yesterday, and he told me that he had discussed this matter with Mr. Lynch and was in complete agreement with the suggestions that Mr. Lynch would be putting before us this morning.

Mr. Lynch.—The matter is a proposed amendment of clause 12 of the Bill dealing with compensation in cases of disability caused by disease. The original proposal was that if the certificate of the medical practitioner given under clause 12 stated that the worker was suffering from a disease it might then be left to the Board to determine whether that disease was a disablement from earning full wages. The reason for the proposal is that doctors generally who had been brought in to give these certificates recently were in fact making a number of invalid certificates because of some omission or irregularity in the form of the certificate.

When the proposal was sent down to me in order that I should draft the suggested amendment, it occurred to me that it would alter the procedure and have two possibly unfortunate effects; one, that the Board would be called upon in every case to determine whether a disability had taken place; and, secondly, that other provisions of the Bill, particularly clause 20, would also need to be amended with respect to the ascertainment of the date from which the disability is deemed to commence.

I drew a clause which I submitted to His Honour, Judge Gamble, and he agreed that it would be an improvement, that it would achieve its purpose and would achieve it without the other undesirable effects. It is merely to this effect; it leaves the procedure untouched but goes directly to the matter of difficulty that had arisen—these irregularities in the form of certificate—and it says, in effect, that where a certificate is given, then no irregularities or omissions in the form will invalidate the claim. I have copies of the proposed new sub-clause for distribution to members of the Committee, and it is as follows:—

(2) Where a certificate has been given under and for the purpose of the last preceding sub-section, then any claim arising thereon or in connexion therewith shall not be barred avoided or invalidated by reason only of any defect omission or irregularity, whether of substance or form, in the certificate if, upon proceedings for the determination of the claim, the Board is satisfied, on such material as seems to it adequate and without regard to the rules of evidence, that the worker is or was suffering from a disease, that he is or was thereby disabled from earning full wages at the work at which he was employed and that the disease was due to the nature of the employment.

That is to be inserted as sub-clause (2) of clause 12 of the Bill as it stands.

Mr. Rylah.—Instead of the amendment that has been already suggested.

Mr. Lynch.—Instead of the two amendments already suggested to clause 12.

Mr. Fraser.—The present position was that if the certificate was in the form prescribed or set out, then the employers practically automatically paid the compensation, is it not? That would mean that they would pay the amount down at the office.

Mr. Lynch.—There might be other matters of dispute, of course.

Mr. Fraser.—Yes, but assuming that this was in its correct form, then under the earlier amendment it would mean that in every one of these cases the matter would have to go to the Board.

Mr. Lynch.—Yes. The earlier amendment would have taken this form—"Where a medical practitioner certifies that a worker is suffering from a disease and the Board is satisfied that he is thereby disabled." The Board would have needed to be satisfied in every case; or, at any rate, the employer would have been required to guess whether the Board would have been satisfied or not. This new proposal leaves the original procedure untouched. The medical practitioner has to make a certificate both on the fact that the worker is suffering from the disease and on the fact that he is disabled, and also as to the date. But if his certificate is faulty, then the claim is not to be invalidated if on the subsequent proceedings the Board is satisfied that the real grounds for compensation did exist.

The Chairman.—What are the provisions of the Evidence Act, or are there any provisions actually in the Evidence Act itself, in regard to forms and so on that would have been over-ridden by these words contained in the proposed new sub-clause, "without regard to the rules of evidence"?

Mr. Lynch.—I took those words from the earlier suggestion of His Honour, Judge Gamble, that the words to be inserted were, "and the Board is satisfied upon such evidence as it thinks fit and without regard to the rules of evidence." I have some doubt whether it would not be better to leave them out of this provision.

The Chairman.—Are there any rules of evidence?

Mr. Lynch.—There are special provisions in this Bill as to how the Board is guided.

The Chairman.—There are provisions somewhere in the Act that over-ride as far as the whole of the Act is concerned—what we call the rules of evidence.

Mr. Fraser.—You will find that in respect to the Commonwealth Arbitration Court. There is provision there.

Mr. Lynch.—They should "be guided by the real justice of the case without regard to legal forms and solemnities."

The Chairman.—I was wondering what could be the rules affected. Here we lay down a specific provision, do we not?

Mr. Lynch.—I think that one which might be material in this case could be stated in this way: suppose that a doctor's certificate—not the original one but from some other practitioner—were produced to the Board in circumstances showing that it had been properly obtained, the Board could accept it without calling the doctor himself. It could take the material without strict regard to strict oral testimony.

The Chairman.—In an ordinary Supreme Court action for damages is it a *sine qua non* that a doctor must be called to prove a certificate?

Mr. Fraser.—No. By consent of the parties he could produce the records of the hospital in which the worker has been under examination.

The Chairman.—If there is not consent, has one to get a doctor from the hospital?

Mr. Fraser.—Yes, that would be required.

The Chairman.—Well, that might answer my point.

Mr. Rylah.—I suggest that one could think of another case where the doctor has died. Unless you suspend the rules of evidence there might be some difficulty in accepting the certificate.

Mr. Lynch.—I put this to Judge Gamble in this form in which it is now before the Committee and he agreed with it in this form. Only subsequently it occurred to me to leave out the words in regard to rules of evidence and to leave it to be governed by the general statement which is in the Act.

The Chairman.—I think that, Mr. Lynch having shown this sub-clause to His Honour, Judge Gamble, and in this form, and His Honour having concurred with Mr. Lynch in regard to it, it might be as well not to re-open it. I do not think there is any great moment in it, and it might, from the drafting point of view, be more tidy. In the circumstances I think it might be accepted.

Mr. Fraser.—Can you think of which clause it is that you have in mind.

The Chairman.—My notice has been directed to clause 54 of this Bill which states—

> "In arriving at every determination the Board shall be guided by the real justice of the matter without regard to legal forms and solemnities."

That would cover it.

Mr. Lynch.—There would be so many other matters in which this would apply as a matter of fact that it seems perhaps unfortunate to put it in for this particular matter.

The Chairman.—There is no danger, do you think, that in one particular clause, you have referred to the fact that the Board can determine a matter without regard to the rules of evidence.

Mr. Lynch.—I think there is such a danger. It might be said, if this is put in in a particular case, that clause 54 is not intended to apply to rules of evidence.

Mr. Rylah.—I wonder if Mr. Lynch would consider this point. Clause 54 of the Bill reads—"In arriving at every determination the Board shall be guided by the real justice of the matter . . . . . " Might it not be argued successfully that this is not arriving at a determination at all? This was not a particular provision to get over a defect in a step leading to that determination—in an essential step under the Act—the provision of a certificate.

Mr. Holt.—The point is that in order to get to a determination there has to be introduced a certain informality in order to arrive at a determination.

Mr. Rylah.—Clause 12 provides for a certain certificate. The Full Court, in the case of *Croft* v. *A. G. Healing Ltd.,* proved that that section must be directly complied with and that any variation would invalidate the claim, without regard to section 54 at all. It does not apply, for this reason, that section 54 is limited to the procedure of the Board in arriving at a determination. Here you have an essential condition precedent for the making of a determination and it is that section 12 has been adequately complied with. The Full Court has held that section 12 must be exactly complied with. Now, if we are going to write down section 12, should not we be careful to make sure that all the provisions necessary are contained in the clause which purports to write it down? I can see a sound argument put up here that this is not a step at arriving at a determination.

Mr. Fraser.—First you start the proceedings off by having a claim by a worker which can be put in in any shape or form.

Mr. Rylah.—It has been held that if the certificate is bad, there is no claim in fact.

Mr. Holt.—That is to say, the applicant is not before the Board. He cannot get before the Board under the provisions of paragraph (*a*) of clause 12 in a majority of cases. And clause 54 cannot apply to clause 12 (*a*) because there is not a claim.

Mr. Fraser.—If the medical practitioner has not certified the worker's disablement, he is not therefore entitled under the Act.

Mr. Lynch.—Here, it is assumed that a certificate has been given. It gets to the Board to determine whether there is a claim or not, and it is at the stage when it is before the Board that this proposed amendment operates.

Mr. Holt.—It cannot determine the scheme because a condition precedent of his appearing before the Board has not been complied with.

Mr. Reid.—Yes, but I do not think it is a question that affects the jurisdiction of the Board.

Mr. Holt.—It disentitles the applicant to the consideration of his claim because he has not got the correct certificate.

Mr. Rylah.—In the case of *Croft* v. *A. G. Healing Ltd.*, the applicant got before the Board, and the Board purported to make a determination.

Mr. Lynch.—But suppose that this provision had been in the Act at that time—this provision which stated that the claim was not to be invalidated by reason of fault in the certificate. I assume that the decision would have been the other way.

Mr. Rylah.—It is a question whether the words of your proposed new clause 12 are wide enough without keeping in them the provision that you shall not have regard to the rules of evidence.

Mr. Holt.—Where the applicant has not got an adequate certificate in accordance with paragraph (*a*) of clause 12 as it stands in the Bill, the rest of the provisions do not apply in the Act, because the worker in question does not come under the provisions of the Act at all; therefore, clause 54 would not apply to dispense with the formalism that we are seeking to put in this amendment.

Mr. Fraser.—There was no evidence on the certificate in this case, as I understand it, that the worker was disabled from earning full wages.

Mr. Holt.—That is the point I want to make; in other words, that the provision of the Act did not apply to him.

Mr. Lynch.—It is not so much that there is no evidence at that stage when the claim is before the Board, but that the certificate originally is necessary in order to found a claim. You must get a valid certificate at the start. That was always the view that has been taken in regard to this.

Mr. Holt.—You are saying that one must have the correct certificate in order to bring into operation the provisions of the Act which will give the applicant the remedies available to him under the Act.

Mr. Lynch.—That has been the position in the past.

Mr. Fraser.—I do not know that I accept that entirely.

Mr. Lynch.—Regarding the ordinary accident, the Act says "Where a worker is injured by accident . . ."; in that case the founding section deals with the fact whether he was injured or not. But in regard to clause 12, it begins, "Where a medical practitioner certifies," the foundation of the claim is the certification of the claim by the medical practitioner. And that has been the difference between the two cases up to date.

Mr. McArthur.—Where the fact emerges that the worker in question has had a leg broken there would hardly be need for a doctor's certificate.

Mr. Rylah.—That is based on the accident. Here is an industrial disease based on a certificate—two different types of cases.

Mr. Fraser.—It will be seen that under clause 12 one must first have a certificate from the medical practitioner that the applicant worker is suffering from a disease; and, secondly, that he is disabled. When this is put before the tribunal, it has to determine, under clause 12, another point, that that disease is due to the nature of any employment in which the worker was employed at the time. That is a fact that the tribunal has to find.

Mr. Lynch.—And which the medical practitioner primarily has to certify.

Mr. Fraser.—When I look at clause 12 I see that it states "Where a medical practitioner certifies that a worker is suffering from a disease and is thereby disabled from earning full wages at the work at which he was employed"——

Mr. Lynch.—That is part of the certificate.

Mr. Fraser.—"And the disease is due to the nature of any employment in which the worker was employed at any time prior to the date of disablement"——

Mr. Lynch.—That is not part of the certificate.

Mr. Fraser.—No. It is a matter that is determined by the tribunal, and then the worker is entitled to compensation.

Mr. Rylah.—We say that stages one and two are covered by the certificate and that clause 54 does not apply. When it comes to stage three—"And is due to the employment—" "the disease is due to the nature of any employment"—that is a matter that the Board is dealing with and it does apply.

Mr. Lynch.—I do not agree. I think that clause 54 applies to all questions determined by the Board.

Mr. Holt.—I think that we are arguing about the same thing really without a difference. The point that I am trying to make is this, and I shall put it in the form of a query: If the interpretation which we are attempting to give to clause 54 is sufficient to justify a deletion from this draft sub-clause (2) of the words, "without regard to the rules of evidence" then why was it not applied by the Full Court in the interpretation that is placed on the doctor's medical certificate in order to save it?

Mr. Rylah.—There is a practical answer to Mr. Holt there, because in fact the Full Court had not to consider any investigation by the Board into the certificate. The Full Court had before it only the certificate and the Board's determination, and after evidence had been given before the Board to supplement the certificate, it might have applied the terms of clause 54, but I think my point is still a good one. It still comes back to the point that I made originally, that clause 54 can apply only to matters that are before the Board, where the Board is making a determination.

Mr. Lynch.—Let me say this, that "making a determination" means determining a claim, whether there is a good claim or whether there is not; it does not apply only to a good claim but to any claim.

Mr. Rylah.—But it is a question whether you can go back to clause 54 and apply it to a certificate. The answer may be that Mr. Lynch has drawn this clause so widely that the words "without regard to the rules of evidence" are pure surplusage, as the Board under the new amendment has very wide powers to

add to the certificate. However, I do not feel entirely happy about it and I think we should leave the words in.

Mr. Fraser.—If the words "without regard to the rules of evidence" had been in section 54, that would not have assisted in the case of *Croft* v. *A. G. Healing Ltd.*

Mr. Rylah.—No, but it might have assisted in a case similar to that of Croft's, where the Board had permitted the applicant to give evidence before the Board, to supplement his certificate.

Mr. Lynch.—I do not think that is altogether the position. In this proposed amendment there are two stages. It says in effect that if at the later stage the Board is satisfied upon certain evidence, that will cure the original defect. That is the difference between the cases, I suggest. This says that the later satisfaction of the Board in the matter will cure the original defect. That was not present in the case of *Croft* v. *A. G. Healing Ltd.,* but section 54 applied in regard to that case, as well as everywhere else, so far as the determination of the claim was concerned. But it did not help, in the sense that there was an original defect, which was not a matter of forms and solemnities, but was basic to the claim.

Mr. Holt.—But the Board had the right to make a determination in that case. The effect of the decision was that any determination of the Board was involved because the formalities of the certificate had not been complied with.

Mr. Rylah.—I suggest that this matter can be got over simply by Mr. Lynch having a word with His Honour Judge Gamble.

Mr. Holt.—The Court again may well hold that any determination made by the Board was invalid.

Mr. Fraser.—It is a question whether the putting in of these words might have a cutting down effect on the whole operation. If under clause 12 you get a proper certificate, the existing clause 12 operates. If you have not a proper certificate, then it "shall not be barred avoided or invalidated by reason only of any defect omission or irregularity, whether of substance or form, in the certificate." And then if "the Board is satisfied, on such material as seems to it adequate" it has to grant compensation on the basis that the worker was suffering from the disease. The Board finds those three things on evidence. On this invalid certificate it can make a determination.

Mr. Lynch.—I should like to leave the words out, but it would be possible and advisable to speak to His Honour Judge Gamble about it.

Mr. Fraser.—My feeling is that putting in those words "without regard to the rules of evidence" might have a limiting effect.

Mr. Rylah.—Can we ask Mr. Lynch to mention that matter to Judge Gamble some time during to-day, and if His Honour is satisfied—as he may be after hearing the explanation—then we could leave the words out.

Mr. Lynch.—Yes. The effect in the case of *Croft* v. *A. G. Healing Ltd.* was that the Court said "This is not a matter of legal forms and solemnities regarding what was before the Board. It is absolutely basic to the claim itself." That left clause 54 to operate then, and it will operate in future, and it enables you to get at the facts without strict regard to legal forms and solemnities, including the rules of evidence. The Board has two lists. The summary list, dealing with any matters not in dispute, without regard to evidence at all in some cases, I think.

Mr. Holt.—Our object is to give the Board the power to ascertain what is the intention of the doctor in the certificate, is it not?

Mr. Lynch.—Yes, if a certificate is given. You must have a certificate of a sort, but any omission from it is not going to be to the disadvantage of the worker.

Mr. Holt.—That is so. If it is a certificate from which the Board is capable of interpreting an intention to put into effect the provisions of clause 12. Well, as it stands, that must achieve that purpose.

Mr. Lynch.—I think so. It is just a question of whether those words being in there, it might not be said in regard to some other section that in these matters you must stick to the rules of evidence.

Mr. Holt.—Well, does not this arise because of a decision that has been made and that that is the reason why it is in this section?

Mr. Lynch.—That gets lost sight of in the course of time when it becomes just another provision in the Act. You have one provision, out of all that are there, that in this case you do not have to have regard to the rules of evidence. It might possibly be that the Court would say that in other cases you must have regard to the rules of evidence.

Mr. Fraser.—You already have a wide phrase there —"on such material as seems to it adequate."

The Chairman.—I suggest that Mr. Lynch should attend here again to-morrow morning after a discussion with His Honour, Judge Gamble.

Mr. Lynch.—I suggest that I might be able to clear this matter up with Judge Gamble immediately by telephone if I may be permitted to retire for a few moments.

The Chairman.—Yes, that is a practical suggestion and Mr. Lynch may retire.

Upon Resuming.

Mr. Lynch.—I have spoken to His Honour, Judge Gamble, and he suggests that the wording of the clause remain as it is here, before you. He points out, also, that there is another provision to which we have not yet adverted in the Bill and which says that in summary matters the Board will not be bound by the laws of evidence. Those are the matters that go on to the summary list. With respect to contentious matters, the Board has always regarded itself as bound by the rules of evidence; and clause 54 he regards only as dealing with procedural forms and solemnities and as not dealing with evidence.

It is only in regard to this one matter of the certificate that the Board is prepared, or desires, to depart from the strict rules of evidence in respect of possibly disputed matters, so that the danger of adversely affecting other parts of the legislation does not arise. His Honour wants it to be made clear that the Board need not have regard to the rules of evidence here.

The Committee adjourned.

1950-51

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

WRONGS (CONTRIBUTORY NEGLIGENCE) BILL

TOGETHER WITH

MINUTES OF EVIDENCE AND APPENDICES

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

TUESDAY, 20TH JUNE, 1950.

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

Question—put and resolved in the affirmative.

WEDNESDAY, 22ND AUGUST, 1951.

4. WRONGS (CONTRIBUTORY NEGLIGENCE) BILL.—The Honorable P. T. Byrnes moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for consideration and report.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 28TH JUNE, 1950.

23. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barry, Mr. Crean,* Mr. Mitchell, Mr. Oldham, Mr. Reid, and Mr. Rylah be appointed members of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—put and agreed to.

TUESDAY, 3RD JULY, 1951.

9. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Holt be appointed a member of the Statute Law Revision Committee (*Mr. McDonald, Shepparton*)—put and agreed to.

* Resigned as a Member of the Legislative Assembly on 17th March, 1951.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of the *Statute Law Revision Committee Act* 1948, have the honour to report as follows :—

1. The Statute Law Revision Committee have considered the Wrongs (Contributory Negligence) Bill—a Bill to amend the Law relating to Contributory Negligence and for purposes connected therewith—which was initiated and read a first time in the Legislative Council on the 15th August, 1951. When the second reading was moved on the 22nd August, 1951, the Legislative Council referred the proposals contained in the Bill to the Statute Law Revision Committee for consideration and report.

2. The Bill was introduced in the Legislative Council as a Private Member's Bill by the Honorable J. W. Galbally, who attended two meetings of the Committee to explain the reasons underlying the proposals in the Bill. Mr. Andrew Garran, Acting Parliamentary Draftsman, appeared before the Committee, and his evidence is appended to this Report. A memorandum prepared by Mr. Garran appears as Appendix A, and a memorandum by Mr. E. H. Coghill, Honorary Secretary to the Chief Justice's Law Reform Committee, appears as Appendix B.

3. The Bill follows the main lines of the English *Law Reform (Contributory Negligence) Act* 1945, with adaptations to meet local conditions, and is based on the findings of a special sub-committee appointed by the Law Council of Australia to draft proposals for legislation to provide for the apportionment of damages between the plaintiff and the defendant in accordance with their respective degrees of negligence. This sub-committee consisted of Professor G. W. Paton, of the University of Melbourne, Mr. K. A. Ferguson, K.C., of Sydney, and Mr. D. B. Ross, K.C., of Adelaide.

4. Under the Victorian law if a plaintiff seeking to recover damages has directly contributed by his own negligence to the event from which the damage suffered results, even if only in a minor degree, he will recover nothing. This has led to many cases of great hardship. The proposed legislation will allow the Court to take into account the degrees of negligence of the plaintiff and the defendant and the Court will be able, in proper cases, to award damages to a plaintiff who has been guilty of contributory negligence but such damages will be reduced to the extent to which the plaintiff's negligence has been a contributing factor.

5. The Committee sought the advice of His Honour the Chief Justice, who referred the Bill to the Chief Justice's Law Reform Committee, which Committee commented as follows :—

> "The Committee recommends its enactment. It considers it most desirable that our Victorian law should in this matter be made to conform with that in force in England. It also considers its adoption highly desirable for the reason that it will eliminate a number of hard cases, which arise today as a result of the doctrine of contributory negligence.
>
> At the same time the Committee felt that it should point out that though this legislation seems to be working quite fairly well in the main in England, it does give rise to a number of nice problems, and it may well be that after it has been tried here for some time, the Committee may consider that some further amendment is both necessary and desirable."

6. The Chief Justice's Law Reform Committee drew attention to the desirability of clarifying Clause 3 of the Bill, which matter is referred to in Mr. Garran's evidence and in the Appendices hereto. The Committee concur with the Chief Justice's Committee in recommending that it should be made clear that in cases before Courts of limited jurisdiction the claimant can recover up to the statutory limit, although the total damages, before apportionment, are expressed at a higher figure, and that Clause 3 of the Bill should be amended accordingly. The Committee also recommend a drafting amendment in Clause 5, for the reason given in Mr. Garran's memorandum.

7. The Committee recommend that the Bill be passed into law during the present Session, with the following amendments :—

(*a*) Clause 3, omit the proviso to sub-clause (1) and insert—

" Provided that—

(*a*) this sub-section shall not operate to defeat any defence arising under a contract ;

(*b*) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages awarded to the claimant by virtue of this sub-section shall not exceed the maximum so applicable ;

(*c*) where an action is brought in a Court of limited jurisdiction, the Court may award damages up to the limit of its jurisdiction even though such damages have first been reduced under this sub-section."

(*b*) Clause 3, omit sub-clause (2) and insert—

" (2) Where damages are recoverable by any person by virtue of the last preceding sub-section subject to such reduction as is therein mentioned, the Court shall find and record the total damages which, apart from any limitation referred to in paragraphs (*b*) and (*c*) of the proviso to the last preceding sub-section, would have been awarded if the claimant had not been at fault."

(*c*) Clause 5, sub-clause (1), line 16, after " effect " insert " with respect to any such claim."

8. In view of the amendments to the Wrongs Act recommended by the Committee in their Report on Limitation of Actions (D. No. 1—Victorian Parliamentary Papers of 1950–51) having relation to the matters referred to in this Report, the Committee recommend that the Limitation of Actions Bill be considered by Parliament concurrently with this Bill.

Committee Room,
16th October, 1951.

DIVISION.

The following extract from the Minutes of the Proceedings of the Committee shows a division which took place during the consideration of the Draft Report :—

TUESDAY, 16TH OCTOBER, 1951.

Mr. Oldham moved—That the following new paragraph be added to the Report :—

> 8. In view of the amendments to the Wrongs Act recommended by the Committee in their Report on Limitation of Actions (D. No. 1—Victorian Parliamentary Papers of 1950–51) having relation to the matters referred to in this Report, the Committee recommend that the Limitation of Actions Bill be considered by Parliament concurrently with this Bill.

Question—That new paragraph 8 be added to the Report—put.

Committee divided.

Ayes, 6.	Noes, 3.
Hon. A. M. Fraser, Mr. Holt, Hon. G. S. McArthur, Mr. Oldham, Mr. Rylah, Hon. F. M. Thomas.	Hon. P. T. Byrnes, Mr. Mitchell, Hon. D. J. Walters.

And so it was resolved in the affirmative.

WRONGS (CONTRIBUTORY NEGLIGENCE) BILL.

MINUTES OF EVIDENCE.

WEDNESDAY, 26TH SEPTEMBER, 1951.

Members Present:

The Honorable A. M. Fraser in the Chair.

Council.	*Assembly.*
The Hon. F. M. Thomas.	Mr. Holt, Mr. Oldham, Mr. Rylah.

Mr. Andrew Garran, Acting Parliamentary Draftsman, was in attendance.

The Chairman.—Mr. Garran has been asked to come before this Committee to assist it in regard to one specific clause of the Bill.

Mr. Rylah.—The Committee has sought the opinion of Mr. Garran on a matter raised by the Law Council in its report and which, apparently, has not been faced up to by the Council. This matter concerns the effect of the decision in England in *Kelly* v. *Stockport Corporation* (1949) 1 All E.R. 893, on the limited jurisdiction of particular courts. The Committee has asked Mr. Garran to consider not only the limited jurisdiction of the Court of Petty Sessions and the County Court, but also the limited amount of claim against the Railways in certain instances.

Mr. Garran.—I do not claim to be an expert on the subject. I suppose it can be said that I drafted this Bill, but that only means that, at the request of Mr. Galbally, I put it into the Victorian form and made the necessary adaptations relating to bankruptcy, &c., imposed by our local conditions.

I have browsed through *Joint Torts and Contributory Negligence* by Glanville Williams. No doubt, this Committee has had a copy of the book placed before it. Glanville Williams has something to say on this matter, not in relation to the limitation of amounts payable, say, in actions against the Railways, but only in relation to limitations of jurisdiction, where he discusses the case of *Kelly* v. *Stockport*. At page 396 of his book, he states, "While these decisions"—that is, the decision of *Kelly* v. *Stockport* and some relative Ontario decisions—"must be accepted as a statement of the present law, it is respectfully submitted that they place an undue restriction upon the jurisdiction of inferior courts. Since a plaintiff is entitled to waive an excess claim in order to bring his case in the inferior court, there is no reason why he should not be able to say in advance that he does not claim more than the upper limit of the court's jurisdiction, but within that limit does claim all that the court is entitled to award him under the Contributory Negligence Act. The amount recorded under s. 1 (2) of the English Act is not an amount due to or recoverable by the plaintiff, but is a mere recording for convenience in case an appeal court may take a different view of the proportion of fault. Even if the appeal court does take a view more favourable to the plaintiff, this cannot result in the plaintiff recovering more than the limit of the county court jurisdiction, where he has expressly abandoned his claim to the excess. It is accordingly suggested that legislation should be introduced to provide that the limit of an inferior court's jurisdiction should apply not to the plaintiff's total damages but to the damages recoverable by him."

Glanville Williams has an appendix to his book—a suggested draft of legislation to codify the law with respect to both joint torts and contributory negligence. I refer the Committee to the proposed clauses 24 and 31 appearing on pages 515 and 525 respectively. Clause 24 commences with a repetition of what appears in clause 3, sub-section (1) of the proposed Bill now under discussion, with one alteration that I think should be noted: in paragraph (*b*) of the proviso reference is made to "damages recoverable," whereas Glanville Williams approaches the matter with the words "damages awarded". I feel that will be of some assistance in overcoming the difficulty. It is not the amount that is recoverable; it is the actual amount that is awarded.

The second matter Glanville Williams suggests at clause 31, is a draft to cover the case of actions in courts of limited jurisdiction. The provision reads as follows:—

> "Where an action is brought in a court of limited jurisdiction, the court may award damages up to the limit of its jurisdiction, even though such damages have first been reduced under sub-section (1) of section twenty-four of this Act on account of the plaintiff's contributory negligence."

I think those two variations will meet the problem.

In the short time at my disposal, I have drafted another method of approach so as to provide for an easy amendment to the Bill. The Committee might possibly consider this approach as an alternative. I am not criticising Glanville Williams; I think his method of approach is good. I am merely putting forward an alternative method to suit the occasion. I suggest that in clause 3 of the Bill the proviso to sub-section (1), and sub-section (2) be omitted, and that, instead, the following be inserted:—

> "Provided that—
>
> (*a*) this sub-section shall not operate to defeat any defence arising under a contract;
>
> (*b*) where—
>
> (i) any contract or enactment providing for the limitation of liability; or
>
> (ii) any limitation of the jurisdiction of the court in which the claim is brought—
>
> is applicable to the claim, the amount of damages awarded to the claimant by virtue of this sub-section shall not exceed the maximum so applicable.
>
> (2) Where damages are recoverable by any person by virtue of the last preceding sub-section subject to such reduction as is therein mentioned, the court shall find and record the total damages which, apart from any limitation referred to in paragraph (*b*) of the proviso to the last preceding sub-section, would have been awarded if the claimant had not been at fault."

When the Committee studies that amendment, it will be noticed that I have done exactly the same as Glanville Williams, but in a different way. In other words, I have altered the words "recoverable by" to "awarded to"; and I have put in by way of amendment—instead of by way of a new sub-section—reference to the limitation of

jurisdiction of the court. I put forward those two alternative methods of approach and, at this stage, I could probably leave the matter to be considered by the Committee.

The Chairman.—What is the position of the limitation in the statute of amounts ?

Mr. Garran.—I think that aspect is covered by altering the words "recoverable by" to "awarded to". Paragraph (*b*) of the proviso as amended reads, "where—(i) any contract or enactment providing for the limitation of liability; . . . . . ." That has a direct reference to the problem. Where that is applicable to the claim, "the amount of damages awarded to the claimant . . . . . shall not exceed the maximum so applicable." It is not the amount "recoverable by" but the amount actually "awarded to."

I consider Glanville Williams has the correct approach. If there is any doubt about it—and I do not think there is—a specific provision could be inserted possibly at the end of paragraph (*b*) of the proviso.

Mr. Rylah.—Something along the lines of clause 31 as proposed by Glanville Williams ?

Mr. Garran.—No, the problem really concerns the other side of the picture.

Mr. Holt.—By the amendment the upper limit of a claim is settled by the court in which the action is brought.

Mr. Garran.—Yes. In sub-section (2), I have brought in the words, ". . . . . apart from any limitation referred to in paragraph (*b*) of the proviso . . . . . ." It means that, for instance, in a claim made on the Railways, apart from the limitation referred to, the court sets out how much would have been awarded. It might say, "Four thousand pounds" but, of course, after the deduction of the person's own share of the negligence there is the final limitation to £2,000.

Mr. Thomas.—How would a person enter into such a contract ?

Mr. Garran.—For instance, the Railways contract to carry a person. They say they will not be liable for any injury over a certain amount. It will apply more with luggage than with persons.

Mr. Thomas.—I think there is some similar provision in the Maritime Regulations.

Mr. Garran.—I think there is, but I am not sure.

Mr. Rylah.—I feel that Mr. Garran has given the Committee very valuable assistance. I would like a copy of the amended clause to be forwarded to the Chief Justice's Committee, to be included in the matters that Committee will consider.

Mr. Garran.—I suggest that the Chief Justice's Committee be also given the alternative proposal of Glanville Williams.

Mr. Thomas.—With interstate train services, take the case of a collision occurring near Serviceton; a person might have purchased a return ticket in Victoria yet the action is beyond the boundaries of the State of Victoria.

The Chairman.—The Court in this State would have jurisdiction when the major cause of the action arose in Victoria. There would be no difficulty in that matter.

Mr. Garran.—The action could always be brought under the Service and Execution of Process Act. It is simply a matter of procedure.

Mr. Rylah.—Is there any other matter in this Bill about which you feel difficulties may arise in view of the practice, procedure or limitations upon the jurisdiction of the Courts in this State ?

Mr. Garran.—As I have already intimated, I have not studied the matter fully, but I have skimmed through this book of Glanville Williams fairly carefully. I have really carried out no research on my own. However, from reading this book of Mr. Williams I am satisfied there is nothing fundamentally wrong. He puts up certain problems but, generally, he is satisfied there is very little that can be done to make the position any better. There is the problem of the Last Opportunity Rule. Another problem is exactly what mathematical formula a court will use in a complicated case, for instance, when there are both joint tortfeasors and contributory negligence. On that last matter, Mr. Williams does work out some rules in his Bill, but, by and large, I think it is a matter that can be safely left to the Courts.

Mr. Rylah.—After the legislation has been in operation for a little while, it may be desirable to consolidate the Wrongs Act and, at that stage, consider the Joint Tortfeasors Act, and other matters arising under it.

Mr. Garran.—Yes.

The Chairman.—Although it has been in operation in England since 1945, has a case ever gone to the House of Lords as to whether or not the Last Opportunity Rule is operative ?

Mr. Garran.—I do not remember a case before the House of Lords.

The Chairman.—Lord Justice Denning had a different view from some of the Justices.

Mr. Garran.—Yes. In the main, of course, they are Canadian cases that are involved. This rule has been in operation in Canada for a longer time. Subject to correction, I think I can say that such a case has not reached the House of Lords.

Mr. Rylah.—Have you given any thought to the husband and wife question which the Law Council raised in its report and, again, does not seem to have faced up to it ?

Mr. Garran.—Once it is found that it was his personal responsibility, and he was not negligent—although his wife was—that is where the matter rests. That is, unless one endeavours to identify husband and wife. Then it might go beyond that to parent and child.

Mr. Rylah.—To my way of thinking, that does not raise a real problem.

Mr. Garran.—No. It is what might be called a side track.

Mr. Holt.—I agree. I formed that opinion.

Mr. Rylah.—I desired Mr. Garran's confirmation of my own view.

Mr. Garran.—One comes across thousands of these side tracks but the trouble is that very often they are confused with the main highway.

Mr. Thomas.—What are the limitations set out in Clause 5 regarding the time in which action should be taken ?

Mr. Garran.—Those are the matters which the Statute Law Revision Committee reported should be consolidated in the Limitation of Actions Bill. Principally, they are the limitations under the Supreme Court Act. The period is generally six years for tort and contract, with special limitations in the case of statutory corporations, municipalities, and the like.

The Chairman.—On behalf of the members of the Committee I desire to thank Mr. Garran for the assistance he has given the Committee this morning.

The Committee adjourned.

APPENDIX A.

MEMORANDUM BY MR. ANDREW GARRAN, ACTING PARLIAMENTARY DRAFTSMAN.

You ask for my comments on two matters in connexion with the Wrongs (Contributory Negligence) Bill.

(1) The suggestion of the Chief Justice's Law Reform Committee that sub-section (4) of clause 3 be drafted in more simple form.

Mr. Coghill, the Secretary of the Chief Justice's Committee, advises that no constructive suggestions for such a re-draft were put forward. It is true that the sub-section is difficult but it is dealing with a complicated position. I have attempted a simpler draft as follows :—

> " (4) The damages recoverable in any action brought under Part III. of the Principal Act for the benefit of the dependants of a deceased person shall be reduced under sub-section (1) of this section to the like extent as the damages recoverable, if the action had been brought under section twenty-five of the *Administration and Probate Act* 1928 for the benefit of the estate of such deceased person, would have been reduced."

I express no opinion as to whether, assuming that this draft is simpler than that in the Bill, the advantage of such simplicity would outweigh the advantage of uniformity with the English legislation.

(2) The suggestion of Mr. Heymanson, Secretary of the Law Institute Council, that in Clause 5, sub-section (1), line 16, the word " Act " where first occurring should read " section ".

This sub-section reproduces section 3 (1) of the English Act except that " section sixty-four of the *Supreme Court Act* 1928 " is substituted for " section one of the *Maritime Conventions Act* 1911." To alter the word " Act " to " section " would be to narrow the provisions of the Bill too greatly, as section 66 of the Supreme Court Act hinges to some extent on section 64. However, the English Maritime Conventions Act is one of only ten sections, whereas the Victorian Supreme Court Act extends over the field of Supreme Court constitution, jurisdiction and procedure. Accordingly some limiting amendment would appear desirable, and I suggest that in line 16 after " effect " there should be inserted the words " with respect to any such claim."

APPENDIX B.

MEMORANDUM BY MR. E. H. COGHILL, HONORARY SECRETARY TO THE CHIEF JUSTICE'S LAW REFORM COMMITTEE.

Further to the Chief Justice's letter of the 4th October on this matter, and yours of 5th October to him, the Chief Justice instructs me to reply that he has read Mr. Garran's evidence before the Statute Law Revision Committee and his proposed amendment to the Bill.

He suggests that it would be even better to incorporate into the Bill the positive statement advocated by Mr. Glanville Williams that a Court of limited jurisdiction can award the full amount which it has jurisdiction to award.

Accordingly, he suggests the following amendment of Mr. Garran's suggested amendment :—

> Clause 3 of the Bill, omit the proviso to sub-section (1), and omit sub-section (2) and insert :—
>
> " Provided that—
>
> (*a*) this sub-section shall not operate to defeat any defence arising under a contract;
>
> (*b*) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages awarded to the claimant by virtue of this sub-section shall not exceed the maximum so applicable;
>
> (*c*) where an action is brought in a Court of limited jurisdiction, the Court may award damages up to the limit of its jurisdiction even though such damages have first been reduced under this sub-section.
>
> (2) Where damages are recoverable by any person by virtue of the last preceding sub-section subject to such reduction as is therein mentioned, the Court shall find and record the total damages which, apart from any limitation referred to in paragraphs (*b*) and (*c*) of the proviso to the last preceding sub-section, would have been awarded if the claimant had not been at fault."

On further consideration, His Honour does not now suggest any amendment of clause 3 (4).

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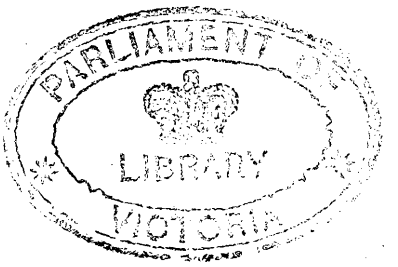
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