VICTORIA - MINUTES OF THE PROCEEDINGS OF THE LEG. COUNCIL, SESSION 1956-57-58

VICTORIA.

MINUTES OF THE PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL.

SESSION 1956-57-58.

WITH A COPY OF THE DOCUMENTS ORDERED TO BE PRINTED.

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 1.

WEDNESDAY, 21ST NOVEMBER, 1956.

1. The Council met pursuant to the Proclamation of His Excellency the Governor, bearing date the thirteenth day of November, 1956, which Proclamation was read by the Clerk and is as follows:—

PROROGUING PARLIAMENT AND FIXING THE TIME FOR HOLDING THE SECOND SESSION OF THE FORTIETH PARLIAMENT OF VICTORIA.

PROCLAMATION

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

WHEREAS the Parliament of Victoria stands adjourned until Thursday, the fifteenth day of November, 1956: Now I, the Governor of the State of Victoria, in the Commonwealth of Australia, do by this my Proclamation prorogue the said Parliament of Victoria until Wednesday, the twenty-first day of November, 1956, and I do hereby fix Wednesday, the twenty-first day of November, 1956, 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 thirteenth day of November, in the year of Our Lord One thousand nine hundred and fifty-six, and in the fifth year of the reign of Her Majesty Queen Elizabeth II.

(L.S.) DALLAS BROOKS.

By His Excellency's Command,
A. G. WARNER,
for Premier.

GOD SAVE THE QUEEN!

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

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

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL:

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY:

In 1856 the Acting Governor, opening the First Parliament of Victoria, said:

> "I embrace with great satisfaction the opportunity which is afforded to me of congratulating you upon the attainment of the object for which the country has, during many years, struggled—the establishment in the fullest degree of the principle of self-government. I am confident that the people of Victoria not only value this privilege, but that they are prepared to meet the increase of responsibility which it imposes upon all."

To-day, one hundred years later, opening the Second Session of the 40th Parliament of Victoria, I congratulate you on the manner in which the increased responsibility has been met.

12806/56. (240 copies.)

Her Majesty The Queen, being aware of this historic occasion, has graciously sent through me the following message for you:

"On this notable occasion when the Parliament of the State of Victoria is celebrating its Centenary, it is with great pleasure that I send to its Members my warm congratulations.

I share your pride in what has been accomplished and I wish you all success in your endeavours to further the welfare and progress of the people of Victoria.

I recall with great happiness the sincere welcome accorded to me when on the 25th February, 1954, it was my privilege to open a Session of your Parliament.

I pray that the blessings of the Almighty God will rest upon your counsels in the years to come.

(Signed) ELIZABETH R."

Through the past century the Constitution of Victoria has developed steadily and soundly. It is firmly based upon responsible government and adult suffrage, in a free Parliament legislating by procedures akin to those of the Parliament at Westminster.

In such a Parliament all the people are represented, and the representatives of the people take counsel in open debate for making and administering laws, for the consideration of grievances great and small, and for the advancement of the welfare of State and citizens.

These principles, as embodied in a verse from the Book of Proverbs, you have written in the pavement of the forecourt of this great building: "Where no counsel is the people fall but in the multitude of counsellors there is safety."

This constitutional development has marched side by side with the development of the State.

The men and women of Victoria have staunchly faced flood, drought, fire, war, and adversity, and have accepted gratefully the prosperity that they have earned.

The infant colony, which a hundred years ago was thriving on newly found gold, is now grown to lusty manhood.

Victoria is well provided with means of transport. Electric power lines and water channels distribute resources widely. Improved methods of agriculture release further wealth from the land. Industry and commerce expand.

Sound local government nourishes many vigorous communities. Assistance is provided for the sick, the aged, and the needy. The arts and sciences are nurtured.

The colony of Victoria has joined in federal union with the other colonies of Australia. As a State of the Commonwealth of Australia it has not surrendered any degree of self-government; though during urgent prosecution of war the Commonwealth assumed financial powers which have now been retained overlong.

Victoria stands high in repute among the countries of the world; and overseas there is increasing interest in the capacity and development of the State.

Victoria's first century was crowned with the visit of Her Most Gracious Majesty Queen Elizabeth II.

We are honoured that we shall have with us again His Royal Highness Prince Philip, who will to-morrow open the Olympic Games. To the renown of the City of Melbourne these Games are for the first time to be held in the Southern Hemisphere.

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY:

Estimates of revenue and expenditure will in due course be laid before you.

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL:

MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY:

I have called you together to consider further measures for the development and government of Victoria. Much has already been achieved, but much remains to be done to consolidate the work of the past and to build further for the future.

The full programme of legislation for the Session will shortly be disclosed to you. It will include measures for the following purposes:

To provide for River Improvement and Land Drainage.

To establish a University of Technology.

To ratify the Commonwealth–State Housing Agreement.

To consolidate and amend the law relating to Companies and also the law relating to Mental Health.

To promote Industry and encourage Tourists.

To provide for efficient Land Utilization.

To regulate the Bread Industry.

The general consolidation of the Statute Law will proceed.

May the blessing of Almighty God be with you in your deliberations; and may peace and prosperity continue through this new century and the centuries to come.

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.

3

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

4. PRIVILEGE BILL.—BENEFIT ASSOCIATIONS (AMENDMENT) BILL.—On the motion of the Honorable Sir Arthur Warner, for the Honorable E. P. Cameron, leave was given to bring in a Bill to amend the Benefit Associations 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.

5. DELEGATION FROM THE UNITED KINGDOM BRANCH OF THE COMMONWEALTH PARLIAMENTARY ASSOCIATION—PRESENTATION OF SANDGLASS.—The President having announced that a Delegation from the United Kingdom Branch of the Commonwealth Parliamentary Association consisting of the Most Honorable the Marquess of Lansdowne and the Right Honorable Emanuel Shinwell, M.P., and accompanied by Major J. G. Lockhart, C.B.E., the Secretary of the Branch, was within the precincts for the purpose of presenting to this House a Sandglass in commemoration of the Centenary of the First Sitting of the Victorian Parliament under Responsible Government—

The Honorable Sir Arthur Warner moved, That chairs be provided on the floor of the Council Chamber for the Most Honorable the Marquess of Lansdowne, a Member of the House of Lords, the Right Honorable Emanuel Shinwell, a Member of the House of Commons, and Major J. G. Lockhart, C.B.E., Secretary of the United Kingdom Branch of the Commonwealth Parliamentary Association.

Question—put and resolved in the affirmative.

The Delegates and Major Lockhart then entered the Council Chamber and were conducted by the Usher of the Black Rod to chairs on the floor of the House to the right of the President.

The President extended a welcome to the distinguished visitors and invited the Marquess of Lansdowne to address the House.

The Marquess of Lansdowne, addressing himself to the President, informed the House that it was the wish of the United Kingdom Branch of the Commonwealth Parliamentary Association to present to the Legislative Council of the Parliament of Victoria a two-minute Sandglass to mark the Centenary of the First Sitting of the Victorian Parliament under Responsible Government, and that the Delegation was charged with the duty of making the presentation.

Having concluded his address, the Marquess of Lansdowne presented the Sandglass by giving it into the care of the President.

The President, on behalf of the House, acknowledged the acceptance of the Sandglass and handed it to the Clerk who placed it on the Table.

At the invitation of the President, Mr. Shinwell also addressed the House.

The Honorable Sir Arthur Warner moved—

> We, the Members of the Legislative Council of Victoria, in Parliament assembled, express our thanks to the United Kingdom Branch of the Commonwealth Parliamentary Association for the presentation to this House of a Sandglass made to-day by its delegates.
>
> We accept this generous and notable gift with a full realization of the good wishes that accompany it and of its significance as marking the completion by this Parliament of its first hundred years of self-government.
>
> We ask the Members of the Delegation to convey to the Members of the United Kingdom Branch our affectionate greetings and express the hope that the friendly relations now existing between all branches of the Association and their Members will continue to grow as the years go by and that the ties that unite the peoples of Her Majesty's Commonwealth may thereby be strengthened.

And other Honorable Members having addressed the House in support of the motion—

Question—put and unanimously resolved in the affirmative.

Preceded by the Usher of the Black Rod, the Delegates and Major Lockhart then withdrew from the Chamber.

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

The Honorable V. O. Dickie 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.
>
> We also thank Your Excellency for conveying to us Her Majesty's Message of warm congratulations on the occasion of our celebration of the Centenary of the First Sitting of the Parliament of Victoria under Responsible Government.

Debate ensued.

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

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

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

7. ADDRESSES TO HER MAJESTY QUEEN ELIZABETH II. AND HIS EXCELLENCY THE GOVERNOR—CENTENARY OF THE FIRST SITTING OF THE PARLIAMENT OF VICTORIA UNDER RESPONSIBLE GOVERNMENT.—The Honorable Sir Arthur Warner moved, by leave, That this House agree to the following Address to Her Majesty the Queen :—

MAY IT PLEASE YOUR MOST GRACIOUS MAJESTY :

We, the Legislative Council of Victoria, in Parliament assembled, on this the One Hundredth Anniversary of the First Sitting of the Parliament of Victoria under Responsible Government desire to convey to Your Majesty the expression of our loyalty and devotion to the Throne and Person of Your Majesty.

We thank Your Majesty for and greatly appreciate the gracious Message of congratulations on the Celebration of this Centenary conveyed to us by His Excellency the Governor of Victoria.

We are happy to be able to assure Your Majesty that great progress has been made in this State in the one hundred years during which we have been privileged to enjoy self-government under the Crown.

Our feelings of loyalty and devotion to Your Majesty are strengthened by the consciousness of the deep personal interest Your Majesty has always manifested in the welfare of the peoples of Your Commonwealth, and we warmly cherish the memory of the year 1954 when Your Majesty, accompanied by His Royal Highness the Duke of Edinburgh, visited this State and graciously opened a Session of this Parliament.

We fervently hope that Your Majesty will enjoy health and happiness in a long and peaceful reign.

Debate ensued.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, by leave, That this House agree to the following Address to His Excellency the Governor :—

MAY IT PLEASE YOUR EXCELLENCY :

We, the Legislative Council 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 to Her Majesty the Queen respecting the Centenary of Responsible Government in Victoria.

Question—put and resolved in the affirmative.

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

8. CENTENARY OF THE FIRST SITTING OF THE PARLIAMENT OF VICTORIA UNDER RESPONSIBLE GOVERNMENT.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have concurred with the Council in adopting the Address to Her Majesty the Queen and the Address to His Excellency the Governor and have filled up the blanks therein by the insertion of the words " and the Legislative Assembly ".

9. ADDRESS TO HIS EXCELLENCY THE GOVERNOR—CENTENARY OF THE FIRST SITTING OF THE PARLIAMENT OF VICTORIA UNDER RESPONSIBLE GOVERNMENT.—The President reported that, accompanied by the Honorable the Speaker of the Legislative Assembly and Honorable Members of both Houses, he had, this day, presented to His Excellency the Governor the Joint Address relating to the Centenary of Responsible Government in Victoria, which had been agreed to by the Legislative Council and the Legislative Assembly, and that His Excellency had been pleased to make the following reply :—

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL, AND MR. SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY :

In the name and on behalf of Her Majesty the Queen, I regard it to be a great honour and privilege to be present at this memorable ceremony on the occasion of the celebration of the Centenary of the Parliament of this State. The history of those hundred years abundantly proves that the free control over its own destinies which was granted by Her late Majesty Queen Victoria, whose name the State bears, has greatly conduced to the wealth and prosperity of Victoria.

It gives me much pleasure to receive your Address and to express my deep satisfaction of your declaration of unswerving loyalty and devotion to the Throne and Person of Her Most Gracious Majesty Queen Elizabeth the Second.

I will convey to Her Majesty these sentiments together with your sincere appreciation of her congratulatory Message on this the occasion of your celebration of Responsible Government in Victoria.

I shall be glad to inform Her Majesty that the people of this joyous State retain cherished and treasured memories in their hearts of the occasion in 1954 when Her Majesty visited Victoria and graciously opened a Session of the Parliament.

I pray that Almighty God will continue to guide you in your honoured duties of office in the years to come in this part of Her Majesty's Empire.

I join with you in wishing Her Majesty health and happiness in a long and peaceful reign.

5

10. 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* 1956, I do hereby appoint—

The Honorable Thomas William Brennan,
The Honorable Percy Thomas Byrnes,
The Honorable Gilbert Lawrence Chandler,
The Honorable Gordon Stewart McArthur,
The Honorable William Slater,
The Honorable Arthur Smith, and
The Honorable Ivan Archie Swinburne

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

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

CLIFDEN EAGER,
President of the Legislative Council.

11. 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 Thomas Henry Grigg,
The Honorable Paul Jones,
The Honorable William MacAulay, and
The Honorable Roy Robert Rawson

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

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

CLIFDEN EAGER,
President of the Legislative Council.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

13. STANDING ORDERS COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. MacAulay, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner be members of the Select Committee on the Standing Orders of the House ; three to be the quorum.

Question—put and resolved in the affirmative.

14. HOUSE COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, W. MacAulay, and G. L. Tilley be members of the House Committee.

Question—put and resolved in the affirmative.

15. LIBRARY COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson be members of the Joint Committee to manage the Library.

Question—put and resolved in the affirmative.

16. PRINTING COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson be members of the Printing Committee ; three to be the quorum.

Question—put and resolved in the affirmative.

17. SUBORDINATE LEGISLATION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne be members of the Subordinate Legislation Committee.

Question—put and resolved in the affirmative.

18. DAYS OF BUSINESS.—The Honorable Sir Arthur Warner moved, by leave, That Tuesday, Wednesday, and Thursday in each week be the days on which the Council shall meet for the despatch of business during the present Session, and that half-past Four o'clock be the hour of meeting on each day ; that on Tuesday and Thursday in each week the transaction of Government business shall take precedence of all other business ; that on Wednesday in each week Private Members' business shall take precedence of Government business ; and that no new business be taken after half-past Ten o'clock.

Question—put and resolved in the affirmative.

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

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

Explosives Act 1928—Orders in Council relating to the Classification and Definition of Explosives (four papers).

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

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

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

Mental Hygiene Authority Act 1950—Mental Hygiene Authority Regulations 1956 (Nos. 4 and 5) (two papers).

Railways Act 1928—Report of the Victorian Railways Commissioners for the year 1955–56.

Soil Conservation and Land Utilization Acts—Report of the Soil Conservation Authority for the year 1955–56.

Victorian Inland Meat Authority Act 1942—Report of the Victorian Inland Meat Authority for the year 1955–56.

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

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 1.

TUESDAY, 16TH APRIL, 1957.

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

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

ORDER OF THE DAY :—

Government Business.

1. BENEFIT ASSOCIATIONS (AMENDMENT) BILL—(*Hon. E. P. Cameron*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, W. MacAulay, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. MacAulay, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION COMMITTEE (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 2.

TUESDAY, 16TH APRIL, 1957.

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 Sir Arthur Warner presented a Message from His Excellency the Governor informing the Council that he had caused the *Governor's Salary Bill*, which was reserved on the 13th November, 1956, for the signification of Her Majesty's pleasure thereon, and which received Her Majesty's Assent on the 19th December, 1956, to be proclaimed in the *Victoria Government Gazette*, and forwarding a copy of such Proclamation. (*For Proclamation, see* "Victoria Government Gazette" *of 27th December*, 1956, *page* 7007.)

4. MELBOURNE AND GEELONG CORPORATIONS BILL.—On the motion (by leave without notice) of the Honorable J. W. Galbally, leave was given to bring in a Bill to repeal Section Four of the *Melbourne and Geelong Corporations Act* 1938, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

5. BARLEY MARKETING (AMENDMENT) BILL.—On the motion (by leave without notice) of the Honorable G. L. Chandler, leave was given to bring in a Bill to amend the Barley Marketing Acts, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

6. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL.—On the motion (by leave without notice) of the Honorable J. W. Galbally, leave was given to bring in a Bill to amend Provisions of the Local Government Acts relating to Entitlement to Enrolment and the Holding of and Voting at Elections and Polls under the said Acts, and for other purposes, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

7. GAME (DESTRUCTION) BILL.—On the motion (by leave without notice) of the Honorable G. S. McArthur, leave was given to bring in a Bill to further amend Section Eleven of the *Game Act* 1928, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

8. HIRE-PURCHASE BILL.—On the motion (by leave without notice) of the Honorable J. W. Galbally, leave was given to bring in a Bill relating to Interest and other Moneys payable under Hire-Purchase Agreements, and for other purposes, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

9. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL.—On the motion (by leave without notice) of the Honorable J. W. Galbally, leave was given to bring in a Bill relating to Entitlement to Vote at Municipal Elections and Polls, and for other purposes, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

10. ABOLITION OF CAPITAL PUNISHMENT BILL.—On the motion (by leave without notice) of the Honorable J. W. Galbally, leave was given to bring in a Bill to abolish Capital Punishment, 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.

11. SUBORDINATE LEGISLATION COMMITTEE.—The Honorable I. A. Swinburne brought up the First General Report of the Subordinate Legislation Committee and Reports from the Committee on the Betting Tax Regulations 1956; the Country Fire Authority (Permits) Regulations 1956; and the Rules of the Estate Agents Committee.

Severally ordered to lie on the Table and the First General Report to be printed.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable P. T. Byrnes brought up Reports together with Minutes of Evidence from the Statute Law Revision Committee on Proposals to Consolidate and Amend the Law relating to Justices of the Peace and Courts of General Sessions; and to Consolidate the Law relating to—State Forests; Racing, Bookmakers and Totalizators; and Police Offences.

Severally ordered to lie on the Table and the Reports to be printed.

The Honorable P. T. Byrnes brought up a Report from the Statute Law Revision Committee on Anomalies in the Statute Law relating to Civil Proceedings by and against the Crown.

Ordered to lie on the Table and be printed together with Extracts from the Proceedings of the Committee, Appendices, and Minutes of Evidence.

12806/56. (240 copies.)

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

Education—Report of the Minister of Education for the year 1955–56.

Indeterminate Sentences Board—Report for the year 1955–56.

Penal Establishments, Gaols, and Reformatory Prisons—Report and Statistical Tables for the year 1955.

Severally ordered to lie on the Table.

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

Apprenticeship Acts—Amendment of Regulations—

Bootmaking Trades Apprenticeship Regulations.
Furniture Trades Apprenticeship Regulations.
Printing and Allied Trades Apprenticeship Regulations.

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 for the year 1955–56.

Companies Act 1938—Return by Prothonotary of the Supreme Court in connexion with the winding-up of Companies during the year 1956.

Co-operative Housing Societies Acts—Report of the Registrar of Co-operative Housing Societies for the year 1955–56.

Country Fire Authority Acts—Report of the Country Fire Authority for the year 1955–56.

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

Dried Fruits Act 1938—

Amendment of Regulations.
Statement of Receipts and Expenditure and Balance-sheet of the Dried Fruits Board for the year 1956.

Education Act 1928—Amendment of Regulations—

Regulation XII. (K).—Certificate of Competency in School Library Work.
Regulation XX. (J).—Trained Teacher–Librarian's Certificate.
Regulation XXI.—Scholarships.

Estate Agents Act 1956—

Estate Agents Licensing and General Regulations 1956.
Rules of the Estate Agents Committee.

Evidence Act 1928—Court Reporting (Fees) Regulations 1956.

Explosives Act 1928—

Explosives (Carriage) Regulations 1957.
Classification and Definition of Explosives (three papers).

Fire Brigades Acts—

Regulations relating to the Issue of Debentures.
Report of the Metropolitan Fire Brigades Board for the year 1955–56.

Fisheries Acts—Notices of Intention to issue Proclamations—

Respecting a bag limit for trout and quinnat salmon taken from Lake Bullen Merri or Lake Purrumbete.
To prescribe a bag limit for trout (non-indigenous to Victoria) taken from the Aringa Reservoir near Port Fairy.
To prohibit all fishing in Aringa Reservoir near Port Fairy from the first day of May in each year to the last day preceding the first Saturday in September next following, both days inclusive.
To vary the Proclamation respecting fishing licences and renewal of such licences.
To vary the Proclamation respecting prohibition of fishing in certain waters.

Friendly Societies Act 1928 and Benefit Associations Act 1951—Report of the Government Statist on—

Friendly Societies for the year 1954–55.
Benefit Associations for the year ended 30th September, 1956.

Geelong Harbor Trust Acts—Amendment of Superannuation Regulations.

Geelong Waterworks and Sewerage Act 1928—Balance-sheet of the Geelong Waterworks and Sewerage Trust as at 30th June, 1956.

Instruments Acts—Instruments Acts (Fees) Regulations 1956.

Labour and Industry Acts—

Amendment of Regulations—Holidays in certain trades (two papers).
Report of the Department of Labour and Industry for the year 1955.

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Brooklyn West, Campbellfield, Carrum North, Golden Square, Healesville, Heatherhill, Kerrimuir, Koo-wee-rup, Montmorency South, Murrumbeena, Syndal, and Wodonga West (thirteen papers).
Schedule of country lands proposed to be sold by public auction (two papers).

Land Act 1928 and Land (Improvement Purchase Lease) Act 1956—Amendment of Regulations.

Marketing of Primary Products Act 1935—

Proclamation declaring Potatoes to be a commodity for the purposes of the Act—Proclamation revoked.

Regulations—

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

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

Marketing of Primary Products (Egg and Egg Pulp) Act 1951—Report of the Egg and Egg Pulp Marketing Board for the year 1955–56.

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 1955–56.

Milk Board Acts—Balance-sheet and Statement of Accounts for the year 1955–56.

Mines Act 1928—Amendment of Rules—

General Rules for Proceedings before Wardens.

General Rules for Proceedings in Courts of Mines.

Motor Car Acts—

Amendment of Motor Car Regulations 1952.

Statistical Returns by Authorized Third-Party Insurers for the year 1955–56.

Petrol Pumps Act 1928—Amendment of Regulations.

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

Police Regulation Acts—

Amendment of Police Regulations 1951.

Determination No. 60 of the Police Classification Board.

Portland Harbor Trust Act 1949—

Amendment of Portland Harbor Trust (Staff) Regulations.

Statement of Receipts and Expenditure, Revenue Account, and Balance-sheet of the Portland Harbor Trust Commissioners for the year 1955–56.

Process Servers and Inquiry Agents Act 1956—Process Servers and Inquiry Agents Regulations 1956.

Public Service Act 1946—

Amendment of Public Service (Governor in Council) Regulations—

Part II.—Hours of Duty and Times of Attendance of Officers and Employees.

Part III.—Discipline and Conduct of Officers and Employees and Part IV.—Leave of Absence.

Part IV.—Leave of Absence.

Part V.—Stores and Transport.

Amendment of Public Service (Public Service Board) Regulations—

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

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

Part VI.—Travelling Expenses (three papers).

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

Railways Act 1928—Reports of the Victorian Railways Commissioners for the quarters ended 30th June, 1956, and 30th September, 1956 (two papers).

Registrar-General's Fees Act 1956—Regulations prescribing Fees.

River Murray Waters Act 1915—Report of the River Murray Commission for the year 1955–56.

Road Traffic Act 1956—Road Traffic (Infringements) Regulations 1956.

Rural Finance Corporation Act 1949—Report of the Rural Finance Corporation, together with Balance-sheet and Profit and Loss Account for the year 1954–55.

Seeds Act 1935—Amendment of Regulations.

State Electricity Commission Acts—

Amendment of Restrictions on Electrical Apparatus Regulations.

Report of the State Electricity Commission for the year 1955–56.

Supreme Court Acts—

Rules of the Supreme Court—

All Rules repealed; Rules substituted.

Amendment of Rules (six papers).

Solicitors Remuneration Order 1956.

Teaching Service Act 1946—Amendment of Regulations—

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

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

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

Town and Country Planning Act 1944—

Amendment of Regulations (two papers).

Planning Schemes—

City of Ararat Planning Scheme 1953.

City of Moorabbin Planning Scheme 1952.

City of Moorabbin Planning Scheme 1952, Amendments Nos. 1 and 2 (two papers).

Vegetation and Vine Diseases Act 1928—Amendment of Regulations.

Water Acts—Report of the State Rivers and Water Supply Commission for the year 1955–56.

14. ADDRESS-IN-REPLY TO SPEECH OF HIS EXCELLENCY THE GOVERNOR.—The Order of the Day for the resumption of the debate on the question, That the Council agree to the Address to His Excellency the Governor in reply to His Excellency's Opening Speech (for Address, see page 3 *ante*), having been read—

Debate resumed.

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

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

Ordered—That the debate be adjourned until later this day.

15. BARLEY MARKETING (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable D. L. Arnott 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 30th instant.

16. BENEFIT ASSOCIATIONS (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron 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 Tuesday, the 7th May next.

17. GAME (DESTRUCTION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday, the 30th instant.

18. MELBOURNE AND GEELONG CORPORATIONS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. W. Galbally moved, That this Bill be now read a second time.

The Honorable Sir Arthur 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 Wednesday, the 1st May next.

19. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of the remaining Orders of the Day, General Business, be postponed until Wednesday, the 1st May next.

20. ADDRESS-IN-REPLY TO SPEECH OF HIS EXCELLENCY THE GOVERNOR—The Order of the Day for the resumption of the debate on the question, That the Council agree to the Address to His Excellency the Governor in reply to His Excellency's Opening Speech (for Address, see page 3 *ante*), having been read—

Debate resumed.

The Honorable D. P. J. Ferguson 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. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 30th instant.

Question—put and resolved in the affirmative.

And then the Council, at forty-four minutes past Ten o'clock, adjourned until Tuesday, the 30th instant.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 2.

TUESDAY, 30TH APRIL, 1957.

Questions.

*1. The Hon. J. A. LITTLE: To ask the Honorable the Minister of Health—

(*a*) Was the Minister approached by the Hospital Employees Union in respect of the appointment of a representative of nursing aides on the Victorian Nursing Council.

(*b*) Did the Union submit at the Minister's request the name of a person holding a nursing aide certificate for five years.

(*c*) Was the person appointed a certified nursing aide; if so, for how long before her appointment had she held a certificate.

(*d*) Did any representative body having nursing aides as members submit the name of the person chosen.

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

(*a*) What amount of entertainment tax was paid in respect of the motor racing carnivals at Albert Park on—(i) 11th and 18th March, 1956; (ii) 25th November and 2nd December, 1956; and (iii) 17th and 24th March, 1957.

(*b*) Has an audited statement of receipts and expenditure of each such carnival been presented to the appropriate Government department; if so—(i) on what date was it audited; (ii) what were the gross takings and expenditure; and (iii) what amount was distributed to each individual charity which benefited.

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

(*a*) How many trusts were engaged in river improvement works prior to the proclamation of the *River Improvement Act* 1948, and how many trusts have been constituted since.

(*b*) How many drainage trusts were in operation before the passing of the *Drainage Areas Act* 1950, and how many trusts have been constituted since.

(*c*) What Government grants have been made to river improvement trusts since 1948, and on what terms.

(*d*) What Government grants have been made to drainage trusts since 1950, and on what terms.

(*e*) What is the revenue from rates of each river improvement trust and each drainage trust in the current financial year.

*4. The Hon. W. O. FULTON: To ask the Honorable the Minister of Health—

(*a*) What are the names and qualifications of the present members of the Medical Board, and what are their duties and responsibilities.

(*b*) On what date was the Board constituted.

(*c*) Is it the intention of the Government to abolish the Medical Board for alleged failure to interpret satisfactorily the recent legislation dealing with alien doctors.

*5. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—When does the Government propose to commence operations to divert the flow of Woady Yallock River away from Lake Corangamite.

*6. The Hon. W. SLATER: To ask the Honorable the Minister of Transport—

(*a*) Is the Minister of Education aware of the extreme discomfort and inconvenience being caused to teachers and pupils alike in the present functioning of the Strathmore High School.

(*b*) Will the Minister take all steps to facilitate the moves now being proposed by the Broadmeadows City Council to sell the Napier Park land to the Education Department and thus end the protracted litigation which has prevented the erection of the Strathmore High School on the Napier Park site.

*7. The Hon. W. SLATER: To ask the Honorable the Minister of Health—

(*a*) What are the names and locations of hospitals in Victoria now in course of construction.

(*b*) What are the names of the hospitals the completion of which has stopped.

(*c*) What is the estimated amount required to complete the construction of each of the hospitals referred to in (*b*).

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

12807/56. (125 copies.)

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

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

Government Business.

ORDERS OF THE DAY :—

*1. BARLEY MARKETING (AMENDMENT) BILL—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

*2. GAME (DESTRUCTION) BILL—(*Hon. G. S. McArthur*)—Second reading—Resumption of debate (*Hon. J. J. Jones*).

General Business.

NOTICES OF MOTION :—

*1. The Hon. W. SLATER : To move, That he have leave to bring in a Bill relating to the Melbourne City Council the permanent reservation and use for recreational purposes and the immediate termination of existing occupations of the whole of the area vested in the Melbourne City Council and situated at Flemington and bounded by Mt. Alexander-road, Victoria-street, Racecourse-road, and Moonee Ponds Creek and known as Debney's Paddock, and for other purposes.

*2. The Hon. B. MACHIN : To move, That he have leave to bring in a Bill to make Provision for Abating the Pollution of the Air.

*3. The Hon. W. SLATER : To move, That he have leave to bring in a Bill to deal with regulate and control Monopolies, restrictive Practices, unfair Trading, unfair Profits, and for other purposes.

WEDNESDAY, 1ST MAY, 1957.

General Business.

ORDERS OF THE DAY :—

*1. MELBOURNE AND GEELONG CORPORATIONS BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

*2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

*3. HIRE-PURCHASE BILL—(*Hon. J. W. Galbally*)—Second reading.

*4. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

*5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

TUESDAY, 7TH MAY, 1957.

Government Business.

ORDER OF THE DAY :—

1. BENEFIT ASSOCIATIONS (AMENDMENT) BILL—(*Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, W. MacAulay, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. MacAulay, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 3.

WEDNESDAY, 1ST MAY, 1957.

Questions.

*1. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—

(*a*) On what date was the tender accepted for the erection of the workshops block at the Geelong Junior Technical School.

(*b*) To whom was the contract awarded, and what was the contract price.

(*c*) What is the cost of this project to 30th April, 1957.

(*d*) When is it expected that the works on this contract and the additions to the main buildings will be completed.

(*e*) On what date were instructions given to the architect to proceed with plans and specifications.

(*f*) Were the plans and specifications for these works prepared by a private architect; if so, what fees have been paid to him to 30th April, 1957.

*2. The Hon. W. SLATER: To ask the Honorable the Minister of Transport—Will he lay on the table of the Library the file concerning the Melbourne City Council and the Town and Country Planning Board relating to Debney's Paddock, together with the correspondence passing between these bodies and the decision made by the Town and Country Planning Board.

*3. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—Will the Minister supply information as to the financial responsibilities of the municipalities of Footscray, Sunshine, and Werribee in connexion with recent reconstruction works on portions of the Princes Highway.

*4. The Hon. W. SLATER: To ask the Honorable the Minister of Transport—

(*a*) Has the Minister approved of proposed action by the Queenscliffe Borough Council to make available for caravans and camping parties part of the narrow cliff lands between the foreshore and the main Point Lonsdale-road.

(*b*) Will not such use of this narrow strip of land result in possible destruction of the ti-tree and other flora as well as accelerate the serious erosion of the cliffs.

(*c*) Will the Minister make available suitable Crown land in the Point Lonsdale area for caravans and camping parties.

*5. The Hon. A. K. BRADBURY: To ask the Honorable the Minister of Agriculture—

(*a*) What has been the cost of the road blocks for the detection of fruit fly in the State for the years 1955–56 and 1956–57 (to date).

(*b*) Have such road blocks led to the detection of fruit containing fruit fly; if so, in which localities, and on what dates.

General Business.

NOTICES OF MOTION:—

1. The Hon. W. SLATER: To move, That he have leave to bring in a Bill relating to the Melbourne City Council the permanent reservation and use for recreational purposes and the immediate termination of existing occupations of the whole of the area vested in the Melbourne City Council and situated at Flemington and bounded by Mt. Alexander-road, Victoria-street, Racecourse-road, and Moonee Ponds Creek and known as Debney's Paddock, and for other purposes.

2. The Hon. B. MACHIN: To move, That he have leave to bring in a Bill to make Provision for Abating the Pollution of the Air.

3. The Hon. W. SLATER: To move, That he have leave to bring in a Bill to deal with regulate and control Monopolies, restrictive Practices, unfair Trading, unfair Profits, and for other purposes.

ORDERS OF THE DAY:—

1. MELBOURNE AND GEELONG CORPORATIONS BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

12807/56. (125 copies.)

2. Local Government (Enrolment and Voting) Bill—(*Hon. J. W. Galbally*)—Second reading.

3. Hire-Purchase Bill—(*Hon. J. W. Galbally*)—Second reading.

4. Local Government (Elections and Polls) Bill—(*Hon. J. W. Galbally*)—Second reading.

5. Abolition of Capital Punishment Bill—(*Hon. J. W. Galbally*)—Second reading.

Government Business.

Orders of the Day:—

*1. Trinity College Bill—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*2. Victorian Inland Meat Authority (Financial) Bill—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

*3. Vermin and Noxious Weeds (Financial) Bill—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*4. Melbourne and Metropolitan Board of Works (Contributions) Bill—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

5. Barley Marketing (Amendment) Bill—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

6. Game (Destruction) Bill—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

TUESDAY, 7th MAY, 1957.

Government Business.

Order of the Day:—

1. Benefit Associations (Amendment) Bill—(*Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

Elections and Qualifications.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

House (Joint).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, W. MacAulay, and G. L. Tilley.

Library (Joint).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

Printing.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

Standing Orders.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. MacAulay, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

Statute Law Revision (Joint).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

Subordinate Legislation (Joint).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 3.

TUESDAY, 30TH APRIL, 1957.

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

2. ADJOURNMENT.—MOTION UNDER STANDING ORDER No. 53.—The Honorable D. L. Arnott moved, That the Council do now adjourn, and said he proposed to speak on the subject of " The disastrous policy of the Government in relation to road transport and decentralization culminating in the closing of the Arcadia Cement Company works at Port Fairy " ; and six Honorable Members having risen in their places and required the motion to be proposed—

Debate ensued.

Question—put.

The Council divided.

Ayes, 13.	Noes, 16.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey (*Teller*),	C. H. Bridgford,
T. W. Brennan,	E. P. Cameron,
D. P. J. Ferguson,	G. L. Chandler,
J. W. Galbally,	V. O. Dickie,
J. J. Jones,	W. O. Fulton,
P. Jones,	C. S. Gawith,
J. A. Little,	T. H. Grigg (*Teller*),
B. Machin (*Teller*),	G. S. McArthur,
R. R. Rawson,	W. MacAulay,
A. Smith,	R. W. Mack,
F. M. Thomas,	A. R. Mansell,
G. L. Tilley.	I. A. Swinburne,
	L. H. S. Thompson,
	D. J. Walters,
	Sir Arthur Warner.

And so it passed in the negative.

3. PAPERS.—The Honorable Sir Arthur Warner presented, by command of His Excellency the Governor—
Langi Kal Kal Training Centre—Report of Board of Inquiry.

Ordered to lie on the Table.

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

Constitution Act Amendment Act 1956—Statement of Appointment and Alterations of Classification in the Department of the Legislative Assembly.

Friendly Societies Act 1928, Industrial and Provident Societies Act 1928, Trade Unions Act 1928, Building Societies Act 1928, and Benefit Associations Act 1951—Report of the Registrar of Friendly Societies for the year 1956.

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

4. ADDRESS-IN-REPLY TO SPEECH OF HIS EXCELLENCY THE GOVERNOR.—The Order of the Day for the resumption of the debate on the question, That the Council agree to the Address to His Excellency the Governor in reply to His Excellency's Opening Speech (for Address, see page 3 *ante*), having been read—

Debate resumed.

Question—put and resolved in the affirmative.

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

Question—put and resolved in the affirmative.

12806/56. (240 copies.)

5. TRINITY COLLEGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to a College affiliated to and connected with the University of Melbourne and known as Trinity College*" and desiring the concurrence of the Council therein.

   Bill ruled to be a Private Bill.

   The Honorable G. S. McArthur moved, That this Bill be dealt with as a Public Bill.

   Question—put and resolved in the affirmative.

   The Honorable G. S. McArthur moved, That this Bill be now read a first time.

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

6. 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 E. P. Cameron, the Bill transmitted by the foregoing 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. VICTORIAN INLAND MEAT AUTHORITY (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Victorian Inland Meat Authority*" and desiring the concurrence of the Council therein.

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

8. MELBOURNE AND METROPOLITAN BOARD OF WORKS (CONTRIBUTIONS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for Contributions by the Melbourne and Metropolitan Board of Works to certain Municipalities and for the Maintenance by the Board of certain Roads, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. L. Chandler, the Bill transmitted by the foregoing 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-four minutes past Eleven o'clock, adjourned until to-morrow.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 4.

WEDNESDAY, 1ST MAY, 1957.

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

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

   Land Act 1928—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.

3. CITY OF MELBOURNE (DEBNEY'S PADDOCK) BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill relating to the Melbourne City Council the permanent reservation and use for recreational purposes and the immediate termination of existing occupations of the whole of the area vested in the Melbourne City Council and situated at Flemington and bounded by Mt. Alexander-road, Victoria-street, Racecourse-road, and Moonee Ponds Creek and known as Debney's Paddock, and for other purposes, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

4. CLEAN AIR BILL.—On the motion of the Honorable B. Machin, leave was given to bring in a Bill to make Provision for Abating the Pollution of the Air, 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. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL.—On the motion of the Honorable W. Slater, leave was given to bring in a Bill to deal with regulate and control Monopolies, restrictive Practices, unfair Trading, unfair Profits, 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 Wednesday next.

6. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, General Business, Nos. 1 to 5 inclusive, be postponed until later this day.

13

7. CITY OF MELBOURNE (DEBNEY'S PADDOCK) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable Sir Arthur 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 Wednesday, the 15th instant.

8. MELBOURNE AND GEELONG CORPORATIONS BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

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

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

Ordered—That the debate be adjourned until Wednesday next.

9. TRINITY COLLEGE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

10. VICTORIAN INLAND MEAT AUTHORITY (FINANCIAL) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable A. Smith 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. VERMIN AND NOXIOUS WEEDS (FINANCIAL) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable A. Smith, for the Honorable J. J. Jones, moved, That the debate be now adjourned.

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

Ordered—That the debate be adjourned until Tuesday next.

12. MELBOURNE AND METROPOLITAN BOARD OF WORKS (CONTRIBUTIONS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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 Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 4.

TUESDAY, 7TH MAY, 1957.

Questions.

*1. The Hon. P. JONES: To ask the Honorable the Minister of Transport—What would be the approximate cost of—(i) widening the railway crossing adjacent to the Kensington railway station; and (ii) converting the existing subway to the ramp type.

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

(*a*) Have audited statements of receipts and expenditure of the motor racing carnivals held at Albert Park on—(i) 11th and 18th March, 1956; and (ii) 17th and 24th March, 1957, been presented to a Government department; if so, on what dates, and to which department were they presented.

(*b*) What were the gross takings of the March, 1957, carnival, and what individual amounts were given to recognized charities.

(*c*) Will the Minister supply an itemised account of the expenditure of the carnivals held in November–December, 1956, and in March, 1957.

(*d*) Will the Minister lay on the table of the Library the file relating to Albert Park.

*3. The Hon. W. O. FULTON: To ask the Honorable the Minister of Health—In view of the ever-increasing costs of erecting infant welfare centres, will he increase the present Government subsidy of £2,250; if so, to what amount.

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

(*a*) Was a public hearing held on 9th April, 1957, by the Transport Regulation Board to hear applicants seeking licences to operate private bus services over the whole or portion of the railway tram service route between St. Kilda railway station and Brighton Beach.

(*b*) Has the name of the successful applicant been announced; if so, on what date was it announced.

(*c*) Were Melbourne–Brighton Bus Line and Eastern Suburbs Omnibus Service applicants.

(*d*) Have any 41-seater Leyland buses been sold recently by the Melbourne and Metropolitan Tramways Board to any such applicant; if so—(i) what are the names of the purchasers; and (ii) how many buses were sold to each.

(*e*) Were tenders called for; if so—(i) when; (ii) how many tenders were received; and (iii) what was the price tendered by the successful tenderer.

(*f*) Does the Tramways Board intend to dispose of its 41-seater buses.

(*g*) How many 41-seater buses are held by the Tramways Board.

(*h*) In view of requests of people using the tramway bus service between Melbourne, Footscray, Sunshine, and Deer Park, will 41-seater two-man buses be placed on that route; if so, on what date; if not, what is the reason.

*5. The Hon. W. O. FULTON: To ask the Honorable the Minister of Transport—

(*a*) What is the accumulated debit balance of the Maffra–Sale Irrigation District.

(*b*) What action does the Government propose to take to relieve the irrigators of this amount, particularly in view of the fact that many irrigation structures in this district are due for replacement.

Government Business.

ORDERS OF THE DAY:—

1. BARLEY MARKETING (AMENDMENT) BILL—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

2. GAME (DESTRUCTION) BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

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

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3. Benefit Associations (Amendment) Bill—(*Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

4. Trinity College Bill—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

5. Victorian Inland Meat Authority (Financial) Bill—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

6. Vermin and Noxious Weeds (Financial) Bill—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

7. Melbourne and Metropolitan Board of Works (Contributions) Bill—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

General Business.

Orders of the Day :—

1. Local Government (Enrolment and Voting) Bill—(*Hon. J. W. Galbally*)—Second reading.

2. Hire-Purchase Bill—(*Hon. J. W. Galbally*)—Second reading.

3. Local Government (Elections and Polls) Bill—(*Hon. J. W. Galbally*)—Second reading.

4. Abolition of Capital Punishment Bill—(*Hon. J. W. Galbally*)—Second reading.

*5. Clean Air Bill—(*Hon. B. Machin*)—Second reading.

WEDNESDAY, 8th MAY, 1957.

General Business.

Orders of the Day :—

*1. Monopolies and Restrictive Trade Practices Control Bill—(*Hon. W. Slater*)—Second reading.

2. Melbourne and Geelong Corporations Bill—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

WEDNESDAY, 15th MAY, 1957.

General Business.

Order of the Day :—

*1. City of Melbourne (Debney's Paddock) Bill—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

Elections and Qualifications.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

House (Joint).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, W. MacAulay, and G. L. Tilley.

Library (Joint).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

Printing.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

Standing Orders.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. MacAulay, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

Statute Law Revision (Joint).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

Subordinate Legislation (Joint).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 5.

WEDNESDAY, 8TH MAY, 1957.

Questions.

*1. The Hon. W. SLATER: To ask the Honorable the Minister of Transport—Will he lay on the table of the Library the reports of the conferences between the City Councils of Melbourne, Essendon, and Brunswick, and the Melbourne and Metropolitan Board of Works relating to the development and use of the land abutting the Moonee Ponds Creek.

*2. The Hon. W. MACAULAY: To ask the Honorable the Minister of Transport—

(*a*) What amount was raised by the Melbourne and Metropolitan Board of Works by its drainage rate during the year ended 30th June, 1956.

(*b*) Of such amount raised, how much has been spent, and upon what works.

*3. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—How many voters are enrolled in each electoral province for the Legislative Council.

*4. The Hon. W. MACAULAY: To ask the Honorable the Minister of Transport—

(*a*) Has the attention of the Government been drawn to the statement made by Dr. Lindell and reported in the press of the 7th instant regarding the consumption of liquor and its effect upon motor drivers.

(*b*) Will the Government seriously consider this statement with a view to taking appropriate action.

*5. The Hon. W. SLATER: To ask the Honorable the Minister of Transport—When will the sessional volumes of the Statutes for the years 1955 and 1956, respectively, be completed and available.

General Business.

ORDERS OF THE DAY:—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

2. MELBOURNE AND GEELONG CORPORATIONS BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

3. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

4. HIRE-PURCHASE BILL—(*Hon. J. W. Galbally*)—Second reading.

5. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

7. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading.

Government Business.

ORDERS OF THE DAY:—

*1. POUNDS (FEES) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*2. MOORABBIN LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

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

12807/56. (125 copies.)

TUESDAY, 14TH MAY, 1957.

Government Business.

ORDERS OF THE DAY :—

1. BENEFIT ASSOCIATIONS (AMENDMENT) BILL—(*Hon. E. P. Cameron*)—To be further considered in Committee.

*2. PUBLIC ACCOUNT (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

*3. RABBIT (BIOLOGICAL DESTRUCTION) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

*4. PUBLIC WORKS LOAN APPLICATION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

WEDNESDAY, 15TH MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. CITY OF MELBOURNE (DEBNEY'S PADDOCK) BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, W. MacAulay, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. MacAulay, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

15

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 5.

TUESDAY, 7TH MAY, 1957.

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

2. PUBLIC WORKS LOAN APPLICATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Money for Public Works and other Purposes*" and desiring the concurrence of the Council therein.

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

3. RABBIT (BIOLOGICAL DESTRUCTION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to authorize the Appointment of a Research Officer in the Biological Destruction of Rabbits*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable E. P. Cameron, 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. PUBLIC ACCOUNT (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Sixteen of the 'Public Account Act* 1951'" and desiring the concurrence of the Council therein.

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

5. MOORABBIN LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Crown Grant of certain Land at Moorabbin to Francis Benjamin Sheppard*" and desiring the concurrence of the Council therein.

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

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

   Adoption of Children Act 1928—Adoption of Children Rules 1957.

   Constitution Act Amendment Act 1956—Statement of Appointments in the Department of the Legislative Council.

   Country Roads Act 1928—Report of the Country Roads Board for the year 1955–56.

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

   Local Government Act 1946—Uniform Building Regulations Amending Regulations No. 6.

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

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

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

   Town and Country Planning Act 1944—Report of the Town and Country Planning Board for the year 1955–56.

   University Act 1928—University of Melbourne—

      Financial Statements for the year 1955.

      Report, together with Statutes and Regulations and Amendments allowed by His Excellency the Governor, for the year 1956.

12806/56. (240 copies.)

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

House in Committee.

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

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

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

House in Committee.

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

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

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

House in Committee.

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

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

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

House in Committee.

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

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

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

12. PUBLIC ACCOUNT (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable R. R. Rawson 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.

13. RABBIT (BIOLOGICAL DESTRUCTION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

14. MOORABBIN LAND BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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. PUBLIC WORKS LOAN APPLICATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable A. Smith 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 Tuesday next.

16. POUNDS (FEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Pounds Act* 1928'" and desiring the concurrence of the Council therein.

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

17. VERMIN AND NOXIOUS WEEDS (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 D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

18. VICTORIAN INLAND MEAT 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 D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

19. MELBOURNE AND METROPOLITAN BOARD OF WORKS (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 D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

20. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 6.

WEDNESDAY, 8TH MAY, 1957.

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

2. SANDRINGHAM TO BLACK ROCK ELECTRIC STREET RAILWAY (DISMANTLING) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Dismantling of the Sandringham to Black Rock Electric Street Railway, and for other purposes*" and desiring the concurrence of the Council therein.

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

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

4. STATUTE LAW REVISION COMMITTEE.—The Honorable L. H. S. Thompson brought up a further Report from the Statute Law Revision Committee on the proposals contained in the Trustee Companies Bill 1955.

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

5. PAPERS.—The Honorable Sir Arthur Warner presented, by command of His Excellency the Governor—

Aborigines Act 1928—Report of Board of Inquiry upon the Operation of the Aborigines Act 1928 and the Regulations and Orders made thereunder.

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 :—

Motor Car Acts—Amendment of Motor Car Regulations 1952—Amendment No. 9.

Police Regulation Acts—Amendment of Police Regulations 1951—Amendment No. 17 (two papers).

Process Servers and Inquiry Agents Act 1956—Amendment of Process Servers and Inquiry Agents Regulations 1956.

Registration of Births Deaths and Marriages Act 1928—General Abstract showing the number of Births, Deaths and Marriages during the year 1956.

Road Traffic Act 1956—

Parking Regulations 1957.
Victoria-Street, Collingwood, Parking Regulations and Amendment (two papers).

State Development Act 1941—Report of the State Development Committee on the development of lands bordering the Latrobe River between Yallourn and Lake Wellington.

6. POSTPONEMENT OF ORDERS OF THE DAY.—

Ordered—That the consideration of Order of the Day, General Business, No. 1, be postponed until Wednesday, the 29th instant.

Ordered—That the consideration of Orders of the Day, General Business, Nos. 2-6 inclusive, be postponed until the next day of meeting.

7. CLEAN AIR BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable B. Machin moved, That this Bill be now read a second time.

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 Wednesday, the 22nd instant.

8. POUNDS (FEES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

The Honorable D. L. Arnott 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.

9. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 6.

TUESDAY, 14TH MAY, 1957.

Questions.

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

(*a*) In relation to the motor racing held at Albert Park on 17th and 24th March, 1957, has a return been submitted to the Entertainments Tax Department; if so—(i) on what date was it submitted; (ii) what were the gross takings and expenditure disclosed therein; and (iii) what individual recognized charities were shown as receiving grants from the proceeds.

(*b*) Will the Minister supply an itemised list of the expenditure of the carnivals held in November-December, 1956, and March, 1957, as supplied to the Entertainments Tax Department.

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

(*a*) In view of the decision of the Melbourne and Metropolitan Tramways Board to sell seven 41-seater buses to a private bus operator for £3,000 each, will the Minister indicate whether he favours the method of sale adopted.

(*b*) What was the cost price of such buses to the Board, and what would be the replacement cost of each at the present day.

(*c*) In the event of more 41-seater buses being offered for sale, will the Minister indicate whether such sales will be by tender or by private negotiation.

*3. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—

(*a*) Is it the policy of the Melbourne and Metropolitan Tramways Board to sell buses to private individuals, companies, and organizations.

(*b*) How many buses have been sold over the past five years, and to whom.

Government Business.

ORDERS OF THE DAY:—

*1. SANDRINGHAM TO BLACK ROCK ELECTRIC STREET RAILWAY (DISMANTLING) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

2. MOORABBIN LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate (Hon. G. L. Tilley).*

*3. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

4. POUNDS (FEES) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate (Hon. D. L. Arnott).*

5. BENEFIT ASSOCIATIONS (AMENDMENT) BILL—(*Hon. E. P. Cameron*)—To be further considered in Committee.

6. PUBLIC ACCOUNT (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate (Hon. R. R. Rawson).*

7. RABBIT (BIOLOGICAL DESTRUCTION) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate (Hon. J. J. Jones).*

8. PUBLIC WORKS LOAN APPLICATION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate (Hon. A. Smith).*

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

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General Business.

ORDERS OF THE DAY :—

1. MELBOURNE AND GEELONG CORPORATIONS BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).
2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
3. HIRE-PURCHASE BILL—(*Hon. J. W. Galbally*)—Second reading.
4. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.
5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

WEDNESDAY, 15TH MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. CITY OF MELBOURNE (DEBNEY'S PADDOCK) BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

WEDNESDAY, 22ND MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. E. P. Cameron*).

WEDNESDAY, 29TH MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

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STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 7.

WEDNESDAY, 15TH MAY, 1957.

Question.

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

(*a*) Is he aware that fifteen accidents (one fatal) at the Macaulay-road, Kensington, railway gates and at the intersections of the adjoining streets were reported to the police during the year 1955-56.

(*b*) In view of a recent police report suggesting that, to make these intersections safe and ease the traffic congestion, it is essential that the railway gates be widened, and also suggesting that the steps of the existing subway be removed and be replaced by a gradual approach without steps, will he, in the interests of public safety, have the position reviewed.

General Business.

NOTICE OF MOTION:—

*1. The Hon. D. P. J. FERGUSON: To move, That he have leave to bring in a Bill to unite the Cities of Geelong, Geelong West, and Newtown and Chilwell into one City, and for other purposes.

ORDERS OF THE DAY:—

1. CITY OF MELBOURNE (DEBNEY'S PADDOCK) BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

2. MELBOURNE AND GEELONG CORPORATIONS BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

3. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

4. HIRE-PURCHASE BILL—(*Hon. J. W. Galbally*)—Second reading.

5. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

Government Business.

NOTICE OF MOTION:—

*1. The Hon. G. L. CHANDLER: To move, That he have leave to bring in a Bill relating to the Construction of Grain Elevators along Border Railways in New South Wales.

ORDERS OF THE DAY:—

1. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

*2. YINNAR LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*3. WODONGA (UNIMPROVED RATING POLL) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

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

12807/56. (125 copies.)

TUESDAY, 21ST MAY, 1957.

Government Business.

ORDERS OF THE DAY :—

1. SANDRINGHAM TO BLACK ROCK ELECTRIC STREET RAILWAY (DISMANTLING) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

*2. HOUSING (COMMONWEALTH AND STATE AGREEMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

WEDNESDAY, 22ND MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. E. P. Cameron*).

WEDNESDAY, 29TH MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

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STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 8.

THURSDAY, 16TH MAY, 1957.

Questions.

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

(*a*) Was a letter addressed to and received by the Honorable the Premier on Monday, 13th May, 1957, from the Flemington-Kensington Progress Association requesting a widening of the terms of reference of the Debney's Paddock inquiry.

(*b*) Did the proposed terms of reference suggested by the Flemington-Kensington Progress Association consist of the following matters:—

(i) Whether the decision to lease parts of Debney's Paddock in 1950 was made by the full City Council or subsequently confirmed by it.

(ii) The circumstances in which occupation was given to certain persons or companies, and the terms, conditions, and payment.

(iii) The circumstances in which the original occupants assigned their rights and whether the full Council agreed to these assignments.

(iv) The circumstances in which valuable buildings were built by occupants enjoying only monthly occupation rights, and whether and by whom were assurances given that occupation would be more or less permanent.

(v) Whether a decision has been made by the Metropolitan Planning Board about Debney's Paddock, the attitude taken by the City Council towards the decision, and whether the matter should not be again referred to the Metropolitan Planning Board.

(*c*) Has the Government considered, or will now consider, the incorporation of the foregoing terms of reference in the terms of reference for the inquiry.

*2. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—Will he give the present percentage (to the nearest one per cent.) of costs of—(i) overhead; and (ii) haulage, per ton mile of goods freight carried on the railways.

Government Business.

NOTICE OF MOTION:—

1. The Hon. G. L. CHANDLER: To move, That he have leave to bring in a Bill relating to the Construction of Grain Elevators along Border Railways in New South Wales.

ORDERS OF THE DAY:—

1. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

2. YINNAR LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

3. WODONGA (UNIMPROVED RATING POLL) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

General Business.

NOTICE OF MOTION:—

1. The Hon. D. P. J. FERGUSON: To move, That he have leave to bring in a Bill to unite the Cities of Geelong, Geelong West, and Newtown and Chilwell into one City, and for other purposes.

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1. CITY OF MELBOURNE (DEBNEY'S PADDOCK) BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

2. MELBOURNE AND GEELONG CORPORATIONS BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

3. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

4. HIRE-PURCHASE BILL—(*Hon. J. W. Galbally*)—Second reading.

5. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

TUESDAY, 21ST MAY, 1957.

Government Business.

ORDERS OF THE DAY :—

1. SANDRINGHAM TO BLACK ROCK ELECTRIC STREET RAILWAY (DISMANTLING) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

2. HOUSING (COMMONWEALTH AND STATE AGREEMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

WEDNESDAY, 22ND MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. E. P. Cameron*).

WEDNESDAY, 29TH MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

ROY S. SARAH,
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· 19

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 7.

TUESDAY, 14TH MAY, 1957.

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

2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable Sir Arthur Warner presented a Message from His Excellency the Lieutenant-Governor informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk-Assistant of the Legislative Council, for and in the absence of the Clerk of the Parliaments, viz. :—

   Trinity College Act.
   Vermin and Noxious Weeds (Financial) Act.
   Victorian Inland Meat Authority (Financial) Act.
   Melbourne and Metropolitan Board of Works (Contributions) Act.

3. DRIED FRUITS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Fifteen of the 'Dried Fruits Act* 1938'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. L. Chandler, 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. HOUSING (COMMONWEALTH AND STATE AGREEMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to ratify and approve the Execution for and on behalf of the State of Victoria of an Agreement between the Commonwealth of Australia and the several States of Australia in relation to Housing Projects, and for other purposes*" and desiring the concurrence of the Council therein.

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

5. 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 1955–56.

   Forests Act 1928—Report of the Forests Commission for the year 1955–56.

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

      Part I.—Appointments to the Administrative, Professional and Technical and General Divisions.
      Part III.—Salaries, Increments and Allowances (six papers).

   Stamps Acts—Amendment of Betting Tax Regulations 1956.

6. SANDRINGHAM TO BLACK ROCK ELECTRIC STREET RAILWAY (DISMANTLING) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

   The Honorable G. L. Tilley moved, That the debate be now adjourned.

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

   Ordered—That the debate be adjourned until Tuesday next.

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

   House in Committee.

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

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

12806/56. (240 copies.)

8. Coal Mine Workers Pensions (Amendment) Bill.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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 later this day.

9. Pounds (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 D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

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

House in Committee.

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

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

11. Yinnar Lands Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide, upon the Surrender to Her Majesty of certain Land in the Parish of Yinnar, for the Reservation thereof as a Site for Public Recreation, and for the Revocation of the Reservation of certain other Land in the said Parish temporarily reserved as a Site for Public Recreation, and for the Grant thereof to the President Councillors and Ratepayers of the Shire of Morwell, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, 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. Wodonga (Unimproved Rating Poll) Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to postpone the Time for taking the Poll on a Proposal to adopt Rating on Unimproved Values in the Shire of Wodonga, and for other purposes*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable E. P. Cameron moved, That this Bill be dealt with as a Public Bill.

Question—put and resolved in the affirmative.

The Honorable E. P. Cameron 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.

13. Benefit Associations (Amendment) Bill.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters 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.

14. Public Account (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 T. H. Grigg having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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. Rabbit (Biological Destruction) 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.

21

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

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

16. HOUSING (COMMONWEALTH AND STATE AGREEMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable R. R. Rawson, 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.

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

House in Committee.

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

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

18. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 8.

WEDNESDAY, 15TH MAY, 1957.

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

2. ADJOURNMENT.—MOTION UNDER STANDING ORDER No. 53.—The Honorable A. K. Bradbury moved, That the Council do now adjourn, and said he proposed to speak on the subject of "The treatment of decentralized industry under the transport policy of the Government as administered by the Minister of Transport"; and six Honorable Members having risen in their places and required the motion to be proposed—

Debate ensued.

Question—put.

The Council divided.

Ayes, 16.	Noes, 15.
The Hon. D. L. Arnott,	The Hon. A. J. Bailey (*Teller*),
A. K. Bradbury,	T. W. Brennan,
P. T. Byrnes,	C. H. Bridgford,
P. V. Feltham,	E. P. Cameron,
D. P. J. Ferguson,	G. L. Chandler,
W. O. Fulton,	V. O. Dickie,
J. W. Galbally,	C. S. Gawith (*Teller*),
J. J. Jones,	T. H. Grigg,
B. Machin (*Teller*),	P. Jones,
A. R. Mansell (*Teller*),	J. A. Little,
R. R. Rawson,	G. S. McArthur,
W. Slater,	R. W. Mack,
A. Smith,	M. P. Sheehy,
I. A. Swinburne,	L. H. S. Thompson,
G. L. Tilley,	Sir Arthur Warner.
D. J. Walters.	

And so it was resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 9.

THURSDAY, 16TH MAY, 1957.

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

2. POLICE OFFENCES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate the Law relating to Police Offences*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. S. McArthur, 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. RACING BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate the Law relating to Horse Pony Trotting and Dog Racing, the Registration of Bookmakers and their Clerks, and Totalizators*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. S. McArthur, 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. STAMPS (HIRE-PURCHASE AGREEMENTS) AMENDMENT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Stamps (Hire-Purchase Agreements) Act* 1956'" and desiring the concurrence of the Council therein.

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

5. FORESTS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate the Law for the Management and Protection of State Forests*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. JUSTICES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate and amend the Law relating to Justices of the Peace and Courts of General and Petty Sessions*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. CEMETERIES (FINANCIAL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Cemeteries Acts*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable E. P. Cameron, 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. MORNINGTON LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Vesting of certain Unalienated Lands of the Crown in the President Councillors and Ratepayers of the Shire of Mornington, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable E. P. Cameron, 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. MAINTENANCE 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 Orders under Parts IV. and V. of the 'Maintenance Act* 1928', *and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. L. Chandler, 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. GAME (DESTRUCTION) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

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

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

    Teaching Service Act 1946—Amendment of Regulations—

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

    Teaching Service (Governor in Council) Regulations.

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

23

12. GRAIN ELEVATORS (BORDER RAILWAYS) BILL.—On the motion of the Honorable G. L. Chandler, leave was given to bring in a Bill relating to the Construction of Grain Elevators along Border Railways in New South Wales, 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.

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

House in Committee.

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

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

14. YINNAR LANDS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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. WODONGA (UNIMPROVED RATING POLL) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

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

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

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

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

House in Committee.

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

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

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

House in Committee.

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

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

18. STAMPS (HIRE-PURCHASE AGREEMENTS) AMENDMENT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable W. Slater for 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 Thursday next.

19. CEMETERIES (FINANCIAL) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

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

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

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

20. MORNINGTON LAND BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable J. W. Galbally 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 Tuesday next.

21. MAINTENANCE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable R. R. Rawson 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.

22. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day for the second reading of the Grain Elevators (Border Railways) Bill be postponed until the next day of meeting.

23. LOCAL GOVERNMENT (GEELONG) BILL.—On the motion of the Honorable D. P. J. Ferguson, leave was given to bring in a Bill to unite the Cities of Geelong, Geelong West, and Newtown and Chilwell into one 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 Wednesday next.

24. CITY OF MELBOURNE (DEBNEY'S PADDOCK) 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, 14.	Noes, 14.
The Hon. A. J. Bailey,	The Hon. A. K. Bradbury (*Teller*),
T. W. Brennan (*Teller*),	C. H. Bridgford,
D. P. J. Ferguson,	P. T. Byrnes,
J. W. Galbally,	E. P. Cameron,
J. J. Jones (*Teller*),	G. L. Chandler,
P. Jones,	V. O. Dickie (*Teller*),
J. A. Little,	P. V. Feltham,
B. Machin,	C. S. Gawith,
R. R. Rawson,	T. H. Grigg,
M. P. Sheehy,	G. S. McArthur,
W. Slater,	R. W. Mack,
A. Smith,	L. H. S. Thompson,
F. M. Thomas,	D. J. Walters,
G. L. Tilley.	Sir Arthur Warner.

The Tellers having declared the numbers for the "Ayes" and for the "Noes" to be respectively fourteen, or equal, the President said—

The voting being equal, it therefore devolves upon me to give a casting vote. In order that the Bill may be further considered in Committee and a final decision reached on the motion for the third reading, I give my casting vote for the Ayes.

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

House in Committee.

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

The Honorable W. Slater moved, That the Bill be now read a third time.

Debate ensued.

Question—put.

The Council divided.

Ayes, 15.	Noes, 14.
The Hon. D. L. Arnott (*Teller*),	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey,	C. H. Bridgford,
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie,
P. Jones,	P. V. Feltham,
J. A. Little,	C. S. Gawith,
B. Machin,	T. H. Grigg (*Teller*),
R. R. Rawson,	G. S. McArthur,
M. P. Sheehy (*Teller*),	R. W. Mack,
W. Slater,	L. H. S. Thompson,
A. Smith,	D. J. Walters,
F. M. Thomas,	Sir Arthur Warner.
G. L. Tilley.	

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

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

25. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 9.

TUESDAY, 21ST MAY, 1957.

Government Business.

NOTICES OF MOTION :—

*1. The Hon. SIR ARTHUR WARNER: To move, That so much of the Sessional Orders as provides that the hour of meeting on Wednesday and Thursday in each week shall be half-past Four o'clock be suspended until the 30th June next, and that until the 30th June next the hour of meeting on Wednesdays shall be Two o'clock and on Thursdays Eleven o'clock.

*2. The Hon. SIR ARTHUR WARNER: To move, That so much of the Sessional Orders as provides that on Wednesday in each week Private Members' Business shall take precedence of Government Business be suspended until the 30th June next, and that until the 30th June next Government Business shall take precedence of all other business.

ORDERS OF THE DAY :—

1. YINNAR LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

2. SANDRINGHAM TO BLACK ROCK ELECTRIC STREET RAILWAY (DISMANTLING) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

*3. FORESTS BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*4. GRAIN ELEVATORS (BORDER RAILWAYS) BILL—(*Hon. G. L. Chandler*)—Second reading.

*5. JUSTICES BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

6. WODONGA (UNIMPROVED RATING POLL) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

7. HOUSING (COMMONWEALTH AND STATE AGREEMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

*8. CEMETERIES (FINANCIAL) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

*9. MAINTENANCE BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

*10. MORNINGTON LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

ORDERS OF THE DAY :—

1. MELBOURNE AND GEELONG CORPORATIONS BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. HIRE-PURCHASE BILL—(*Hon. J. W. Galbally*)—Second reading.

4. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

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

12807/56. (125 copies.)

2° WEDNESDAY, 22ND MAY, 1957.

General Business.

ORDERS OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. E. P. Cameron*).

*2. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading.

THURSDAY, 23RD MAY, 1957.

Government Business.

ORDER OF THE DAY :—

*1. STAMPS (HIRE-PURCHASE AGREEMENTS) AMENDMENT BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

WEDNESDAY, 29TH MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

MEETING OF SELECT COMMITTEE.

Wednesday, 29th May.

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

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, W. MacAulay, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. MacAulay, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 10.

WEDNESDAY, 22ND MAY, 1957.

Questions.

*1. The Hon. W. O. FULTON: To ask the Honorable the Minister of Transport—

(*a*) What was the date of the last survey of the Avon River.

(*b*) How many acres of land have been lost by erosion between the Valencia Creek bridge and Lake Wellington.

(*c*) What is the estimated area of land covered by sand and gravel from such erosion.

(*d*) What amount of money was made available by the Government—(i) for flood protection on the Avon River prior to the formation of the River Improvement Trust; and (ii) to the Trust since its inception.

(*e*) Has a survey been carried out on the Freestone Creek; if so, what is the extent of the erosion on that stream.

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

(*a*) How many Housing Commission homes have been sold to persons other than tenants in each of the following categories—(i) females with dependants; (ii) females without dependants; (iii) males with dependants: and (iv) males without dependants.

(*b*) From which estates have such homes been sold since 1st July, 1955.

General Business.

ORDERS OF THE DAY:—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. E. P. Cameron*).

2. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading.

3. MELBOURNE AND GEELONG CORPORATIONS BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

4. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

5. HIRE-PURCHASE BILL—(*Hon. J. W. Galbally*)—Second reading.

6. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

7. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

Government Business.

NOTICE OF MOTION:—

1. The Hon. SIR ARTHUR WARNER: To move, That so much of the Sessional Orders as provides that on Wednesday in each week Private Members' Business shall take precedence of Government Business be suspended until the 30th June next, and that until the 30th June next Government Business shall take precedence of all other business.

ORDERS OF THE DAY:—

1. CEMETERIES (FINANCIAL) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

2. MAINTENANCE BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

3. MORNINGTON LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

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

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THURSDAY, 23RD MAY, 1957.

Government Business.

ORDERS OF THE DAY :—

1. STAMPS (HIRE-PURCHASE AGREEMENTS) AMENDMENT BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

2. GRAIN ELEVATORS (BORDER RAILWAYS) BILL—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

TUESDAY, 28TH MAY, 1957.

Government Business.

ORDER OF THE DAY :—

1. JUSTICES BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

WEDNESDAY, 29TH MAY, 1957.

General Business.

ORDER OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

MEETING OF SELECT COMMITTEE.

Wednesday, 29th May.

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

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 11.

THURSDAY, 23RD MAY, 1957.

Government Business.

NOTICE OF MOTION :—

*1. The Hon. SIR ARTHUR WARNER : To move, That so much of the Sessional Orders as provides that no new business shall be taken after the hour of half-past Ten o'clock be suspended until the 30th June next and that until the 30th June next new business may be taken at any hour.

ORDERS OF THE DAY :—

1. STAMPS (HIRE-PURCHASE AGREEMENTS) AMENDMENT BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

2. GRAIN ELEVATORS (BORDER RAILWAYS) BILL—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

*3. CONSOLIDATED REVENUE BILL—(*from Assembly—Hon. Sir Arthur Warner*)—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

4. MAINTENANCE BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

5. MORNINGTON LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

ORDERS OF THE DAY :—

1. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

2. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

TUESDAY, 28TH MAY, 1957.

Government Business.

ORDER OF THE DAY :—

1. JUSTICES BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

General Business.

ORDER OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

WEDNESDAY, 29TH MAY, 1957.

General Business.

ORDERS OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

2. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

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

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MEETING OF SELECT COMMITTEE.

Wednesday, 29th May.

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

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 10.

TUESDAY, 21ST MAY, 1957.

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

2. THE LATE HONORABLE WILLIAM MACAULAY.—The Honorable Sir Arthur Warner moved, by leave, That this House place on record its deep regret at the death of the Honorable William MacAulay, one of the Members for the Gippsland Province, and its keen appreciation of the long and valuable services rendered by him to the Parliament and the people of Victoria.

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

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

3. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, That the House, out of respect to the memory of the late Honorable William MacAulay, do now adjourn until a quarter to Eight o'clock this day.

Question—put and resolved in the affirmative.

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

---

1. The President resumed the Chair.

2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable Sir Arthur Warner presented a Message from His Excellency the Lieutenant-Governor informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk-Assistant of the Legislative Council, for and in the absence of the Clerk of the Parliaments, viz. :—

Moorabbin Land Act.
Pounds (Fees) Act.
Dried Fruits (Amendment) Act.
Public Account (Amendment) Act.
Rabbit (Biological Destruction) Act.
Public Works Loan Application Act.
Game (Destruction) Act.

3. ALTERATION OF SESSIONAL ORDERS.—The Honorable Sir Arthur Warner moved, That so much of the Sessional Orders as provides that the hour of meeting on Wednesday and Thursday in each week shall be half-past Four o'clock be suspended until the 30th June next, and that until the 30th June next the hour of meeting on Wednesdays shall be Two o'clock and on Thursdays Eleven o'clock.

Question—put and resolved in the affirmative.

4. SUBORDINATE LEGISLATION COMMITTEE—PARKING REGULATIONS 1957.—The Honorable I. A. Swinburne brought up a Report from the Subordinate Legislation Committee on the Parking Regulations 1957.

Ordered to lie on the Table.

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

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

Town and Country Planning Act 1944—Shire of Morwell Planning Scheme 1954.

12806/56. (240 copies.)

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

House in Committee.

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

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

7. SANDRINGHAM TO BLACK ROCK ELECTRIC STREET RAILWAY (DISMANTLING) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

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

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

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

House in Committee.

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

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

9. GRAIN ELEVATORS (BORDER RAILWAYS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Thursday next.

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

House in Committee.

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

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

11. WODONGA (UNIMPROVED RATING POLL) 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. R. Rawson having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

House in Committee.

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

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

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

ROY S. SARAH,
Clerk of the Legislative Council.

27

No. 11.

WEDNESDAY, 22ND MAY, 1957.

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

2. CONSOLIDATED REVENUE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to apply out of the Consolidated Revenue the sum of Twenty-six million one hundred and thirteen thousand eight hundred and forty-five pounds to the service of the year One thousand nine hundred and fifty-seven and One thousand nine hundred and fifty-eight*" and desiring the concurrence of the Council therein.

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

3. SUBORDINATE LEGISLATION COMMITTEE—PUBLIC SERVICE REGULATIONS.—The Honorable I. A. Swinburne brought up a Report from the Subordinate Legislation Committee on the Public Service (Public Service Board) Regulations (No. 550).

Ordered to lie on the Table.

4. STATUTE LAW REVISION COMMITTEE—JUSTICES ACT 1928.—The Honorable P. T. Byrnes brought up a Report from the Statute Law Revision Committee on the provisions of Section 187 of the *Justices Act* 1928.

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

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

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

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

7. LOCAL GOVERNMENT (GEELONG) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable D. P. J. Ferguson moved, That this Bill be now read a second time.

The Honorable Sir Arthur Warner moved, That the debate be now adjourned.

Debate ensued.

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

Ordered—That the debate be adjourned until Wednesday next.

8. MELBOURNE AND GEELONG CORPORATIONS 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, 16.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey (*Teller*),	C. H. Bridgford (*Teller*),
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson (*Teller*),	E. P. Cameron,
J. W. Galbally,	V. O. Dickie,
J. J. Jones,	P. V. Feltham,
P. Jones,	W. O. Fulton (*Teller*),
J. A. Little,	C. S. Gawith,
B. Machin,	T. H. Grigg,
R. R. Rawson,	G. S. McArthur,
W. Slater,	R. W. Mack,
A. Smith,	A. R. Mansell,
G. L. Tilley.	I. A. Swinburne,
	L. H. S. Thompson,
	D. J. Walters,
	Sir Arthur Warner.

And so it passed in the negative.

9. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, General Business, No. 4, be postponed until later this day.

10. HIRE-PURCHASE 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.

Debate ensued.

Question—put.

The Council divided.

Ayes, 20.	Noes, 9.
The Hon. D. L. Arnott,	The Hon. C. H. Bridgford,
A. J. Bailey,	E. P. Cameron,
A. K. Bradbury,	V. O. Dickie (*Teller*),
T. W. Brennan (*Teller*),	C. S. Gawith (*Teller*),
P. T. Byrnes,	T. H. Grigg,
P. V. Feltham,	G. S. McArthur,
D. P. J. Ferguson,	R. W. Mack,
W. O. Fulton,	L. H. S. Thompson,
J. W. Galbally,	Sir Arthur Warner.
J. J. Jones (*Teller*),	
P. Jones,	
J. A. Little,	
B. Machin,	
A. R. Mansell,	
R. R. Rawson,	
W. Slater,	
A. Smith,	
I. A. Swinburne,	
G. L. Tilley,	
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 D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House, after debate, 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.

11. CLEAN AIR BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

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

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

Ordered—That the debate be adjourned until Tuesday next.

12. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, General Business, Nos. 4, 6, and 7, be postponed until the next day of meeting.

13. ALTERATION OF SESSIONAL ORDERS.—The Honorable Sir Arthur Warner 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 suspended until the 30th June next, and that until the 30th June next Government Business shall take precedence of all other business.

Question—put and resolved in the affirmative.

14. CONSOLIDATED REVENUE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

Debate ensued.

The Honorable D. P. J. Ferguson 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.

15. CEMETERIES (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. R. Rawson having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

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

ROY S. SARAH,
Clerk of the Legislative Council.

29

No. 12.

THURSDAY, 23RD MAY, 1957.

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 :—

   Fruit and Vegetables Act 1928—Amendment of Regulations.

   Sheep (Foot Rot) Act 1956—Regulations.

3. ALTERATION OF SESSIONAL ORDERS.—The Honorable Sir Arthur Warner moved, That so much of the Sessional Orders as provides that no new business shall be taken after the hour of half-past Ten o'clock be suspended until the 30th June next and that until the 30th June next new business may be taken at any hour.

   Question—put and resolved in the affirmative.

4. 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.

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

   House in Committee.

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

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

6. TRANSPORT (WESTERNPORT BAY) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Licensing of certain Boats operating in or near Westernport Bay and for other purposes*" and desiring the concurrence of the Council therein.

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

7. SOIL CONSERVATION AND LAND UTILIZATION (RIVER FLATS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to control the Removal of Soil Sand and other Material from River Flats, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. L. Chandler, the Bill transmitted by the foregoing 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. MASSEURS (REGISTRATION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Registration of a certain Person as a Masseur under the Masseurs Acts*" and desiring the concurrence of the Council therein.

   Bill ruled to be a Private Bill.

   The Honorable G. S. McArthur moved, That this Bill be dealt with as a Public Bill.

   Question—put and resolved in the affirmative.

   The Honorable G. S. McArthur 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.

9. COUNTRY ROADS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Four and Thirty-nine, to re-enact Section Twenty-six and to repeal Section Twenty-seven of the 'Country Roads Act* 1928'" and desiring the concurrence of the Council therein.

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

10. ISSUE OF WRIT.—The President announced that he had, this day, issued a Writ for the election of a Member to serve for the Gippsland Province in the place of the Honorable William MacAulay, deceased, and that by such Writ the following dates had been fixed for the election :—

    Nomination Day—Friday, 7th June, 1957.

    Polling Day—Saturday, 29th June, 1957.

    Return of Writ—Before or on Wednesday, 17th July, 1957.

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

ROY S. SARAH,
Clekr of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 12.

TUESDAY, 28TH MAY, 1957.

Question.

*1. The Hon. R. R. RAWSON: To ask the Honorable the Minister of Transport—Have rents been increased since 1st April, 1957, in the Jordanville Estates of the Housing Commission; if so—(i) how many tenants have been affected and by how much; and (ii) what is the justification for increased rents.

Government Business.

ORDERS OF THE DAY:—

1. STAMPS (HIRE-PURCHASE AGREEMENTS) AMENDMENT BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).
2. GRAIN ELEVATORS (BORDER RAILWAYS) BILL—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).
3. JUSTICES BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

*4. TRANSPORT (WESTERNPORT BAY) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

5. MAINTENANCE BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

*6. MASSEURS (REGISTRATION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*7. COUNTRY ROADS (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*8. SOIL CONSERVATION AND LAND UTILIZATION (RIVER FLATS) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

9. MORNINGTON LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

ORDERS OF THE DAY:—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).
2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.
4. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

WEDNESDAY, 29TH MAY, 1957.

General Business.

ORDERS OF THE DAY:—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.
2. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

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

12807/56. (125 copies.)

MEETING OF SELECT COMMITTEE.

Wednesday, 29th May.

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

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 13.

TUESDAY, 28TH MAY, 1957.

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

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

Coal Mine Workers Pensions (Amendment) Act.
Police Offences Act.
Racing Act.
Yinnar Lands Act.
Sandringham to Black Rock Electric Street Railway (Dismantling) Act.
Forests Act.
Wodonga (Unimproved Rating Poll) Act.
Housing (Commonwealth and State Agreement) Act.
Cemeteries (Financial) Act.
Consolidated Revenue Act.

3. MEDICAL (REGISTRATION) 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 Registration as Medical Practitioners of Persons qualified in that regard in other Countries*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, 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. SUBORDINATE LEGISLATION COMMITTEE—CAMPING REGULATIONS 1956.—The Honorable I. A. Swinburne brought up a Report from the Subordinate Legislation Committee on the Camping Regulations 1956.

Ordered to lie on the Table.

5. GAME (AMENDMENT) BILL.—On the motion (by leave without notice) of the Honorable G. S. McArthur, leave was given to bring in a Bill to amend Section Thirty-five of the *Game 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. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk :—

Co-operative Housing Societies Act 1944—Co-operative Housing Societies (General) Regulations No. 10.
Co-operation Act 1953—Report of the Registrar of Co-operative Societies for the year 1955-56.
Marketing of Primary Products Act 1935—Proclamation declaring that Maize shall become the property of the Maize Marketing Board for a further period of two years.
Milk and Dairy Supervision Acts—Amendment of Regulations (three papers).
Milk Board Acts—Amendment of Regulations (two papers).
Milk Pasteurization Act 1949—Amendment of Regulations (two papers).
Public Service Act 1946—Amendment of Public Service (Public Service Board) Regulations—Part III.—Salaries, Increments and Allowances (four papers).
Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 31st December, 1956.

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

8. TRANSPORT (WESTERNPORT BAY) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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.

12806/56. (240 copies.)

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. MASSEURS (REGISTRATION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

Debate ensued.

Question—put.

The Council divided.

Ayes, 26.	Noes, 5.
The Hon. D. L. Arnott,	The Hon. A. J. Bailey (*Teller*),
A. K. Bradbury,	T. W. Brennan (*Teller*),
C. H. Bridgford,	P. Jones,
P. T. Byrnes,	J. A. Little,
E. P. Cameron,	M. P. Sheehy.
G. L. Chandler,	
V. O. Dickie,	
P. V. Feltham,	
D. P. J. Ferguson,	
W. O. Fulton,	
J. W. Galbally,	
C. S. Gawith,	
T. H. Grigg,	
J. J. Jones,	
G. S. McArthur,	
B. Machin,	
R. W. Mack (*Teller*),	
A. R. Mansell,	
R. R. Rawson (*Teller*),	
W. Slater,	
A. Smith,	
I. A. Swinburne,	
L. H. S. Thompson,	
G. L. Tilley,	
D. J. Walters,	
Sir Arthur Warner.	

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

House in Committee.

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

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

House in Committee.

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

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

12. SOIL CONSERVATION AND LAND UTILIZATION (RIVER FLATS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

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

House in Committee.

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

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

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

House in Committee.

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

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

15. GRAIN ELEVATORS (BORDER RAILWAYS) 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. R. Rawson having reported that the Committee had agreed 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. ABORIGINES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Aboriginal Natives of Victoria, and for other purposes*" and desiring the concurrence of the Council therein.

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

17. WEIGHTS AND MEASURES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Weights and Measures Acts*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, 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.

18. JUSTICES BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

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

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

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

House in Committee.

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

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. ADMINISTRATION AND PROBATE (AMENDMENT) BILL.—On the motion (by leave without notice) of the Honorable Sir Arthur Warner, leave was given to bring in a Bill to amend Sections Seven and Fifty-one of the *Administration and Probate Act* 1928, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

The Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

Debate ensued.

The Honorable P. V. Feltham 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.

21. MEDICAL (REGISTRATION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

22. WEIGHTS AND MEASURES (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

The Honorable B. Machin moved, That the debate be now adjourned.

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

Ordered—That the debate be adjourned until Tuesday next.

23. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Debate ensued.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 13.

TUESDAY, 4TH JUNE, 1957.

Questions.

*1. The Hon. W. SLATER: To ask the Honorable the Minister of Transport—Was a general retainer given by the Melbourne City Council on the 15th March last to Dr. E. G. Coppel, Q.C., who has been appointed to be the Board for the Debney's Paddock inquiry; if so—(i) by whom was such retainer given; and (ii) to what extent was Dr. Coppel bound to the Melbourne City Council by the terms of the retainer.

*2. The Hon. B. MACHIN: To ask the Honorable the Minister of Health—

(*a*) What were the names of the persons who came from New South Wales to advise on air pollution, and what were their qualifications.

(*b*) When was the visit made.

(*c*) What recommendations were made by them.

Government Business.

ORDERS OF THE DAY:—

*1. ABORIGINES BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

*2. GAME (AMENDMENT) BILL—(*Hon. G. S. McArthur*)—Second reading.

*3. ADMINISTRATION AND PROBATE (AMENDMENT) BILL—(*Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. P. V. Feltham*).

*4 MEDICAL (REGISTRATION) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

5. TRANSPORT (WESTERNPORT BAY) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

6. SOIL CONSERVATION AND LAND UTILIZATION (RIVER FLATS) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

*7 WEIGHTS AND MEASURES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

General Business.

ORDERS OF THE DAY:—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

4. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.

5. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

6. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

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

12807/56. (125 copies.)

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 14.

WEDNESDAY, 5TH JUNE, 1957.

Questions.

*1. The Hon. W. O. FULTON: To ask the Honorable the Minister of Transport—Will he lay on the table of the Library the file relating to the engagement, employment, and termination of services of employees on the soldier settlement project at the Yanakie Estate since the inception of this work.

*2. The Hon. J. W. GALBALLY: To ask the Honorable the Minister of Transport—Has the retainer given by the City of Melbourne to Dr. E. G. Coppel, Q.C., been terminated by him; if so, when; if not, is he still bound by the terms of the retainer.

*3. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—

(*a*) Will he request the Railways Commissioners to endeavour to provide an express passenger train from Geelong to Melbourne daily between 7.30 a.m. and 9.15 a.m. as an addition to the existing service.

(*b*) Will he request the Railways Commissioners to provide a mid-afternoon train from Melbourne to Geelong on Saturdays.

Government Business.

ORDERS OF THE DAY:—

1. ADMINISTRATION AND PROBATE (AMENDMENT) BILL—(*Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. P. V. Feltham*).

2 MEDICAL (REGISTRATION) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

3. TRANSPORT (WESTERNPORT BAY) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

4. SOIL CONSERVATION AND LAND UTILIZATION (RIVER FLATS) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

*5. LABOUR AND INDUSTRY (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

6. WEIGHTS AND MEASURES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

*7. POLICE REGULATION (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

*8. HOUSING BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

9. GAME (AMENDMENT) BILL—(*Hon. G. S. McArthur*)—To be further considered in Committee.

General Business.

NOTICE OF MOTION:—

*1. The Hon. J. W. GALBALLY: To move, That he have leave to bring in a Bill to amend the Law relating to the Sale and Purchase of Goods.

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

12807/56. (125 copies.)

ORDERS OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).
2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.
4. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading.
5. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.
6. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

TUESDAY, 2ND JULY, 1957.

Government Business.

ORDER OF THE DAY :—

*1. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

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STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 15.

THURSDAY, 6TH JUNE, 1957.

Government Business.

NOTICE OF MOTION :—

*1. The Hon. SIR ARTHUR WARNER : To move, That the Council shall meet for the despatch of business on Friday of this week and that Eleven o'clock shall be the hour of meeting.

ORDERS OF THE DAY :—

*1. LANDLORD AND TENANT (CONTROL) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

2. GAME (AMENDMENT) BILL—(*Hon. G. S. McArthur*)—To be further considered in Committee.

3. HOUSING BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

4. POLICE REGULATION (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

*5. TROTTING RACES BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

6. WEIGHTS AND MEASURES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

7. LABOUR AND INDUSTRY (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—To be further considered in Committee.

General Business.

NOTICE OF MOTION :—

1. The Hon. J. W. GALBALLY : To move, That he have leave to bring in a Bill to amend the Law relating to the Sale and Purchase of Goods.

ORDERS OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

4. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

WEDNESDAY, 19TH JUNE, 1957.

General Business.

ORDER OF THE DAY :—

1. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

12807/56. (175 copies.)

TUESDAY, 2ND JULY, 1957.

Government Business.

ORDER OF THE DAY :—

1. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 14.

TUESDAY, 4TH JUNE, 1957.

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

2. PRESENTATION OF ADDRESS TO HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The President reported that, accompanied by Honorable Members, he had, on the 29th May last, waited upon His Excellency the Lieutenant-Governor and had presented to him the Address of the Legislative Council, adopted on the 30th April last, in reply to His Excellency the Governor's Opening Speech, and that His Excellency the Lieutenant-Governor had been pleased to make the following reply :—

MR. PRESIDENT AND HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL :

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

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

3. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable Sir Arthur Warner presented a Message from His Excellency the Lieutenant-Governor informing the Council that he had, this day, given the Royal Assent to the undermentioned Acts presented to him by the Clerk-Assistant of the Legislative Council, for and in the absence of the Clerk of the Parliaments, viz. :—

Masseurs (Registration) Act.
Country Roads (Amendment) Act.
Maintenance Act.
Stamps (Hire-Purchase Agreements) Amendment Act.
Justices Act.
Mornington Land Act.

4. RIVER IMPROVEMENT AND LAND DRAINAGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to River Improvement Land Drainage and Flood Protection, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, 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. POLICE REGULATION (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Paragraph* 5 *of the Fourth Schedule to the 'Police Regulation Act* 1928*' and Section Three of the 'Police Regulation Act* 1946*' and for other purposes*" and desiring the concurrence of the Council therein.

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

6. LABOUR AND INDUSTRY (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Labour and Industry Act* 1953*' in relation to the Age of Chairmen of Wages Boards, the Hours for Closing Shops for the Sale of Motor Cars, and the Publication of Industrial Determinations*" and desiring the concurrence of the Council therein.

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

12806/56. (140 copies)

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

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

8. TEMPORARY CHAIRMAN OF COMMITTEES.—The President laid upon the Table the following Warrant nominating a Temporary Chairman 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 Percy Victor Feltham, M.B.E.,

to act as a Temporary Chairman 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 fourth day of June, One thousand nine hundred and fifty-seven.

CLIFDEN EAGER,
President of the Legislative Council.

9. SUBORDINATE LEGISLATION COMMITTEE—EXPLOSIVES (CARRIAGE) REGULATIONS 1957.—The Honorable I. A. Swinburne brought up a Report from the Subordinate Legislation Committee on the Explosives (Carriage) Regulations 1957.

Ordered to lie on the Table.

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

Constitution Act Amendment Acts—Victorian Parliamentary Elections Regulations 1957.

Land Act 1928—Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Beverley Hills, Coatesville, Forest Hill, and Rushworth (four papers).

Police Regulation Acts—Amendment of Police Regulations 1951.

Public Service Act 1946—

Amendment of Public Service (Public Service Board) Regulations—

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

Report of the Public Service Board for the year 1955–56.

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

House in Committee.

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

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

12. VACANCY IN THE SENATE.—The Honorable Sir Arthur Warner presented a Message from His Excellency the Lieutenant-Governor transmitting a copy of the following despatch :—

Parliament House,
Canberra, A.C.T.,
3rd June, 1957.

Your Excellency,

Pursuant to the provisions of Section 21 of the Commonwealth of Australia Constitution, I have the honour to notify Your Excellency that a vacancy has happened in the representation of the State of Victoria in the Senate through the death of Senator John Joseph Devlin, which occurred on the 26th May, 1957.

I have the honour to be,
Your Excellency's obedient servant,
(Signed) A. M. McMULLIN,
President of the Senate.

His Excellency the Governor of the State of Victoria,
Government House,
Melbourne, Victoria.

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

The Honorable Sir Arthur Warner moved, That this House meet the Legislative Assembly for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the death of Senator John Joseph Devlin.

Question—put and resolved in the affirmative.

Ordered—That a Message be sent to the Assembly acquainting them with the foregoing resolution and requesting them to name the place and time of such meeting.

37

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

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters reported that the Committee had 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.

14. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 3 to 7 inclusive, be postponed until later this day.

15. RIVER IMPROVEMENT AND LAND DRAINAGE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

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

Debate ensued.

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

The Honorable E. P. Cameron moved, That the debate be adjourned until Tuesday next.

The Honorable J. W. Galbally moved, as an amendment, That the words "Tuesday next" be omitted with the view of inserting in place thereof the words "Tuesday, the 2nd July next".

Debate ensued.

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

The Council divided.

Ayes, 10.	Noes, 20.
The Hon. C. H. Bridgford,	The Hon. D. L. Arnott,
E. P. Cameron,	A. J. Bailey,
G. L. Chandler,	A. K. Bradbury (*Teller*),
V. O. Dickie,	T. W. Brennan,
C. S. Gawith,	P. T. Byrnes,
T. H. Grigg (*Teller*),	P. V. Feltham,
G. S. McArthur,	D. P. J. Ferguson,
R. W. Mack,	W. O. Fulton,
L. H. S. Thompson (*Teller*),	J. W. Galbally,
Sir Arthur Warner.	J. J. Jones,
	P. Jones,
	J. A. Little,
	B. Machin,
	R. R. Rawson,
	M. P. Sheehy (*Teller*),
	W. Slater,
	A. Smith,
	I. A. Swinburne,
	G. L. Tilley,
	D. J. Walters.

And so it passed in the negative.

Question—That the words proposed to be inserted be so inserted—put and resolved in the affirmative.

Question—That the debate be adjourned until Tuesday, the 2nd July next—put and resolved in the affirmative.

16. POLICE REGULATION (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur 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.

17. LABOUR AND INDUSTRY (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

18. HOUSING BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner 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.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 15.

WEDNESDAY, 5TH JUNE, 1957.

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

2. VACANCY IN THE SENATE.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to meet the Council for the purpose of sitting and voting together to choose a person to hold the vacant place in the Senate, and, as requested by the Council to name the place and time of such meeting, naming the Assembly Chamber at a quarter past Two o'clock on Thursday, the 6th June instant.

3. LANDLORD AND TENANT (CONTROL) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to re-enact with Amendments the Law relating to the Control of Rents of Premises and of the Recovery of Possession of Premises, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable Sir Arthur Warner, 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.

4. TROTTING RACES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to re-constitute the Trotting Control Board and to make Provision relating to the Use of the Royal Agricultural Showgrounds for Trotting Races, and for other purposes*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. S. McArthur, 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. ADMINISTRATION AND PROBATE (AMENDMENT) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

   House in Committee.

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

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

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

   House in Committee.

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

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

7. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 3 to 9 inclusive, the Notice of Motion, General Business, and Orders of the Day, General Business, Nos. 1 to 3 inclusive, be postponed until after Order of the Day, General Business, No. 4.

8. ABOLITION OF CAPITAL PUNISHMENT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. W. Galbally moved, That this Bill be now read a second time.

   The Honorable Sir Arthur 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 Wednesday, the 19th instant.

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

   House in Committee.

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

   Ordered—That the Bill be 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.

39

10. Soil Conservation and Land Utilization (River Flats) 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. R. Rawson 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.

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

House in Committee.

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

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

13. Adjournment.—The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 16.

THURSDAY, 6th JUNE, 1957.

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

2. House Committee.—The Honorable Sir Arthur Warner moved, by leave, That the Honorable Archibald Keith Bradbury be a member of the House Committee.

Question—put and resolved in the affirmative.

3. Standing Orders Committee.—The Honorable Sir Arthur Warner moved, by leave, That the Honorable Ivan Archie Swinburne be a member of the Select Committee on the Standing Orders of the House.

Question—put and resolved in the affirmative.

4. Alteration of Sessional Orders.—The Honorable Sir Arthur Warner moved, That the Council shall meet for the despatch of business on Friday of this week and that Eleven o'clock shall be the hour of meeting.

Question—put and resolved in the affirmative.

5. LANDLORD AND TENANT (CONTROL) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable W. Slater moved, as an amendment, That all the words after "That" be omitted with the view of inserting in place thereof the words "this House is of the opinion that this Bill should not be read a second time until the proposals therein have been examined by the Statute Law Revision Committee".

Debate ensued.

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

The Council divided.

Ayes, 17.	Noes, 5.
The Hon. A. K. Bradbury, C. H. Bridgford (*Teller*), P. T. Byrnes, E. P. Cameron, G. L. Chandler, V. O. Dickie, P. V. Feltham, W. O. Fulton, C. S. Gawith, T. H. Grigg, G. S. McArthur, R. W. Mack, A. R. Mansell (*Teller*), I. A. Swinburne, L. H. S. Thompson, D. J. Walters, Sir Arthur Warner.	The Hon. A. J. Bailey (*Teller*), T. W. Brennan, P. Jones (*Teller*), J. A. Little, M. P. Sheehy.

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

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.

The Honorable Sir Arthur Warner moved, That the debate be adjourned until later this day.

The Honorable J. W. Galbally moved, as an amendment, That the words "later this day" be omitted with the view of inserting in place thereof the words "Tuesday, the 2nd July next".

Debate ensued.

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

The Council divided.

Ayes, 10.	Noes, 21.
The Hon. C. H. Bridgford, E. P. Cameron, G L Chandler, V. O. Dickie (*Teller*), C. S. Gawith (*Teller*), T. H. Grigg, G. S. McArthur, R. W. Mack, L. H. S. Thompson, Sir Arthur Warner.	The Hon. D. L. Arnott, A J Bailey, A. K. Bradbury, T. W. Brennan, P. T. Byrnes, P. V. Feltham, D. P. J. Ferguson, W. O. Fulton (*Teller*), J. W. Galbally, J. J. Jones, P. Jones, J. A. Little, B. Machin, A. R. Mansell, R. R. Rawson, M. P. Sheehy, W. Slater, A. Smith, I. A. Swinburne, F. M. Thomas, G. L. Tilley (*Teller*).

And so it passed in the negative.

Question—That the words "Tuesday, 2nd July next" proposed to be inserted be so inserted.

The Honorable Sir Arthur Warner moved, as a further amendment, That the words "2nd July next" be omitted from the proposed amendment, with the view of inserting in place thereof the words "18th June next".

Question—That the words "2nd July next" proposed to be omitted stand part of the proposed amendment—put.

41

The Council divided.

Ayes, 21.	Noes, 10.
The Hon. D. L. Arnott (*Teller*),	The Hon. C. H. Bridgford,
A. J. Bailey,	E. P. Cameron,
A. K. Bradbury,	G. L. Chandler,
T. W. Brennan,	V. O. Dickie,
P. T. Byrnes,	C. S. Gawith,
P. V. Feltham,	T. H. Grigg (*Teller*),
D. P. J. Ferguson,	G. S. McArthur,
W. O. Fulton,	R. W. Mack (*Teller*),
J. W. Galbally,	L. H. S. Thompson,
J. J. Jones,	Sir Arthur Warner.
P. Jones,	
J. A. Little,	
B. Machin,	
A. R. Mansell,	
R. R. Rawson,	
M. P. Sheehy (*Teller*),	
W. Slater,	
A. Smith,	
I. A. Swinburne,	
F. M. Thomas,	
G. L. Tilley.	

And so it was resolved in the affirmative.—Further amendment negatived.

Question—That the words "Tuesday, the 2nd July next" proposed to be inserted be so inserted—put and resolved in the affirmative.

Question—That the debate be adjourned until Tuesday, the 2nd July next—put and resolved in the affirmative.

6. Vacancy in the Senate.—The President announced that the time had arrived for this House to meet the Assembly in the Assembly Chamber for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the death of Senator John Joseph Devlin.

Accordingly, the Council then proceeded to the Assembly Chamber, and being returned—

The President reported that this House had met the Assembly this day in the Assembly Chamber for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the death of Senator John Joseph Devlin, and that Charles Walter Sandford, Esquire, had been duly chosen to hold the vacant place.

7. Game (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 T. H. Grigg having reported that the Committee had agreed 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. Transport (Westernport Bay) Bill.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendment made by the Council in this Bill.

9. Soil Conservation and Land Utilization (River Flats) Bill.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendment made by the Council in this Bill.

10. Aborigines 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. Grain Elevators (Border Railways) 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. Barley Marketing (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.

13. 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, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

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

Resolved—That the Council will, later this day, again resolve itself into the said Committee.

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

House in Committee.

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

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

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

House in Committee.

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

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

16. WEIGHTS AND MEASURES (AMENDMENT) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

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

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. LABOUR AND INDUSTRY (AMENDMENT) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters 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.

18. ADMINISTRATION AND PROBATE (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.

19. TRANSPORT (WESTERNPORT BAY) BILL.—The President announced the receipt of a Message from the Assembly transmitting a communication from the Clerk of the Parliaments (pursuant to Joint Standing Order No. 21), calling attention to a clerical error in this Bill, viz.:—In clause 2, sub-clause (1), page 2, line 1, the expression "'Operate' a boat" has been inserted instead of the expression "'Operate a boat'" and acquainting the Council that they have agreed that such error be corrected by the insertion of the expression "'Operate a boat'" instead of the expression "'Operate' a boat", and desiring the concurrence of the Council therein.

On the motion of the Honorable Sir Arthur Warner, 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.

20. BENEFIT ASSOCIATIONS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have agreed to the same with an amendment and desiring the concurrence of the Council therein.

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

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

Clause 3, page 3, lines 4–10, omit the words beginning "except on the recommendation" to the end of the clause, and insert "except after consideration by the Minister of reports in writing made by the Registrar and the Government Statist relative to the proposed exemption or revocation and, in the case of a proposed exemption, relative to the terms and conditions to be imposed".

On the motion of the Honorable E. P. Cameron, and after debate, the Council agreed to the amendment made by the Assembly and ordered the Bill to be returned to the Assembly with a Message acquainting them therewith.

21. HOUSING BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

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

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

43

22. LABOUR AND INDUSTRY (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have disagreed with the amendment made in such Bill by the Council.

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

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

Amendment made by the Legislative Council.	How dealt with by the Legislative Assembly.
Clause 2, line 5, omit " seventy-two years " and insert " seventy years ".	Disagreed with.

The Honorable Sir Arthur Warner moved, That the Council do not insist on their amendment disagreed with by the Assembly.

Debate ensued.

Question—put.

The Council divided.

Ayes, 14.	Noes, 17.
The Hon. A. J. Bailey,	The Hon. D. L. Arnott,
T. W. Brennan, (*Teller*),	A. K. Bradbury (*Teller*),
C. H. Bridgford,	P. T. Byrnes,
E. P. Cameron,	P. V. Feltham,
G. L. Chandler,	D. P. J. Ferguson (*Teller*),
V. O. Dickie,	W. O. Fulton,
C. S. Gawith,	J. W. Galbally,
T. H. Grigg,	J. J. Jones,
P. Jones,	B. Machin,
G. S. McArthur,	A. R. Mansell,
R. W. Mack,	R. R. Rawson,
M. P. Sheehy,	W. Slater,
L. H. S. Thompson (*Teller*),	A. Smith,
Sir Arthur Warner.	I. A. Swinburne,
	F. M. Thomas,
	G. L. Tilley,
	D. J. Walters.

And so it passed in the negative.—Amendment insisted on.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council insist on their amendment disagreed with by the Assembly.

23. LABOUR AND INDUSTRY (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they insist on disagreeing with the amendment made and insisted on by the Council but have made an amendment in the Bill and desiring the concurrence of the Council therein.

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

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

Amendment made by the Legislative Council.	How dealt with.
Clause 2, page 5, omit " seventy-two years " and insert " seventy years ".	Disagreed with by Assembly.—Insisted on by Council. Disagreement insisted on by Assembly, but the following amendment made in the Bill :—Clause 2, omit this clause.

The Honorable Sir Arthur Warner moved, That the Council do not now insist on their amendment with which the Assembly insist on disagreeing and agree to the amendment made by the Assembly in the Bill.

Debate ensued.

Question—put.

The Council divided.

Ayes, 22.	Noes, 10.
The Hon. A. J. Bailey,	The Hon. D. L. Arnott,
A. K. Bradbury,	D. P. J. Ferguson,
T. W. Brennan,	J. W. Galbally,
C. H. Bridgford (*Teller*),	J. J. Jones,
P. T. Byrnes,	B. Machin (*Teller*),
E. P. Cameron,	R. R. Rawson (*Teller*),
G. L. Chandler,	W. Slater,
V. O. Dickie,	A. Smith,
P. V. Feltham,	F. M. Thomas,
W. O. Fulton,	G. L. Tilley.
C. S. Gawith,	
T. H. Grigg,	
P. Jones (*Teller*),	
J. A. Little,	
G. S. McArthur,	
R. W. Mack,	
A. R. Mansell,	
M. P. Sheehy,	
I. A. Swinburne,	
L. H. S. Thompson,	
D. J. Walters,	
Sir Arthur Warner.	

And so it was resolved in the affirmative.—Amendment not now insisted on and the amendment made by Assembly in the Bill agreed to.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council do not now insist on their amendment with which the Assembly insist on disagreeing and agree to the amendment made by the Assembly in the Bill.

24. ADJOURNMENT.—The Honorable Sir Arthur Warner 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.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 16.

TUESDAY, 3RD SEPTEMBER, 1957.

Government Business.

ORDERS OF THE DAY :—

1. LANDLORD AND TENANT (CONTROL) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

2. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

NOTICE OF MOTION :—

1. The Hon. J. W. GALBALLY : To move, That he have leave to bring in a Bill to amend the Law relating to the Sale and Purchase of Goods.

ORDERS OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

4. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

12807/56. (350 copies.)

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 17.

TUESDAY, 3RD SEPTEMBER, 1957.

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

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

3. RETURN TO WRIT.—The President announced that there had been returned to him the writ issued by him for the election of a Member of the Legislative Council to serve for the Gippsland Province, and that by the indorsement on such writ it appeared that the Honorable Robert William May had been elected in pursuance thereof.

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

5. MESSAGES FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable Sir Arthur Warner presented Messages from His Excellency the Lieutenant-Governor informing the Council that he had, on the dates mentioned hereunder, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

On the 11th June last—

Medical (Registration) Act.
Soil Conservation and Land Utilization (River Flats) Act.
Aborigines Act.
Grain Elevators (Border Railways) Act.
Barley Marketing (Amendment) Act.
Administration and Probate (Amendment) Act.

On the 19th June last—

Housing Act.
Police Regulation (Amendment) Act.
Trotting Races Act.
Weights and Measures (Amendment) Act.
Benefit Associations (Amendment) Act.
Transport (Westernport Bay) Act.
Labour and Industry (Amendment) Act.
Game (Amendment) Act.

6. BREAD INDUSTRY BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Bread Industry*" and desiring the concurrence of the Council therein.

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

7. GAME (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.

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

9. THE LATE HONORABLE JOHN CAIN.—The Honorable Sir Arthur Warner moved, by leave, That this House place on record its deep regret at the death of the Honorable John Cain, and its appreciation of the valuable services rendered by him to the Parliament and the people of Victoria during his long and honorable career as a Member of the Legislative Assembly, Minister of the Crown, and Premier of the State.

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

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

12806/56. (240 copies.)

10. SUBORDINATE LEGISLATION COMMITTEE.—The Honorable I. A. Swinburne brought up Reports from the Subordinate Legislation Committee on—Amendment of Rules of the Supreme Court; Amending Portland Harbor Trust Staff Regulations; Amending Food and Drug Standards Regulations 1957 (No. 1); Cancer Institute (Amending) Regulations 1957; and Regulations under the Milk Board Acts.

Severally ordered to lie on the Table.

11. STATUTE LAW REVISION COMMITTEE.—The Honorable P. T. Byrnes brought up Reports from the Statute Law Revision Committee, together with Minutes of Evidence, on proposals to Consolidate and Amend the Law relating to County Courts, and on proposals to Consolidate the Law relating to Crimes and Criminal Offenders, and the Maintenance of Wives and Children and related matters.

Severally ordered to lie on the Table and the Reports to be printed.

The Honorable P. T. Byrnes brought up Reports, together with Minutes of Evidence and Appendices, from the Statute Law Revision Committee on Sections 471, 472, and 572 of the *Crimes Act* 1928, and the Companies Acts (*re* Freighters Limited).

Severally ordered to lie on the Table and be printed together with Minutes of Evidence and Appendices.

12. PAPERS.—The Honorable Sir Arthur Warner presented, by command of His Excellency the Lieutenant-Governor—

Supreme Court—Annual Report of the Judges of the Supreme Court.
Victorian Licensing Court and Licences Reduction Board—Report and Statement of Accounts for the years 1954–55 and 1955–56.

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 Adult Education Regulations 1955.
Cancer Institute Act 1948—Cancer Institute (Amending) Regulations 1957.
Children's Welfare Acts—Amendment of Children's Welfare Regulations 1955.
Country Fire Authority Acts—Amendment of Regulations.
County Court Act 1928—Amendment of County Court Rules 1930.
Dairy Products Acts—Report of the Dairy Products Board for the six months ended 30th June, 1956, and 31st December, 1956 (two papers).
Education Act 1928—Amendment of Regulations—
- Regulation VI.—Teachers' Certificates.
- Regulation XXIII.—Records.
- Regulation XLIII.—Nomination of Teachers for Courses at the University or other Approved Institutions.

Electric Light and Power Act 1928 and State Electricity Commission Acts—Amendment of Electricity Supply and Construction Regulations.
Evidence Acts—
- Court Reporting (Fees) Regulations 1957.
- Examination of Applicants for Licence as Shorthand Writers—Regulations.

Explosives Act 1928—Orders in Council relating to Classification and Definition of Explosives (two papers).
Geelong and Melbourne Harbor Trusts Act 1934—Accounts and Statements of Receipts and Expenditure of the Geelong Harbor Trust Commissioners for the year 1956.
Home Finance Acts—Home Finance (Trust) Regulations No. 3.
Hospitals and Charities Act 1948—Certificate of the Minister of Health relating to the proposed compulsory resumption of land for the purpose of the Southern Peninsula Hospital.
Land Act 1928—
- Certificate of the Commissioner of Public Works relating to the proposed compulsory resumption of land for the purpose of obtaining a supply of stone for road making.
- Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Albion North, Bennettswood East, Echuca North, Eltham, Frankston, Hallam, Hawthorn, Kangaroo Lake, Olympic Village, Portland South, and Rollins (twelve papers).
- Schedule of country lands proposed to be sold by public auction (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 1956–57.
Marketing of Primary Products Act 1935—Amendment of Regulations—Seed Beans.
Mental Hygiene Authority Act 1950—
- Mental Hygiene Authority Regulations 1957, Nos. 1 and 2 (two papers).
- Report of the Mental Hygiene Authority for the year 1955–56.

Milk and Dairy Supervision Act 1928—Amendment of Regulations.
Milk Pasteurization Act 1949—Regulation prescribing Districts.
Nurses Acts—Nurses Regulations 1957.
Penal Reform Act 1956—Penal Reform Regulations 1957.
Poisons Acts—
- Pharmacy Board of Victoria—Dangerous Drugs Regulations 1957.
- Proclamations—
  - Amending a declaration of potent drugs.
  - Declaring potent drugs (two papers).
  - Revoking a declaration of potent drugs.

Police Regulation Acts—
- Amendment of Police Regulations 1951 (two papers).
- Determination No. 63 of the Police Classification Board.

47

Public Service Act 1946—
Amendment of Public Service (Governor in Council) Regulations—Part IV.—Leave of Absence (two papers).
Amendment of Public Service (Public Service Board) Regulations—
Part I.—Appointments to the Administrative, Professional, and Technical and General Divisions (two papers).
Part II.—Promotions and Transfers (three papers).
Part III.—Salaries, Increments and Allowances (ninety-two papers).
Part VI.—Travelling Expenses (two papers).
Racing Acts—Trotting Control Board Regulations 1957.
Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 31st March, 1957.
Rural Finance Corporation Act 1949—Report of the Rural Finance Corporation, together with Balance-sheet and Profit and Loss Account for the year 1955–56.
Stamps Act 1946—Amendment of Stamps Regulations 1948.
Supreme Court Acts—Amendment of Supreme Court Rules (three papers).
Teaching Service Act 1946—
Amendment of Regulations—
Teaching Service (Governor in Council) Regulations.
Teaching Service (Teachers Tribunal) Regulations.
Report of the Teachers Tribunal for the year 1955–56.
Town and Country Planning Acts—Amendment of Regulations.
Workers Compensation Acts—
Amendment of the Workers Compensation Regulations 1954.
Workers Compensation Board Fund—Balance-sheet and Statement of Receipts and Expenditure for the year 1956–57.
Zoological Gardens Act 1936—Amendment of Regulations.

13. LANDLORD AND TENANT (CONTROL) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

Question—put.

The Council divided.

Ayes, 17.	Noes, 15.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
C. H. Bridgford,	A. J. Bailey (*Teller*),
P. T. Byrnes,	T. W. Brennan,
E. P. Cameron,	D. P. J. Ferguson,
G. L. Chandler,	J. W. Galbally,
V. O. Dickie,	J. J. Jones,
P. V. Feltham,	P. Jones,
W. O. Fulton,	J. A. Little,
C. S. Gawith,	B. Machin,
T. H. Grigg (*Teller*),	R. R. Rawson,
G. S. McArthur,	M. P. Sheehy,
R. W. Mack,	W. Slater,
R. W. May,	A. Smith,
I. A. Swinburne (*Teller*),	F. M. Thomas,
L. H. S. Thompson,	G. L. Tilley (*Teller*).
D. J. Walters,	
Sir Arthur Warner.	

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

House in Committee.

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

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

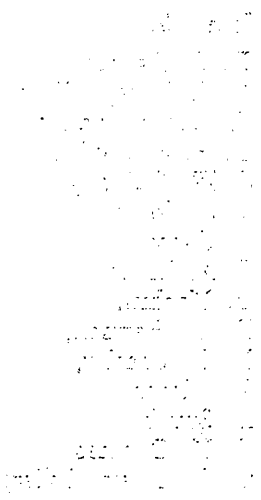
14. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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



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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 17.

TUESDAY, 10TH SEPTEMBER, 1957.

Questions :—

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

(*a*) What is the number and amount of the claims made by road hauliers in respect of legislation previously declared invalid by the High Court.

(*b*) Have such claims been admitted and/or paid by the Government.

(*c*) What amount of road tax has been withheld by road hauliers pending the determination by the High Court on the validity of the *Commercial Goods Vehicles Act* 1955.

(*d*) Will any and what steps be taken by the Government to enforce payment of all such road taxes.

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

(*a*) What were the voting figures at the meeting of the Melbourne and Metropolitan Board of Works on Tuesday, the 27th August last, on the proposal to increase the improvement rate for planning and highways.

(*b*) How many Commissioners were absent, and who were they.

Government Business.

NOTICES OF MOTION :—

*1. The Hon. G. S. MCARTHUR: To move, That he have leave to bring in a Bill to revise the Statute Law and for other purposes.

*2. The Hon. G. S. MCARTHUR: To move, That he have leave to bring in a Bill to amend Section Twenty-four of the *Acts Interpretation Act* 1928.

*3. The Hon. G. L. CHANDLER: To move, That he have leave to bring in a Bill relating to the Trustees of the Melbourne Cricket Ground.

*4. The Hon. SIR ARTHUR WARNER: To move, That he have leave to bring in a Bill relating to the Computation of the Period of Service which entitles Employés at the State Coal Mine to be granted Long Service Leave.

ORDERS OF THE DAY :—

1. LANDLORD AND TENANT (CONTROL) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—To be further considered in Committee.

*2. BREAD INDUSTRY BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

3. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

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

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eneral Business.

NOTICE OF MOTION :—

1. The Hon. J. W. GALBALLY : To move, That he have leave to bring in a Bill to amend the Law relating to the Sale and Purchase of Goods.

ORDERS OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).
2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.
4. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.
5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

MEETING OF SELECT COMMITTEE.

Wednesday, 11th September.

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

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956).—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 18.

TUESDAY, 10TH SEPTEMBER, 1957.

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

2. SUBORDINATE LEGISLATION COMMITTEE—PENAL REFORM REGULATIONS 1957.—The Honorable R. W. Mack brought up a Report from the Subordinate Legislation Committee on the Penal Reform Regulations 1957.

Ordered to lie on the Table.

3. 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—

To vary the Proclamation respecting prohibition of all fishing in or the taking of fish from certain waters from 1st September to 31st October (both days inclusive) in each year.

To vary the Proclamation respecting prohibition of fishing in certain waters.

Public Service Act 1946—

Amendment of Public Service (Governor in Council) Regulations—Part III.—Discipline and Conduct of Officers and Employees.

Amendment of Public Service (Public Service Board) Regulations—

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

Part II.—Promotions and Transfers.

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

Part VI.—Travelling Expenses (three papers).

Marketing of Primary Products Acts—

Amendment of Regulations—

Egg and Egg Pulp Marketing Board.

Onion Marketing Board.

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

Mental Hygiene Authority Act 1950—Mental Hygiene Authority Regulations 1957 (No. 3).

Police Regulations Acts—Amendment of Police Regulations 1951.

Road Traffic Act 1956—Amendment of Parking Regulations 1957.

4. STATUTE LAW REVISION BILL.—On the motion of the Honorable G. S. McArthur, leave was given to bring in a Bill to revise the Statute Law and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. ACTS INTERPRETATION (SERVICE BY POST) BILL.—On the motion of the Honorable G. S. McArthur, leave was given to bring in a Bill to amend Section Twenty-four of the *Acts Interpretation 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. MELBOURNE CRICKET GROUND (TRUSTEES) BILL.—On the motion of the Honorable G. L. Chandler, leave was given to bring in a Bill relating to the Trustees of the Melbourne Cricket Ground, 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. RAILWAYS (FURLOUGH) AMENDMENT BILL.—On the motion of the Honorable Sir Arthur Warner, leave was given to bring in a Bill relating to the Computation of the Period of Service which entitles Employés at the State Coal Mine to be granted Long Service Leave, 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.

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8. LANDLORD AND TENANT (CONTROL) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

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

The Honorable W. Slater moved, That the Bill be re-committed to a Committee of the whole in respect of clause 9.

Debate ensued.

Question—put.

The Council divided.

Ayes, 14.	Noes, 17.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey,	C. H. Bridgford,
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie,
P. Jones,	P. V. Feltham,
B. Machin,	W. O. Fulton,
R. R. Rawson,	C. S. Gawith (*Teller*),
M. P. Sheehy,	T. H. Grigg,
W. Slater,	G. S. McArthur,
A. Smith (*Teller*),	R. W. Mack,
F. M. Thomas (*Teller*),	A. R. Mansell,
G. L. Tilley.	R. W. May,
	L. H. S. Thompson,
	D. J. Walters,
	Sir Arthur Warner.

And so it passed in the negative.

On the motion of the Honorable Sir Arthur Warner, the Report was adopted and the Bill was read a third time 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. BREAD INDUSTRY BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

10. RAILWAYS (FURLOUGH) AMENDMENT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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 Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 24th instant.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 18.

TUESDAY, 24TH SEPTEMBER, 1957.

Question :—

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

(*a*) Is the Government aware of any proposal by the Yarra Bend National Park Trust to further alienate park lands under its control by sponsoring the extension of an eighteen-hole golf course by a further nine holes; if so, what is the acreage involved.

(*b*) Has the Government any information that the Heidelberg, Kew, and Collingwood Councils propose using ratepayers' funds in the establishment of such a project; if so, what are the respective amounts involved.

(*c*) Has the Government received any request for State financial assistance in extending this golf course; if so, what amount was requested, and has the Government made a decision favorable or otherwise.

Government Business.

ORDERS OF THE DAY :—

*1. STATUTE LAW REVISION BILL—(*Hon. G. S. McArthur*)—Second reading.

*2. MELBOURNE CRICKET GROUND (TRUSTEES) BILL—(*Hon. G. L. Chandler*)—Second reading.

*3. ACTS INTERPRETATION (SERVICE BY POST) BILL—(*Hon. G. S. McArthur*)—Second reading.

*4. RAILWAYS (FURLOUGH) AMENDMENT BILL—(*Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

5. BREAD INDUSTRY BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

6. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

NOTICE OF MOTION :—

1. The Hon. J. W. GALBALLY: To move, That he have leave to bring in a Bill to amend the Law relating to the Sale and Purchase of Goods.

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

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ORDERS OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).
2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.
4. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.
5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 19.

WEDNESDAY, 25TH SEPTEMBER, 1957.

General Business.

NOTICE OF MOTION :—

1. The Hon. J. W. GALBALLY: To move, That he have leave to bring in a Bill to amend the Law relating to the Sale and Purchase of Goods.

ORDERS OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).
2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.
4. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.
5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

Government Business.

ORDERS OF THE DAY :—

*1. CONSOLIDATED REVENUE BILL (No. 2)—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*2. WANGARATTA (RATING ON UNIMPROVED VALUES) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

3. MELBOURNE CRICKET GROUND (TRUSTEES) BILL—(*Hon. G. L. Chandler*)—Second reading.

*4. AUDIT BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*5. STAMPS BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*6. TRUSTEE COMPANIES BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*7. LOCAL GOVERNMENT BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

*8. PORT MELBOURNE LAGOON LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

9. STATUTE LAW REVISION BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. G. S. McArthur*).

10. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

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

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TUESDAY, 1ST OCTOBER, 1957.

Government Business.

ORDERS OF THE DAY :—

1. ACTS INTERPRETATION (SERVICE BY POST) BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

2. BREAD INDUSTRY BILL—(*from Assembly—Hon. Sir Arthur Warner*)—To be further considered in Committee.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA

LEGISLATIVE COUNCIL

MINUTES OF THE PROCEEDINGS

No. 19.

TUESDAY, 24TH SEPTEMBER, 1957.

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

2. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR.—The Honorable Sir Arthur Warner presented a Message from His Excellency the Lieutenant-Governor, informing the Council that he had, on the 17th instant, given the Royal Assent to the undermentioned Act presented to him by the Clerk of the Parliaments, viz. :—

Landlord and Tenant (Control) Act.

3. AUDIT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Collection and Payment of the Public Moneys the Audit of the Public Account and other Accounts and the Protection and Recovery of the Public Property, and for other purposes*" and desiring the concurrence of the Council therein.

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

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

On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. TRUSTEE COMPANIES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Law relating to Trustee Companies*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, the Bill transmitted by the foregoing 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. PORT MELBOURNE LAGOON LANDS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to vest certain Land in the City of Port Melbourne in the Melbourne and Metropolitan Board of Works*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, the Bill transmitted by the foregoing 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 BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Local Government Act* 1946'" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. L. Chandler, the Bill transmitted by the foregoing 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. 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 Twenty-seven million three hundred and eighty-three thousand nine hundred and eighty-five pounds to the service of the year One thousand nine hundred and fifty-seven and One thousand nine hundred and fifty-eight*" and desiring the concurrence of the Council therein.

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

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9. LANDLORD AND TENANT (CONTROL) 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.

10. PAPERS.—The Honorable Sir Arthur Warner presented, by command of His Excellency the Lieutenant-Governor—

Police—Report of the Chief Commissioner of Police for the year 1956.

Ordered to lie on the Table.

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

Constitution Statute—Statement of Expenditure under Schedule D to Act 18 and 19 Vict., Cap. 55, Acts 3660, 5380, 6006 and 6056 during the year 1956-57.

Country Fire Authority Acts—

Amendment of Regulations (two papers).
Regulations relating to the issue of Debentures.

Explosives Act 1928—

Order in Council relating to the Definition of Explosives.
Report of the Chief Inspector of Explosives for the year 1956.

Fisheries Acts—Notices of Intention to issue Proclamations—

To alter the Regulations respecting netting in Lindsay River, Wallpola Creek and Potterwalkagee Creek.
To prescribe a close season for school or snapper shark and gummy shark.
To prohibit all fishing in or the taking of fish from Lake Bullen Merri until the 30th April, 1958, inclusive.
To revoke the proclamation prohibiting all fishing in or the taking of fish from Scots Creek and portion of Curdies River near Cobden, from 1st May to 15th December in each year.
To vary the proclamation respecting prohibition of fishing in certain waters.

Marketing of Primary Products Acts—Amendment of Egg and Egg Pulp Marketing Board Regulations.

Police Offences Act 1957—Police Offences (Pea Rifles) Regulations 1957.

Police Regulation Acts—Amendment of Police Regulations 1951.

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

Part III.—Salaries, Increments and Allowances (seven papers).
Part VI.—Travelling Expenses.

River Improvement Act 1948—Pental Island River Improvement Trust—Regulations relating to the election and term of office of Commissioners.

Soldier Settlement Acts—Additional Regulations.

11. CENTENARY OF RESPONSIBLE GOVERNMENT IN VICTORIA.—The President presented " One Hundred Years of Responsible Government in Victoria, 1856–1956 ".

Ordered to lie on the Table and be printed.

12. STATUTE LAW REVISION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

The Honorable G. S. McArthur moved, That the debate be now adjourned.

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

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

13. STATUTE LAW REVISION BILL.—The Honorable G. S. McArthur moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.

Question—put and resolved in the affirmative.

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

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

House in Committee.

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

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

16. ACTS INTERPRETATION (SERVICE BY POST) BILL.—The order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur 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 Tuesday next.

53

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

House in Committee.

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

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

18. WANGARATTA (RATING ON UNIMPROVED VALUES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to Validate the Adoption of Rating on Unimproved Values in the Borough of Wangaratta, and for other purposes*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable Sir Arthur Warner moved, That this Bill be dealt with as a Public Bill.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That this Bill be now read a first time.

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

19. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 20.

WEDNESDAY, 25TH SEPTEMBER, 1957.

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

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

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

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

Education Act 1928—Amendment of Regulations—

- Regulation IV. (E).—Accountancy Certificate.
- Regulation IV. (H).—Consolidated School Intermediate Certificate.
- Regulation XIX.—Allowances for School Requisites and Maintenance to Pupils Attending Post-Primary Schools and Classes.
- Regulation XX. (D).—Trained Secondary Teacher's Certificate (Domestic Arts).
- Regulation XX. (E).—Diploma of Domestic Arts.
- Regulation XX. (L).—Trained Technical Teacher's Certificate.
- Regulation XXI.—Scholarships.

Health Act 1956—

- Amending Infectious Diseases Regulations 1957.
- Amending Infectious Diseases Regulations 1957 (No. 2).

Public Service Act 1946—Amendment of Public Service (Governor-in-Council) Regulations—Part III.—Discipline and Conduct of Officers and Employees.

Teaching Service Act 1946—Amendment of Regulations—

- Regulation XX. (O).—Trained Secondary Teacher's Certificate.
- Regulation L.—Studentships and Courses at Teachers' Colleges or other Approved Institutions.

Superannuation Act 1928—Report of the State Superannuation Board for the year 1955-56.

4. GOODS (AMENDMENT) BILL.—On the motion of the Honorable J. W. Galbally, leave was given to bring in a Bill to amend the Law relating to the Sale and Purchase of Goods, and the said Bill was read a first time and ordered to be printed and to be read a second time on Wednesday next.

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

House in Committee.

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

Resolved—That the Council will, later this day, again resolve itself into the said Committee.

6. STATUTE LAW REVISION COMMITTEE.—The Honorable P. T. Byrnes brought up a Report from the Statute Law Revision Committee upon the proposals contained in the County Court Bill.

Ordered to lie on the Table and be printed.

7. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, General Business, Nos. 2 to 6 inclusive, be postponed until later this day.

8. CONSOLIDATED REVENUE BILL (No. 2).—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

Debate ensued.

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

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

Ordered—That the debate be adjourned until later this day.

9. ALTERATION OF SESSIONAL ORDERS.—The Honorable Sir Arthur Warner moved, by leave, That so much of the Sessional Orders as provides that no new business shall be taken after half-past Ten o'clock be suspended during this sitting of the House so as to permit consideration of the Wangaratta (Rating on Unimproved Values) Bill to be entered into after half-past Ten o'clock.

Question—put and resolved in the affirmative.

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

House in Committee.

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

THURSDAY, 26TH SEPTEMBER, 1957.

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

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

11. CRIMES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate the Law relating to Crimes and Criminal Offenders*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, 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. MAINTENANCE (CONSOLIDATION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate the Law relating to the Maintenance of Wives and Children and relating to Confinement Expenses and relating to the Relief of Persons whose Relatives liable to support them reside in another State or a Territory of the Commonwealth or in the Dominion of New Zealand, and to facilitate the Enforcement in Victoria of Maintenance Orders made in England and Northern Ireland and other parts of Her Majesty's Dominions and Protectorates and in other Countries and vice versa, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. WANGARATTA (RATING ON UNIMPROVED VALUES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

Debate ensued.

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

The Council divided.

Ayes, 25.	Noes, 5.
The Hon. D. L. Arnott (*Teller*),	The Hon. A. J. Bailey,
A. K. Bradbury,	T. W. Brennan (*Teller*),
C. H. Bridgford,	P. Jones,
P. T. Byrnes,	J. A. Little,
E. P. Cameron,	M. P. Sheehy (*Teller*).
V. O. Dickie,	
P. V. Feltham,	
D. P. J. Ferguson,	
W. O. Fulton,	
J. W. Galbally,	
C. S. Gawith,	
T. H. Grigg,	
J. J. Jones,	
G. S. McArthur,	
B. Machin,	
R. W. Mack (*Teller*),	
A. R. Mansell,	
R. W. May,	
R. R. Rawson,	
A. Smith,	
I. A. Swinburne,	
L. H. S. Thompson,	
G. L. Tilley,	
D. J. Walters,	
Sir Arthur Warner.	

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

House in Committee.

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

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 Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 20.

TUESDAY, 1ST OCTOBER, 1957.

Question.

*1. The Hon. A. J. BAILEY: To ask the Honorable the Minister of Transport—In respect to the Seaholme No. 1 Co-operative Housing Society which is financing the construction of roads for lot-holders—

(*a*) Is the Registrar of Co-operative Housing Societies aware that some lot-holders are not reimbursing the Society for such money expended by the Society.

(*b*) How many lots are involved and by whom are they owned.

(*c*) Have four members of this Society had an expulsion order passed against them; if so—(i) what are the reasons for their expulsion; (ii) have they paid their road charges; and (iii) will the Government undertake an inquiry into all aspects of the road-making scheme and the action taken against those members involved in the expulsion.

Government Business.

ORDERS OF THE DAY:—

1. MELBOURNE CRICKET GROUND (TRUSTEES) BILL—(*Hon. G. L. Chandler*)—Second reading.

2. AUDIT BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

3. TRUSTEE COMPANIES BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

4. STAMPS BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

5. LOCAL GOVERNMENT BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

*6. CONSOLIDATED REVENUE BILL (No. 3)—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

7. PORT MELBOURNE LAGOON LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

8. BREAD INDUSTRY BILL—(*from Assembly—Hon. Sir Arthur Warner*)—To be further considered in Committee.

*9 MAINTENANCE (CONSOLIDATION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*10. CRIMES BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

11. ACTS INTERPRETATION (SERVICE BY POST) BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

12. STATUTE LAW REVISION BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. G. S. McArthur*).

13. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

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

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eral Business.

ORDERS OF THE DAY :—

1. CLEAN AIR BILL—(*Hon. B. Machin*)—To be further considered in Committee.
2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.
4. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.
5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

WEDNESDAY, 2ND OCTOBER, 1957.

General Business.

ORDER OF THE DAY :—

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

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

57

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 21.

TUESDAY, 1ST OCTOBER, 1957.

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

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

Consolidated Revenue Act.

Wangaratta (Rating on Unimproved Values) Act.

3. STATUTE LAW REVISION COMMITTEE—ESTATE AGENTS.—The Honorable L. H. S. Thompson brought up a Report from the Statute Law Revision Committee on clauses 2, 5, 6, 8 and 9 of the Estate Agents (Amendment) Bill 1957, and section 4 of the *Estate Agents Act* 1956.

Ordered to lie on the Table and be printed.

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

Anti-Cancer Council Act 1936—Report and Statement of Accounts of the Anti-Cancer Council of Victoria for the year 1956–57.

Children's Welfare Act 1954—Report of the Director of Children's Welfare for the year 1956.

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

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

Part II.—Promotions and Transfers.

Part III.—Salaries, Increments and Allowances (3 papers).

State Savings Bank Act 1928—Statements and Returns of the State Savings Bank for the year 1956–57.

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

6. CLEAN AIR BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

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

On the motion of the Honorable B. Machin, the Bill was re-committed to a Committee of the whole in respect of clauses 3 and 5.

House in Committee.

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

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

7. LAND (RESUMPTION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Two hundred and eighty-six of the 'Land Act* 1928' *in relation to Lands to be resumed for Educational Purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, the Bill transmitted by the foregoing 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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8. CONSOLIDATED REVENUE BILL (No. 3).—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

9. LOCAL GOVERNMENT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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 15th instant.

10. AUDIT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable R. R. Rawson 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 15th instant.

11. STAMPS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

The Honorable F. M. Thomas for 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 Tuesday, the 15th instant.

12. TRUSTEE COMPANIES BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable R. R. Rawson 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 15th instant.

13. MAINTENANCE (CONSOLIDATION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

The Honorable R. R. Rawson 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 15th instant.

14. PORT MELBOURNE LAGOON LANDS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable B. Machin 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. CRIMES BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday, the 15th instant.

16. BREAD INDUSTRY BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

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

WEDNESDAY, 2ND OCTOBER, 1957.

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

Resolved—That the Council will, on Tuesday, the 15th instant, again resolve itself into the said Committee.

17. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 15th instant.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at sixteen minutes past Twelve o'clock in the morning, adjourned until Tuesday, the 15th instant.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 21.

TUESDAY, 15TH OCTOBER, 1957.

Questions.

*1. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of State Development and Decentralization—

(*a*) What is the total sum of money standing to the credit of the State Decentralization Fund.

(*b*) What payments have been made from the fund during the financial years 1955–56 and 1956–57, and to whom.

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

(*a*) What is the estimated damage done by recent fires in schools at Hampton and Braybrook.

(*b*) Was any form of emergency fire extinguisher installed in either of the schools.

(*c*) Have unsuccessful representations been made by head teachers to have such provision made in their schools.

(*d*) In view of the danger to the lives of pupils and teachers, will the Government consider the wisdom of making such provision in schools where such is considered desirable.

*3. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—

(*a*) What were the total funds available to the Country Roads Board for the year 1956–57.

(*b*) What are the estimated total funds available to the Board for the year 1957–58.

(*c*) For the year 1956–57—(i) what amount was paid into consolidated revenue under Act No. 3944, section 4; (ii) what amount was paid to the Treasurer out of the Country Roads Board Fund under Act No. 4140, section 2; (iii) what amount was paid for liability under Act No. 4395, section 6; and (iv) what amount was paid out of the Country Roads Board Fund under Act No. 3662, section 39 (1) (*b*) (ii).

*4. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—Will the Government make a special grant of funds to the municipalities in the Geelong district to enable them to carry out maintenance works on road surfaces that have been damaged by public passenger street buses.

*5. The Hon. W. O. FULTON: To ask the Honorable the Minister of Transport—

(*a*) How many leaks have been discovered in the outfall sewer from Morwell to Rosedale, and what are the reasons given for the effluent escaping from the pipeline in this area.

(*b*) What are the names of the contractors who carried out this work.

(*c*) Is it the responsibility of the contractors or the authority to remedy the defects.

(*d*) Will landowners be compensated for any damage to their properties by overflow or seepage from the pipeline or channel.

*6. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—

(*a*) What was the total output of electric power at the power station at Eildon for the six months ended 30th September, 1957.

(*b*) What amount was paid to the State Rivers and Water Supply Commission by the State Electricity Commission for the water supplied during such period.

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

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THE HONORABLE D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—Is it the intention of the Government to re-establish the health and recreation camp for under-privileged children of the State; if so, will the land at Queenscliff held by the Education Department and originally secured
8. for this purpose be the locality for such a camp.

*8. THE HONORABLE W. O. FULTON: To ask the Honorable the Minister of Transport—

(*a*) Are the activities of the State Savings Bank controlled by the Commonwealth Bank; if so, under which section of the Commonwealth of Australia Constitution is the power derived.

(*b*) What is the number of accounts in the State Savings Bank and what is the average amount of such accounts.

(*c*) What was the total amount of depositors' money held by the bank at the first of each month of the years 1955–56 and 1956–57 and the minimum balance of depositors' accounts during each such month.

*9. THE HONORABLE I. A. SWINBURNE: To ask the Honorable the Minister of Transport—

(*a*) Is it the policy of the Railways Department to discontinue land leases at present held in country towns as they become due for renewal.

(*b*) How long will persons holding such leases be given to remove improvements erected thereon.

*10. THE HONORABLE D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—Will he lay on the table of the Library the Country Roads Board file relating to Princes Bridge, Geelong.

Government Business.

ORDERS OF THE DAY:—

1. AUDIT BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

2. MAINTENANCE (CONSOLIDATION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

3. TRUSTEE COMPANIES BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

4. LOCAL GOVERNMENT BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

*5. LAND (RESUMPTION) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

6. CRIMES BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

7. CONSOLIDATED REVENUE BILL (No. 3)—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

8. STAMPS BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

9. PORT MELBOURNE LAGOON LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

10. BREAD INDUSTRY BILL—(*from Assembly—Hon. Sir Arthur Warner*)—To be further considered in Committee.

11. ACTS INTERPRETATION (SERVICE BY POST) BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

12. MELBOURNE CRICKET GROUND (TRUSTEES) BILL—(*Hon. G. L. Chandler*)—Second reading.

13. STATUTE LAW REVISION BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. G. S. McArthur*).

14. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

ORDERS OF THE DAY:—

1. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

2. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

4. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 22.

TUESDAY, 15TH OCTOBER, 1957.

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

2. COUNTY COURT BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate and amend the Law relating to the County Court*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. MARRIAGE (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Marriage Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. STATE ELECTRICITY COMMISSION (LANDS COMPENSATION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Fifteen of the 'State Electricity Commission Act* 1928'" and desiring the concurrence of the Council therein.

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

5. STATUTE LAW REVISION COMMITTEE.—The Honorable P. T. Byrnes brought up Reports from the Statute Law Revision Committee, together with Minutes of Evidence, on the provisions of the *Instruments Act* 1928 relating to Bills of Sale and upon the proposals contained in the Statute Law Revision Bill.

Severally ordered to lie on the Table and the Reports to be printed.

6. 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—Amendment of Adult Education Regulations 1955 (two papers).

Country Fire Authority Acts—Regulations relating to the Issue of Debentures.

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

Fisheries Acts—Notice of Intention to issue a Proclamation to prescribe certain Mollusca as fish for the purposes of the Fisheries Acts.

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

Health Act 1956—Report of the Commission of Public Health for the year 1956–57.

Melbourne and Metropolitan Tramways Act 1928—Report and Statement of Accounts of the Melbourne and Metropolitan Tramways Board for the year 1956–57.

Police Regulation Acts—Amendment of Police Regulations 1951.

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

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

Teaching Service Act 1946—Amendment of Regulations—

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

Town and Country Planning Acts—

- Amendment of Regulations.
- City of Moorabbin Planning Scheme 1952—Amendment No. 3, 1956.
- City of Moorabbin Planning Scheme—Section 1—Amendment No. 2, 1956.

Trade Unions Act 1928—Report of the Government Statist for the year 1956.

Vegetation and Vine Diseases Act 1928—Amendment of Regulations (two papers).

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

12806/56. (240 copies.)

7. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 to 6 inclusive, be postponed until later this day.

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

House in Committee.

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

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

9. FIREARMS (PISTOLS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Twenty-two of the 'Firearms Act* 1951' *in respect of the Granting of Firearm Certificates for certain Pistols, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, the Bill transmitted by the foregoing 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. DOG BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Dog Acts*" and desiring the concurrence of the Council therein.

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

11. GEELONG HARBOR TRUST (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Geelong Harbor Trust Acts, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable Sir Arthur Warner, for the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. EXHIBITION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Administration and Control of the Exhibition, and for other purposes*" and desiring the concurrence of the Council therein.

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

13. RAILWAYS (FURLOUGH) AMENDMENT BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

14. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 22.

TUESDAY, 22ND OCTOBER, 1957.

Government Business.

ORDERS OF THE DAY :—

1. STAMPS BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).
2. CRIMES BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

*3. STATE ELECTRICITY COMMISSION (LANDS COMPENSATION) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*4. FIREARMS (PISTOLS) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*5. COUNTY COURT BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*6. DOG BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*7. MARRIAGE (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*8. EXHIBITION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*9. GEELONG HARBOR TRUST (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

10. AUDIT BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).
11. MAINTENANCE (CONSOLIDATION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).
12. TRUSTEE COMPANIES BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).
13. LOCAL GOVERNMENT BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).
14. LAND (RESUMPTION) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.
15. STATUTE LAW REVISION BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. G. S. McArthur*).
16. PORT MELBOURNE LAGOON LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).
17. MELBOURNE CRICKET GROUND (TRUSTEES) BILL—(*Hon. G. L. Chandler*)—Second reading.
18. ACTS INTERPRETATION (SERVICE BY POST) BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).
19. BREAD INDUSTRY BILL—(*from Assembly—Hon. Sir Arthur Warner*)—To be further considered in Committee.
20. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

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

12807/56. (125 copies.)

Notice of Business.

ORDERS OF THE DAY:—

1. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
2. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.
3. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.
4. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
6. GOODS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

MEETING OF SELECT COMMITTEE.

Wednesday, 23rd October.

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

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 23.

TUESDAY, 22ND OCTOBER, 1957.

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

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

Railways (Furlough) Amendment Act.
Consolidated Revenue Act.

3. JUDICIAL PROCEEDINGS (REGULATION OF REPORTS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Publication of Reports of Proceedings in respect of Sexual and Unnatural Offences, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. JUSTICES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Justices Act* 1957', *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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 :—

Cancer Institute Act 1948—Cancer Institute (Amending) Regulations 1957.

Country Fire Authority Acts—

Amendment of Country Fire Authority (General) Regulations.
Country Fire Authority (Permits) Regulations 1957.

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

Education Act 1928—Report of the Council of Public Education for the year 1956-57.

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

Landlord and Tenant (Control) Act 1957—Landlord and Tenant (Control) Regulations 1957.

Poisons Acts—Pharmacy Board of Victoria—Proclamations amending—

Fourth Schedule to the Poisons Act 1928 (two papers).

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 (six papers).

River Improvement Act 1948—Mitchell River Improvement Trust—Regulations for the election and term of office of Commissioners.

Second-hand Dealers Acts—Amendment of Regulations.

Supreme Court Act 1928—Amendment of Supreme Court Office Fees Regulations 1954.

12806/56. (240 copies.)

6. POSTPONEMENT OF ORDERS OF THE DAY.—The Honorable J. W. Galbally moved, That the consideration of Orders of the Day, Government Business, Nos. 1 to 18 inclusive, be postponed until after Order of the Day, Government Business, No. 19.

Debate ensued.

Question—put.

The Council divided.

Ayes, 22.	Noes, 9.
The Hon. D. L. Arnott,	The Hon. C. H. Bridgford (*Teller*),
A. J. Bailey (*Teller*),	E. P. Cameron,
A. K. Bradbury,	G. L. Chandler,
T. W. Brennan,	V. O. Dickie (*Teller*),
P. T. Byrnes,	T. H. Grigg,
P. V. Feltham,	G. S. McArthur,
D. P. J. Ferguson,	R. W. Mack,
J. W. Galbally,	L. H. S. Thompson,
J. J. Jones,	Sir Arthur Warner.
P. Jones,	
J. A. Little,	
B. Machin,	
A. R. Mansell,	
R. W. May (*Teller*),	
R. R. Rawson,	
M. P. Sheehy,	
W. Slater,	
A. Smith,	
I. A. Swinburne,	
F. M. Thomas,	
G. L. Tilley,	
D. J. Walters.	

And so it was resolved in the affirmative.

7. BREAD INDUSTRY BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and, after debate, the Bill was read a third time 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. CRIMES BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

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

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

9. MELBOURNE AND METROPOLITAN BOARD OF WORKS (EXTENSION AND ADVANCES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Extension of the Metropolis under the Melbourne and Metropolitan Board of Works Acts and to the Making of Advances by the Treasurer of Victoria to the said Board*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. L. Chandler, the Bill transmitted by the foregoing 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. SOLICITOR-GENERAL (PENSION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Pension of the Solicitor-General, and for other purposes*" and desiring the concurrence of the Council therein.

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

11. POLICE OFFENCES (PROSTITUTION) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Twenty-eight and to re-enact Section Seventy-nine of the 'Police Offences Act* 1957'" and desiring the concurrence of the Council therein.

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

12. RAILWAYS (LEVEL CROSSINGS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make provision for the Closing of Level Crossings over Railway Lines*" and desiring the concurrence of the Council therein.

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

63

13. STATE ELECTRICITY COMMISSION (LAND COMPENSATION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

14. FIREARMS (PISTOLS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable G. L. Tilley, for the Honorable D. P. J. Ferguson 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.

15. COUNTY COURT BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur 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.

16. DOG BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable A. Smith 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. MARRIAGE (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 the next day of meeting.

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

House in Committee.

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

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

19. ADJOURNMENT.—The Honorable Sir Arthur Warner 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 fifty-six minutes past Ten o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 23.

TUESDAY, 29TH OCTOBER, 1957.

Questions.

*1. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—Is the Somerton-Campbellfield-Fawkner Transport Trust privately operated and controlled; if so, by whom.

*2. The Hon. J. J. Jones: To ask the Honorable the Minister of Agriculture—

(*a*) How many students are awaiting admission to Agricultural Colleges in this State.

(*b*) What additional provision is being made to accommodate those applicants on the waiting list.

Government Business.

ORDERS OF THE DAY:—

1. ACTS INTERPRETATION (SERVICE BY POST) BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

2. MELBOURNE CRICKET GROUND (TRUSTEES) BILL—(*Hon. G. L. Chandler*)—Second reading.

3. PORT MELBOURNE LAGOON LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

4. AUDIT BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

5. LAND (RESUMPTION) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

6. LOCAL GOVERNMENT BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

7. TRUSTEE COMPANIES BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

8. STATUTE LAW REVISION BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. G. S. McArthur*).

*9. SOLICITOR-GENERAL (PENSION) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*10. JUDICIAL PROCEEDINGS (REGULATION OF REPORTS) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*11. MELBOURNE AND METROPOLITAN BOARD OF WORKS (EXTENSION AND ADVANCES) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

*12. JUSTICES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*13. RAILWAYS (LEVEL CROSSINGS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*14. POLICE OFFENCES (PROSTITUTION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

15. STATE ELECTRICITY COMMISSION (LAND COMPENSATION) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

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

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16. MAINTENANCE (CONSOLIDATION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

17. FIREARMS (PISTOLS) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

18. COUNTY COURT BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

19. DOG BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

20. MARRIAGE (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—To be committed.

21. EXHIBITION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

22. GEELONG HARBOR TRUST (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

23. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

ORDERS OF THE DAY:—

1. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

2. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

4. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

MR. PRESIDENT TAKES THE CHAIR AT TWO O'CLOCK.

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 24.

WEDNESDAY, 30TH OCTOBER, 1957.

Questions.

*1. The Hon. J. W. GALBALLY: To ask the Honorable the Minister of Transport—

(*a*) Has his attention been drawn to recent public statements by the Minister of Housing that Housing Commission tenants will be evicted as soon as they fail to pay the rent; if so, do the statements by the Minister of Housing represent the views of the Government.

(*b*) Is the Minister aware that landlords cannot evict tenants unless the rent is in arrears for 28 days.

(*c*) Is the Government preparing to turn out into the street people who by reason of unemployment, sickness or other cause may be temporarily unable to pay the rent.

(*d*) Will the Government give the assurance that Housing Commission tenants will not be in a less favorable position with regard to eviction for non-payment of rent than other tenants in the community.

*2. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—What net amount is received by the Country Roads Board after payment of costs of collection from—(i) motor registration fees; (ii) drivers' licence fees; and (iii) fines.

*3. The Hon. M. P. SHEEHY: To ask the Honorable the Minister of Transport—

(*a*) What fares are charged by the Melbourne and Metropolitan Tramways Board for the sections from the corner of Malvern and Orrong Roads to—(i) the corner of Swanston and Flinders Streets; and (ii) the Public Library, Swanston-street.

(*b*) What fares are charged by private buses for the above sections.

*4. The Hon. W. SLATER: To ask the Honorable the Minister of Transport—Is it the intention of the transport authorities to meet the ever-increasing demand for adequate transport facilities in the Broadmeadows–Essendon district.

*5. The Hon. M. P. SHEEHY: To ask the Honorable the Minister of Agriculture—

(*a*) Is the zoning of areas for milk delivery done by—(i) the Milk Board; or (ii) the dairymen trading in the district.

(*b*) What metropolitan areas have been zoned, giving the boundaries of each zone, and by whom determined.

(*c*) In respect of the City of Richmond—(i) when was the area zoned; (ii) how many zones are there; (iii) what are the boundaries of each zone; (iv) what are the names of the dairymen allotted to each zone; (v) was the zoning effected by the Milk Board or by agreement among the dairymen in the area; and (vi) was the zoning done with the approval and sanction of the Board.

*6. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—Will the Government give immediate attention to the question of adjusting salaries and employment conditions of Council-controlled Technical Schools to ensure that expert professional tutors are retained, instead of being lost to private firms that are giving salaries commensurate with the skill and experience of these professional people.

*7. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—Will he lay on the table of the Library the file relating to the Somerton–Campbellfield–Fawkner Transport Trust.

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

12807/56. (125 copies.)

General Business.

ORDERS OF THE DAY :—

1. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
2. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading.
3. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.
4. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
6. GOODS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.

Government Business.

NOTICE OF MOTION :—

*1. The Hon. G. L. CHANDLER : To move, That he have leave to bring in a Bill to amend the *Fruit and Vegetables Act* 1928 and the *Vegetation Diseases* (*Fruit Fly*) *Act* 1947 in relation to the Powers of Inspectors and of Members of the Police Force, and for other purposes.

ORDERS OF THE DAY :—

1. POLICE OFFENCES (PROSTITUTION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*2. VERMIN AND NOXIOUS WEEDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*3. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL (NO. 2)—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

4. JUDICIAL PROCEEDINGS (REGULATION OF REPORTS) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

5. MELBOURNE AND METROPOLITAN BOARD OF WORKS (EXTENSION AND ADVANCES) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

*6. RACING (TOTALIZATORS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

7. LOCAL GOVERNMENT BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

8. LAND (RESUMPTION) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

9. MAINTENANCE (CONSOLIDATION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

10. FIREARMS (PISTOLS) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

11. EXHIBITION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

12. COUNTY COURT BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

13. RAILWAYS (LEVEL CROSSINGS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

14. GEELONG HARBOR TRUST (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

15. STATE ELECTRICITY COMMISSION (LAND COMPENSATION) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

16. MARRIAGE (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

17. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

TUESDAY, 12TH NOVEMBER, 1957.

Government Business.

ORDER OF THE DAY :—

1. MELBOURNE CRICKET GROUND (TRUSTEES) BILL—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS

No. 24.

TUESDAY, 29TH OCTOBER, 1957.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable Sir Arthur Warner 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. :—

   Crimes Act.

   Stamps Act.

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

   On the motion of the Honorable E. P. Cameron, the Bill transmitted by the foregoing 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 MINE WORKERS PENSIONS (AMENDMENT) BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Coal Mine Workers Pensions Act* 1942'" and desiring the concurrence of the Council therein.

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

5. SUBORDINATE LEGISLATION COMMITTEE.—The Honorable I. A. Swinburne brought up the First Special Report from the Subordinate Legislation Committee, together with an Appendix.

   Ordered to lie on the Table and be printed together with the Appendix.

6. ADJOURNMENT—ALTERATION OF HOUR OF MEETING.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until to-morrow at a quarter to Two o'clock.

   Question—put and resolved in the affirmative.

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

   House in Committee.

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

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

8. MELBOURNE CRICKET GROUND (TRUSTEES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler 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 Tuesday, the 12th November next.

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

   House in Committee.

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

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

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

House in Committee.

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

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

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

Forests Act 1957—Report of the Forests Commission for the year 1956–57.

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

Soldier Settlement Act 1945—Report of the Soldier Settlement Commission for the year 1956–57.

Stamps Acts—Amendment of Betting Tax Regulations 1956.

Transport Regulation Act 1955—Report of the Transport Regulation Board for the year 1956-57.

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

12. LAND (RESUMPTION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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. 6 to 8 inclusive, be postponed until later this day.

14. SOLICITOR-GENERAL (PENSION) BILL.—This Bill was, according to Order and after debate, read a second time with the concurrence of an absolute majority of the whole number of the Members of the Legislative Council and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable R. R. Rawson 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. JUDICIAL PROCEEDINGS (REGULATION OF REPORTS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

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

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

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

16. MELBOURNE AND METROPOLITAN BOARD OF WORKS (EXTENSION AND ADVANCES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable R. R. Rawson 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. JUSTICES (AMENDMENT) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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

18. RAILWAYS (LEVEL CROSSINGS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable A. Smith 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.

19. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 14 to 18 inclusive, be postponed until later this day.

67

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

House in Committee.

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

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

21. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 20 and 21, be postponed until later this day.

22. GEELONG HARBOR TRUST (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

The Honorable D. P. J. Ferguson 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. MARRIAGE (AMENDMENT) BILL.—This Bill was, according to Order, committed to a Committee of the whole.

The Honorable G. S. McArthur moved, by leave, That it be an instruction to the Committee that they have power to consider a new clause providing for the recognition in Victoria of a decree of dissolution of marriage made by a competent court in any country outside Victoria.

Question—put and resolved in the affirmative.

The President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters 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. MARRIAGE (AMENDMENT) BILL.—The Honorable G. S. McArthur moved, by leave, That the proposals contained in clause AA proposed to be inserted in the Marriage (Amendment) Bill be referred to the Statute Law Revision Committee for examination and report.

Debate ensued.

Question—put and resolved in the affirmative.

25. RACING (TOTALIZATORS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Part V. of the 'Racing Act* 1957', *and for other purposes*" and desiring the concurrence of the Council therein.

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

26. EXHIBITION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable B. Machin 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.

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

House in Committee.

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

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

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

House in Committee.

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

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

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 25.

WEDNESDAY, 30TH OCTOBER, 1957.

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

2. PROPERTY LAW (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Part I. of the 'Property Law Act* 1928'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. PAPER.—The following Paper, pursuant to the direction of an Act of Parliament, was laid upon the Table by the Clerk:—

   Public Service Act 1946—Report of the Public Service Board for the year 1956–57.

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

5. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. W. Galbally moved, That this Bill be now read a second time.

   The Honorable Sir Arthur 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 Wednesday, the 13th November next.

6. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, General Business, Nos. 1 and 3 to 6 inclusive, be postponed until Wednesday, the 13th November next.

7. FRUIT AND VEGETABLES (INSPECTION) BILL.—On the motion of the Honorable G. L. Chandler, leave was given to bring in a Bill to amend the *Fruit and Vegetables Act* 1928 and the *Vegetation Diseases (Fruit Fly) Act* 1947 in relation to the Powers of Inspectors and of Members of the Police Force, and for other purposes; and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

8. STATUTE LAW REVISION COMMITTEE—ENFORCEMENT OF FINES.—The Honorable P. T. Byrnes brought up a Report from the Statute Law Revision Committee on the law relating to the Enforcement of Fines, together with Minutes of Evidence, and an Appendix.

   Ordered to lie on the Table and the Report to be printed.

9. POLICE OFFENCES (PROSTITUTION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

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

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

   Ordered—That the debate be adjourned until Tuesday, the 12th November next.

10. POSTPONEMENT OF ORDERS OF THE DAY.—

    Ordered—That the consideration of Orders of the Day, Government Business, Nos. 2 and 3, be postponed until later this day.

    Ordered—That the consideration of Order of the Day, Government Business, No. 4, be postponed until Tuesday, the 12th November next.

11. COAL MINE WORKERS PENSIONS (AMENDMENT) BILL (No. 2).—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

    House in Committee.

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

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

12. 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.

13. RACING (TOTALIZATORS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

69

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

House in Committee.

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

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

15. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday, the 12th November next.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at seventeen minutes past Five o'clock, adjourned until Tuesday, the 12th November next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 25.

TUESDAY, 12TH NOVEMBER, 1957.

Government Business.

ORDERS OF THE DAY :—

*1. FRUIT AND VEGETABLES (INSPECTION) BILL—(*Hon. G. L. Chandler*)—Second reading.

*2. PROPERTY LAW (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

3. VERMIN AND NOXIOUS WEEDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

4. JUDICIAL PROCEEDINGS (REGULATION OF REPORTS) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

5. MELBOURNE AND METROPOLITAN BOARD OF WORKS (EXTENSION AND ADVANCES) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

6. LOCAL GOVERNMENT BILL—(*from Assembly—Hon. G. L. Chandler*)—To be further considered in Committee.

7. LAND (RESUMPTION) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

8. MAINTENANCE (CONSOLIDATION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

9. FIREARMS (PISTOLS) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

10. MELBOURNE CRICKET GROUND (TRUSTEES) BILL—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

11. EXHIBITION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

12. COUNTY COURT BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

13. RAILWAYS (LEVEL CROSSINGS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

14. GEELONG HARBOR TRUST (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

15. STATE ELECTRICITY COMMISSION (LAND COMPENSATION) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

16. RACING (TOTALIZATORS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

17. POLICE OFFENCES (PROSTITUTION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

18. MARRIAGE (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

19. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

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

12807/56. (125 copies.)

WEDNESDAY, 13TH NOVEMBER, 1957.

General Business.

ORDERS OF THE DAY:—

1. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

4. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 26.

WEDNESDAY, 13TH NOVEMBER, 1957.

Questions.

*1. The Hon. D. L. ARNOTT: To ask the Honorable the Minister of Transport—

(*a*) What were the reasons for increasing by approximately 100 per cent. the charges for water supplied by the State Rivers and Water Supply Commission to the Horsham Water Trust.

(*b*) Were these increases approved by the Minister of Water Supply.

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

(*a*) How many passengers were carried "up" and "down", respectively, by the Mildura Express during each of the months of September, October, and November in the years 1955, 1956, and 1957.

(*b*) What were the numbers of passengers carried for the same months and years by the Friday and Sunday trains.

(*c*) What was the revenue from passenger fares for the same months and years.

(*d*) Can the Minister supply any information as to the number of passengers carried by air and road for the same months and years.

*3. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—In view of the Government's decision to make a special Treasury grant of £7,500 available to subsidize privately owned and operated transport at Fawkner, will the Government favorably consider making a special Treasury grant to each of the Municipal Councils in the Geelong area to enable them to carry out repairs to roadways damaged by the privately owned passenger street transport system.

*4. The Hon. J. W. GALBALLY: To ask the Honorable the Minister of Transport—

(*a*) In view of the alarming failure of the recent Gas and Fuel Corporation loan and the State Electricity Commission loan last week, will the Government give consideration to curbing the loan raising activities of hire-purchase companies.

(*b*) In view of the fact that adequate supplies of gas and electricity are vital to the life of the community, will the Government take steps to see that future loans of the State Electricity Commission and the Gas and Fuel Corporation are not imperilled by banks and hire-purchase money lenders draining money off the market at high rates of interest.

General Business.

ORDERS OF THE DAY:—

1. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading.

4. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

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

12807/56. (125 copies.)

rnment Business.

NOTICES OF MOTION :—

*1. The Hon. SIR ARTHUR WARNER : To move, That he have leave to bring in a Bill to make Provision for the Regulation of the Use of Liquified Petroleum Gas, and for other purposes.

*2. The Hon. E. P. CAMERON : To move, That he have leave to bring in a Bill to make further Provision with respect to the Law relating to Cruelty to Animals.

*3. The Hon. G. S. MCARTHUR : To move, That he have leave to bring in a Bill to make further Provision with respect to the Functions and Powers of the Parole Board, and for other purposes.

ORDERS OF THE DAY :—

*1. LABOUR AND INDUSTRY (LONG SERVICE LEAVE) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*2. LAND TAX (RATES) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*3. REVENUE DEFICIT FUNDING BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*4. ACTS INTERPRETATION (SERVICE BY POST) BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.

*5. CLEAN AIR BILL—AMENDMENTS OF THE ASSEMBLY—To be considered.

*6. CRIMES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

7. PROPERTY LAW (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate (Hon. W. Slater).*

8. STATE ELECTRICITY COMMISSION (LAND COMPENSATION) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate (Hon. J. W. Galbally).*

9. POLICE OFFENCES (PROSTITUTION) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate (Hon. J. W. Galbally).*

10. MARRIAGE (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

11. RACING (TOTALIZATORS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate (Hon. J. W. Galbally).*

12. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate (Hon. J. W. Galbally).*

TUESDAY, 19TH NOVEMBER, 1957.

Government Business.

ORDERS OF THE DAY :—

1. FRUIT AND VEGETABLES (INSPECTION) BILL—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate (Hon. A. Smith).*

2. VERMIN AND NOXIOUS WEEDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate (Hon. J. J. Jones).*

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 26.

TUESDAY, 12TH NOVEMBER, 1957.

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

2. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable Sir Arthur Warner 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 6th instant—

   Port Melbourne Lagoon Lands Act.
   Solicitor-General (Pension) Act.
   Justices (Amendment) Act.
   Dog Act.
   Trustee Companies Act.
   Coal Mine Workers Pensions (Amendment) Act.
   Audit Act.

   On the 12th instant—

   Statute Law Revision Act.

3. LABOUR AND INDUSTRY (LONG SERVICE LEAVE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to further amend Division Four of Part VIII. of the 'Labour and Industry Act* 1953'" and desiring the concurrence of the Council therein.

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

4. LAND TAX (RATES) BILL:—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to declare the Rates of Land Tax for the Year ending the Thirty-first Day of December One thousand nine hundred and fifty-eight*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable E. P. Cameron, the Bill transmitted by the foregoing 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. REVENUE DEFICIT FUNDING BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Money for Transfer to the Consolidated Revenue to meet the Deficit therein for the year* 1956–57" and desiring the concurrence of the Council therein.

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

6. ACTS INTERPRETATION (SERVICE BY POST) BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and aquainting the Council that they have agreed to the same with amendments and desiring the concurrence of the Council therein.

   Ordered—That the foregoing Message be taken into consideration later this day.

7. CLEAN AIR BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have agreed to the same with amendments and desiring the concurrence of the Council therein.

   Ordered—That the foregoing Message be taken into consideration later this day.

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

9. STATUTE LAW REVISION BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

10. ADJOURNMENT—ALTERATION OF HOUR OF MEETING.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until to-morrow, at Two o'clock.

    Question—put and resolved in the affirmative.

12806/56. (240 copies.)

11. STATUTE LAW REVISION COMMITTEE.—The Honorable P. T. Byrnes brought up Reports from the Statute Law Revision Committee on the Law relating to the Unauthorized Use of Boats and upon the proposals contained in new clause AA proposed to be inserted in the Marriage (Amendment) Bill, together with Minutes of Evidence and Appendices.

Severally ordered to lie on the Table and the Reports to be printed.

12. PAPERS.—The Honorable Sir Arthur Warner moved, by leave, That there be laid before this House the Report of the Inspector appointed pursuant to the Companies (Special Investigations) Act 1940 to investigate the affairs of Wollomba River Oyster Leases Proprietary Limited and Oyster Development (Australia) Limited.

Question—put and resolved in the affirmative.

The said Report was thereupon presented by the Honorable Sir Arthur Warner and ordered to lie on the Table.

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

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

Fisheries Acts—Notices of Intention to vary Proclamations respecting prohibition of fishing in certain waters (two papers).

Land Act 1928—Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Mitcham, Ringwood, and Westwood (three papers).

Legal Profession Practice Act 1946—Solicitors (Professional Conduct and Practice) Rules 1957.

Milk Board Acts—Balance-sheet and Statements of Accounts of the Milk Board for the year 1956–57.

Poisons Acts—Dangerous Drugs Regulations 1957 (No. 2).

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

Road Traffic Act 1956—Road Traffic Regulations 1958.

13. FRUIT AND VEGETABLES (INSPECTION) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable A. Smith 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. PROPERTY LAW (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur 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.

15. VERMIN AND NOXIOUS WEEDS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

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

House in Committee.

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

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

17. MELBOURNE AND METROPOLITAN BOARD OF WORKS (EXTENSION AND 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 D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

18. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 6 to 8 inclusive, be postponed until later this day.

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

House in Committee.

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

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

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

House in Committee.

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

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

21. LOCAL GOVERNMENT BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

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

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

22. CRIMES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Law relating to Crimes and Criminal Offenders, and for other purposes*" and desiring the concurrence of the Council therein.

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

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

House in Committee.

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

Ordered—That the Bill be 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.

24. MAINTENANCE (CONSOLIDATION) 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. R. Rawson having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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. EXHIBITION 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 T. H. Grigg 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.

26. COUNTY COURT 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. R. Rawson having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

House in Committee.

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

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

28. 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 P. V. Feltham 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.

29. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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. 27.

WEDNESDAY, 13TH NOVEMBER, 1957.

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

2. CO-OPERATIVE HOUSING SOCIETIES BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate and amend the Law relating to the Formation Registration and Management of Co-operative Housing Societies and to the Making by the Treasurer of Victoria of Certain Guarantees and Indemnities in connexion with such Societies, and for other purposes*" and desiring the concurrence of the Council therein.

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

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

National Parks Act 1956—First Annual Report of the National Parks Authority for the period ended 30th June, 1957.

4. LOCAL GOVERNMENT (ELECTIONS AND POLLS) 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 ensued.

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

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

Ordered—That the debate be adjourned until Wednesday next.

75

5. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, General Business, No. 2, be postponed until Wednesday next.

6. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable W. Slater moved, That this Bill be now read a second time.

The Honorable Sir Arthur Warner moved, That the debate be now adjourned.

Debate ensued.

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

Ordered—That the debate be adjourned until Wednesday, the 27th instant.

7. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, General Business, Nos. 4 to 6 inclusive, be postponed until Wednesday next.

8. LIQUIFIED PETROLEUM GAS BILL.—On the motion of the Honorable Sir Arthur Warner, leave was given to bring in a Bill to make Provision for the Regulation of the Use of Liquified Petroleum Gas, 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. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL.—On the motion of the Honorable E. P. Cameron, leave was given to bring in a Bill to make further Provision with respect to the Law relating to Cruelty to Animals, 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. CRIMES (PAROLE BOARD) BILL.—On the motion of the Honorable G. S. McArthur, leave was given to bring in a Bill to make further Provision with respect to the Functions and Powers of the Parole Board, 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.

11. LABOUR AND INDUSTRY (LONG SERVICE LEAVE) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

12. LAND TAX (RATES) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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. REVENUE DEFICIT FUNDING BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable G. L. Tilley, for the Honorable J. W. Galbally moved, That the debate be now adjourned.

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

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

14. ACTS INTERPRETATION (SERVICE BY POST) BILL.—The Order of the Day for the consideration of the amendments made by the Assembly in this Bill having been read, the said amendments were read and are as follows:—

1. Clause 2, lines 15–16, omit " whether passed " and insert " or by any regulation rule or by-law whether passed or made ".

2. Clause 2, page 2, line 9, at the end of the clause insert the following sub-clause:—

( ) In sub-section (1) of section twenty-four of the *Acts Interpretation Act* 1928 after the words " commencement of this Act " there shall be inserted the words " or any regulation rule or by-law is made whether before or after the commencement of this Act ".

On the motion of the Honorable G. S. McArthur, 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. CLEAN AIR BILL.—The Order of the Day for the consideration of the amendments made by the Assembly in this Bill having been read, the said amendments were read and are as follows:—

1. Clause 8, pages 4 and 5, sub-clauses (1), (2) and (3), omit these sub-clauses and insert the following sub-clauses:—

( ) For the purposes of this Act there shall be a Clean Air Committee (hereinafter called " the Committee ").

( ) The Committee shall consist of—

(*a*) the persons for the time being holding the offices of—

(i) Chief Health Officer, who shall be the chairman of the Committee ;
(ii) Chief Inspector of Boilers and Pressure Vessels ;
(iii) Chief Chemist of the Gas and Fuel Corporation of Victoria ;

(*b*) nine members appointed by the Governor in Council (hereinafter called " the appointed members ") of whom—

(i) one shall be appointed on the nomination of the Trades Hall Council as a person having a practical knowledge of stoking problems ;
(ii) one shall be appointed on the nomination of the Victorian Railways Commissioners ;
(iii) one shall be appointed on the nomination of the Commonwealth Scientific and Industrial Research Organization as a person having special knowledge of combustion problems ;
(iv) one shall be appointed on the nomination of the State Electricity Commission of Victoria ;
(v) one shall be a professor or teacher of mechanical engineering in the University of Melbourne ;
(vi) one shall be a professor or teacher of physics in the University of Melbourne ;
(vii) one shall be the chief chemist of an Oil Company ;
(viii) one shall be a person appointed to represent the interests of the clay products industry ;
(ix) one shall be a person appointed to represent the interests of the ferrous and non-ferrous industries.

( ) Subject to this Act the appointed members shall hold office for such term not exceeding five years as is specified in the instrument of their appointment and shall be eligible for reappointment.

( ) If any body authorized to nominate a person for appointment to the Committee fails for one month to comply with a request in writing by the Commission to make a nomination the Governor in Council may appoint any suitable person to be a member of the Committee in place of the person who should have been nominated.

( ) The Committee may act notwithstanding any vacancy in its membership so long as the Committee consists of more than six members.

( ) An appointed member may be removed from office by Order of the Governor in Council.

( ) In the event of a vacancy however occurring in the office of an appointed member the Governor in Council may appoint a qualified person in his stead for the unexpired period of his office.

( ) The members of the Committee shall be entitled to such fees and travelling expenses as are prescribed.

2. Clause 12, sub-clause (1), page 7, line 38, at the end of the sub-clause insert the following paragraph—

( ) generally prescribing any matter or thing authorized or required to be prescribed or necessary or expedient to be prescribed for the purposes of this Act.

3. *Insert the following New Clause to follow clause* 2 :—

AA. This Act shall bind the Crown.

On the motion of the Honorable E. P. Cameron, and after debate, the Council agreed to the amendments made by the Assembly and ordered the Bill to be returned to the Assembly with a Message acquainting them therewith.

16. Postponement of Orders of the Day.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 6 and 7, be postponed until later this day.

17. State Electricity Commission (Land Compensation) Bill.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

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

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. The Constitution Act Amendment (Special Appropriations) Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled " *An Act relating to the Expenses of the Executive Council and the Legislative Council* " and desiring the concurrence of the Council therein.

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

19. Land (Resumption) 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.

20. Exhibition 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.

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

House in Committee.

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

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

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

House in Committee.

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

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

23. ADJOURNMENT.—The Honorable Sir Arthur Warner 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 fifty-four minutes past Five o'clock, adjourned until Tuesday next.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 27.

TUESDAY, 19TH NOVEMBER, 1957.

Questions.

1. The Hon. A. R. MANSELL: To ask the Honorable the Minister of Transport—
   (*a*) How many passengers were carried "up" and "down", respectively, by the Mildura Express during each of the months of September, October, and November in the years 1955, 1956, and 1957.
   (*b*) What were the numbers of passengers carried for the same months and years by the Friday and Sunday trains.
   (*c*) What was the revenue from passenger fares for the same months and years.
   (*d*) Can the Minister supply any information as to the number of passengers carried by air and road for the same months and years.

*2. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—What was the number of evictions from Housing Commission homes in the Maidstone and Footscray area for the years 1955-56 and 1956-57, respectively.

Government Business.

ORDERS OF THE DAY:—

1. REVENUE DEFICIT FUNDING BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

*2. LIQUIFIED PETROLEUM GAS BILL—(*Hon. Sir Arthur Warner*)—Second reading.

*3. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL—(*Hon. E. P. Cameron*)—Second reading.

*4. CO-OPERATIVE HOUSING SOCIETIES BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*5. CRIMES (PAROLE BOARD) BILL—(*Hon. G. S. McArthur*)—Second reading.

*6. THE CONSTITUTION ACT AMENDMENT (SPECIAL APPROPRIATIONS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

7. CRIMES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

8. LABOUR AND INDUSTRY (LONG SERVICE LEAVE) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

9. FRUIT AND VEGETABLES (INSPECTION) BILL—(*Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

10. VERMIN AND NOXIOUS WEEDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

11. MARRIAGE (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

12. RACING (TOTALIZATORS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

13. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

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

12807/56. (125 copies.)

WEDNESDAY, 20TH NOVEMBER, 1957.

General Business.

ORDERS OF THE DAY :—

1. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

4. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

WEDNESDAY, 27TH NOVEMBER, 1957.

General Business.

ORDER OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 28.

TUESDAY, 19TH NOVEMBER, 1957.

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

2. ACTS INTERPRETATION (SERVICE BY POST) 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 2, sub-clause (2), the word " is " has been inserted after the word " by-law ".

   On the motion of the Honorable G. S. McArthur, the Council agreed that the said error be corrected by omitting the word " is " after the word " by-law " in clause 2, sub-clause (2).

   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.

3. ESTATE AGENTS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Estate Agents Act* 1956'" and desiring the concurrence of the Council therein.

   On the motion of the Honorable E. P. Cameron, the Bill transmitted by the foregoing 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. FORESTS (MOUNT BULLER LEASE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Granting of a Lease of Forest Land at Horse Hill near Mount Buller*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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. SUBORDINATE LEGISLATION COMMITTEE—SUPREME COURT OFFICE FEES.—The Honorable I. A. Swinburne brought up a Report from the Subordinate Legislation Committee on a Regulation amending the Supreme Court Office Fees.

   Ordered to lie on the Table.

6. GEELONG HARBOR TRUST (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.

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

8. 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 1956—Part IX.—Statements of persons temporarily employed in the Departments of the Legislative Council, the Legislative Assembly, and the Parliament Library (three papers).

   Marketing of Primary Products Acts—Amendment of Egg and Egg Pulp Marketing Board Regulations.

   Melbourne and Metropolitan Tramways Act 1928—Notice and Statement of Proposal to abandon an Electric Tramway in Mary-street and Beaconsfield-parade, St. Kilda.

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

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

12806/56. (240 copies.)

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

House in Committee.

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

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

10. SHEPPARTON LANDS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide upon the Surrender to Her Majesty of certain Land in the Parish of Shepparton, for the Reservation thereof as a Site for Municipal Buildings, and for the Revocation of the Reservation of certain other Land in the said Parish temporarily reserved as a Site for Municipal Buildings, and for the Grant thereof to the Mayor Councillors and Citizens of the City of Shepparton, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, the Bill transmitted by the foregoing 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. ELPHINSTONE LANDS EXCHANGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Revocation of the Reservation of certain Land in the Parish of Elphinstone temporarily reserved as a Site for Public Recreation and for the Exchange thereof for certain other Land in the said Parish to be reserved as a Site for Public Recreation*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, the Bill transmitted by the foregoing 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. BENDIGO LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Purchase of certain Crown Land situate in the City of Bendigo by the Trustees of the Bendigo Branch No. 5 of the Australian Natives Association and for the Crown Grant thereof to the said Branch*" and desiring the concurrence of the Council therein.

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

14. FOOT AND MOUTH DISEASE ERADICATION FUND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Establishment of a Foot and Mouth Disease Eradication Fund and for the Compensation of Owners of Animals and Property which may be destroyed in order to eradicate or prevent the spread of Foot and Mouth Disease, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. L. Chandler, the Bill transmitted by the foregoing 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. ACTS INTERPRETATION (SERVICE BY POST) 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.

16. LIQUIFIED PETROLEUM GAS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable B. Machin 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.

17. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable F. M. Thomas for the Honorable D. L. Arnott 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.

18. CO-OPERATIVE HOUSING SOCIETIES BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

19. CRIMES (PAROLE BOARD) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

81

20. THE CONSTITUTION ACT AMENDMENT (SPECIAL APPROPRIATIONS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable R. R. Rawson 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.

21. CRIMES (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

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

House in Committee.

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

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

House in Committee.

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

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

24. EDUCATION BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to consolidate and amend the Law relating to Education*" and desiring the concurrence of the Council therein.

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

25. ADJOURNMENT.—ALTERATION OF HOUR OF MEETING.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday next at half-past Seven o'clock.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 28.

TUESDAY, 26TH NOVEMBER, 1957.

Questions.

*1. The Hon. W. O. FULTON: To ask the Honorable the Minister of Health—

(*a*) What is the number of poliomyelitis cases in Victoria—(i) for the years 1952 to 1956, inclusive; (ii) for the year 1956–57; and (iii) since the introduction of Salk vaccine.

(*b*) How many children have been inoculated since the inception of the campaign.

(*c*) Are there any children who have not been inoculated: if so, how many are awaiting inoculation and in what age groups.

(*d*) Are ample supplies of Salk vaccine available for present use and is it anticipated that full supplies will be available for all future needs.

*2. The Hon. T. H. GRIGG: To ask the Honorable the Minister of Transport—

(*a*) What is the area of the watershed of the Coliban water supply system.

(*b*) What is the total capacity of the Malmsbury, Upper Coliban and Lauriston reservoirs, and their present position.

(*c*) What is the total capacity of the service basins serving the various towns in this district, and their present position.

(*d*) What towns are served by reticulation from this system.

(*e*) What acreage of orchards is served by this system.

(*f*) What acreages of pastures and tomato plantations are normally served by this system.

(*g*) What mileage of the channels from the main storages is—(i) cement-lined; and (ii) earthern.

(*h*) What amount of water is lost by seepage from the non-cemented channels.

*3. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—What was the number of evictions from Housing Commission homes in the Footscray and Maidstone areas during the period 30th June to 12th November, 1957.

*4. The Hon. A. SMITH: To ask the Honorable the Minister of Forests—

(*a*) How many employees were dismissed from the Forests Commission on account of retrenchments during the last financial year.

(*b*) What were the lengths of service of these employees.

(*c*) Are any of these employees entitled to long-service leave on a pro rata basis; if so, when does the Commission propose making a satisfactory settlement.

*5. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—

(*a*) Is it intended to proceed with the original plan to provide railway services to the River Entrance docks.

(*b*) Will the Minister lay on the table of the Library the file relating to railway services to the River Entrance docks.

Government Business.

ORDERS OF THE DAY:—

1. RACING (TOTALIZATORS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

2. VERMIN AND NOXIOUS WEEDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

*3. FORESTS (MOUNT BULLER LEASE) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*4. ESTATE AGENTS (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*5. FOOT AND MOUTH DISEASE ERADICATION FUND BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

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

12807/56. (125 copies.)

SHEPPARTON LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

7. TEACHING SERVICE (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*8. ELPHINSTONE LANDS EXCHANGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*9. EDUCATION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*10. BENDIGO LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

11. THE CONSTITUTION ACT AMENDMENT (SPECIAL APPROPRIATIONS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

12. CRIMES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

13. CO-OPERATIVE HOUSING SOCIETIES BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

14. CRIMES (PAROLE BOARD) BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

15. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL—(*Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

16. LIQUIFIED PETROLEUM GAS BILL—(*Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

17. MARRIAGE (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

18. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

ORDERS OF THE DAY :—

1. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

4. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

WEDNESDAY, 27TH NOVEMBER, 1957.

General Business.

ORDER OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 29.

WEDNESDAY, 27TH NOVEMBER, 1957.

Questions.

*1. The Hon. D. L. ARNOTT: To ask the Honorable the Minister of Transport—

(*a*) Is it the intention of the Government to close the Milltown railway siding, or reduce the facilities at present provided.

(*b*) Has the question been considered by the Railways Commissioners.

(*c*) Will the Minister give an assurance that before any such action is taken, Members of Parliament representing this district will be consulted.

*2. The Hon. T. H. GRIGG: To ask the Honorable the Minister of Transport—Have the Railways Commissioners at any time indicated that they intended to place two air-conditioned cars on the 8.20 a.m. Spencer-street to Swan Hill train, and on the 8.10 a.m. Swan Hill to Spencer-street train; if so, when do they propose to do so.

*3. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—

(*a*) What is the annual cost of maintaining the tram service in the 5d. section between Flinders-street and Domain-road (*via* Hanna-street) provided by the West Coburg—Domain-road route trams.

(*b*) What revenue does the above section produce.

(*c*) What are the numbers of passengers carried on a weekly basis on this West Coburg service during—(i) peak periods; and (ii) off-peak periods.

(*d*) What would be the estimated cost per year if the St. Kilda Beach *via* South Melbourne tram service were extended from its present terminus in Beaconsfield-parade at the corner of Fitzroy-street to the Luna Park crossover, such service running seven days a week from the first to the last tram.

*4. The Hon. R. W. MAY: To ask the Honorable the Minister of Transport—

(*a*) What technical schools or manual arts blocks have been built or commenced in the last four years.

(*b*) At which schools in the above categories have additions been made during the past four years.

(*c*) What was the cost of each of such works.

(*d*) What building projects in the above categories are contemplated during this financial year.

*5. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—

(*a*) In connexion with the proposal to abandon the electric tramway in Mary-street and Beaconsfield-parade, St. Kilda, involving a new terminus in Park-street, what would be the cost of constructing at such terminus the curved tracks necessary to join up with the existing tracks along Fitzroy-street.

(*b*) What is the cost of constructing an ordinary tram cross-over on—(i) a macadam foundation; and (ii) a concrete foundation.

*6. The Hon. A. K. BRADBURY: To ask the Honorable the Minister of Transport—

(*a*) How many prosecutions under the Police Offences Act involving cruelty to animals were launched during the past twelve months.

(*b*) Of such prosecutions—(i) how many were in respect of first offences, giving the number of successful prosecutions and the penalties imposed; (ii) how many were in respect of second offences, giving the number of successful prosecutions and the penalties imposed; and (iii) how many were in respect of third offences, giving the number of successful prosecutions and the penalties imposed.

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

12807/56. (125 copies.)

7. The Hon. I. A. SWINBURNE ; To ask the Honorable the Minister of Transport—
   (*a*) What tenders have been accepted for high schools since the 1st July, 1957, what is the estimated cost of each and which of these works has been commenced.
   (*b*) What tenders is it proposed will be called by the 31st December, 1957, for erection of high schools.
   (*c*) What tenders is it proposed will be called for erection of high schools between 1st January and 31st March, 1958.

*8. The Hon. B. MACHIN : To ask the Honorable the Minister of Transport—
   (*a*) What acreage of Crown lands within the City of South Melbourne is held on—(i) leases ; and (ii) licences.
   (*b*) How many—(i) leases ; and (ii) licences, have been granted, and for what periods.
   (*c*) What are the names and locations of the areas involved.
   (*d*) What is the total annual revenue received from these Crown leases and licences.
   (*e*) What acreage of Crown lands within the City of South Melbourne is occupied by—(i) Commonwealth Departments ; and (ii) State Departments and public bodies.

General Business.

NOTICE OF MOTION :—

*1. The Hon. J. W. GALBALLY : To move, That he have leave to bring in a Bill to amend the *Hire-Purchase Agreements Act* 1936, and for other purposes.

ORDERS OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
2. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).
3. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
4. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
5. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
6. GOODS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.

Government Business.

ORDERS OF THE DAY :—

1. EDUCATION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.
2. BENDIGO LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*3. GEELONG WATERWORKS AND SEWERAGE (BELLARINE OFFICERS) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*4. MOTOR CAR (REGISTRATION FEES) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*5. WATER (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*6. LABOUR AND INDUSTRY (CARRIAGE OF BEES) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*7. SWAN HILL RAILWAY LAND BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*8. PUBLIC SERVICE (AMENDMENT) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

*9. POLICE OFFENCES (UNLAWFUL USE OF BOATS) BILL—(*from Assembly—Hon. Sir Arthur Warner*—Second reading.

10. VERMIN AND NOXIOUS WEEDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).
11. THE CONSTITUTION ACT AMENDMENT (SPECIAL APPROPRIATIONS) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).
12. CRIMES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).
13. CO-OPERATIVE HOUSING SOCIETIES BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading —*Resumption of debate* (*Hon. J. J. Jones*).
14. CRIMES (PAROLE BOARD) BILL—(*Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).
15. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL—(*Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

16. LIQUIFIED PETROLEUM GAS BILL—(*Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

17. MARRIAGE (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—To be further considered in Committee.

18. FORESTS (MOUNT BULLER LEASE) BILL—*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

19. ESTATE AGENTS (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

20. FOOT AND MOUTH DISEASE ERADICATION FUND BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

21. SHEPPARTON LANDS BILL—(*from Assembly—Hon. E P. Cameron*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

22. TEACHING SERVICE (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warmer*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

23. ELPHINSTONE LANDS EXCHANGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

24. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

83

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 29.

TUESDAY, 26TH NOVEMBER, 1957.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable Sir Arthur Warner presented a Message from His Excellency the Governor, informing the Council that he had, on the 20th instant, given the Royal Assent to the undermentioned Acts presented to him by the Clerk of the Parliaments, viz. :—

Judicial Proceedings (Regulation of Reports) Act.
Melbourne and Metropolitan Board of Works (Extension and Advances) Act.
Firearms (Pistols) Act.
Maintenance (Consolidation) Act.
County Court Act.
Railways (Level Crossings) Act.
Land (Resumption) Act.
Exhibition Act.
Land Tax (Rates) Act.
State Electricity Commission (Land Compensation) Act.
Property Law (Amendment) Act.
Police Offences (Prostitution) Act.
Clean Air Act.
Acts Interpretation (Service by Post) Act.

3. MOTOR CAR (REGISTRATION FEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Second Schedule to the 'Motor Car Act* 1951' " and desiring the concurrence of the Council therein.

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

4. LABOUR AND INDUSTRY (CARRIAGE OF BEES) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Ninety-nine of the 'Labour and Industry Act* 1953' " and desiring the concurrence of the Council therein.

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

5. GEELONG WATERWORKS AND SEWERAGE (BELLARINE OFFICERS) 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 Transfer of certain Persons from the Public Service to the Employment of the Geelong Waterworks and Sewerage Trust*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron for the Honorable G. S. McArthur, the Bill transmitted by the foregoing 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 (UNLAWFUL USE OF BOATS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Two hundred and seven of the 'Police Offences Act* 1957' " and desiring the concurrence of the Council therein.

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

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

12806/56. (240 copies.)

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

Benefit Associations Act 1951—Report of the Government Statist and Actuary on Benefit Associations for the year ended 30th September, 1957.

Geelong Waterworks and Sewerage Act 1928—Balance-sheet of the Geelong Waterworks and Sewerage Trust as at 30th June, 1957.

Local Government Act 1946—Uniform Building Regulations Amending Regulations No. 7.

Marketing of Primary Products (Egg and Egg Pulp) Act 1951—Report of the Egg and Egg Pulp Marketing Board for the Pool Year ended 29th June, 1957.

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

Victorian Inland Meat Authority Act 1942—Report of the Victorian Inland Meat Authority for the year 1956-57.

9. RACING (TOTALIZATORS) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

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

Debate ensued.

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

Ordered—That the debate be adjourned until later this day.

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. FORESTS (MOUNT BULLER LEASE) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

The Honorable G. L. Tilley moved, That the debate be now adjourned.

Debate ensued.

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

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

12. ESTATE AGENTS (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron 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.

13. FOOT AND MOUTH DISEASE ERADICATION FUND BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable D. L. Arnott 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. SHEPPARTON LANDS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable A. Smith 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. TEACHING SERVICE (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable R. R. Rawson moved, That the debate be now adjourned.

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

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

16. ELPHINSTONE LANDS EXCHANGE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable A. Smith 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. SWAN HILL RAILWAY LAND BILL.—The Deputy-President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act with respect to certain Railway Land at Swan Hill required for Educational purposes*" and desiring the concurrence of the Council therein.

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

18. PUBLIC SERVICE (AMENDMENT) BILL.—The Deputy-President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Public Service Act* 1946', *and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable Sir Arthur Warner for the Honorable G. L. Chandler, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

85

19. RACING (TOTALIZATORS) 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, 14.	Noes, 18.
The Hon. C. H. Bridgford,	The Hon. D. L. Arnott,
P. T. Byrnes,	A. J. Bailey (*Teller*),
E. P. Cameron,	A. K. Bradbury,
G. L. Chandler,	T. W. Brennan,
V. O. Dickie,	D. P. J. Ferguson,
P. V. Feltham (*Teller*),	J. W. Galbally,
C. S. Gawith,	J. J. Jones,
T. H. Grigg,	P. Jones,
G. S. McArthur,	J. A. Little,
R. W. Mack (*Teller*),	B. Machin,
I. A. Swinburne,	A. R. Mansell,
L. H. S. Thompson,	R. W. May,
D. J. Walters,	R. R. Rawson,
Sir Arthur Warner.	M. P. Sheehy,
	W. Slater,
	A. Smith,
	F. M. Thomas,
	G. L. Tilley (*Teller*).

And so it passed in the negative.

20. ADJOURNMENT.—ALTERATION OF HOUR OF MEETING.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until to-morrow at Two o'clock.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 30.

WEDNESDAY, 27TH NOVEMBER, 1957.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable Sir Arthur Warner 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. :—

Geelong Harbor Trust (Amendment) Act.
Local Government Act.
Revenue Deficit Funding Act.
Labour and Industry (Long Service Leave) Act.

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

Portland Harbor Trust Act 1949—Revocation of Part VII. of the Portland Harbor Trust (Staff) Regulations.

4. HIRE-PURCHASE AGREEMENTS (AMENDMENT) BILL.—On the motion of the Honorable J. W. Galbally, leave was given to bring in a Bill to amend the *Hire-Purchase Agreements Act* 1936, and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

5. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of the Orders of the Day, General Business, be postponed until later this day.

6. EDUCATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable R. R. Rawson moved, That the debate be now adjourned.

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

Ordered—That the debate be adjourned until Tuesday next.

7. BENDIGO 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 T. H. Grigg having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

8. GEELONG WATERWORKS AND SEWERAGE (BELLARINE OFFICERS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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

9. MOTOR CAR (REGISTRATION FEES) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

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

The Honorable D. P. J. Ferguson 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. LABOUR AND INDUSTRY (CARRIAGE OF BEES) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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

12. SWAN HILL RAILWAY 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 T. H. Grigg having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

House in Committee.

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

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

14. POLICE OFFENCES (UNLAWFUL USE OF BOATS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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

15. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

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

Debate ensued.

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

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

87

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

House in Committee.

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

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

17. LOCAL GOVERNMENT (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Local Government Act, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable Sir Arthur Warner for the Honorable G. L. Chandler, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

18. STATE SAVINGS BANK (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'State Savings Bank Act* 1928', *and for other purposes*" and desiring the concurrence of the Council therein.

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

19. JURIES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Eight and Forty-seven of the 'Juries Act* 1956'" and desiring the concurrence of the Council therein.

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

20. THE CONSTITUTION ACT AMENDMENT (SPECIAL APPROPRIATIONS) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time with the concurrence of an absolute majority of the whole number of the Members of the Legislative Council and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time with the concurrence of an absolute majority of the whole number of the Members of the Legislative Council and passed.

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

21. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 12, be postponed until later this day.

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

House in Committee.

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

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

23. CRIMES (PAROLE 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 D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

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

24. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 15, be postponed until later this day.

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

House in Committee.

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

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

26. MARRIAGE (AMENDMENT) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill with an amendment, and had amended the title thereof, which title is as follows:—

"*An Act to amend the 'Marriage Act* 1928' *and for other purposes*"—

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.

27. STATE ELECTRICITY COMMISSION (BORROWING) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to increase the Borrowing Powers of the State Electricity Commission of Victoria, and for other purposes*" and desiring the concurrence of the Council therein.

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

28. ADJOURNMENT.—ALTERATION OF HOUR OF MEETING.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday next at half-past Three o'clock.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 30.

TUESDAY, 3RD DECEMBER, 1957.

Questions.

1. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—
   (*a*) What is the annual cost of maintaining the tram service in the 5d. section between Flinders-street and Domain-road (*via* Hanna-street) provided by the West Coburg—Domain-road route trams.
   (*b*) What revenue does the above section produce.
   (*c*) What are the numbers of passengers carried on a weekly basis on this West Coburg service during—(i) peak periods; and (ii) off-peak periods.
   (*d*) What would be the estimated cost per year if the St. Kilda Beach *via* South Melbourne tram service were extended from its present terminus in Beaconsfield-parade at the corner of Fitzroy-street to the Luna Park cross-over, such service running seven days a week from the first to the last tram.

2. The Hon. R. W. MAY: To ask the Honorable the Minister of Transport—
   (*a*) What technical schools or manual arts blocks have been built or commenced in the last four years.
   (*b*) At which schools in the above categories have additions been made during the past four years.
   (*c*) What was the cost of each of such works.
   (*d*) What building projects in the above categories are contemplated during this financial year.

3. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—
   (*a*) In connexion with the proposal to abandon the electric tramway in Mary-street and Beaconsfield-parade, St. Kilda, involving a new terminus in Park-street, what would be the cost of constructing at such terminus the curved tracks necessary to join up with the existing tracks along Fitzroy-street.
   (*b*) What is the cost of constructing an ordinary tram cross-over on—(i) a macadam foundation; and (ii) a concrete foundation.

4. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—
   (*a*) What tenders have been accepted for high schools since the 1st July, 1957, what is the estimated cost of each and which of these works has been commenced.
   (*b*) What tenders is it proposed will be called by the 31st December, 1957, for erection of high schools.
   (*c*) What tenders is it proposed will be called for erection of high schools between 1st January and 31st March, 1958.

5. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—
   (*a*) What acreage of Crown lands within the City of South Melbourne is held on—(i) leases; and (ii) licences.
   (*b*) How many—(i) leases; and (ii) licences, have been granted, and for what periods.
   (*c*) What are the names and locations of the areas involved.
   (*d*) What is the total annual revenue received from these Crown leases and licences.
   (*e*) What acreage of Crown lands within the City of South Melbourne is occupied by—(i) Commonwealth Departments; and (ii) State Departments and public bodies.

*6. The Hon. T. H. GRIGG: To ask the Honorable the Minister of Transport—What expenditure has been incurred by the State Rivers and Water Supply Commission during the past ten years—(i) in the erection of new water storages for irrigation purposes; (ii) in enlarging such existing storages; (iii) in creating new storages for town water supplies; (iv) in enlarging and improving existing town water supply schemes; and (v) in grants made available to Water Trusts in the urban areas of the State.

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

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2f *7. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—

(*a*) How many air-conditioned railway carriages for country services were on hand at the 30th June, 1955.

(*b*) How many such carriages have been purchased or built, and how many existing carriages have been converted to air-conditioning, since the 30th June, 1955.

(*c*) Is it proposed to increase the number of air-conditioned carriages to enable a continuity of service to country train travellers even when race trains are given priority over regular services.

*8. The Hon. J. W. GALBALLY: To ask the Honorable the Minister of Transport—In view of the Liberal and Country Party policy of one vote one value, when does the Government propose to give consideration to rectifying the extraordinary anomalies in Legislative Council provinces whereby three voters in Melbourne North province and certain other metropolitan provinces have only the same voting power as one voter in most of the country provinces.

Government Business.

NOTICE OF MOTION:—

*1. The Hon. SIR ARTHUR WARNER: To move, That so much of the Sessional Orders as provides that no new business shall be taken after the hour of half-past Ten o'clock and that the hour of meeting on Wednesdays and Thursdays shall be half-past Four o'clock be suspended during the present month, and that during the present month new business may be taken at any hour and the hour of meeting on Wednesdays shall be Two o'clock and on Thursdays Eleven o'clock.

ORDERS OF THE DAY:—

*1. LOCAL GOVERNMENT (AMENDMENT) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

*2. STATE SAVINGS BANK (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*3. JURIES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*4. STATE ELECTRICITY COMMISSION (BORROWING) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

5. EDUCATION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

6. MOTOR CAR (REGISTRATION FEES) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

7. WATER (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

8. FORESTS (MOUNT BULLER LEASE) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

9. ESTATE AGENTS (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

10. FOOT AND MOUTH DISEASE ERADICATION FUND BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

11. SHEPPARTON LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

12. TEACHING SERVICE (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. R. R. Rawson*).

13. ELPHINSTONE LANDS EXCHANGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

14. CRIMES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

15. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL—(*Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

16. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

ORDERS OF THE DAY:—

*1. HIRE-PURCHASE AGREEMENTS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.

2. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

4. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of deb.* (*Hon. Sir Arthur Warner*).

6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 31.

WEDNESDAY, 4TH DECEMBER, 1957.

Questions.

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

(*a*) How much has been paid under the provisions of the *Racing* (*Finance*) *Act* 1956 up to 30th November, 1957—(i) out of the Metropolitan Racing Clubs Fund to individual racing clubs; (ii) out of the Metropolitan Trotting Fund to the Trotting Control Board; (iii) out of the Country Racing Clubs Fund to individual racing clubs; (iv) out of the Country Trotting Clubs Fund to individual trotting clubs; and (v) out of the Dog Racing Clubs Fund to individual dog racing clubs.

(*b*) In relation to (iii), (iv) and (v) above, which clubs have not been granted an allocation and for what reason.

*2. The Hon. W. O. FULTON: To ask the Honorable the Minister of Transport—

(*a*) What was the total cost of constructing the open outfall sewer from Rosedale to the pondage area, and the cost of clearing and fencing the open sewer.

(*b*) Have adequate steps been taken to prevent any possibility of the sewage escaping from the pondage into the Gippsland lakes in the event of heavy rain, or through seepage.

*3. The Hon. R. W. MACK: To ask the Honorable the Minister of Agriculture—

(*a*) Is the Minister aware that the Soldier Settlement Commission has established ex-servicemen as dairymen in the Horsham district.

(*b*) Is the Minister aware that eight further settlers are to be established in the same industry at Coromby.

(*c*) Will the Department of Agriculture take steps to see that the dairy produce of the Horsham district is used as far as possible in the district in which it is produced.

(*d*) Will the Department of Agriculture make representations to the Milk Board to ensure that surplus milk from these settlements is taken to Melbourne by tanker for distribution.

*4. The Hon. J. A. LITTLE: To ask the Honorable the Minister of Transport—

(*a*) Does the Education Department deduct from the salaries of teachers rents for the Housing Commission.

(*b*) If such deductions are made, do they have the approval of the teachers who happen to be Housing Commission tenants.

(*c*) Are any such deductions being made in the face of objection by any member of the Education Department staff: if so, what are the Government's intentions in regard to the practice.

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

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eral Business.

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ORDERS OF THE DAY :—

1. HIRE-PURCHASE AGREEMENTS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.
2. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).
3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).
4. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).
7. GOODS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.

Government Business.

ORDERS OF THE DAY :—

*1. KING-STREET BRIDGE BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*2. WATER SUPPLY LOAN APPLICATION BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*3. STATE FORESTS LOAN APPLICATION BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*4. MOTOR CAR (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*5. FRIENDLY SOCIETIES (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*6. COUNTRY FIRE AUTHORITY (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*7. LIQUIFIED PETROLEUM GAS BILL—AMENDMENT OF THE ASSEMBLY—To be considered.

8. WATER (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).
9. FORESTS (MOUNT BULLER LEASE) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).
10. LOCAL GOVERNMENT (AMENDMENT) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).
11. MOTOR CAR (REGISTRATION FEES) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).
12. ESTATE AGENTS (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).
13. FOOT AND MOUTH DISEASE ERADICATION FUND BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).
14. SHEPPARTON LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

*15. FRASER NATIONAL PARK BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

16. ELPHINSTONE LANDS EXCHANGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).
17. CRIMES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).
18. STATE SAVINGS BANK (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading. *Resumption of debate* (*Hon. W. Slater*).
19. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL—(*Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

*20. RAILWAY LOAN APPLICATION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

21. JURIES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

22. STATE ELECTRICITY COMMISSION (BORROWING) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

*23. PUBLIC WORKS LOAN APPLICATION BILL (No. 2)—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

24. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 32.

THURSDAY, 5TH DECEMBER, 1957.

Questions.

*1. The Hon. C. H. BRIDGFORD: To ask the Honorable the Minister of Transport—How many—(i) motor cars; and (ii) motor cycles, were owned by the Police Department on 1st December, 1954, 1955, 1956, and 1957, respectively.

*2. The Hon. C. H. BRIDGFORD: To ask the Honorable the Minister of Transport—

(*a*) Are members of the police force using private cars for official purposes; if so—(i) whose cars are they; and (ii) what is the cost per mile, or other basis of payment.

(*b*) How many such cars have been used this year up to 1st December, 1957, and what was the cost.

(*c*) Are arrangements made before such a car is used as to—(i) the charges to be made for the use of the vehicle; and (ii) the mileage to be run; or are these arrangements made afterwards.

(*d*) Is it proposed to extend or restrict such use of private cars in the future.

Government Business.

NOTICE OF MOTION:—

*1. The Hon. SIR ARTHUR WARNER: To move, That the Council shall meet for the despatch of business on Friday of this week and that Eleven o'clock shall be the hour of meeting.

ORDERS OF THE DAY:—

*1. TOURIST BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

2. KING-STREET BRIDGE BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

3. WATER SUPPLY LOAN APPLICATION BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

4. STATE FORESTS LOAN APPLICATION BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

5. MOTOR CAR (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

6. COUNTRY FIRE AUTHORITY (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

7. ESTATE AGENTS (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—To be committed.

8. FOOT AND MOUTH DISEASE ERADICATION FUND BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

9. SHEPPARTON LANDS BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

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

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2. FRASER NATIONAL PARK BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

11. ELPHINSTONE LANDS EXCHANGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. A. Smith*).

12. CRIMES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

13. STATE SAVINGS BANK (AMENDMENT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. W. Slater*).

14. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL—(*Hon. E. P. Cameron*)—To be further considered in Committee.

15. RAILWAY LOAN APPLICATION BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. J. Jones*).

16. JURIES (AMENDMENT) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

17. STATE ELECTRICITY COMMISSION (BORROWING) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

18. PUBLIC WORKS LOAN APPLICATION BILL (No. 2)—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

19. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

ORDERS OF THE DAY:—

1. HIRE-PURCHASE AGREEMENTS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.

2. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. P. T. Byrnes*).

4. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

89

VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 31.

TUESDAY, 3RD DECEMBER, 1957.

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

2. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable Sir Arthur Warner 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 Land Act.
Geelong Waterworks and Sewerage (Bellarine Officers) Act.
Swan Hill Railway Land Act.
Police Offences (Unlawful Use of Boats) Act.
The Constitution Act Amendment (Special Appropriations) Act.
Labour and Industry (Carriage of Bees) Act.

3. 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 Money for Works and other Purposes relating to State Forests*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, 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. DENTAL HOSPITAL (FINANCE) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to make Provision with respect to Finance for the Erection of a Dental Hospital and Dental School, and for other purposes*" and desiring the concurrence of the Council therein.

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

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

6. PUBLIC WORKS LOAN APPLICATION BILL (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to sanction the Issue and Application of Loan Money for Public Works and other purposes*" and desiring the concurrence of the Council therein.

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

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

8. FRASER NATIONAL PARK BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to transfer certain Land at Eildon from the State Rivers and Water Supply Commission to the Crown and to reserve that Land and certain Lands of the Crown as a Site for a National Park, and for other purposes*" and desiring the concurrence of the Council therein.

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

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9. LABOUR AND INDUSTRY (CARRIAGE OF BEES) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendment made by the Council in this Bill.

10. VERMIN AND NOXIOUS WEEDS BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

11. 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.

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

13. PAPER.—The Honorable Sir Arthur Warner moved, by leave, that there be laid before this House a Return (prepared in reply to a question by the Honorable B. Machin) with reference to certain Crown Lands within the City of South Melbourne.

Debate ensued.

Question—put and resolved in the affirmative.

The said Return was thereupon presented by the Honorable Sir Arthur Warner and ordered to lie on the Table.

14. ALTERATION OF SESSIONAL ORDERS.—The Honorable Sir Arthur Warner moved, That so much of the Sessional Orders as provides that no new business shall be taken after the hour of half-past Ten o'clock and that the hour of meeting on Wednesdays and Thursdays shall be half-past Four o'clock be suspended during the present month, and that during the present month new business may be taken at any hour and the hour of meeting on Wednesdays shall be Two o'clock and on Thursdays Eleven o'clock.

Question—put and resolved in the affirmative.

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

Agricultural Colleges Act 1944—Amendment of Regulations.

Dairy Products Acts—Report of the Victorian Dairy Products Board for the six months ended 30th June, 1957.

Hospitals and Charities Act 1948—Report of the Hospitals and Charities Commission for the year 1956–57.

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

Marketing of Primary Products Act 1935—Amendment of Regulations (three papers).

Medical (Registration) Act 1957—Medical Registration Regulations 1957.

Milk Pasteurization Act 1949—Amendment of Regulations.

Motor Car Act 1951—Statistical Returns by Authorized Third-Party Insurers for the year 1956–57.

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

Railways Act 1928—Report of the Victorian Railways Commissioners for the year 1956–57.

State Electricity Commission Act 1928—Report of the State Electricity Commission for the year 1956–57.

Victorian Inland Meat Authority Act 1942—Amendment of Regulations.

16. LOCAL GOVERNMENT (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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. STATE SAVINGS BANK (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

18. JURIES (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

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

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

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

19. STATE ELECTRICITY COMMISSION (BORROWING) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

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

House in Committee.

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

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

21. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 6 to 11 inclusive, be postponed until later this day.

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

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

23. KING-STREET BRIDGE BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Construction of a Bridge over the River Yarra at or near King-street Melbourne, and for other purposes*" and desiring the concurrence of the Council therein.

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

24. PUBLIC SERVICE (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a communication from the Clerk of the Parliaments (pursuant to Joint Standing Order No. 21), calling attention to a clerical error in this Bill, viz.:—In clause 4, page 3, line 27, the words "of the Principal Act" have been omitted after the word "seventy-four" and acquainting the Council that they have agreed that such error be corrected by the insertion of the words "of the Principal Act" after the word "seventy-four" in clause 4, page 3, line 27, and desiring the concurrence of the Council therein.

On the motion of the Honorable G. L. Chandler, 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.

25. MOTOR CAR (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Motor Car Act* 1951', *and for other purposes*" and desiring the concurrence of the Council therein.

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

26. FRIENDLY SOCIETIES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Sections Five and Sixteen of the 'Friendly Societies Act* 1928'" and desiring the concurrence of the Council therein.

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

27. FRUIT AND VEGETABLES (INSPECTION) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

28. CRIMES (PAROLE BOARD) 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. PUBLIC WORKS LOAN APPLICATION BILL (No. 2).—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable G. L. Tilley 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.

30. FRASER NATIONAL PARK BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

31. DENTAL HOSPITAL (FINANCE) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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

32. RAILWAY LOAN APPLICATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

33. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Motion, by leave, withdrawn.

34. COUNTRY FIRE AUTHORITY (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the Country Fire Authority Acts*" and desiring the concurrence of the Council therein.

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

35. LIQUIFIED PETROLEUM GAS BILL.—The President announced the receipt of a Message from the Assembly returning this Bill and acquainting the Council that they have agreed to the same with an amendment and desiring the concurrence of the Council therein.

Ordered—That the amendment made by the Assembly in this Bill be considered on the next day of meeting.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 32.

WEDNESDAY, 4TH DECEMBER, 1957.

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:—

   Dried Fruits Act 1938—Amendment of Dried Fruits Regulations.

   Forests Act 1957—Amendment of Appointment of Forest Officers Regulations 1954.

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

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

3. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of the Orders of the Day, General Business, be postponed until later this day.

4. KING-STREET BRIDGE BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable B. Machin 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 later this day.

5. WATER SUPPLY LOAN APPLICATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable D. P. J. Ferguson 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 later this day.

93

6. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable Sir Arthur Warner presented a Message from His Excellency the Governor informing the Council that he had, on the 3rd instant, reserved for the signification of Her Majesty's pleasure thereon the undermentioned Bill, presented to him by the Clerk of the Parliaments, viz. :—

Marriage (Amendment) Act.

7. TOURIST BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to establish a Tourist Development Authority, to assist the Development of Tourist Resorts and the Tourist Industry in Victoria, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, 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. STATE FORESTS LOAN APPLICATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

The Honorable A. Smith 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.

9. 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.

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

House in Committee.

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

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. COUNTRY FIRE AUTHORITY (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

The Honorable D. P. J. Ferguson 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.

12. LIQUIFIED PETROLEUM GAS 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 5, sub-clause (1), line 22, insert the following new paragraphs to follow paragraph (*a*)—

( ) determining standards of quality for liquified petroleum gas including the fixing of minimum and maximum calorific values of liquified petroleum gas ;

( ) prescribing any matter or thing necessary or expedient for prohibiting the manufacture and sale of liquified petroleum gas containing impurities or toxic substances.

On the motion of the Honorable Sir Arthur Warner, and after debate, the Council agreed to the amendment made by the Assembly and ordered the Bill to be returned to the Assembly with a Message acquainting them therewith.

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

House in Committee.

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

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

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

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

15. EDUCATION 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.

16. MELBOURNE CRICKET GROUND (TRUSTEES) 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. 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.

18. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 10 to 18 inclusive, be postponed until later this day.

19. POLICE OFFENCES (CRUELTY TO 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 D. J. Walters reported that the Committee had made progress in the Bill, and asked leave to sit again.

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

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

House in Committee.

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

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

21. 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 T. H. Grigg having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

22. MOTOR CAR (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

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

23. ESTATE AGENTS (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.

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

THURSDAY, 5TH DECEMBER, 1957.

Debate continued.

Question—put and resolved in the affirmative.—Bill read a second time.

Ordered—That the Bill be committed to a Committee of the whole on the next day of meeting.

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

ROY S. SARAH,
Clerk of the Legislative Council.

No. 33.

THURSDAY, 5TH DECEMBER, 1957.

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

2. PAPERS.—The Honorable Sir Arthur Warner presented, by command of His Excellency the Governor—
Penal Department—Report and Statistical Tables for the year 1956.

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:—

Housing Acts—Report of the Housing Commission for the year 1956–57.

Soil Conservation and Land Utilization Act 1947—Amendment of Soil Conservation Authority District Advisory Committee Election Regulations.

95

3. ALTERATION OF SESSIONAL ORDERS.—The Honorable Sir Arthur Warner moved, That the Council shall meet for the despatch of business on Friday of this week and that Eleven o'clock shall be the hour of meeting.

Question—put and resolved in the affirmative.

4. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, Government Business, Nos. 1 to 13 inclusive, be postponed until later this day.

5. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

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

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

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

House in Committee.

The Deputy-President resumed the Chair; and the Honorable P. Jones reported that the Committee had made progress in the Bill, and asked leave to sit again.

Resolved—That the Council will, later this day, again resolve itself into the said Committee.

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

House in Committee.

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

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

8. POLICE OFFENCES (CRUELTY TO ANIMALS) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

9. LOCAL GOVERNMENT (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

10. ESTATE AGENTS (AMENDMENT) BILL.—This Bill was, according to Order, committed to a Committee of the whole.

House in Committee.

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

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

11. KING-STREET BRIDGE 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 T. H. Grigg having reported that the Committee had agreed to the Bill with amendments, the House ordered the Report to be taken into consideration this day, whereupon the House adopted the Report, and the Bill was read a third time and passed.

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

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

House in Committee.

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

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

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

House in Committee.

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

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

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

House in Committee.

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

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. COUNTRY FIRE AUTHORITY (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. R. Rawson having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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

House in Committee.

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

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

17. STATE SAVINGS BANK (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, later this day, again resolve itself into the said Committee.

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

House in Committee.

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

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

19. STATE SAVINGS BANK (AMENDMENT) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

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

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

97

20. TOURIST 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.

21. KING-STREET BRIDGE 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.

22. ESTATE AGENTS (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

23. 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-eight 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 Sir Arthur Warner, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

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

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

Soil Conservation and Land Utilization Acts—Report of the Soil Conservation Authority for the year 1956–57.

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

House in Committee.

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

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

26. POSTPONEMENT OF ORDER OF THE DAY.—Ordered—That the consideration of Order of the Day, Government Business, No. 16 be postponed until later this day.

27. STATE ELECTRICITY COMMISSION (BORROWING) 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—

FRIDAY, 6TH DECEMBER, 1957.

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

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

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

House in Committee.

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

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

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

House in Committee.

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

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

30. CRIMES (AMENDMENT) BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters 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.

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

House in Committee.

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

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

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

House in Committee.

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

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

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

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

34. CRIMES (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to the amendments made by the Council in this Bill.

35. ADJOURNMENT.—The Honorable Sir Arthur Warner 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 thirty-four minutes past Two o'clock in the morning, adjourned until a day and hour to be fixed by the President or, if the President is unable to act on account of illness or other cause, by the Chairman of Committees, which time of meeting shall be notified to each Honorable Member by telegram or letter.

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 33.

TUESDAY, 25TH MARCH, 1958.

Government Business.

ORDER OF THE DAY :—

1. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate (Hon. J. W. Galbally).*

General Business.

ORDERS OF THE DAY :—

1. HIRE-PURCHASE AGREEMENTS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.
2. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate (Hon. P. T. Byrnes).*
3. LOCAL GOVERNMENT (ELECTIONS AND POLLS) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate (Hon. P. T. Byrnes).*
4. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.
5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate (Hon. Sir Arthur Warner).*
6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate (Hon. Sir Arthur Warner).*
7. GOODS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading.

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

12807/56. (350 copies.)

99

VICTORIA.

LEGISLATIVE COUNCIL

MINUTES OF THE PROCEEDINGS

No. 34.

TUESDAY, 25TH MARCH, 1958.

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. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable Sir Arthur Warner 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 10th December, 1957—

Vermin and Noxious Weeds Act.
Co-operative Housing Societies Act.
Fruit and Vegetables (Inspection) Act.
Teaching Service (Amendment) Act.
Public Service (Amendment) Act.
Dental Hospital (Finance) Act.
Education Act.
Melbourne Cricket Ground (Trustees) Act.
Friendly Societies (Amendment) Act.
Liquified Petroleum Gas Act.
Water (Amendment) Act.

On the 18th December, 1957—

Forests (Mount Buller Lease) Act.
Motor Car (Registration Fees) Act.
Police Offences (Cruelty to Animals) Act.
Local Government (Amendment) Act.
Water Supply Loan Application Act.
State Forests Loan Application Act.
Motor Car (Amendment) Act.
Tourist Act.
King-street Bridge Act.
Estate Agents (Amendment) Act.
Railway Loan Application Act.
Country Fire Authority (Amendment) Act.
Fraser National Park Act.
State Savings Bank (Amendment) Act.
Foot and Mouth Disease Eradication Fund Act.
State Electricity Commission (Borrowing) Act.
Shepparton Lands Act.
Elphinstone Lands Exchange Act.
Crimes (Amendment) Act.
Crimes (Parole Board) Act.
Juries (Amendment) Act.
Public Works Loan Application Act.

12806/56. (240 copies.)

4. 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 Nine million one hundred and twenty-two thousand three hundred and seventy pounds to the service of the year One thousand nine hundred and fifty-eight and One thousand nine hundred and fifty-nine*" and desiring the concurrence of the Council therein.

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

5. POLICE OFFENCES (TRAP-SHOOTING) BILL.—On the motion (by leave without notice) of the Honorable J. W. Galbally, leave was given to bring in a Bill to abolish Live Bird Trap-shooting, and for other purposes, and the said Bill was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

6. RAILWAYS (CONTRACTS) BILL.—On the motion (by leave without notice) of the Honorable Sir Arthur Warner, leave was given to bring in a Bill to amend Section Forty-seven of the *Railways Act* 1928, and the said Bill was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

7. STATUTE LAW REVISION COMMITTEE—REGULATION OF REPORTS OF JUDICIAL PROCEEDINGS.—The Honorable P. T. Byrnes brought up a Report from the Statute Law Revision Committee on the Regulation of Reports of Judicial Proceedings together with Minutes of Evidence and Appendices.

Ordered to lie on the Table and the Report to be printed.

8. SUBORDINATE LEGISLATION COMMITTEE.—The Honorable I. A. Swinburne brought up Reports from the Subordinate Legislation Committee on—Amendment to Regulation IV. (E)—Accountancy Certificate—made under the *Education Act* 1928; Amendment to Regulation XX. (L)—Trained Technical Teacher's Certificate—made under the *Education Act* 1928; and Amendment to the Rules of the Estate Agents Committee.

Severally ordered to lie on the Table.

9. PAPERS.—The Honorable Sir Arthur Warner presented, by command of His Excellency the Governor—

Indeterminate Sentences Board—Report for the year 1956–57.

Ordered to lie on the Table.

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

Agricultural Colleges Act 1944—Amendment of Regulations.

Apprenticeship Acts—Amendment of Regulations—

Dental Mechanic Trade Apprenticeship Regulations.
Hairdressing Trades Apprenticeship Regulations.
Printing and Allied Trades Apprenticeship Regulations.

Boilers Inspection Acts—Amendment of Regulations.

Cemeteries Acts—Certificate of the Minister of Health relating to the purchase or taking of certain land for the purposes of the Horsham Public Cemetery.

Coal Mine Workers Pensions Acts—Balance-sheet and Statement of Accounts of the Pensions Tribunal for the year 1956–57.

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 for the year 1956–57.

Crimes Acts—

Penal Reform (Amending) Regulations 1958.
Regulations relating to Blood Tests.

Dried Fruits Act 1938—

Amendment of Regulations.
Statement of Receipts and Expenditure of the Dried Fruits Board for the year 1957.

Explosives Act 1928—Orders in Council relating to the Classification and Definition of Explosives (five papers).

Fire Brigades Acts—Metropolitan Fire Brigades Board—

Regulations relating to the Issue of Debentures.
Report of the Board for the year 1956–57.

Free Library Service Board Act 1946—

Amendment of Regulations.
Report of the Free Library Service Board for the year 1956–57.

Friendly Societies Act 1928—Report of the Government Statist on Friendly Societies for the year 1955–56.

Fruit and Vegetables Act 1928—Amendment of Regulations.

Geelong Harbor Trust Acts—Amendment of Principal Regulations.

Goods Acts—Goods (Bedding, Upholstered Furniture and Artifical or Imitation Leather) Regulations.

Health Act 1956—Camping Regulations 1958.

Justices Acts—Amendment of Rules.

Labour and Industry Act 1953—

Amendment of Regulations—Holidays in certain trades.
Report of the Department of Labour and Industry for the year 1956.

Land Act 1928—

Certificates of the Minister of Education relating to the proposed compulsory resumption of land for the purposes of schools at Beaufort, Clayton West, Croydon West, Geelong West, Glen Waverley, Mitcham, Moorabbin, Sale, Sunshine, Wodonga, and Woods Point (eleven papers).

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

Local Government Acts—Scaffolding Regulations.

Marketing of Primary Products Act 1935—

Proclamation declaring that Seed Beans shall become the property of the Seed Beans Marketing Board for a further period of two years.

Regulations—

Amendment of Marketing of Primary Products (Polls and Elections) Regulations.

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

Medical Acts—Pharmacy Board of Victoria—Pharmacy Regulations 1957.

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 1956–57.

Mental Hygiene Authority Act 1950—

Mental Hygiene Authority Regulations 1958 (No. 1).

Report of the Mental Hygiene Authority for the year 1956.

Motor Car Act 1951 and Workers Compensation Act 1951—Report, Profit and Loss Account, and Balance-sheet for the year 1956-57 of—

State Accident Insurance Office.

State Motor Car Insurance Office.

Motor Car Acts—Amendment of Motor Car Regulations 1952 (two papers).

Nurses Acts—Nurses Regulations 1957 (No. 2).

Police Regulation Acts—Police Regulations 1957.

Portland Harbor Trust Act 1949—Statement of Receipts and Expenditure, Revenue Account, and Balance-sheet of the Portland Harbor Trust Commissioners for the year 1956–57.

Public Library National Gallery and Museums Acts—Reports, with Statements of Income and Expenditure for the year 1956–57 of the—

Trustees of the Museum of Applied Science.

Trustees of the National Gallery.

Trustees of the National Museum.

Trustees of the Public Library.

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

Public Service Act 1946—

Public Service Board Elections Regulations.

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

Amendment of Public Service (Public Service Board) Regulations—

Part II.—Promotions and Transfers.

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

Railways Act 1928—Report of the Victorian Railways Commissioners for the quarter ended 30th September, 1957.

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

River Murray Waters Act 1915—Report of the River Murray Commission for the year 1956–57.

Road Traffic Act 1956—Amendment of Road Traffic Regulations 1958.

Rural Finance Corporation Act 1949—Report of the Rural Finance Corporation, together with Balance-sheet and Profit and Loss Account for the year 1956–57.

State Electricity Commission Acts—Amendment of Restrictions on Electrical Apparatus Regulations.

State Savings Bank Act 1928—General Order No. 54.

Supreme Court Act 1928—Supreme Court Office Fees Regulations 1954—Amending Regulations rescinded.

Teaching Service Act 1946—Amendment of Regulations—

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

Teaching Service (Teachers Tribunal) Regulations.

Town and Country Planning Acts—

Amendment of Regulations.

City of Brunswick Planning Scheme 1956.

Water Acts—Report of the State Rivers and Water Supply Commission for the year 1956–57.

Zoological Gardens Act 1936—Amendment of Regulations.

10. CONSOLIDATED REVENUE BILL (No. 4).—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

11. RAILWAYS (CONTRACTS) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

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

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

Ordered—That the debate be adjourned until Tuesday next.

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

13. HIRE-PURCHASE AGREEMENTS (AMENDMENT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. W. Galbally moved, That this Bill be now read a second time.

The Honorable Sir Arthur Warner moved, That the debate be now adjourned.

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

Ordered—That the debate be adjourned until Tuesday next.

14. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL 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 G. L. Tilley 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.

15. LOCAL GOVERNMENT (ELECTIONS AND POLLS) 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, 18.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey (*Teller*),	C. H. Bridgford,
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie,
J. A. Little,	P. V. Feltham,
B. Machin,	W. O. Fulton,
R. R. Rawson,	C. S. Gawith,
W. Slater,	T. H. Grigg,
A. Smith,	G. S. McArthur,
F. M. Thomas,	R. W. Mack (*Teller*),
G. L. Tilley (*Teller*).	A. R. Mansell,
	R. W. May,
	I. A. Swinburne,
	L. H. S. Thompson,
	D. J. Walters,
	Sir Arthur Warner.

And so it passed in the negative.

16. LOCAL GOVERNMENT (PORTLAND) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to enable the Council of the Town of Portland to sell the Gas Undertaking of the said Council*" and desiring the concurrence of the Council therein.

Bill ruled to be a Private Bill.

The Honorable G. L. Chandler moved, That this Bill be dealt with as a Public Bill.

Question—put and resolved in the affirmative.

The Honorable G. L. Chandler moved, That this Bill be now read a first time.

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

17. ACTS INTERPRETATION 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 Repeal of Amending Acts*" and desiring the concurrence of the Council therein.

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

103

18. MILK BOARD (MEMBERS) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Seven of the 'Milk Board Act* 1933' *with respect to the Remuneration and Service of the Members of the Milk Board and to make other provision in relation thereto*" and desiring the concurrence of the Council therein.

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

19. MELBOURNE (FLINDERS-STREET) LAND BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide that certain Land vested in the City of Melbourne shall be reserved as a Site for Municipal Purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, 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 ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, General Business, Nos. 4 to 7 inclusive, be postponed until the next day of meeting.

21. LOCAL GOVERNMENT (PORTLAND) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. L. Chandler moved, That this Bill be now read a second time.

The Honorable D. L. Arnott 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.

22. MELBOURNE (FLINDERS-STREET) LAND BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable B. Machin moved, That the debate be now adjourned.

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

Ordered—That the debate be adjourned until Tuesday next.

23. ADJOURNMENT.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until Tuesday next.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

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

ROY S. SARAH,
Clerk of the Legislative Council.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 34.

TUESDAY, 1ST APRIL, 1958.

Questions.

*1. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—

(*a*) How many men of the permanent way staff left the employ of the Melbourne and Metropolitan Tramways Board during the period 13th July, 1957, to 15th March, 1958.

(*b*) What was the net gain of enlistments over resignations in permanent way staff during the period 1st February to 15th March, 1958.

(*c*) How many enlistments were made and how many resignations were received in the traffic branch during the period 10th January to 21st February, 1958.

(*d*) How much money is being paid each week in penalty rates in the traffic branch because of shortage of staff.

*2. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—Has the five-year-old boy at Geelong West been compensated for the loss of his pet angora rabbit that was destroyed by his father in obedience to a Government declaration in the public press.

*3. The Hon. R. W. MAY: To ask the Honorable the Minister of Transport—

(*a*) What amount has been granted to municipalities since 1st July, 1957, for the construction and reconstruction of municipal saleyards.

(*b*) What municipalities received such grants and what was the amount of each grant.

(*c*) From what funds were these grants made.

*4. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—

(*a*) Why are the Railways Commissioners refusing to employ skilled tradesmen in the various classifications needed in the construction of rolling stock.

(*b*) From what countries have tenders been received for the construction of 30 trains.

*5. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Health—Has the Hospitals and Charities Commission given approval for the building of a new public hospital, or section thereof, at Geelong; if so, what funds will be forthcoming from the Commission and when is it proposed to make the first allocation.

*6. The Hon. B. MACHIN: To ask the Honorable the Minister of Transport—How many schools have been refused a subsidy either for libraries or for other facilities during the last twelve months.

*7. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Health—

(*a*) What new public hospital structures have been built outside the metropolitan area since the appointment of the present Hospitals and Charities Commission.

(*b*) What is the location of each such structure.

(*c*) What contribution towards capital cost has been made by the Commission in each case.

*8. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—In view of the efforts recently made by the Railways Commissioners to recapture from road competition the conveyance to and from Melbourne of theatre patrons who reside in the Geelong district, will the Minister also take steps to have the time-tables revised to include the addition of an express train from Geelong to Melbourne, leaving Geelong at approximately 8.45 a.m. daily and a passenger train leaving Melbourne for Geelong in the mid-afternoon on Saturdays.

*9. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—When does the Government propose to re-constitute the Geelong Waterworks and Sewerage Trust to provide for the appointment of a full-time chairman as was done in the case of the Geelong Harbor Trust.

*10. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—

(*a*) What is the total sum of money received up to date by the Treasury from Tattersalls lotteries.

(*b*) How much of the total sum received has been paid to the Hospitals and Charities Commission; what have been the allocations of this amount; to whom has the Commission allotted the money and for what purposes.

(*c*) How much of the Tattersalls receipts has been paid to the Mental Hygiene Department.

*11. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—When is it proposed to commence work on the duplication of the Newport to Geelong railway line, and when is it estimated that the duplication will be completed.

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

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rnment Business.

NOTICE OF MOTION :—

*1. The Hon. E. P. CAMERON : To move, That he have leave to bring in a Bill to provide for the Closing of Portion of a certain Street in the City of Footscray.

ORDERS OF THE DAY :—

*1. RAILWAYS (CONTRACTS) BILL—(*Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. D. P. J. Ferguson*).

*2. MILK BOARD (MEMBERS) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading.

*3. ACTS INTERPRETATION BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*4. MELBOURNE (FLINDERS-STREET) LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

*5. CONSOLIDATED REVENUE BILL (No. 4)—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

*6. LOCAL GOVERNMENT (PORTLAND) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

7. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

General Business.

ORDERS OF THE DAY :—

*1. POLICE OFFENCES (TRAP-SHOOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

2. HIRE-PURCHASE AGREEMENTS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

3. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

4. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 35.

WEDNESDAY, 2ND APRIL, 1958.

Questions.

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

(*a*) Has the Education Department given consideration to the need for additional playing areas for the Sale Technical School.

(*b*) Is land suitable for this purpose reasonably adjacent to the school; if so, are there any special reasons why the resumption of the land should not proceed forthwith.

*2. The Hon. W. O. FULTON: To ask the Honorable the Minister of Forests—

(*a*) What is the name of the beetle or insect responsible for the killing of eucalypts in Gippsland.

(*b*) Has the Forests Commission taken steps to combat this menace; if so, what measures have been taken.

(*c*) Has the Commission any record of the different species of trees attacked.

(*d*) What is the number of red-gum trees destroyed in the State forest at Briagolong.

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

(*a*) Has the Mines Department been successful in finding water at Timboon; if so, when will a report be made public, showing the quantity and quality of the water.

(*b*) What was the cost of the search.

*4. The Hon. R. R. RAWSON: To ask the Honorable the Minister of Transport—If any moves should be made to annex the district of Clayton to the City of Oakleigh or any other municipality, would the Commissioner of Public Works arrange for a referendum to be held, so that the citizens of Clayton may first express their opinions.

*5. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—

(*a*) Who authorized the building of the overhead bridge and road deviations between the Broadmeadows and Somerton railway stations.

(*b*) What authorities or organizations are contributing to the cost of such construction, and on what basis.

(*c*) What is the estimated cost of the total works to be carried out, and who is the constructing authority.

*6. The Hon. P. JONES: To ask the Honorable the Minister of Transport—

(*a*) What was the total expenditure incurred by the University of Melbourne for the year 1957.

(*b*) What was the total amount received in students' fees for that year.

*7. The Hon. T. H. GRIGG: To ask the Honorable the Minister of Transport—As diplomas of the Bendigo School of Mines and Industries give full exemption for the first two years of the degree-course in engineering at the University of Melbourne, will the Bendigo School of Mines and Industries become an affiliated institute of the Monash University immediately on its foundation.

*8. The Hon. R. R. RAWSON: To ask the Honorable the Minister of Transport—Has the Minister of Education further considered the request made to him in November, 1957, for the printing of the report made by Mr. Nilsson, Chief Inspector of Technical Schools; if it has been decided to print the report, when will it be available.

*9. The Hon. I. A. SWINBURNE: To ask the Honorable the Minister of Transport—

(*a*) Did the Minister of Public Works authorize the building of the Skyline Theatre adjacent to the Hume Highway at Campbellfield.

(*b*) Who installed the traffic lights there, and what was the cost of installation.

(*c*) Who authorized the extensive alterations to the roadway, and who bears the cost of these works.

*10. The Hon. D. P. J. FERGUSON: To ask the Honorable the Minister of Transport—

(*a*) What was the total amount of salary and allowances paid to the Chairman of the Geelong Waterworks and Sewerage Trust during the year ended 30th September, 1957.

(*b*) What was the total sum of salary and allowances paid during the same period to each of the other six commissioners.

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

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eneral Business.

ORDERS OF THE DAY :—

1. POLICE OFFENCES (TRAP-SHOOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

2. HIRE-PURCHASE AGREEMENTS (AMENDMENT) BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

3. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate* (*Hon. G. L. Tilley*).

4. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

5. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

6. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate* (*Hon. Sir Arthur Warner*).

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

Government Business.

NOTICES OF MOTION :—

*1. The Hon. SIR ARTHUR WARNER : To move, That so much of the Sessional Orders as provides that on Wednesday in each week Private Members' business shall take precedence of Government business and that no new business shall be taken after the hour of half-past Ten o'clock be rescinded, and that for the remainder of the Session, Government business shall take precedence of all other business.

*2. The Hon. SIR ARTHUR WARNER : To move, That the Council, at its rising, adjourn until Tuesday, the 15th instant.

ORDERS OF THE DAY :—

*1. SNOWY MOUNTAINS HYDRO-ELECTRIC AGREEMENTS BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*2. GAS AND FUEL CORPORATION (BENDIGO UNDERTAKING) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

*3. PUBLIC ACCOUNT ADVANCES (HOME BUILDERS' ACCOUNT) BILL—(*from Assembly—Hon. Sir Arthur Warner*)—Second reading.

*4. FOOTSCRAY (LAWSON-STREET) LAND BILL—(*Hon. E. P. Cameron*)—Second reading.

*5. GAME (DESTRUCTION) BILL (NO. 2)—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*6. WESTERN METROPOLITAN MARKET (AMENDMENT) BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading.

7. LOCAL GOVERNMENT (PORTLAND) BILL—(*from Assembly—Hon. G. L. Chandler*)—Second reading—*Resumption of debate* (*Hon. D. L. Arnott*).

8. MELBOURNE (FLINDERS-STREET) LAND BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. B. Machin*).

9. ACTS INTERPRETATION BILL—(*from Assembly—Hon. G. S. McArthur*)—To be committed.

10. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate* (*Hon. J. W. Galbally*).

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

LEGISLATIVE COUNCIL.

Notices of Motion and Orders of the Day.

No. 36.

THURSDAY, 3RD APRIL, 1958.

Government Business.

NOTICE OF MOTION :—

1. The Hon. SIR ARTHUR WARNER: To move, That the Council, at its rising, adjourn until Tuesday, the 15th instant.

ORDERS OF THE DAY :—

*1. MONASH UNIVERSITY BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

*2. UNIVERSITY (COUNCIL) BILL—(*from Assembly—Hon. G. S. McArthur*)—Second reading.

3. RIVER IMPROVEMENT AND LAND DRAINAGE BILL—(*from Assembly—Hon. E. P. Cameron*)—Second reading—*Resumption of debate (Hon. J. W. Galbally)*.

General Business.

ORDERS OF THE DAY :—

1. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES CONTROL BILL—(*Hon. W. Slater*)—Second reading—*Resumption of debate (Hon. G. L. Tilley)*.

2. LOCAL GOVERNMENT (ENROLMENT AND VOTING) BILL—(*Hon. J. W. Galbally*)—Second reading.

3. LOCAL GOVERNMENT (GEELONG) BILL—(*Hon. D. P. J. Ferguson*)—Second reading—*Resumption of debate (Hon. Sir Arthur Warner)*.

4. ABOLITION OF CAPITAL PUNISHMENT BILL—(*Hon. J. W. Galbally*)—Second reading—*Resumption of debate (Hon. Sir Arthur Warner)*.

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

ROY S. SARAH,
Clerk of the Legislative Council.

CLIFDEN EAGER,
President.

SESSIONAL COMMITTEES.

ELECTIONS AND QUALIFICATIONS.—(Appointed by Mr. President's Warrant, 21st November, 1956.)—The Honorables T. W. Brennan, P. T. Byrnes, G. L. Chandler, G. S. McArthur, W. Slater, A. Smith, and I. A. Swinburne.

HOUSE (JOINT).—The Honorables the President (*ex officio*), A. K. Bradbury, P. T. Byrnes, D. P. J. Ferguson, C. S. Gawith, and G. L. Tilley.

LIBRARY (JOINT).—The Honorables the President, W. O. Fulton, R. R. Rawson, W. Slater, and L. H. S. Thompson.

PRINTING.—The Honorables the President, D. L. Arnott, A. K. Bradbury, D. P. J. Ferguson, T. H. Grigg, A. R. Mansell, and L. H. S. Thompson.

STANDING ORDERS.—The Honorables the President, P. T. Byrnes, G. L. Chandler, J. W. Galbally, G. S. McArthur, W. Slater, I. A. Swinburne, L. H. S. Thompson, D. J. Walters, and Sir Arthur Warner.

STATUTE LAW REVISION (JOINT).—The Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson.

SUBORDINATE LEGISLATION (JOINT).—The Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne.

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

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

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VICTORIA.

LEGISLATIVE COUNCIL.

MINUTES OF THE PROCEEDINGS.

No. 35.

TUESDAY, 1ST APRIL, 1958.

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

2. PUBLIC ACCOUNT ADVANCES (HOME BUILDERS' ACCOUNT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend the 'Housing (Commonwealth and State Agreement) Act* 1957' *to authorize the temporary Issue and Application of Moneys out of the Public Account and the Transfer thereof to the Home Builders' Account*" and desiring the concurrence of the Council therein.

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

3. GAS AND FUEL CORPORATION (BENDIGO UNDERTAKING) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act relating to the Purchase by the Gas and Fuel Corporation of Victoria of the Gas Undertaking of the Bendigo Gas Company*" and desiring the concurrence of the Council therein.

   On the motion of the Honorable E. P. Cameron, 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. SNOWY MOUNTAINS HYDRO-ELECTRIC AGREEMENTS BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to ratify the Execution for and on behalf of the State of Victoria of certain Agreements between the said State the Commonwealth of Australia and the State of New South Wales in relation to the Snowy Mountains Hydro-electric Scheme and to approve the Agreements so executed, and for other purposes*" and desiring the concurrence of the Council therein.

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

5. ADJOURNMENT.—ALTERATION OF HOUR OF MEETING.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until to-morrow at half-past One o'clock.

   Question—put and resolved in the affirmative.

6. ADJOURNMENT.—MOTION UNDER STANDING ORDER NO. 53.—The Honorable J. W. Galbally moved, That the Council do now adjourn, and said he proposed to speak on the subject of "The refusal of the Government to take steps to prevent the flogging of William John O'Meally and John Henry Taylor and the statement of the Honorable the Premier accusing the Labor Party, when it criticised the Government for refusing to intervene, of setting itself up as a supporter of the criminal classes"; and six Members having risen in their places and required the motion to be proposed—

   Debate ensued.

   Question—put.

   The Council divided.

Ayes, 15.	Noes, 17.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey,	C. H. Bridgford,
T. W. Brennan (*Teller*),	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie,
P. Jones,	P. V. Feltham,
J. A. Little,	W. O. Fulton,
B. Machin,	C. S. Gawith,
R. R. Rawson,	T. H. Grigg (*Teller*),
M. P. Sheehy,	G. S. McArthur,
W. Slater,	R. W. Mack,
A. Smith (*Teller*),	R. W. May,
F. M. Thomas,	I. A. Swinburne,
G. L. Tilley.	L. H. S. Thompson,
	D. J. Walters,
	Sir Arthur Warner.

   And so it passed in the negative.

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

Co-operative Housing Societies Act 1957—Report of the Registrar of Co-operative Housing Societies for the year 1956–57.

Education Act 1957—Amendment of Regulations—

Regulation XXI.—Scholarships.

Regulation XXXI.—Woodwork Centres.

Evidence Act 1928—Amendment of Court Reporting (Fees) Regulations 1957.

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

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.

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

State Electricity Commission Acts—Kiewa Works Protection Regulations 1954–58.

Supreme Court Acts—Amendment of Rules of the Supreme Court.

8. STATUTE LAW REVISION COMMITTEE—LAW RELATING TO TENANTS' FIXTURES.—The Honorable P. T. Byrnes brought up a Progress Report from the Statute Law Revision Committee on the Law relating to Tenants' Fixtures, together with Minutes of Evidence and Appendices.

Ordered to lie on the Table and the Report to be printed.

9. SUBORDINATE LEGISLATION COMMITTEE—SECOND GENERAL REPORT.—The Honorable I. A. Swinburne brought up the Second General Report from the Subordinate Legislation Committee.

Ordered to lie on the Table and be printed.

10. FOOTSCRAY (LAWSON-STREET) LAND BILL.—On the motion of the Honorable E. P. Cameron, leave was given to bring in a Bill to provide for the Closing of Portion of a certain Street in the City of Footscray, 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.

11. RAILWAYS (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, further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

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

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

12. WESTERN METROPOLITAN MARKET (AMENDMENT) BILL.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to amend Section Nine of the 'Western Metropolitan Market Act* 1938'" and desiring the concurrence of the Council therein.

On the motion of the Honorable E. P. Cameron, 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. MILK BOARD (MEMBERS) BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

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

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

14. ACTS INTERPRETATION BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable G. S. McArthur moved, That this Bill be now read a second time.

Debate ensued.

Question—put.

107

The Council divided.

Ayes, 17.	Noes, 15.
The Hon. A. K. Bradbury, C. H. Bridgford (*Teller*), P. T. Byrnes, E. P. Cameron, G. L. Chandler, V. O. Dickie, P. V. Feltham, W. O. Fulton, C. S. Gawith, T. H. Grigg, G. S. McArthur, R. W. Mack, R. W. May (*Teller*), I. A. Swinburne, L. H. S. Thompson, D. J. Walters, Sir Arthur Warner.	The Hon. D. L. Arnott, A. J. Bailey (*Teller*), T. W. Brennan, D. P. J. Ferguson, J. W. Galbally, J. J. Jones, P. Jones, J. A. Little, B. Machin, R. R. Rawson, M. P. Sheehy, W. Slater, A. Smith, F. M. Thomas, G. L. Tilley (*Teller*).

And so it was resolved in the affirmative.—Bill read a second time.

Ordered, after debate—That the Bill be committed to a Committee of the whole 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. 4, be postponed until later this day.

16. Consolidated Revenue Bill (No. 4).—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

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

WEDNESDAY, 2nd APRIL, 1958.

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

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

17. Game (Destruction) Bill (No. 2).—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to further amend Section Eleven of the 'Game Act* 1928'" and desiring the concurrence of the Council therein.

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

18. Adjournment.—The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at twenty-six minutes past One o'clock in the morning, adjourned until this day.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 36.

WEDNESDAY, 2nd APRIL, 1958.

1. The President took the Chair and read the Prayer.

2. Police Offences (Trap Shooting) Bill.—The Order of the Day for the second reading of this Bill having been read, the Honorable J. W. Galbally moved, That this Bill be now read a second time.

The Honorable Sir Arthur Warner moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until later this day.

3. HIRE-PURCHASE AGREEMENTS (AMENDMENT) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

Question—put.

The Council divided.

Ayes, 15.	Noes, 17.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	C. H. Bridgford,
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones (*Teller*),	V. O. Dickie,
P. Jones,	P. V. Feltham (*Teller*),
J. A. Little,	W. O. Fulton,
B. Machin,	C. S. Gawith,
R. R. Rawson,	T. H. Grigg,
M. P. Sheehy (*Teller*),	G. S. McArthur,
W. Slater,	R. W. Mack (*Teller*),
A. Smith,	R. W. May,
F. M. Thomas,	I. A. Swinburne,
G. L. Tilley.	L. H. S. Thompson,
	D. J. Walters,
	Sir Arthur Warner.

And so it passed in the negative.

4. POSTPONEMENT OF ORDERS OF THE DAY.—Ordered—That the consideration of Orders of the Day, General Business, No. 3 to 7 inclusive, be postponed until later this day.

5. ALTERATION OF SESSIONAL ORDERS.—The Honorable Sir Arthur Warner moved, That so much of the Sessional Orders as provides that on Wednesday in each week Private Members' business shall take precedence of Government business and that no new business shall be taken after the hour of half-past Ten o'clock be rescinded, and that for the remainder of the Session, Government business shall take precedence of all other business.

Question—put and resolved in the affirmative.

6. POSTPONEMENT OF NOTICE OF MOTION.—Ordered—That the consideration of Notice of Motion, Government Business, No. 2, be postponed until later this day.

7. SNOWY MOUNTAINS HYDRO-ELECTRIC AGREEMENTS BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable J. J. Jones moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until later this day.

8. GAS AND FUEL CORPORATION (BENDIGO UNDERTAKING) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable E. P. Cameron moved, That this Bill be now read a second time.

The Honorable J. W. Galbally moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until later this day.

9. PUBLIC ACCOUNT ADVANCES (HOME BUILDERS' ACCOUNT) BILL.—The Order of the Day for the second reading of this Bill having been read, the Honorable Sir Arthur Warner moved, That this Bill be now read a second time.

The Honorable G. L. Tilley moved, That the debate be now adjourned.

Question—That the debate be now adjourned—put and resolved in the affirmative.

Ordered—That the debate be adjourned until later this day.

10. FOOTSCRAY (LAWSON-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 P. V. Feltham having reported that the Committee had agreed 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.

109

11. GAME (DESTRUCTION) 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 T. H. Grigg having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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. WESTERN METROPOLITAN MARKET (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 T. H. Grigg having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

13. LOCAL GOVERNMENT (PORTLAND) 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 T. H. Grigg having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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. MELBOURNE (FLINDERS-STREET) LAND 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 T. H. Grigg having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

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. STATUTE LAW REVISION COMMITTEE—CONSOLIDATION OF THE STATUTES.—The Honorable P. T. Byrnes brought up a Progress Report from the Statute Law Revision Committee on a proposal for the Consolidation of the Statutes, together with Minutes of Evidence and Appendices.

Ordered to lie on the Table and the Report to be printed.

16. PAPERS.—The following Papers, pursuant to the directions of several Acts of Parliament, were laid upon the Table by the Clerk:—

Grain Elevators Act 1934—Report of the Grain Elevators Board for the year ended 31st October, 1956.

Seed Acts—Amendment of Regulations.

Veterinary Surgeons Acts—Regulations.

17. ACTS INTERPRETATION BILL.—This Bill was, according to Order, committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable T. H. Grigg reported that the Committee had made progress in the Bill, and asked leave to sit again.

Resolved—That the Council will, later this day, again resolve itself into the said Committee.

18. PUBLIC ACCOUNT ADVANCES (HOME BUILDERS' 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.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

19. POLICE OFFENCES (TRAP SHOOTING) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

The Honorable Sir Arthur Warner moved, That the debate be adjourned until Wednesday, the 16th instant.

Debate ensued.

Question—That the debate be adjourned until Wednesday, the 16th instant—put.

The Council divided.

Ayes, 10.	Noes, 20.
The Hon. C. H. Bridgford,	The Hon. D. L. Arnott (*Teller*),
E. P. Cameron,	A. K. Bradbury,
G. L. Chandler,	P. T. Byrnes,
V. O. Dickie (*Teller*),	P. V. Feltham,
C. S. Gawith,	D. P. J. Ferguson,
T. H. Grigg,	W. O. Fulton,
G. S. McArthur,	J. W. Galbally,
R. W. Mack,	J. J. Jones,
L. H. S. Thompson (*Teller*),	P. Jones,
Sir Arthur Warner.	J. A. Little,
	B. Machin,
	A. R. Mansell (*Teller*),
	R. W. May,
	R. R. Rawson,
	M. P. Sheehy,
	A. Smith,
	I. A. Swinburne,
	F. M. Thomas,
	G. L. Tilley,
	D. J. Walters.

And so it passed in the negative.

Debate on the main question continued.

Question—That this Bill be now read a second time—put.

The Council divided.

Ayes, 15.	Noes, 18.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	C. H. Bridgford,
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson (*Teller*),	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie,
P. Jones (*Teller*),	P. V. Feltham,
J. A. Little,	W. O. Fulton,
B. Machin,	C. S. Gawith (*Teller*),
R. R. Rawson,	T. H. Grigg,
M. P. Sheehy,	G. S. McArthur,
W. Slater,	R. W. Mack,
A. Smith,	A. R. Mansell,
F. M. Thomas,	R. W. May (*Teller*),
G. L. Tilley.	I. A. Swinburne,
	L. H. S. Thompson,
	D. J. Walters,
	Sir Arthur Warner.

And so it passed in the negative.

20. SNOWY MOUNTAINS HYDRO-ELECTRIC AGREEMENTS 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 T. H. Grigg having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and, after debate, the Bill was read a third time and passed.

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. GAS AND FUEL CORPORATION (BENDIGO UNDERTAKING) BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, was read and, after further debate, the question being put was resolved in the affirmative.—Bill read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

111

22. Acts Interpretation Bill.—The Order of the Day for the further consideration of this Bill in Committee of the whole having been read, the President left the Chair.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

23. Monash University Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for the Establishment and Incorporation of a University to be known as Monash University, and for other purposes*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

24. University (Council) Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to provide for Representation of the Council of Monash University upon the Council of the University of Melbourne*" and desiring the concurrence of the Council therein.

On the motion of the Honorable G. S. McArthur, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and to be read a second time on the next day of meeting.

25. Railways (Employés) Bill.—The President announced the receipt of a Message from the Assembly transmitting a Bill intituled "*An Act to repeal Section One hundred and forty and Sub-section* (2) *of Section One hundred and fifty-nine of the 'Railways Act* 1928'" and desiring the concurrence of the Council therein.

On the motion of the Honorable Sir Arthur Warner, the Bill transmitted by the foregoing Message was read a first time and ordered to be printed and, by leave, to be read a second time later this day.

26. Footscray (Lawson-street) Land Bill.—The President announced the receipt of a Message from the Assembly acquainting the Council that they have agreed to this Bill without amendment.

27. Railways (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.

28. Railways (Employés) Bill.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable 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.

29. Postponement of Notice of Motion.—Ordered—That the consideration of Notice of Motion, Government Business, No. 2, be postponed until the next day of meeting.

30. Adjournment.—Alteration of Hour of Meeting.—The Honorable Sir Arthur Warner moved, by leave, That the Council, at its rising, adjourn until to-morrow at Ten o'clock.

Question—put and resolved in the affirmative.

The Honorable Sir Arthur Warner moved, That the House do now adjourn.

Debate ensued.

And the Council having continued to sit until after Twelve of the clock—

THURSDAY, 3rd APRIL, 1958.

Debate continued.

Question—put and resolved in the affirmative.

And then the Council, at eight minutes past Twelve o'clock in the morning, adjourned until this day.

ROY S. SARAH,
Clerk of the Legislative Council.

No. 37.

THURSDAY, 3rd APRIL, 1958.

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:—

Teaching Service Act 1946—Report of the Teachers Tribunal for the year 1956-57.

3. ADJOURNMENT.—The Honorable G. L. Chandler for the Honorable Sir Arthur Warner moved, That the Council, at its rising, adjourn until Tuesday, the 15th instant.

Question—put and resolved in the affirmative.

4. MONASH UNIVERSITY BILL.—This Bill was, according to Order and after debate, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

5. UNIVERSITY (COUNCIL) BILL.—This Bill was, according to Order, read a second time and committed to a Committee of the whole.

House in Committee.

The President resumed the Chair; and the Honorable D. J. Walters having reported that the Committee had agreed to the Bill without amendment, the Report was adopted, and the Bill was read a third time and passed.

Ordered—That the Bill be returned to the Assembly with a Message acquainting them that the Council have agreed to the same without amendment.

6. 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.

7. ADJOURNMENT.—The Honorable G. L. Chandler moved, by leave, That the resolution of the Council—That the Council, at its rising, adjourn until Tuesday, the 15th instant, be rescinded, and That the Council, at its rising, adjourn until Tuesday the 22nd instant.

Question—put and resolved in the affirmative.

The Honorable G. L. Chandler moved, That the House do now adjourn.

Debate ensued.

Question—put and resolved in the affirmative.

And then the Council, at twenty minutes past One o'clock, adjourned until Tuesday, the 22nd instant.

ROY S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

BILLS ASSENTED TO AFTER THE FINAL ADJOURNMENT OF BOTH HOUSES AND BEFORE THE PROROGATION.

Messages were received from His Excellency the Lieutenant-Governor after the final adjournment of both Houses :—

Informing the Legislative Council that he had, on 15th April, 1958, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz :—

Milk Board (Members) Act 1958.

Consolidated Revenue Act 1958.

Footscray (Lawson-street) Land Act 1958.

Railways (Contracts) Act 1958.

Game (Destruction) Act 1958.

Western Metropolitan Market (Amendment) Act 1958.

Local Government (Portland) Act 1958.

Melbourne (Flinders-street) Land Act 1958.

Public Account Advances (Home Builders' Account) Act 1958.

Snowy Mountains Hydro-electric Agreements Act 1958.

Gas and Fuel Corporation (Bendigo Undertaking) Act 1958.

Acts Interpretation Act 1958.

Railways (Employés) Act 1958.

Monash University Act 1958.

University (Council) Act 1958.

Informing the Legislative Council that he had, on 16th April, 1958, caused the Bill intituled "An Act to amend the *Marriage Act* 1928", which was reserved for the signification of Her Majesty's pleasure thereon and which received Her Majesty's Assent on 14th March, 1958, to be proclaimed in the *Government Gazette* (*see* No. 28 of 16th April, 1958).

QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO.

QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO—*continued.*

Name of Member and Subject-matter.	Number of Notice-Paper. (Question.)	Page in *Hansard.* (*Reply.*)
FULTON, Hon. W. O.—		
Forests Commission—Eucalypts in Gippsland—Control of insect pests ..	35	3955
Health Department—		
Infant Welfare Centres—Government subsidy	4	437
Poliomyelitis—Number of cases and inoculation	28	3058
Latrobe Valley Water and Sewerage Board—Outfall sewer—Escape of sewage	21, 31	2244, 3391
Medical Board—Personnel—Decision regarding alien doctors	2	300
River Improvement and Flood Protection—Avon river scheme	10	915
Soldier Settlement Commission—Employees on Yanakie Estate	14	1378
State Rivers and Water Supply Commission—Maffra-Sale Irrigation District—Debit balance	4	437
State Savings Bank—Control of activities—Depositors' accounts	21	2245
GALBALLY, Hon. J. W.—		
Electoral—Legislative Council provinces	30	3288
Housing Commission—Eviction of tenants	24	2581
Melbourne City Council—Retainer to Dr. E. G. Coppell, Q.C.	14, *	1378, 1518
Public Loans—Loan raising activities of hire-purchase companies	26	2778
GRIGG, Hon. T. H.—		
Monash University—Affiliation of Bendigo School of Mines and Industries	35	3956
Railways Department—Air-conditioned cars on Melbourne-Swan Hill service	29	3121
State Rivers and Water Supply Commission—		
Coliban water supply system	28	3059
Irrigation and town water supplies	30	3288
JONES, Hon. J. J.—		
Agricultural Colleges—Accommodation	23	2502
Railways Department—Dismissal of permanent-way maintenance employees ..	*	2702
JONES, Hon. P.—		
Education Department—Fire damage to schools—Provision of fire extinguishers	21	2243
Railways Department—		
Country train services	*	526
Kensington station level crossing and subway	4, 7	436, 651
University of Melbourne—Expenditure and students' fees	35	3956
LITTLE, Hon. J. A.—		
Education Department—		
Playing areas for Sale Technical School	35	3955
Rent collection for Housing Commission	31	3391
Victorian Nursing Council—Representation of nursing aides	2	297
Yarra Bend National Park Trust—Extension of golf course	18	1833
MACAULAY, Hon. W.—		
Melbourne and Metropolitan Board of Works—Drainage rate	5	515
Motor Drivers—Effect of liquor consumption	5	515
MACHIN, Hon. B.—		
Air Pollution—Visit of New South Wales officials	13	1255
Country Roads Board—Princes Highway—Financial responsibilities of municipalities	3	381
Crown Lands—Leases and licences in South Melbourne	30	3287
Education Department—Subsidies for school libraries	34	3857
Electoral—Enrolments for Legislative Council provinces	5	515
Housing Commission—Evictions	27, 28	2893, 3060
Melbourne and Metropolitan Tramways Board—		
Construction costs—St. Kilda terminus	30	3285
Costs and revenue of certain sections	30	3285
Sale of buses	6	574
Staff of permanent-way and traffic branches	34	3855
Railways Department—		
Construction of rolling stock	34	3856
Services to Yarra River Entrance docks	28	3060

* Question asked without notice.

QUESTIONS ASKED BY HONORABLE MEMBERS, AND REPLIES THERETO—*continued.*

* Question asked without notice.

[991]

VICTORIA

GOVERNMENT GAZETTE

Published by Authority

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No. 29] FRIDAY, APRIL 18 [1958

PROROGUING THE PARLIAMENT OF VICTORIA.

PROCLAMATION

By the Lieutenant-Governor as Deputy for 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 Tuesday, the twenty-second day of April, 1958: Now I, the Lieutenant-Governor of the State of Victoria, in the Commonwealth of Australia, do by this my Proclamation prorogue the said Parliament of Victoria until Wednesday, the twenty-third day of April, 1958.

Given under my Hand and the Seal of the State of Victoria aforesaid, at Melbourne, this eighteenth day of April, in the year of our Lord One thousand nine hundred and fifty-eight, and in the seventh year of the reign of Her Majesty Queen Elizabeth II.

(L.S.) E. F. HERRING.

By His Excellency's Command,

HENRY E. BOLTE,
Premier.

GOD SAVE THE QUEEN!

DISCHARGING MEMBERS OF THE LEGISLATIVE COUNCIL FROM ATTENDANCE AND DISSOLVING THE LEGISLATIVE ASSEMBLY.

PROCLAMATION

By the Lieutenant-Governor as Deputy for His Excellency the Governor of the State of Victoria and its Dependencies in the Commonwealth of Australia, &c., &c., &c.

WHEREAS by *The Constitution Act* it was amongst other things enacted that it should be lawful for the Governor to fix such places within Victoria and, subject to the limitation therein contained, such times for holding the first and every other Session of the Council and Assembly, and to vary and alter the same respectively in such manner as he might think fit; and also from time to time to prorogue the said Council and Assembly, and to dissolve the said Assembly, by Proclamation or otherwise, whenever he should deem it expedient: And whereas the said Council and Assembly, called "The Parliament of Victoria", stand prorogued until Wednesday, the twenty-third day of April, 1958: And whereas it is expedient to dissolve the Legislative Assembly: Now therefore I, the Lieutenant-Governor of the State of Victoria, in the Commonwealth of Australia, in exercise of the power in me vested in this behalf, do by this my Proclamation discharge the Honourable the Members of the Legislative Council from their meeting and attendance on Wednesday, the

twenty-third day of April, 1958: And I do dissolve the Legislative Assembly, such dissolution to take effect on Friday, the eighteenth day of April, 1958: And I do hereby declare that I have this day given Order that Writs be issued in due form, and according to law, for the election of Members to be duly returned to serve in the Legislative Assembly.

Given under my Hand and the Seal of the State of Victoria, at Melbourne, this eighteenth day of April, in the year of our Lord One thousand nine hundred and fifty-eight and in the seventh year of the reign of Her Majesty Queen Elizabeth II.

(L.S.) E. F. HERRING.

By His Excellency's Command,

HENRY E. BOLTE,
Premier.

GOD SAVE THE QUEEN!

GENERAL ELECTION.

NOTICE is hereby given that the Lieutenant-Governor as Deputy for His Excellency the Governor will issue Writs for a General Election of Members to serve in the Legislative Assembly of Victoria on the day first hereinafter mentioned, viz.:—

Date of Issue of Writs	Monday, 21st April, 1958.
Day of Nomination (before or on which nominations are to be made)	Friday, 9th May, 1958 (up to 12 o'clock noon).
Day of Polling	Saturday, 31st May, 1958.
Return of Writs	Wednesday, 18th June, 1958.

By His Excellency's Command,

A. MAHLSTEDT,
Official Secretary.

The Governor's Office,
Melbourne, 18th April, 1958.

By Authority: W. M. HOUSTON, Government Printer, Melbourne

119

SELECT COMMITTEES

APPOINTED DURING THE SESSION 1956–57–58.

No. 1.—ELECTIONS AND QUALIFICATIONS.

Appointed (by Mr. President's Warrant) 21st November, 1956.

The Hon.	T. W. Brennan	The Hon.	W. Slater
	P. T. Byrnes		A. Smith
	G. L. Chandler		I. A. Swinburne.
	G. S. McArthur		

No. 2.—STANDING ORDERS.

Appointed 21st November, 1956.

The Hon.	The President	The Hon.	W. MacAulay*
	P. T. Byrnes		W. Slater
	G. L. Chandler		I. A. Swinburne†
	J. W. Galbally		L. H. S. Thompson
	G. S. McArthur		D. J. Walters
			Sir Arthur Warner.

No. 3.—HOUSE (JOINT).

Appointed 21st November, 1956.
(*See* Act No. 6006, s. 334.)

The Hon.	the President (*ex officio*)	The Hon.	C. S. Gawith
	A. K. Bradbury†		W. MacAulay*
	P. T. Byrnes		G. L. Tilley.
	D. P. J. Ferguson		

No. 4.—LIBRARY (JOINT).

Appointed 21st November, 1956.
(*See* Act No. 6006, s. 342.)

The Hon.	the President	The Hon.	W. Slater
	W. O. Fulton		L. H. S. Thompson.
	R. R. Rawson		

No. 5.—PRINTING.

Appointed 21st November, 1956.

The Hon.	the President	The Hon.	T. H. Grigg
	D. L. Arnott		A. R. Mansell
	A. K. Bradbury		L. H. S. Thompson.
	D. P. J. Ferguson		

No. 6.—STATUTE LAW REVISION (JOINT).

Appointed 21st November, 1956.
(*See* Act No. 6006, s. 343.)

The Hon.	P. T. Byrnes	The Hon.	R. R. Rawson
	W. O. Fulton		A. Smith
	T. H. Grigg		L. H. S. Thompson.

No. 7.—SUBORDINATE LEGISLATION COMMITTEE (JOINT).

Appointed 21st November, 1956.
(*See* Act No. 5991, s. 3.)

The Hon.	D. L. Arnott	The Hon.	I. A. Swinburne.
	R. W. Mack		

* Died 17th May, 1957.

† Appointed 6th June, 1957.

By Authority: A. C. Brooks, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 1.

THURSDAY, 16TH MAY, 1957.

No. 1.—CITY OF MELBOURNE (DEBNEY'S PADDOCK) BILL.—Clause 2—

2. Notwithstanding anything in the *Melbourne* (*Hopetoun Ward*) *Streets Act* 1938, as on and from the first day of January, One thousand nine hundred and fifty-eight, by virtue of this Act—

(*a*) the area of land bounded by Victoria-street, Mount Alexander-road, the Moonee Ponds Creek and Racecourse-road (which area is known as Debney's Paddock and is the area referred to in sub-section (2) of section one of the said Act) shall be and is hereby surrendered to the Crown freed and discharged from all encumbrances trusts limitations and restrictions whatsoever and from every estate and interest therein and shall be and be deemed to be unalienated land of the Crown;

(*b*) the said area shall be and be deemed to be permanently reserved under the Land Acts as a site for the recreation of the people;

(*c*) the council of the City of Melbourne shall be and be deemed to be appointed to be the committee of management thereof.

—(*Hon. W. Slater.*)

Question—That clause 2 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 14.	Noes, 13.
The Hon. A. J. Bailey,	The Hon. A. K. Bradbury,
T. W. Brennan,	C. H. Bridgford,
D. P. J. Ferguson,	P. T. Byrnes,
J. W. Galbally,	E. P. Cameron,
J. J. Jones,	G. L. Chandler,
P. Jones (*Teller*),	V. O. Dickie,
J. A. Little,	P. V. Feltham (*Teller*),
B. Machin (*Teller*),	C. S. Gawith (*Teller*),
R. R. Rawson,	T. H. Grigg,
M. P. Sheehy,	G. S. McArthur,
W. Slater,	R. W. Mack,
A. Smith,	L. H. S. Thompson,
F. M. Thomas,	Sir Arthur Warner.
G. L. Tilley.	

And so it was resolved in the affirmative.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 2.

WEDNESDAY, 22ND MAY, 1957.

No. 1.—HIRE-PURCHASE BILL.—Clause 5—

5. No person firm or corporation which is substantially engaged in the business of letting hiring or agreeing to sell goods or chattels under a hire-purchase agreement shall borrow any money for use in any way in connexion with such business at a rate of interest which exceeds by more than one per cent. the maximum rate of interest payable by the Commonwealth of Australia on the Commonwealth loan last raised.

—(*Hon. J. W. Galbally.*)

Question—That clause 5 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 20.	Noes, 10.
The Hon. D. L. Arnott,	The Hon. C. H. Bridgford,
A. J. Bailey,	E. P. Cameron,
A. K. Bradbury,	G. L. Chandler,
T. W. Brennan,	V. O. Dickie (*Teller*),
P. T. Byrnes,	C. S. Gawith,
P. V. Feltham,	T. H. Grigg (*Teller*),
D. P. J. Ferguson,	G. S. McArthur,
W. O. Fulton,	R. W. Mack,
J. W. Galbally,	L. H. S. Thompson,
J. J. Jones,	Sir Arthur Warner.
P. Jones (*Teller*),	
J. A. Little,	
B. Machin,	
A. R. Mansell (*Teller*),	
R. R. Rawson,	
M. P. Sheehy,	
W. Slater,	
A. Smith,	
I. A. Swinburne,	
G. L. Tilley.	

And so it was resolved in the affirmative.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 3.

TUESDAY, 28TH MAY, 1957.

No. 1.—STAMPS (HIRE-PURCHASE AGREEMENTS) AMENDMENT BILL.—Clause 2—

2. (1) In section two of the *Stamps (Hire-Purchase Agreements) Act* 1956 for the interpretation of "Purchase price" there shall be substituted the following interpretation :—

"'Purchase price' means the total amount payable under a hire-purchase agreement by the purchaser on any account whatsoever in respect of the goods the subject-matter of the agreement, less the amount of the deposit or other money or consideration paid or given to the vendor at or before the making of the agreement, and less the total amount payable under the agreement by way of interest or insurance or by way of any other charge."

(2) For sub-paragraph (iv) of paragraph (*a*) of sub-section (3) of section four of the *Stamps (Hire-Purchase Agreements) Act* 1956 there shall be substituted the following sub-paragraphs :—

"(iv) the total amount payable under the agreement by the purchaser on any account whatsoever in respect of the goods the subject-matter of the agreement;

(v) the amount of the deposit or other money or consideration paid or given to the vendor at or before the making of the agreement;

(vi) the total amount payable under the agreement by way of interest or insurance or by way of any other charge;

(vii) the purchase price within the meaning of this Act".

—(*Hon. Sir Arthur Warner.*)

Motion made and question put—That it be a suggestion to the Legislative Assembly that they make the following amendment in the Bill, viz. :—

Clause 2, sub-clause (2), insert the following new sub-paragraph to follow sub-paragraph (vii) :—

"; and

(viii) the rate of interest ascertained in accordance with the Second Schedule to the *Money Lenders Act* 1938."

—(*Hon. J. W. Galbally.*)

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 12.	Noes, 14.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey,	C. H. Bridgford (*Teller*),
T. W. Brennan,	P. T. Byrnes,
J. W. Galbally,	E. P. Cameron,
J. J. Jones,	G. L. Chandler,
P. Jones,	V. O. Dickie,
B. Machin,	P. V. Feltham,
R. R. Rawson,	C. S. Gawith,
M. P. Sheehy (*Teller*),	T. H. Grigg,
W. Slater,	G. S. McArthur,
A. Smith (*Teller*),	A. R. Mansell,
G. L. Tilley.	I. A. Swinburne,
	L. H. S. Thompson,
	Sir Arthur Warner.

And so it passed in the negative.

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VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 4.

WEDNESDAY, 5TH JUNE, 1957.

No. 1.—MEDICAL (REGISTRATION) BILL.—Clause 4—

4. (1) Any person who is or has been qualified to practise medicine or surgery in any country (not being any of the countries referred to in paragraphs (*a*) and (*b*) of section fourteen of the Principal Act) and who has been resident in Victoria for not less than three years may in the manner and form prescribed by the regulations apply to the Board to be registered as a legally qualified medical practitioner under Part I. of the Principal Act.

(2) Every such application shall, unless the applicant is entitled to registration pursuant to sections thirteen and fourteen of the Principal Act or eligible for registration pursuant to section two of the *Medical (Registration) Act* 1956, be submitted by the Board to the committee for its consideration.

(3) The committee shall consider every application submitted to it upon its merits and for that purpose may interview and examine the applicant and, if it thinks necessary, require him to submit further evidence of his qualifications and to undergo any appropriate examination or examinations conducted, arranged or approved by the committee (whether for applicants generally or any class of applicants or any individual applicant) and if the committee is satisfied—

(*a*) that the applicant is or has been qualified to practise medicine or surgery in such a country as aforesaid and that his qualification has not been withdrawn or cancelled for misconduct in a professional sense;

(*b*) that he has, at the time of his application, been resident in Victoria for not less than three years;

(*c*) that he is professionally competent to practise as a legally qualified medical practitioner in Victoria;

(*d*) that he is of good character; and

(*e*) that he has an adequate understanding and command of the English language—

the committee may certify to the Board that the applicant is a fit and proper person to be registered as a legally qualified medical practitioner.

* * * * * *

—(*Hon. E. P. Cameron.*)

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Amendment proposed—That the following new sub-clause be inserted to follow sub-clause (3) :—

"( ) In any case where the committee is of the opinion that the applicant is not professionally competent to practise as a legally qualified medical practitioner in Victoria as aforesaid on the grounds that he has not recently practised medicine or surgery, the committee may arrange with the committee of management of any public hospital for the applicant concerned to undergo a course of medical training for a period not exceeding twelve months, to enable the applicant to refresh his medical knowledge, training and skill, and upon the completion of such course the committee shall reconsider such application and if satisfied as aforesaid the committee may certify to the Board that the applicant is a fit and proper person to be registered as a legally qualified medical practitioner."

—(*Hon. J. W. Galbally.*)

Question—That the new sub-clause proposed to be inserted be so inserted—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 13.	Noes, 16.
The Hon. D. L. Arnott (*Teller*), A. J. Bailey (*Teller*), D. P. J. Ferguson, J. W. Galbally, J. J. Jones, P. Jones, J. A. Little, B. Machin, R. R. Rawson, M. P. Sheehy, W. Slater, A. Smith, G. L. Tilley.	The Hon. A. K. Bradbury, C. H. Bridgford, P. T. Byrnes, E. P. Cameron, G. L. Chandler, V. O. Dickie, P. V. Feltham, W. O. Fulton, C. S. Gawith (*Teller*), T. H. Grigg, G. S. McArthur, R. W. Mack, A. R. Mansell (*Teller*), I. A. Swinburne, L. H. S. Thompson, Sir Arthur Warner.

And so it passed in the negative.

THURSDAY, 6TH JUNE, 1957.

No. 2.—LABOUR AND INDUSTRY (AMENDMENT) BILL.—Clause 2—

2. At the end of section twenty-four of the Principal Act there shall be inserted the following sub-section :—

"(6) Notwithstanding anything in this section when any chairman of a Wages Board attains the age of seventy-two years his appointment shall thereupon cease and his office shall become vacant."

—(*Hon. Sir Arthur Warner.*)

Amendment proposed—That the words "seventy-two years" be omitted with the view of inserting in place thereof the words "seventy years".

—(*Hon. J. W. Galbally.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 16.
The Hon. A. J. Bailey, T. W. Brennan (*Teller*), C. H. Bridgford, E. P. Cameron, G. L. Chandler, V. O. Dickie, C. S. Gawith, T. H. Grigg (*Teller*), P. Jones, J. A. Little, G. S. McArthur, R. W. Mack, M. P. Sheehy, L. H. S. Thompson, Sir Arthur Warner.	The Hon. D. L. Arnott (*Teller*), A. K. Bradbury, P. T. Byrnes, P. V. Feltham, D. P. J. Ferguson, W. O. Fulton, J. W. Galbally, J. J. Jones, B. Machin, A. R. Mansell (*Teller*), R. R. Rawson, W. Slater, A. Smith, I. A. Swinburne, F. M. Thomas, G. L. Tilley.

And so it passed in the negative.

No. 3.—Labour and Industry (Amendment) Bill.—Clause 3—

3. At the end of sub-section (1) of section eighty of the Principal Act there shall be inserted the following proviso :—

"Provided that shops for the sale of motor cars (as defined in the Motor Car Acts) may remain open on Saturdays until the hour of six o'clock and on Fridays until the hour of ten o'clock."

—(*Hon. Sir Arthur Warner.*)

Question—That clause 3 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 16.	Noes, 15.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
C. H. Bridgford (*Teller*),	A. J. Bailey (*Teller*),
P. T. Byrnes,	T. W. Brennan,
E. P. Cameron,	D. P. J. Ferguson,
G. L. Chandler,	J. W. Galbally,
V. O. Dickie,	J. J. Jones,
P. V. Feltham,	P. Jones,
W. O. Fulton (*Teller*),	J. A. Little,
C. S. Gawith,	B. Machin,
T. H. Grigg,	R. R. Rawson,
G. S. McArthur,	M. P. Sheehy (*Teller*),
R. W. Mack,	W. Slater,
A. R. Mansell,	A. Smith,
I. A. Swinburne,	F. M. Thomas,
L. H. S. Thompson,	G. L. Tilley.
Sir Arthur Warner.	

And so it was resolved in the affirmative.

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11

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 5.

TUESDAY, 3RD SEPTEMBER, 1957.

No. 1.—LANDLORD AND TENANT (CONTROL) BILL.—Clause 7—

Motion made and question put—That clause 7 be postponed.

—(*Hon. J. W. Galbally.*)

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 16.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	C. H. Bridgford,
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones (*Teller*),	V. O. Dickie,
P. Jones,	P. V. Feltham,
J. A. Little,	W. O. Fulton (*Teller*),
B. Machin,	C. S. Gawith,
R. R. Rawson,	T. H. Grigg,
M. P. Sheehy (*Teller*),	G. S. McArthur,
W. Slater,	R. W. Mack,
A. Smith,	R. W. May,
F. M. Thomas,	I. A. Swinburne,
G. L. Tilley.	L. H. S. Thompson (*Teller*),
	Sir Arthur Warner.

And so it passed in the negative.

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13

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 6.

TUESDAY, 10TH SEPTEMBER, 1957.

No. 1.—LANDLORD AND TENANT (CONTROL) BILL.—Clause 9—

9. On the first day of August One thousand nine hundred and fifty-nine all prescribed premises which immediately before that date are business premises shall cease to be prescribed premises and the provisions of this Act shall cease to apply to those premises.

—(*Hon. Sir Arthur Warner.*)

Question—That clause 9 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 16.	Noes, 15.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott,
C. H. Bridgford,	A. J. Bailey (*Teller*),
P. T. Byrnes,	T. W. Brennan,
E. P. Cameron,	D. P. J. Ferguson,
G. L. Chandler,	J. W. Galbally,
V. O. Dickie,	J. J. Jones,
P. V. Feltham (*Teller*),	P. Jones,
W. O. Fulton,	J. A. Little,
C. S. Gawith,	B. Machin,
T. H. Grigg (*Teller*),	R. R. Rawson,
G. S. McArthur,	M. P. Sheehy,
R. W. Mack,	W. Slater,
A. R. Mansell,	A. Smith,
R. W. May,	F. M. Thomas,
L. H. S. Thompson,	G. L. Tilley (*Teller*).
Sir Arthur Warner.	

And so it was resolved in the affirmative.

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15

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 7.

TUESDAY, 1ST OCTOBER, 1957.

No. 1.—BREAD INDUSTRY BILL.—Clause 6—

6. (1) Any person who—

(*a*) sells or supplies or offers for sale or supply to any bread manufacturer or has in his possession for the purpose of selling or supplying to any bread manufacturer any flour or meal or other ingredient for the making of bread which does not conform with section four of this Act and the relevant provisions of the Schedule to this Act in respect of such flour meal or other ingredient; or

(*b*) makes or bakes bread of any kind for trade or sale or has in his possession for the purpose of making or baking bread of any kind for trade or sale any flour or meal or other ingredient which does not conform with section four of this Act and the relevant provisions of the said Schedule in respect of bread of that kind; or

(*c*) sells or offers for sale or has in his possession for sale as bread of any kind any bread which does not conform with section four of this Act and the relevant provisions of the said Schedule in respect of bread of that kind—

shall be guilty of an offence against this Act and liable to a penalty of not more than Two hundred pounds.

(2) Any person who, in connexion with the sale or offer of sale of any bread, represents or in any manner implies, whether verbally or by means of any label, wrapping or advertising matter or otherwise, that the bread contains all or any of the substances set out in Part C of the Schedule to this Act shall, unless the flour or meal from which the bread was made and baked contained the substance or substances in question within the relevant limits set out in the said Part of the said Schedule, be guilty of an offence against this Act and liable to a penalty of not more than Two hundred pounds.

—(*Hon. Sir Arthur Warner.*)

Amendment proposed—That sub-clause (2) be omitted with the view of inserting in place thereof the following sub-clause :—

" (2) Any person who sells or supplies or offers for sale or supply to any bread manufacturer or has in his possession for the purpose of selling or supplying to any bread manufacturer or who has in his possession for the making or baking or who uses in the making or baking of bread of any kind any flour or meal which does not contain the substances referred to in Part C of the Schedule to this Act within the relevant limits set out in the said Part of the said Schedule shall be guilty of an offence against this Act and liable to a penalty of not more than Two hundred pounds."

—(*Hon. J. W. Galbally.*)

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Question—That the sub-clause proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 14.
The Hon. A. K. Bradbury,	The Hon. D. L. Arnott (*Teller*),
C. H. Bridgford,	A. J. Bailey,
P. T. Byrnes,	T. W. Brennan (*Teller*),
E. P. Cameron,	D. P. J. Ferguson,
G. L. Chandler,	J. W. Galbally,
V. O. Dickie,	J. J. Jones,
P. V. Feltham,	P. Jones,
W. O. Fulton (*Teller*),	J. A. Little,
T. H. Grigg (*Teller*),	B. Machin,
G. S. McArthur,	R. R. Rawson,
R. W. Mack,	M. P. Sheehy,
R. W. May,	A. Smith,
I. A. Swinburne,	F. M. Thomas,
L. H. S. Thompson,	G. L. Tilley.
Sir Arthur Warner.	

And so it was resolved in the affirmative.

No. 2.—Bread Industry Bill.—Clause 8—

8. (1) For the purposes of this Act there shall be a committee appointed by the Governor in Council to be called the " Bread Industry Committee ".

(2) The Committee shall consist of seven members appointed by the Governor in Council of whom—

* * * * * * *

—(*Hon. Sir Arthur Warner.*)

Amendment proposed—That the word " seven " be omitted with the view of inserting in place thereof the word " nine ".

—(*Hon. Sir Arthur Warner.*)

Question—That the word proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 14.
The Hon. D. L. Arnott,	The Hon. A. J. Bailey,
A. K. Bradbury,	T. W. Brennan,
P. T. Byrnes,	C. H. Bridgford,
P. V. Feltham (*Teller*),	E. P. Cameron,
D. P. J. Ferguson,	G. L. Chandler,
W. O. Fulton,	V. O. Dickie (*Teller*),
J. W. Galbally,	T. H. Grigg,
J. J. Jones,	P. Jones,
B. Machin,	J. A. Little,
R. W. May,	G. S. McArthur,
R. R. Rawson,	R. W. Mack (*Teller*),
A. Smith (*Teller*),	M. P. Sheehy,
I. A. Swinburne,	L. H. S. Thompson,
F. M. Thomas,	Sir Arthur Warner.
G. L. Tilley.	

And so it was resolved in the affirmative.

No. 3.—Bread Industry Bill.—Clause 9 (*as amended*)—

9. (1) Every bread manufacturer who ordinarily delivers bread to the premises of customers and every bread seller shall, if so required verbally or in writing by any person—

(*a*) regularly sell to that person (hereinafter called " the customer ") ; and

(*b*) regularly deliver to any premises stipulated by the customer (whether those of a consumer or the proprietor of a bread shop or otherwise) which are within two miles of any bakery or distribution centre of that bread manufacturer or bread seller—

bread of such kinds and in such reasonable quantities and at such reasonable times and intervals as are from time to time stipulated by the customer in some manner agreed upon by the customer and the bread manufacturer or bread seller or " in default of agreement " prescribed in the regulations in that behalf and upon such terms and conditions with respect to payment and delivery as are so agreed upon or prescribed.

(2) Every bread manufacturer or bread seller who ordinarily sells bread at any bakery or distribution centre shall, if so required verbally or in writing, regularly sell and deliver at that bakery or distribution centre to the proprietor of a bread shop (hereinafter called " the customer ") bread of such kinds and in such reasonable quantities and at such reasonable intervals as may from time to time be required by the customer and on such terms and conditions as are agreed upon by the customer and the bread manufacturer or bread seller or, in default of agreement, as are prescribed by the regulations in that behalf.

(3) In any prosecution for a failure to comply with any of the foregoing provisions of this section it shall be a sufficient defence to prove—

(*a*) (where delivery to the customer's premises was required) that there was at least one bakery or distribution centre of each of at least two bread manufacturers or bread sellers other than the defendant from which the customer's premises were more accessible by the shortest practicable route than from any bakery or distribution centre of the defendant;

(*b*) that the customer had, after being required so to do by the defendant, refused to pay cash on delivery for bread sold or required to be sold to him;

(*c*) that compliance with the requirement would have involved the defendant in a breach of the terms of any industrial award or determination under any Commonwealth or Victorian Act of Parliament; or

(*d*) that on the occasion in question the defendant, having used all due diligence—

(i) had not available a sufficient quantity of the kind of bread required, after providing for other requirements under contracts and agreements with *bona fide* customers then subsisting; or

(ii) (where delivery to the customer's premises was required) had not available and could not obtain sufficient means of delivery—

to comply with the requirement in question.

(4) The fact that the quantity of bread required to be sold and delivered on any particular occasion pursuant to sub-section (1) or sub-section (2) of this section was greater than the quantity ordinarily required by the customer in question shall not be deemed or taken to render the quantity an unreasonable quantity in any case where—

(*a*) it is proved that reasonable notice of the greater requirement on that occasion was given to the defendant; and

(*b*) the defendant fails to prove that, having exercised all due diligence and having fully employed the plant and means available to him, he was unable to comply with the requirement.

(5) Any bread manufacturer or bread seller who refuses or fails to sell and deliver bread after being required so to do in accordance with sub-section (1) or sub-section (2) of this section shall, upon being so requested by the person making the requirement, state to him the reason for such refusal or failure.

(6) The committee may grant to any bread manufacturer or bread seller a certificate of exemption from all or any of the provisions of this Part either generally or in respect of any particular sale and delivery or in respect of sales and deliveries of any particular class, and the committee may at any time revoke any such certificate.

(7) Whilst any such certificate remains in force the bread manufacturer or bread seller to whom it was granted shall not by reason of any refusal or failure to sell or deliver bread, from which sale or delivery he is exempted by the certificate, be guilty of any contravention or failure to comply with the provisions of this Part.

(8) The provisions of this Part shall apply only in respect of bakeries and distribution centres which are within the Metropolitan District under the *Labour and Industry Act* 1953 or within any other district specified upon the recommendation of the committee for the purposes of this Part by Order of the Governor in Council published in the *Government Gazette*, and any Order made for the purposes of this Part may in like manner and upon the like recommendation be amended varied or revoked.

—(*Hon. Sir Arthur Warner.*)

Question—That clause 9.(as amended) stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 9.	Noes, 20.
The Hon. C. H. Bridgford (*Teller*), E. P. Cameron, G. L. Chandler, V. O. Dickie, T. H. Grigg, G. S. McArthur, R. W. Mack, L. H. S. Thompson (*Teller*), Sir Arthur Warner.	The Hon. D. L. Arnott, A. J. Bailey, A. K. Bradbury (*Teller*), T. W. Brennan, P. T. Byrnes, P. V. Feltham, D. P. J. Ferguson, W. O. Fulton, J. W. Galbally, J. J. Jones, P. Jones (*Teller*), J. A. Little, B. Machin, R. W. May, R. R. Rawson, M. P. Sheehy, A. Smith, I. A. Swinburne, F. M. Thomas, G. L. Tilley.

And so it passed in the negative.

No. 4.—Bread Industry Bill.—Clause 15—

15. Section one hundred and five of the *Labour and Industry Act* 1953 is hereby repealed.

—(*Hon. Sir Arthur Warner.*)

Question—That clause 15 stand part of the Bill—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 9.	Noes, 20.
The Hon. C. H. Bridgford,	The Hon. D. L. Arnott,
E. P. Cameron,	A. J. Bailey (*Teller*),
G. L. Chandler,	A. K. Bradbury,
V. O. Dickie (*Teller*),	T. W. Brennan,
T. H. Grigg (*Teller*),	P. T. Byrnes,
G. S. McArthur,	P. V. Feltham,
R. W. Mack,	D. P. J. Ferguson,
L. H. S. Thompson,	W. O. Fulton,
Sir Arthur Warner.	J. W. Galbally,
	J. J. Jones,
	P. Jones,
	J. A. Little,
	B. Machin,
	R. W. May (*Teller*),
	R. R. Rawson,
	M. P. Sheehy,
	A. Smith,
	I. A. Swinburne,
	F. M. Thomas,
	G. L. Tilley.

And so it passed in the negative.

By Authority: W. M. Houston, Government Printer, Melbourne.

19

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 8.

TUESDAY, 22ND OCTOBER, 1957.

No. 1.—BREAD INDUSTRY BILL.—Proposed new clause A—

A. (1) A flour miller shall not sell or deliver flour to a bread industry supplier or bread manufacturer and a bread industry supplier shall not sell or deliver flour to a bread manufacturer unless there is conspicuously affixed in the prescribed manner to every bag or other container in which such flour is so sold or delivered a specification in the prescribed form setting out the protein and maltose content of the flour and such other description of the ingredients contained therein and such particulars relating to the use of the flour in the manufacture of bread as are prescribed.

(2) Any flour miller or bread industry supplier who contravenes or fails to comply with the provisions of the last preceding sub-section shall be guilty of an offence and liable to a penalty of not more than Two hundred pounds.

—(*Hon. J. W. Galbally.*)

Motion made and question put—That new clause A be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 15.
The Hon. D. L. Arnott (*Teller*),	The Hon. A. K. Bradbury,
A. J. Bailey,	C. H. Bridgford,
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie,
P. Jones (*Teller*),	P. V. Feltham,
J. A. Little,	T. H. Grigg (*Teller*),
B. Machin,	G. S. McArthur,
R. R. Rawson,	R. W. Mack,
M. P. Sheehy,	A. R. Mansell (*Teller*),
W. Slater,	R. W. May,
A. Smith,	I. A. Swinburne,
F. M. Thomas,	L. H. S. Thompson,
G. L. Tilley.	Sir Arthur Warner.

The Tellers having declared the numbers for the "Ayes" and for the "Noes" to be respectively fifteen, or equal, the Chairman gave his voice with the "Noes" in order to allow of further consideration of the subject and declared the question to have passed in the negative.

12808/56. (140 copies.)

No. 2.—Bread Industry Bill.—Proposed new clause B—

Operative Bakers.

B. (1) No person shall work as an operative baker, that is to say, as a person engaged whether as principal or employé, in any or all of the processes of making or baking bread, otherwise than as an apprentice, and no bread manufacturer shall employ any person as an operative baker unless the person so working or so employed is the holder of a certificate of competency as an operative baker issued pursuant to this section for the time being in force.

(2) Any person who contravenes or fails to comply with any provision of the last preceding sub-section shall be guilty of an offence and liable to a penalty of not more than One hundred pounds.

(3) Every application for a certificate of competency as an operative baker shall be made in writing in the prescribed form to the Secretary to the Department of Labour and Industry and shall be accompanied by the prescribed fee and the Secretary shall submit all such applications to the committee for determination.

(4) Any person who applies for a certificate of competency within three months next after the commencement of this Part and who satisfies the committee that he was working as an operative baker immediately before the passing of this Act and is so working at the time of his application shall be entitled as of right to the issue of such a certificate.

(5) Any person who at any time applies for a certificate of competency as an operative baker shall be entitled to the issue of such a certificate if he satisfies the committee that he is duly qualified therefor in some manner prescribed by the Regulations.

—(*Hon. J. W. Galbally.*)

Motion made and question put—That new clause B be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 15.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	C. H. Bridgford (*Teller*),
T. W. Brennan (*Teller*),	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie,
P. Jones,	P. V. Feltham,
J. A. Little,	T. H. Grigg,
B. Machin (*Teller*),	G. S. McArthur,
R. R. Rawson,	R. W. Mack,
M. P. Sheehy,	A. R. Mansell,
W. Slater,	R. W. May (*Teller*),
A. Smith,	I. A. Swinburne,
F. M. Thomas,	L. H. S. Thompson,
G. L. Tilley.	Sir Arthur Warner.

The Tellers having declared the numbers for the "Ayes" and for the "Noes" to be respectively fifteen, or equal, the Chairman gave his voice with the "Noes" in order to allow of further consideration of the subject and declared the question to have passed in the negative.

By Authority: W. M. Houston, Government Printer, Melbourne.

21

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 9.

TUESDAY, 12TH NOVEMBER, 1957.

No. 1.—LOCAL GOVERNMENT BILL.—Proposed new clause B—

B. For sub-section (3) of section one hundred and forty-nine of the Principal Act there shall be substituted the following sub-section—

"(3) The regulations for the time being in force under this section relating to compulsory voting shall by force of this Act apply to all elections of councillors for every municipality; and the Governor in Council on the petition of the council of any municipality may by order published in the *Government Gazette*—

(*a*) apply to election of councillors for that municipality with any modification provided for in such order all or any of the regulations relating to voting by post made under this section; or

(*b*) alter or revoke any such order."

—(*Hon. G. L. Tilley.*)

Motion made and question put—That new clause B be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 16.
The Hon. D. L. Arnott (*Teller*),	The Hon. A. K. Bradbury (*Teller*),
A. J. Bailey (*Teller*),	C. H. Bridgford,
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie,
P. Jones,	P. V. Feltham,
J. A. Little,	W. O. Fulton,
B. Machin,	C. S. Gawith,
R. R. Rawson,	T. H. Grigg (*Teller*),
M. P. Sheehy,	G. S. McArthur,
W. Slater,	R. W. Mack,
A. Smith,	A. R. Mansell,
F. M. Thomas,	I. A. Swinburne,
G. L. Tilley.	L. H. S. Thompson,
	Sir Arthur Warner.

And so it passed in the negative.

12808/56. (140 copies.)

No. 2.—LOCAL GOVERNMENT BILL.—Proposed new clause A—

A. In section one hundred and thirteen of the Principal Act for the expression "Thursday or the Saturday next following (as the Council determines)" there shall be substituted the word "Saturday".

—(*Hon. G. L. Tilley.*)

Motion made and question put—That new clause A be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 15.	Noes, 16.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	C. H. Bridgford (*Teller*),
T. W. Brennan (*Teller*),	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie,
P. Jones,	P. V. Feltham,
J. A. Little,	W. O. Fulton (*Teller*),
B. Machin,	C. S. Gawith,
R. R. Rawson,	T. H. Grigg,
M. P. Sheehy,	G. S. McArthur,
W. Slater,	R. W. Mack,
A. Smith,	A. R. Mansell,
F. M. Thomas,	I. A. Swinburne,
G. L. Tilley (*Teller*).	L. H. S. Thompson,
	Sir Arthur Warner.

And so it passed in the negative.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

23

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1956-57.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 10.

WEDNESDAY, 4TH DECEMBER, 1957.

No. 1.—LOCAL GOVERNMENT (AMENDMENT) BILL.—Proposed new clause A—

A. In section one hundred and thirteen of the Principal Act for the expression "Thursday or the Saturday next following (as the Council determines)" there shall be substituted the word "Saturday".

—(*Hon. G. L. Tilley.*)

Motion made and question put—That new clause A be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 14.	Noes, 16.
The Hon. D. L. Arnott (*Teller*),	The Hon. A. K. Bradbury,
A. J. Bailey (*Teller*),	C. H. Bridgford,
T. W. Brennan,	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	G. L. Chandler,
J. J. Jones,	V. O. Dickie (*Teller*),
P. Jones,	P. V. Feltham,
J. A. Little,	C. S. Gawith (*Teller*),
B. Machin,	T. H. Grigg,
R. R. Rawson,	G. S. McArthur,
M. P. Sheehy,	R. W. Mack,
W. Slater,	A. R. Mansell,
A. Smith,	R. W. May,
G. L. Tilley.	I. A. Swinburne,
	L. H. S. Thompson,
	Sir Arthur Warner.

And so it passed in the negative.

THURSDAY, 5TH DECEMBER, 1957.

No. 2.—POLICE OFFENCES (CRUELTY TO ANIMALS) BILL.—Proposed new clause A—

A. At the end of section sixty-one of the Principal Act there shall be inserted the following sub-section :—

"(3) (*a*) Notwithstanding anything in section sixty-five of this Act no person shall—

(i) engage in ; or

(ii) keep or use any place or premises for the purpose of—

the trap shooting of live birds.

12808/56.

(140 copies.)

(*b*) In this sub-section 'trap shooting' means shooting at a bird which is released from a box trap cage or other contrivance used for the holding of a bird, or which after being held in captivity is released or projected whether by mechanical means or by hand."

—(*Hon. J. W. Galbally.*)

Motion made and question put—That new clause A be added to the Bill.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 13.	Noes, 15.
The Hon. D. L. Arnott, A. J. Bailey (*Teller*), T. W. Brennan, D. P. J. Ferguson, J. W. Galbally, J. J. Jones (*Teller*), J. A. Little, B. Machin, R. R. Rawson, W. Slater, A. Smith, F. M. Thomas, G. L. Tilley.	The Hon. A. K. Bradbury, P. T. Byrnes, E. P. Cameron, V. O. Dickie, P. V. Feltham, W. O. Fulton (*Teller*), C. S. Gawith, T. H. Grigg, G. S. McArthur, R. W. Mack, A. R. Mansell, R. W. May, I. A. Swinburne, L. H. S. Thompson (*Teller*), Sir Arthur Warner.

And so it passed in the negative.

No. 3.—Fraser National Park Bill.—Clause 1—

1. (1) This Act may be cited as the *Fraser National Park Act* 1957 and shall be read and construed as one with the *National Parks Act* 1956 which Act and this Act may be cited together as the National Parks Acts.

(2) Sections two three and seven of this Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette.*

—(*Hon. Sir Arthur Warner.*)

Amendment proposed—That the word "*Fraser*" be omitted with the view of inserting in place thereof the word "*Eildon*".

Question—That the word proposed to be omitted stand part of the clause—put.

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 19.	Noes, 10.
The Hon. A. J. Bailey, A. K. Bradbury, T. W. Brennan, C. H. Bridgford, P. T. Byrnes, E. P. Cameron, V. O. Dickie, P. V. Feltham (*Teller*), C. S. Gawith, T. H. Grigg (*Teller*), P. Jones, J. A. Little, G. S. McArthur, R. W. Mack, A. R. Mansell, R. W. May, I. A. Swinburne, L. H. S. Thompson, Sir Arthur Warner.	The Hon. D. L. Arnott (*Teller*), D. P. J. Ferguson, J. W. Galbally, J. J. Jones, B. Machin, R. R. Rawson, W. Slater, A. Smith, F. M. Thomas, G. L. Tilley (*Teller*).

And so it was resolved in the affirmative.

No. 4.—State Savings Bank (Amendment) Bill.—Clause 8—

8. In paragraph (7) of the exemptions under the heading "1. BILLS OF EXCHANGE AND PROMISSORY NOTES" in the Third Schedule to the *Stamps Act* 1946 as amended by any Act after the words "Savings Bank" there shall be inserted the expression "(not being a cheque drawn by a depositor on an account in a Savings Bank unless such cheque is exempt under another exemption in this Schedule)".

—(*Hon. Sir Arthur Warner.*)

Motion made and question put—That it be a suggestion to the Assembly that they make the following amendment in the Bill, viz. :—

Clause 8, omit this clause.

—(*Hon. W. Slater.*)

Committee divided—The Hon. D. J. Walters in the Chair.

Ayes, 14.	Noes, 15.
The Hon. D. L. Arnott,	The Hon. A. K. Bradbury,
A. J. Bailey,	C. H. Bridgford (*Teller*),
T. W. Brennan (*Teller*),	P. T. Byrnes,
D. P. J. Ferguson,	E. P. Cameron,
J. W. Galbally,	V. O. Dickie,
J. J. Jones,	P. V. Feltham,
P. Jones,	C. S. Gawith,
J. A. Little,	T. H. Grigg,
B. Machin (*Teller*),	G. S. McArthur,
R. R. Rawson,	R. W. Mack,
W. Slater,	A. R. Mansell,
A. Smith,	R. W. May (*Teller*),
F. M. Thomas,	I. A. Swinburne,
G. L. Tilley.	L. H. S. Thompson,
	Sir Arthur Warner.

And so it passed in the negative.

By Authority: W. M. Houston, Government Printer, Melbourne.

1956-57

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

A PROPOSAL TO CONSOLIDATE AND AMEND THE LAW RELATING TO

JUSTICES OF THE PEACE AND COURTS OF GENERAL SESSIONS

Ordered by the Legislative Assembly to be printed, 9th April, 1957

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

2633/57.—D.—No. 1.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Director of Statutory Consolidation, Mr. R. C. Normand, brought before the Committee a draft of the Justices Bill—a Bill to consolidate and amend the Law relating to Justices of the Peace and Courts of General Sessions.

Section 344 of *The Constitution Act Amendment Act* 1956 provides that one of the functions of the Committee shall be " to examine proposals for the consolidation of statutes ".

The Committee undertook an examination of the proposed consolidation.

2. The evidence of the Director of Statutory Consolidation is appended to this Report.*

3. The Director drew the attention of the Committee to clauses 31 (2), 55, 60 (8), 146 and 153 (2) of the proposed consolidation—all relating to warrants for the apprehension of absconders. The present provisions relating to these warrants contain small variations of wording and an attempt has been made in the consolidation to make all the provisions the same. Nothing new has been introduced.

4. Clauses 50 (5), 92 (5), 118 (1), 120 and 122 propose verbal alterations of the existing law relating to warrants of commitment. The Director assured the Committee that the alterations made are those which should have been made consequentially in 1938 when the main provisions in the Justices Act were altered to provide that any person apprehended on a warrant of commitment could be taken to the gaol named in the warrant or any other gaol which was more accessible or more convenient. Forms in the Schedule to the Act were consequentially altered in 1938, but small inconsistencies remained. The alterations proposed in the above-mentioned clauses are designed to remove these inconsistencies.

5. The words " opposite, or as nearly opposite as is reasonably practicable " have been inserted in sub-clause (3) of clause 21 of the proposed consolidation to provide for circumstances in which it is mechanically impossible to make necessary endorsements actually opposite an alteration.

6. Affidavits of service of copies must at present be endorsed on the original summons. Compliance has been found difficult if not impossible when copies of one summons are to be served on several parties. In clause 23 (4) the Director has used the words " or shall make an affidavit endorsed on, or attached to and identifying, the original summons " to permit affidavits of service to be either endorsed on or attached to original summonses.

7. Clause 60 (3), the new provision relating to certificates of consent to bail, excludes the reference in the present provision to the endorsement of consent on the back of a warrant. Future endorsements will be made on the face of a warrant where they can be seen readily.

8. In clause 68 (4) the word " complainant " has been substituted for " plaintiff ", as the appropriate designation in proceedings in courts of petty sessions.

9. A verbal alteration, the insertion of the words " or offer ", has been made in clause 130 to complete a phrase which refers back to a similar phrase.

* *Minutes of evidence not printed.*

10. In clause 155 (5) the words "Five pounds sterling" have been altered to read "Five pounds" in consonance with the principle of expressing all sums of money in Australian currency.

11. Certain consequential amendments were made to the Justices Acts following the passing of the Limitation of Actions Act. In order to make further consequential amendments which the Director, in consultation with the Parliamentary Draftsman, found to be necessary, clauses 179 and 180 have been re-drafted and one section of the Justices Act omitted.

12. The forms in the Second Schedule to the Justices Act have been altered from time to time by rules made under section 6 of the Act. The Director informed the Committee that no complete official record has been kept of the alterations made and that the forms in the proposed new Second Schedule are as nearly as possible those at present being used in the courts.

13. The title of the proposed consolidation indicates that it is "A Bill to consolidate and amend the Law . . . . ."

The Committee has examined the amendments which were brought to its notice by the Director and is of opinion that all are incidental to the consolidation and are such as may properly be included in a proposal for consolidation.

14. The Committee recommends the Bill, when introduced, to Honorable Members for a speedy passage.

Committee Room,
12th February, 1957.

By Authority: W. M. Hornton, Government Printer, Melbourne.

1956-57

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VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

ANOMALIES IN THE STATUTE LAW RELATING TO CIVIL PROCEEDINGS BY AND AGAINST THE CROWN

TOGETHER WITH

EXTRACTS FROM THE PROCEEDINGS OF THE COMMITTEE, APPENDICES, AND MINUTES OF EVIDENCE

Ordered by the Legislative Council to be printed, 16th April, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

11515/56.—D.—No. 2.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Honorable the Attorney-General, by letter dated the 8th November, 1955, recommended to the Statute Law Revision Committee that it should examine anomalies in the Statute Law relating to civil proceedings by and against the Crown in relation to—

(*a*) the ownership occupation possession or control of property by the Crown or its servants agents or independent contractors ;

(*b*) the exercise by servants of the Crown of functions otherwise than on instructions lawfully given by the Crown ;

(*c*) generally, any other matter.

The Committee adopted this recommendation and commenced its enquiries.

2. In July, 1952 a previous Statute Law Revision Committee presented to both Houses of Parliament a Report on the proposals contained in the Crown Proceedings Bill (D.No. 3—Victorian Parliamentary Papers of 1951–52). In the words of that Committee, the 1952 Bill " was introduced in the Legislative Council as a Private Member's Bill by the Honorable A. M. Fraser and its main objects are to assimilate the liability of the Crown, both as regards tort and contract, to the liability of any subject of the Crown and also to assimilate the procedure in legal proceedings against the Crown to the normal procedure in legal proceedings as between subject and subject."

The previous Statute Law Revision Committee in its report, whilst affirming the principles of the Bill, recommended certain amendments. The Bill, however, lapsed at the conclusion of the 1951–52 session.

3. On the 31st August, 1955, a new Crown Proceedings Bill* was initiated and read a first time in the Legislative Assembly. In moving the second reading of the Bill on 6th September, 1955, the Honorable the Attorney-General outlined to the House its departures from the earlier Bill as recommended by the previous Statute Law Revision Committee. The Committee in pursuing its enquiries into the matters referred to in paragraph 1 of this report was undertaking what was very largely an examination of these points of difference between the 1952 Bill and the 1955 Act.

4. Appended to this Report is the evidence given by the following witnesses who appeared before the Committee :—

Mr. H. A. Winneke, Q.C., Solicitor-General.
Professor Zelman Cowen, Dean of the Faculty of Law of the University of Melbourne.
Mr. R. N. Vroland .. } representing the Council of the Law Institute of
Mr. A. Heymanson .. } Victoria.
Mr. D. I. Menzies, Q.C. }
Mr. G. Lush .. .. } representing the State Electricity Commission of
Mr. N. H. Dooley .. } Victoria.
Mr. J. L. Baskett, Estates Officer, Forests Commission of Victoria.
Mr. J. J. Lynch, Assistant Parliamentary Draftsman.
Mr. A. E. Poynton, Secretary of the Victorian Public Service Association.

Also appended to the Report are memoranda which were submitted to the Committee by Professor Zelman Cowen and Mr. Peter Brett, the Under-Secretary, the Chief Commissioner of Police, the Insurance Commissioner, the Crown Solicitor, the Secretary, State Electricity Commission, and the Secretary for Railways.

* *This Bill was assented to on 2nd November*, 1955.

In addition to the evidence and memoranda tendered to it the Committee had the benefit of a very helpful conference with Mr. Porter, the Chief Commissioner of Police. It obtained from the Crown Solicitors of a number of Australian States details of the practical application of the law on relevant aspects of Crown proceedings in those States. The Committee also had before it the evidence given to the previous Committee.

The Committee extended an opportunity to express their views to the various Government departments and instrumentalities which it considered might be affected by the proposed alterations in the law regarding Crown proceedings.

5. The Committee undertook, with the valued assistance of Professor Cowen, a detailed examination of the relevant aspects of the statute law of the United Kingdom, Commonwealth of Australia, New Zealand, the various Australian states, and the United States of America for the purposes of comparison with the law in Victoria.

Liability in Tort for Property.

6. The previous Committee recommended, in paragraph 7 of its Report, an amendment to the 1952 Bill to provide that " ( ) Without prejudice to the generality of the last preceding sub-section and subject to this Act the Crown shall be subject to all those liabilities in tort to which if it were a private person it would be subject in respect of any breach of the duties attaching at common law to the ownership occupation possession or control of property."

The proposed amendment follows closely the lines of the United Kingdom *Crown Proceedings Act* 1947 (10 and 11 Geo. VI. C.44).

No provision along these lines was embodied in the *Crown Proceedings Act* 1955, and it appears to this Committee that the intention of that Act was to impose on the Crown a *vicarious* but not an *original* liability in tort.

7. This Committee agrees in principle with the amendment referred to, and endorses the view expressed by the previous Statute Law Revision Committee that " it was under present day conditions unjust to private persons that the Crown in Victoria should continue to enjoy immunity from certain liabilities to which ordinary individuals are subject."

8. The above proposal for amendment does not, in the opinion of this Committee, go far enough in that it expressly includes liability at common law and implicity excludes liability imposed by statute. The Committee commends the proposal of the previous Committee but with the words " at common law " deleted so as to enact the general principle that the Crown will be liable in those circumstances in which an ordinary individual is liable whether the liability stems from the common or the statute law.

The Committee does not intend that the enactment of this principle should cancel existing statutory provisions which expressly give special protection to the Crown and its instrumentalities, but feels that following the enactment of the principle each such provision should be examined in the light of the Crown's generally altered position in relation to liability in tort.

9. This Committee further recommends that the proposed liability of the Crown for the duties attaching to the ownership, occupation, possession or control of property be confined to liability in respect of buildings, other structures, and the immediately contiguous lands.

In view of the vast areas of forest reserves and unalienated Crown lands existing in this State, the Committee considers that to place the Crown in the same position as a private occupier with regard to land, as distinct from buildings and their surrounds, would be undesirable as imposing a vast burden upon the Crown. The Committee realizes that the distinction proposed herein was not drawn in the United Kingdom Act (referred to *ante*), nor is it consistent with the general principle set out in paragraph 7 hereof. However the United Kingdom situation may be distinguished inasmuch as Victoria is much more sparsely settled and the area of unalienated Crown Land is vastly greater than in the United Kingdom. This creates, in the opinion of the Committee, very special circumstances, which on grounds of public policy justify departure from the general principle expressed herein.

Liability for Actions of Officers Exercising Independent Authority or Discretion.

10. The 1952 Bill as recommended by the previous Committee in its Report contained an extended definition of the word " servant " (clause 2), which, coupled with sub-clause (3) of clause 4 of the Bill, was intended to render the Crown liable for the actions of members of the Police Force and various other persons employed in the governance of the State whose relationship to the Crown was not that of servant and master in the ordinary legal sense.

These provisions have been omitted from the *Crown Proceedings Act* 1955, the effect being, your Committee has been advised, that the Act renders the Crown liable in tort only where the ordinary relationship of master and servant exists between the Crown and the actual wrongdoer. Policemen and other public servants who exercise an independent discretion conferred by law will be to some extent outside the provisions of the Act, so that the Crown will neither be liable for their torts nor conversely able to sue tortfeasors who occasion damage to them.

11. Your Committee has carefully examined a proposal that the Act should be amended to widen the scope of Crown liability to conform to the proposals of the 1952 Bill in the above regard. It considers however that such an amendment would involve a new conception of legal theory and that it would seriously weaken the sanction attaching to the individual officer who exercises the discretion.

The Committee therefore does not recommend any amendment of the Act with regard to this matter.

Miscellaneous.

12. The Committee examined a proposal that express reference should be made in section 4 of the Crown Proceedings Act, with regard to liability for quasi-contract. It does not, however, consider such an amendment necessary.

13. It was suggested to the Committee that sub-section (2) of section 4 of the Act, exempting the Crown from liability " in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibility of a judicial nature invested in him ", was too wide in its scope, and required amendment. The Committee is not convinced of the need for a narrower definition, and accordingly makes no recommendation in the matter.

14. The Committee examined a suggestion that the term " public statutory corporation " used in section 4 of the Act should be defined in the legislation. As the section now reads there may still be doubts in some cases as to whether a prospective litigant should sue the public body or the Crown. The plaintiff who wrongly sues the Crown instead of the public body (or *vice versa*) may find himself faced with an order for costs or may be out of time when he brings a fresh suit against the correct defendant.

In the opinion of the Committee the best way of meeting the difficulty is that sub-section (3) of section 4 of the Act be amended to provide that for the purposes of the Act no " declared public body " shall be regarded as the Crown, its servant or agent, and further to provide that the Attorney-General may from time to time by proclamation published in the *Government Gazette* declare bodies to be " declared public bodies " for the purposes of the Act.

15. The Committee examined the procedural issue of whether the Crown should be required to make discovery and answer interrogatories. No provision was made in the *Crown Proceedings Act* 1955 with regard to this matter, and in the absence of a provision there is some doubt as to whether the courts would follow the doctrine of *Robinson* v. *State South Australia* (1931 A.C. 704) or that of *Duncan* v. *Cammell Laird* (1942 A.C.624).

The United Kingdom Parliament made provision (by section 28 of the *Crown Proceedings Act* 1947) whereby the Crown may be required by the court to make discovery and answer interrogatories. The provision however makes exception in the case of documents where " in the opinion of a Minister of the Crown, it would be injurious to the public interest to disclose the existence thereof."

16. The Committee recommends the enactment of a provision along the lines of section 28 of the United Kingdom Act. It considers that the Minister should have the right to decide conclusively whether a document should be witheld in the public interest.

17. The Committee has received evidence that the administration of the United Kingdom section has been the subject of criticism. It considers, however, that the public interest and the security of the State should prevail over the right of the individual litigant to obtain discovery of relevant documents and furthermore that the most effective way to protect the public interest is to give to the Minister the conclusive right to withold the documents where he considers the circumstances warrant it.

18. The Committee draws attention to the possibility that provisions such as that of Section 15 of the *Forests Act* 1939, which were enacted against a general background of Crown immunity in tort, may require review in the light of the *Crown Proceedings* Act 1955.

19. The Committee, in conclusion, expresses appreciation of those who have assisted in the furtherance of this enquiry, whether by the presentation of evidence, the submission of documents, or in the course of its deliberations.

Committee Room,

28th March, 1957.

DIVISIONS

The following extracts from the Minutes of the Proceedings of the Committee show Divisions which took place during the consideration of the Draft Report:—

WEDNESDAY, 13TH MARCH, 1957.

DRAFT REPORT.

Paragraph 9.

This Committee further recommends that the proposed liability of the Crown for the duties attaching to the ownership, occupation, possession or control of property be confined to liability in respect of buildings, other structures, and the immediately contiguous lands.

In view of the vast areas of forest reserves and unalienated Crown lands existing in this State, the Committee considers that to place the Crown in the same position as a private occupier with regard to land, as distinct from buildings and their surrounds, would be undesirable as imposing a vast burden upon the Crown. The Committee realizes that the distinction proposed herein was not drawn in the United Kingdom Act (referred to *ante*), nor is it consistent with the general principle set out in paragraph 7 hereof. However the United Kingdom situation may be distinguished inasmuch as Victoria is much more sparsely settled and the area of unalienated Crown land is vastly greater than in the United Kingdom. This creates, in the opinion of the Committee, very special circumstances, which on grounds of public policy justify departure from the general principle expressed herein.

Mr. Rawson moved—That paragraph 9 of the Draft Report be amended as follows:—

Delete the words commencing "further recommends" down to the end of the paragraph and insert "carefully considered a suggestion that the proposed liability of the Crown for the duties attaching to the ownership, occupation, possession or control of property be confined to liability in respect of buildings, other structures and the immediately contiguous lands.

It was suggested that, in view of the vast areas of forest reserves and unalienated Crown lands existing in this State, to place the Crown in the same position as a private occupier with regard to land as distinct from buildings and their surrounds, would impose too great a burden upon the Crown.

The Committee, however, does not favour this suggestion. The distinction between land and buildings &c., was not drawn in the legislation of either the United Kingdom (10 and 11 Geo. VI., C44, s.2. (c)), New Zealand (Act No. 54 of 1950, s 6 (c)), the Commonwealth of Australia or the other Australian States. The Committee has heard no evidence to indicate that in any of these cases has the legislation imposed an intolerable burden upon the Crown. The Committee therefore sees no reason for departing from the principle which appears to have proved satisfactory in the Commonwealth and the other States of Australia, furthermore in this view it is supported by the report of the previous Statute Law Revision Committee (paragraph 7) and the Chief Justice's Law Reform Committee Report of 1948 (Paragraph 7 (*b*)).

The Committee considers that the Crown should be as nearly as possible in the same position as a private individual as regards liability in tort, and this being so does not favour the drawing of distinctions and making of exceptions in the statute law except where very sound reasons exist. The Crown has already been made liable in tort for a number of matters by the *Crown Proceedings Act* 1955 and by other previous enactments such as section 15 of the *Forests Act* 1939. To broaden the area of Crown liability in tort the Committee recommends the enactment of a provision as set out in paragraph 6 hereof, but with the amendment recommended in paragraph 8 of this report."

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 3.	Noes, 6.
The Hon. R. R. Rawson,	Mr. Barclay,
The Hon. A. Smith,	The Hon. P. T. Byrnes,
Mr. Sutton.	The Hon. W. O. Fulton,
	Mr. Manson,
	The Hon. L. H. S. Thompson,
	Mr. Wilcox.

Amendment negatived.

Paragraph 11.

Your Committee has carefully examined a proposal that the Act should be amended to widen the scope of Crown liability to conform to the proposals of the 1952 Bill in the above regard. It considers however that such an amendment would involve a new conception of legal theory, that it would seriously weaken the sanction attaching to the individual officer who exercises the discretion. Perhaps some insurance scheme whereby the Crown could be indemnified in respect of medical expenses and other financial loss resulting from the injury of the officer, and conversely any injured person could recover in respect of damage occasioned by a negligent officer, may be feasible. This however is outside the scope of this Committee's enquiry.

The Committee therefore does not recommend any amendment of the Act with regard to this matter.

Mr. Rawson moved—That paragraph 11 of the Draft Report be amended as follows :—

Delete the words commencing " It considers however " down to the end of the paragraph and insert " It affirms the view of the previous Committee and of the Chief Justices' Law Reform Committee (Paragraph 7 (*c*)) that a provision along the lines of section 2 (3) of the United Kingdom Act should be enacted in Victoria, to the effect outlined in Paragraph 10 of this report. The Committee considers that it is anomalous that police constables and other persons similarly employed by virtue of the historical development of the law, should be regarded not as servants of the Crown, and that therefore the Crown should not be liable for their actions.

The Committee is not enamoured of the argument that to render the Crown liable for the actions of these officers would seriously weaken the sanction attaching to the particular officer. Such an argument would be applicable to the case of any employer and employee. Furthermore there may be other sanctions equally effective which apply to the individual officer. The situation now pertaining whereby police officers are personally liable for quite extensive damages as tortfeasors, without the Crown being also liable is considered by the Committee to be undesirable. Similarly the inability of the Crown to sue where it suffers damage to its property and its servants in certain cases is also undesirable.

It is the opinion therefore of this Committee that the Crown should be responsible for the torts of all persons whom it employs in the governance of the State."

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 2.	Noes, 7.
The Hon. R. R. Rawson,	Mr. Barclay,
The Hon. A. Smith.	The Hon. P. T. Byrnes,
	The Hon. W. O. Fulton,
	Mr. Manson,
	Mr. Sutton,
	The Hon. L. H. S. Thompson,
	Mr. Wilcox.

Amendment negatived.

MINUTES OF EVIDENCE

WEDNESDAY, 26TH SEPTEMBER, 1956.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. W. O. Fulton,	Mr. Lovegrove,
The Hon. T. H. Grigg,	Mr. Wilcox,
The Hon. R. R. Rawson,	Mr. Sutton,
The Hon. L. H. S. Thompson.	Mr. Mitchell.

Mr. H. A. Winneke, Q.C., Solicitor-General, was in attendance.

The Chairman.—We have to consider the opening of an inquiry into Crown proceedings and the terms of reference are included in a letter on the front of the folio. A letter from the Attorney-General includes these words, "It is recommended to the Statute Law Revision Committee that they should examine anomalies in the Statute Law relating to civil proceedings by and against the Crown in relation to—

(*a*) the ownership occupation possession or control of property by the Crown or its servants agents or independent contractors;

(*b*) the exercise by servants of the Crown of functions otherwise than on instructions lawfully given by the Crown;

(*c*) generally, any other matter."

In order that this inquiry may proceed in its smoothest form we are fortunate in having Mr. Winneke present to give the Committee a background to the subject and to open up the inquiry so that we may know the extent of it and the avenues we should explore.

Mr. Winneke.—I thought that it might be useful to the Committee if I said a few words about the background of this problem and the stage to which the law has now been brought. You will remember that the Crown Proceedings Bill became law in 1955 and, as I see it, that Bill did two main things. Before 1955 the Crown in Victoria was liable in contract, but the contracts were only enforceable against the Crown by a rather archaic procedure, and so far as contract was concerned the Act of 1955 confirmed the liability of the Crown in contract but wiped away the archaic procedure. So far as contract was concerned, the Act did not make any difference in the substance of law but left the Crown liable in contract. It simplified the procedure and brought things into line with the ordinary procedure by action. So far as torts were concerned, prior to 1955 the Crown was not liable in tort and the Act of 1955 made a big alteration in the law because it provided that in Victoria for the first time the Crown should be liable in tort for the wrongful acts or omissions of its servants, agents or independent contractors and again, it provided that the simplified procedure introduced for contracts should also apply to actions of tort. So that what you have done up to date is this: You have confirmed the liability of the Crown in contract, you have made the Crown liable in tort for the actions of its servants and agents and provided the ordinary simple procedure for enforcing that law that exists between subjects. That is the background of it.

When I said that we made the Crown liable in tort I said that you made it liable in tort for the actions of its servants, agents, or independent contractors. That is what you did and that is all you did. You did not make the Crown, as it were, personally liable for its own torts. You said that if any of your servants or agents in performance of their duties commit a tort the Crown will be liable for the tort. The Act of 1955 introduced a true vicarious liability, a secondary liability, as distinct from the liability for some wrongful act the Crown has done, not through an agent or servant. That was done at the time, advisedly, because if you went further than that at the time you would have brought in changes which have been argued about for the last 100 years; you would have brought in consequences which may have been far-reaching in their effects and therefore Parliament stopped at the vicarious liability and said that it would leave over for other consideration various other aspects worthy of consideration. I think that it is those aspects left over which you have been commissioned to inquire into now. What you have done to date is that you have made the Crown liable in tort. We can forget about contract, you have made the Crown liable in tort, but you have limited the liability to vicarious liability, the liability for acts of its servants or agents.

As I see it, there are two major matters outstanding for your consideration, and the first one is this. Should the Crown now be made liable as an occupier of property? That is one of the matters which has been left outstanding. It is a difficult problem. It involves some very difficult concepts, and if I may say so, with respect, after I have outlined what is involved in this, this is an aspect on which you would be very wise indeed to acquire as much all-round information as you can from interested people. This is not the kind of thing to rush into without examining it thoroughly. Speaking of this liability as an occupier, in all probability you realize that the private occupier of property may be liable for injuries which arise out of the dangerous state of his premises, or he may be liable for damage caused by dangerous things which escape from his premises, speaking broadly. You all realize that as far as you are concerned, as tenants or owners of your houses or flats, if you have faulty stairs or bannisters or a hole in your front path and somebody falls into it, the law imposes certain liabilities on you for damages done to other people, according to the character of the person who comes in. Similarly, if you like to light a fire on your property or build a dam and bring a quantity of water there, artificially, and it gets away and rushes through other people's property, you will be in trouble because of the liabilities that the law attaches to you. It is sufficient

for me to say this, that lawyers have built up a mighty and complicated code of law dealing with liability of occupiers. What happens is this:

A person who enters a property may enter in various capacities. If you go down to the Melbourne Cricket Ground to see a Grand Final and you pay your admittance fee you can enter pursuant to a contract. You have paid to go in. That is one respect in which you can go in, and that is the highest position that the law recognizes. If you pay or give some other consideration to go on somebody else's property so that you enter as a contractor, then, the occupier owes you a high duty of care to see that the premises are as reasonably safe as anybody can make them. Another class of person is anyone who enters a shop to examine a suit or a wireless set or something like that, or to have a look around the shop. You go into the shop presumably on some kind of business in which you and the occupier of the shop have a mutual interest. You are called an invitee, and the law says that the owner owes you a duty. Then, there is a third class of person called a licensee. You could be walking along a street and looking for somebody's house, not knowing where it was. You could go into my place and ring the bell, and ask if I knew where Bill Smith lived. That person could come into my house to make an inquiry but not on any business. So far as he is concerned, the law says that you owe some duty of care to him, but a lesser duty than one who comes on business or as a contractor. The fourth category is a trespasser, one who has no right to be on the property at all. The trespasser must take the property as he finds it. Even so, there are some limitations. You are, for instance, not allowed deliberately to injure a trespasser. I am endeavouring to indicate to you that there is a whole code and body of law which has been built up over the years dealing with liability.

Mr. Mitchell.—Say, for instance, I invited someone to spend a week-end in the house, as a friend. What is my obligation towards him?

Mr. Winneke.—The person you invited would go as a friend, and he is probably a licensee. Although you invite him to go, that does not of itself make him an invitee. The purpose for which he goes may make him an invitee.

Mr. Mitchell.—It appears to me that if I went into your place and asked if Mr. Reilly lived there that would put me in a different category.

Mr. Winneke.—The extent of the duty was not so great.

Mr. Mitchell.—The person who wanders up fortuitously and asks the way to the Olympic Swimming Pool is in the same category as the person you ask to dinner.

Mr. Winneke.—Yes.

Mr. Mitchell.—There is a person who comes on the premises on a contractural obligation, the man who comes to paint the house, the licensee who comes in, not for business but for information or pleasure, and there is the trespasser. With him, you cannot set a dingo trap.

Mr. Winneke.—If he falls into that he cannot get any compensation for it.

Mr. Mitchell.—You cannot set any trap for him?

Mr. Winneke.—I do not think you could do it, intentionally.

Mr. Wilcox.—You would not have to put up a notice of warning that there were traps made.

Mr. Byrnes.—If he was injured you would be liable?

Mr. Winneke.—You might be liable for something, but not under the law of occupiers.

Mr. Lovegrove.—Is the onus of proof to prove that a person is not a trespasser?

Mr. Winneke.—If a man brings an action against you for damages suffered on your property, the onus is on him to prove that he falls within a category that entitles him to damages. You would have to prove you had come on contract with him, for business, or as a licensee.

If I have made that clear to the Committee, there you have the general position of the private occupier. You will see that the kind of liability I am speaking of is what you might call an original as distinct from a vicarious or secondary liability. It is not because of what any agent, servant, or independent contractor of yours has done that you are liable, but because you have allowed your own premises to be in a certain condition, and therefore it is not a vicarious liability, but one which belongs to the occupier. It is that distinction which means that the Act you have already passed in 1955 will not cover it as far as the Crown is concerned, because the 1955 Act made the Crown liable in tort only for the torts of its servants, agents, or independent contractors, and that was done deliberately.

Mr. Byrnes.—If a man goes into a Crown forest, there is no liability?

Mr. Winneke.—No, but subject to this there is no liability on the Crown as an occupier of property, whether a man is a contractor, an invitee, or what he may be. If the person on the Crown land is injured through the negligence of any servant or agent, the Crown is liable but not an an occupier of the property. Supposing a man went into the Crown forest and an employee of the Lands Department was driving a tractor and ran him down through negligence, even if he were a trespasser the Crown would be liable for that, but it would not be liable for injury arising from the dangerous state of the Crown land. If there were a disused mine shaft which had not been operated for a time, and a man fell down it, the Crown would not be liable.

Mr. Wilcox.—Supposing a ditch had been built and a person came as an invitee at night, and fell into it, would the Crown be liable?

Mr. Winneke.—I think that is a difficult question. It might depend very much on the particular circumstances of that case. It could be if you could say there was negligence distinct from the condition of the premises and a duty owed to the person injured. I think I have been saying that under the law the Crown is not liable for its ownership of property in the sense of dangers arising out of the condition of the property. I do not wish you to form the idea that there is no liability on the Crown for injuries which may have been sustained.

Mr. Lovegrove.—Supposing you went to the Zoo and an animal bit you?

Mr. Winneke.—There might be liability, because the men who are supposed to keep the animals in the cages could be guilty of some act of negligence or carelessness for allowing the animals to get at people.

Mr. Thompson.—What would be the position of a licensee in a Crown forest if, in the removal of a number of trees, he was hit by a falling tree.

Mr. Winneke.—He would be an invitee because he is there on business in which he and the Crown have a mutual interest. He would be a licensee as far as the licence to take the timber was concerned but, as far as occupation was concerned, he would be an invitee.

There is the problem for the Committee. What I have tried to show you is that there is a large body of law which makes a private occupier of property subject to extensive duties in relation to people coming on the premises. At the moment, that liability does not attach to the Crown. The first point you have to consider is, having regard to the present state of the development of Victoria and the implications involved, should this Parliament, as a matter of policy in the public interest, should it or should it not at this stage attach that liability to the Crown? There is a further question which arises. If you say, yes, there should be some liability attached to the Crown as an occupier of property then, should that liability be limited to the Crown's occupation of buildings such as Parliament House, law courts, police stations, railway buildings, &c. Should it be limited to that so that if people go in and the stairs give way the Crown should be liable in the same way as a private occupier, or should the liability be unlimited as in the case of an individual. In considering whether there should be unlimited liability the Committee must seriously consider the vast tracts of unalienated Crown lands which exist in this State. It is said that in England the liability of the Crown in unlimited. Of course, England is a very much older country than this. One important factor to be considered, looking at the State as a whole, is whether we are not relatively sparsely populated in the country areas. I think it is true to say there are very large tracts of unalienated land.

It means that if unlimited liability for property is given, there may be great bush fires and floods. At this stage of development of the State, with facilities and finances available, what is the best to do in the public interest?

Is it better to say, in the public interest, "At this stage, let us develop the State as we are endeavouring to do at the present time, and if an odd tragedy happens, as sometimes it will, then we will do what we can on compensatory grounds and with public assistance to help the individual who suffers the tragedy?"

Is it better to do that, rather than to say that we will put the individual in front of the public interest, and say, "No, if somebody has bad luck in one of these disasters, whether the amount is one thousand pounds or one thousand million pounds, we will make the public as a whole pay." What is the best for the State? I do not know, and I think that is the kind of inquiry this Committee has to make.

Mr. Barclay.—Do you think it would be possible for people who had suffered loss from flooding to claim compensation from the Government?

Mr. Winneke.—Yes, if the Crown were liable.

Mr. Thompson.—What is the position of the Crown, or its equivalent, in the United States and Canada?

Mr. Winneke.—I have not investigated that position.

Mr. Rawson.—Can you say what is the position in other States of the Commonwealth?

Mr. Winneke.—I cannot say; I do not know what has been done in respect of property. I think it will probably be found that they have gone the whole way.

Mr. Fulton.—What avenues could be explored to ascertain that information?

Mr. Winneke.—I think probably the best people to ask would be the draftsmen.

Mr. Byrnes.—In South Australia, I think it has been found concerning the relationship between the State and the equivalent of the State Rivers and Water Supply Commission that that body was protected much more than in Victoria.

Mr. Mitchell.—There is also the position in New Zealand.

Mr. Winneke.—Yes. One would require to look at the Commonwealth Act which makes the Crown generally liable in tort. However, the point is that it is not so important from the Commonwealth point of view because the Commonwealth is not the owner of vast tracts of unalienated land.

The first important question to ask is, "Are we going to attach the liabilities of an occupier to the Crown?" If we are, are we going to say, "We will make you liable in respect of some things" or do we go the whole way and say, "There will be full liability."

The main danger there is with fire and flood. Of course, one difficulty is that there are special cases where the law of liability is absolute in cases of fire and water. It is not based on lack of care or skill, but it is based on the fact that water is brought from a large dam on to the land or some timber may be burnt to get rid of pests.

In these cases, the liability of the occupier is absolute, irrespective of how much skill on the part of anybody has been used.

That is why it is difficult to say that the law relating to occupiers really fits into any one definite category of the law of torts. They cover special branches. I think it is true to say that on the whole, during the last fifty years, and particularly in the last ten or fifteen years, the tendency may be seen on the part of the English Courts to rationalize all this business and really bring it down, so far as people entering the premises are concerned, to a straight-out branch of the law of negligence.

Mr. Barclay.—Would it apply to the State Rivers and Water Supply Commission in cases of water escaping over a man's crop?

Mr. Winneke.—They have certain statutory protections. It is difficult to apply the ordinary common law rule of an occupier to some of these statutory bodies, because they have special protections in their own statutes.

When the Committee comes to consider whether it will be imposing an undue burden on the community as a whole, making it liable in respect of water or fire, it must look at the provisions, for instance, in the Forests Acts and the Water Acts, to see what is the extent and how far it can go. That is the first problem in relation to the occupier of property.

I now come to the second problem which, in some ways, I think is an even more difficult one; in the general service of the Crown there are some officers or servants who exercise discretions and authorities which come to them not from their superior officers but from common law, or by statute.

The Attorney-General, myself as Solicitor-General, and the Crown Prosecutor have the power of indictment under the Crimes Act. I think that is a very wide power to be given to any person. It is a very

dangerous power, the right to put anybody on trial by signing a document. As I stated, there are three persons who have that power under the Crimes Act.

For instance, supposing I put somebody on trial, maliciously or negligently, and I sign a presentment, I can be sued for that. That could apply to the Attorney-General and also the Crown Prosecutor. However, the Crown cannot tell me not to do it. Nobody can tell me not to do it. If I do it negligently or maliciously, should the Crown be liable for my act?

Again, a policeman may see a man in the street behaving in some improper way and so arrest him. It would not matter if the Chief Commissioner were walking along and he said, "Do not arrest that man." The policeman can arrest him. He would be perfectly right to make the arrest and he should do so if he considered he were right in so doing.

Mr. Fulton.—But a charge of wrongful arrest could be made against the policeman.

Mr. Winneke.—Yes, or of malicious prosecution. Supposing the policeman does act wrongly. Should the Crown be liable, also? The Crown is not liable under our existing Statute because, as I stated, the existing Statute only makes the Crown liable for the wrongful acts of its servants or agents.

The police constable in making an arrest, myself in signing a presentment, or a Justice of the Peace in signing a warrant is not a servant of the Crown at all in the ordinary sense of the term. That is, because each of us is performing the duties or exercising authorities on discretion, and the Crown has no control over us.

Mr. Fulton.—You would be acting on behalf of the Crown?

Mr. Winneke.—On behalf of the community, but it is an original authority as distinct from derived. Should the Crown be liable for the wrongful acts of a person in that position?

Mr. Fulton.—If you were an employee of mine I would be liable.

Mr. Winneke.—You could not be because no private individual can employ such people. It is only the Crown who can so employ.

Mr. Fulton.—But in the ordinary sense, I would be liable for any of your acts?

Mr. Winneke.—No, not quite, because the relationship can never arise in private employment. This is a position peculiar to the Crown. That is why it is a special problem.

May I put this to the Committee: at common law, and according to the ordinary rules of law as the position now stands, the Crown is not liable for the wrongful acts of people in that position, because these people are not true servants of the Crown and the Crown has no right to tell them how to do it or to stop them from doing it. Therefore, in legal theory, the employer, the Crown, should not be, and is not, at law liable for these acions.

Mr. Lovegrove.—This is in reference to only one Department?

Mr. Winneke.—I do not know—Parliament might set up various statutory bodies.

Mr. Lovegrove.—But it applies only to the activity of internal security?

Mr. Winneke.—Largely, that is so. The problem first arose in Tasmania about 1903 or 1904, in the case of *Enever* v. *The King.* At that time, in Tasmania, the Crown was liable in contract and tort. Mr. Enever considered he had been wrongly arrested by a police constable. He brought an action against the constable under the Crown Liability Act in Tasmania for damage by wrongful arrest. The case went to the High Court, which stated, in effect, "You can get nothing because the police constable is not a servant of the Crown in doing that type of thing. He is exercising an authority or discretion conferred on him independently of his employment by the common law."

Any person who is a constable has, over the years, had that power of arrest. The Crown is not liable because it is not responsible for his actions; it could not stop him and give him directions what to do.

In two recent cases since the War—*Quince* v. *The Commonwealth,* and the *Attorney-General for New South Wales* v. *The Perpetual Trustee Company*—the same principle was applied. In the case of Quince, it was held that a member of the Air Force was not a servant of the Crown in the true sense of the term. The same principle applied. In the case of the Perpetual Trustee Company, the question arose again in relation to a police constable, the same as it had in Tasmania years ago. The result was the same in the Supreme Court of New South Wales, in the High Court, and later in the Privy Council, where the appeal was taken.

It may be taken as established that people who exercise this peculiar discretion or authority, who have the trust or confidence reposed in them by Statute or by common law, are independent operators for these purposes. Although they are personally liable for any wrongful arrest or malicious prosecution, or negligent exercise of their authorities, the Crown is not liable.

The problem is should we make the Crown liable for these acts? There are three points which occur to me: should you make the Crown liable in respect of the police constable who arrests a person in the manner I have indicated and in respect of myself, for instance, for signing presentments, and the Justice of the Peace for signing warrants, and so on. If the Committee says, "yes, the Crown ought to be made liable for that," I think the first point to remember is that it would be creating a new kind of legal liability. You would be attaching to the Crown liability which could not operate in the ordinary field of employment at all.

Mr. Lovegrove.—It would be a special liability?

Mr. Winneke.—It would be a new departure or new conception in legal theory.

The Chairman.—It would not be wrong?

Mr. Winneke.—No, not in itself.

Mr. Lovegrove.—I think it is arguable in view of the wide authority invested in an individual.

Mr. Winneke.—Yes. The second point is this: if you do attach liability in these circumstances, you will be making the Crown liable for acts it cannot control. Thirdly—and I think this is the most important consideration—if you make the Crown liable you may either remove altogether or very seriously weaken the sanction attaching to the particular officer at the present time, because he knows if he acts wrongly he and he alone will be liable.

I cannot place too much stress on that. I do not wish to be taken as endeavouring to force my views on the Committee but I do wish to say that I have had very close association with members of the Police Force over the last seven or eight years. Similarly,

with every other large organization, there are good and bad. I do say this, that it is absolutely remarkable the very few cases we have had in the last eight years where an action has been brought against a policeman for wrongful arrest, false imprisonment or malicious prosecution. The reason is because these men are very careful whom they arrest, also how and when they do it. A policeman knows very well that if he abuses his powers of arrest he will be personally liable for damages. He never knows whether or not the Crown will step in and support him. Under present conditions, if we found somebody had exercised his powers badly, and we felt he had enough to compensate the plaintiff, I would not feel inclined to recommend the Crown to support him. That is, so long as the plaintiff could obtain recovery from him.

If you say, "We will make the Crown liable as well," what will such people say? They will say, "What does it matter." In the course of time, it may be found that it will have a somewhat similar effect to the introduction of compulsory insurance with motor drivers. They were relatively careful in the pre-war days. If an Act were brought in whereby before bringing an action against a person a man had to pay the first £50 out of his own pocket, it would make a tremendous difference.

That is the kind of thing that arises.

Assuming, after full consideration of this matter, the Committee recommended that the Crown should be made liable for the actions of these officers, what would be the position of a constable injured in the course of his duty, who has to go into a police hospital. He has to be paid and has to have his sick leave. He has to be kept. When he comes out of hospital he may have run up a bill for £1,000. The ordinary private employer whose servant is knocked over in the street and suffers damage on that account, through the negligence of an outsider, can sue the outsider to recover the loss he has sustained as a result of the injury to his servant, what he had paid in wages, medical expenses, hospitalization, clothing, and so on.

The Crown cannot do that. In the case of the Perpetual Trustee Company, the constable on beat duty was knocked over and seriously injured. It cost the Crown somewhere between £1,200 and £1,500 in sick leave. He was knocked down through the negligence of a motorist. The Attorney-General of New South Wales sued the motorist and said, "You have knocked over my servant, and as a result of your knocking him over, the Crown has been put to this expense." The Crown sued the motorist for negligence. The Courts and eventually the Privy Council held that, "No, you cannot recover because the police constable is not your servant."

If this Committee decides that the Crown is to be liable for the actions of such officers as if they were servants it might consider, conversely, whether the Crown should not be given the right to recover for loss sustained through injury to them.

If you say, for the purposes of the Crown being sued that they are servants—although they are not, in reality—should not you go the whole way and say that if they are servants for that purpose, they will be servants for the purposes of recovering what is lost, in the event of them being injured through the negligence or other kinds of wrongful acts of outsiders.

Mr. Fulton.—You are opening up another angle, which is very complicated and can lead to great legal argument.

Mr. Winneke.—Yes, definitely, and so can the other point which arises out of it.

May I summarize what I have been saying: it seems to me that there are really three problems which present themselves in a fairly definite way. First of all, should we make the Crown liable as an occupier of property? If so, should we make the Crown liable only in its capacity as owner of buildings or other structures, or should it be an unlimited liability attaching to lands, and so on?

Secondly, should we make the Crown liable for the actions of officers who are exercising an independent authority or discretion, and if so, if these people are to be made servants in the ordinary sense of the term, for the purposes of Crown liability, should not we go further and say, if there are servants for one purpose they should be servants for all purposes, and if they are injured in the course of their duty by outsiders, likewise the Crown has the right to consider them as servants for that purpose and recover for loss sustained through their injury.

Mr. Thompson.—Has there been a test case to decide whether or not an officer of the Education Department is, strictly speaking, a servant of the Crown?

Mr. Winneke.—Not that I am aware of in any action of tort. I am not sure whether the question arose in the Arbitration Court at one stage as to whether school teaching was an industry. I believe that did arise and I think the finding was that it was not an industry. It might follow from that, from the general indications which were given in these judgments, that they were not to be regarded, although it would not necessarily follow. I do not think it has been decided.

Mr. Lovegrove.—What degree of direction must a servant accept from the Crown before he moves from the category of a policeman to some other category?

Mr. Winneke.—I think I can answer it best this way: there are many directions which a police constable must accept, such as the uniform he wears, and how he wears it, but that is under a regulation which he is bound by.

Mr. Lovegrove.—He is a servant for that purpose?

Mr. Winneke.—Yes, he is a servant for that purpose, but when it comes to exercising his basic functions of a constable, such as keeping order, quelling riots, arresting people, laying charges, &c., he is not bound to accept a direction at all.

Mr. Lovegrove.—Is he an agent?

Mr. Winneke.—No, in legal theory, he is an independent officer of the law. He is exercising an authority conferred on him, not by the Crown as employer, but an authority conferred on him by common law or Parliament.

Mr. Lovegrove.—That is an acceptance of the theory of emergency?

Mr. Winneke.—Yes.

Mr. Lovegrove.—You stated that a policeman is not a servant but an agent, that he is exercising an independent authority because his function requires that. I am calling it an emergency. It is something for which you cannot legislate. Are there any other categories of servants in which the same conditions of service apply?

Mr. Winneke.—There are Justices of the Peace who issue warrants, and all the ministerial functions they exercise out of Sessions. There are the Attorney-General, the Solicitor-General, and the Crown Prosecutor who sign presentments.

Mr. Lovegrove.—But outside the sphere of " internal security."

Mr. Winneke.—For all practical purposes, I think you can say this problem mainly arises in connexion with the administration of law.

Mr. Wilcox.—Which particularly affects the rights of the individual?

Mr. Winneke.—Yes. All I can say is that the only cases decided, to my knowledge, have arisen in connexion with policemen or members of the armed forces. I would not like to say there are no others, but those are the only ones with which I am familar, and the only ones, from a practical point of view, that you would be likely to get. There might be an odd case but I do not think it would amount to much over one hundred years.

Mr. Thompson.—Is it possible to say that these people are servants of the Crown?

Mr. Barclay.—Are the employees of the State Rivers and Water Supply Commission and the Lands Department servants of the Crown?

Mr. Winneke.—Yes.

Mr. Barclay.—That would apply to all public servants?

Mr. Winneke.—Yes. They are people who have to do all they are told to do; they have not this independent discretion.

Mr. Rawson.—How far does Commonwealth legislation cover the matters into which we are inquiring?

Mr. Winneke.—The Commonwealth legislation would cover the liability of the occupier, as it says, " The Crown will be liable in tort." It would not make the Crown liable for its police or its law officers, because the legislation makes the Crown only liable in tort. In common law there is no liability in tort covering the actions of such people.

Mr. Rawson.—To what extent would it be responsible in the Northern Territory?

Mr. Winneke.—There are special ordinances covering the Northern Territory.

Mr. Rawson.—So far as buildings and land owned by the Commonwealth are concerned, they are the same?

Mr. Winneke.—Yes. I could not speak of the Northern Territory or Papua.

Mr. Wilcox.—Might not the Sheriff of the Supreme Court be another?

Mr. Winneke.—Yes; he falls into the same general category of which I have been speaking.

The Committee adjourned.

THURSDAY, 18TH OCTOBER, 1956.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. R. R. Rawson,	Mr. Lovegrove,
The Hon. L. H. S. Thompson.	Mr. Wilcox,
	Mr. Sutton.

Professor Zelman Cowen was in attendance.

The Chairman.—We are fortunate to welcome Professor Cowen, following his magnificent memo, he has consented to amplify that, so that we can have the opportunity of checking up on all the points raised by it.

Professor Cowen.—I do not know how you wish me to proceed; I understand that you have had an opportunity to read this memorandum. It has been prepared by my colleague and myself and I am very glad to know that it has been of some use to you. Do you wish me to proceed by going through the memorandum or would you prefer that I answer any questions?

The Chairman.—We have not had an opportunity yet to look at it very fully and carefully, so we are not at this stage ready with questions. I think the best way is for you to amplify it.

Professor Cowen.—With your permission I will run through the memorandum and make the points that we have made in it. In the first place, what we did in accordance with your request, was to set out the legislation on Crown Proceedings in various jurisdictions. The memorandum is deficient in one respect, which is that we have been unable to secure the Canadian provincial legislation and I have written to Canada for that. I do not know whether it is worth getting, because you have the Canadian Dominion legislation, the legislation from the other Australian States, and the Commonwealth legislation. We have also set out the relevant English legislation, and the New Zealand legislation, and although the words " Crown Proceedings " are not appropriate we have also set out the provisions of United States legislation relating to claims against the American Government.

At this stage, we have directed attention to the two matters you are at present considering—the matter of the liability of the Crown in respect of the ownership, occupation, possession or control of property—and the other, the problem of the exercise by servants of the Crown of certain functions. There are, if I may say so, other matters which I would suggest, you might wish to look at. In a number of respects, it seems to me that the Victorian *Crown Proceedings Act* 1955, is a fairly imperfect document. So far as it goes, it could give rise to problems of interpretation and I believe that in other respects, it does not go far enough. I will speak to those matters if you wish, but I think it desirable that I should at first confine myself to the two matters which you asked me to speak on.

What we attempted to do in the memorandum was to set out first of all, some general principles of tort liability, and we drew attention to the fact that tort liability may be either original or vicarious. Taking vicarious liability first, a person or a body may be liable for the acts of his or its servants or agents acting within the scope of their employment. Again a person or a body including a corporation may be liable for his or its own acts; and this we call original liability.

The Chairman.—Except in those cases where there is something specially written into their Act, such as a statutory authority.

Professor Cowen.—Yes, and the Crown may not be liable in tort at all in some jurisdictions but I am speaking of general liability, without reference to special immunities. So you have two notions of liability, one which is vicarious liability, which is liability for the act of a servant or agent, and the other which is in effect one's own liability, that is, original liability.

Now when the Victorian *Crown Proceedings Act* 1955 was passed, the tort liability that was imposed upon the Crown was liability in respect of the torts of any servant or agent of the Crown or independent contractor employed by the Crown. The point was that the liability which was imposed by the Act was limited to liability for servants or independent

contractors, and there was no general provision for what I have described as original liability. Not only that but there was a further anomaly introduced by the Act, which I can perhaps explain in this way. The liability which is imposed on a person in respect of the occupation of premises is not vicarious liability. There are rules which I have set out here, which prescribe the liability of, let us say, a company or a person in respect of his occupation of premises. For example, if you enter my premises, I will, depending upon the legal category into which you fall as an entrant on my premises, be liable to you in respect of injuries you may suffer on my premises. Now this is the first matter with which we are concerned here. So far as the Victorian Act is concerned, no provision is made for any liability of that sort at all. The only provision that is made for liability is for liability in respect of the acts of a servant, that is to say, vicarious liability, whereas the liability of an occupier of premises is an original liability. Moreover, under the Act as it stands, a distinction is drawn between what are called public statutory corporations, and the Crown. In the case of a Public Statutory Corporation, section 4 of the Act removes Crown immunity from it, but, apart from a public statutory corporation, the only liability in tort which is imposed upon the Crown is a liability for the acts of its servants and independent contractors.

The Chairman.—In other words, the State Electricity Commission might be exempt, but the Education Department would not be.

Professor Cowen.—It is just the other way, sir. As I read the law at the present time, if I were to walk into the State Electricity Commission and if the condition of the floor was defective, and the State Electricity Commission ought to have known about it, and I suffer injury, I may recover, because the State Electricity Commission, as a public statutory corporation, owes me a duty in respect of the condition of its premises. If, on the other hand, I were to go into the Education Department and fall on the slippery floor—the floor being slippery for precisely the same reason—I would have no right of recovery because these are Crown premises and the only liability which is imposed upon the Crown by this Act is a vicarious liability—that is to say, a liability in respect of the acts of servants. Now I submit that this is a highly anomalous distinction, and has no justification in principle.

The Chairman.—You have no idea why it was written into the Act?

Professor Cowen.—I have not gone into the debates to see why, but if I may say so, I do not think it makes sense. Now I think that the important thing to note is that, when the English Act was enacted in 1947, liability was imposed on the Crown in the following circumstances. I turn to section 2 of the *Crown Proceedings Act* 1947, which reads as follows:—

> Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject:—
>
> (*a*) In respect of torts committed by its servants or agents; . . . . .

Now that broadly is the provision that we have written into our Act except that we have included independent contractors as well as servants or agents. But the English Act went on to provide that the Crown should be liable in two further cases, and it is in respect of one of those two cases, the one I am dealing with now, that I wish to say something. It provides that the Crown is liable "in respect of any breach of the duties attaching at Common Law to the ownership, occupation, possession or control of property." You will note that the English Act specifically made provision for liability in the case which you are considering now, so that there would be no doubt that if a person entered some Government office, and because of the condition of the premises, suffered injury, he would, in appropriate circumstances, be entitled to recover. Now as I say, we do not allow recovery, and it seems to me, for the reasons we have set out in this memorandum, highly anomalous that we do not. I can see no reason in principle, why the Crown should not be liable, both in respect of the acts of its servants or independent contractors, and also in respect of any breach of the duties attaching to the ownership, occupation, possession or control of property, and I have set out my reasons at some considerable length in the memorandum. The question then is how should we amend the present Act? There are two ways of doing it. You may do it the English way, or in another way which I will indicate. The English way is to enumerate specific heads of tort liability. I have drawn attention to another method at the top of page 4 of this memorandum. If you look at the provisions of the Commonwealth legislation and of the New South Wales, Queensland, South Australian, Western Australian, Canadian Dominion and American legislation you will see that they have tackled the problem of Crown liability, or in the case of the United States, State liability, by writing a general provision stating that the Crown or the United States may sue or be sued as if it were a private person, subject always to limitations and qualifications. They have left it to the Courts to work out the precise scope of the words "sue and be sued." I feel that if we adopted a "sue and be sued" provision, we would satisfactorily cover the case of Crown liability arising out of the occupation or possession of premises.

On the other hand, if you followed the English precedent, you would copy into the Victorian Act a clause which is like the provision in section 2 (1) (*c*) of the English Act. That provides for liability in respect of any breach of the duties attaching at Common Law to the ownership, occupation, possession or control of property.

The Chairman.—Which would be easier for the plaintiff?

Professor Cowen.—My view, not only for this particular case, but to cover other matters that may arise, is that you adopt a "sue and be sued" provision. There has been such a provision in Commonwealth legislation since the early beginnings of Commonwealth liability in tort, which are as old as the Commonwealth itself. Similar provision has been made in other State legislation for a long time, and as far as I can discover, it works perfectly well. I think it is the best way to achieve the purpose. I think that the resort to detailed specification of cases, except as a matter of great caution, is not the best way to proceed.

The Chairman.—You have no idea of the volume of claims in the other States or Commonwealth?

Professor Cowen.—No, I have not, but I have no evidence that there has been any great perturbation about it.

Mr. Thompson.—You would not distinguish between buildings and land?

Professor Cowen.—Do I understand that your question is: Is there a possible distinction between liability for entering upon land, and liability for entering a building?

Mr. Thompson.—Yes, or whether you suggest we should consider dividing the two, perhaps extend the liability beyond the State as occupier of buildings, but be hesitant about extending the liability to the State as an owner of thousands of square miles of land.

Professor Cowen.—I do not think there is any reason for drawing that distinction, because the rules of law in this particular area do not state that there is a strict liability upon the occupier of land. The way in which the rules of law operate at the present time is like this. The law draws a distinction depending on whether you enter land as an invitee, licensee or trespasser. The duties which the law imposes upon the occupier of land in respect of a trespasser are very low indeed—I am not attempting to be perfectly precise, but you must not wilfully harm him. If he comes on to your land, including your buildings, as a licensee, who may be described as a person who comes on to your land with express or implied permission, but without any particular business interest, then the duty you, as an occupier, owe him, is to warn him of dangers on the land of which you actually know. Thirdly, if he comes on to your land or buildings as an invitee, that is, a person entering with a common business interest (one who, for example, comes into a shop to buy), you owe him a duty in respect of dangers on the land of which you know or ought to know. Now it may be that a particular entrant on to Crown land, who suffers injury is an invitee. It is then necessary to determine whether the occupier ought to have known of that particular danger, and the character of the land may determine what the occupier ought reasonably to know about it.

Mr. Thompson.—I was thinking more of dangers arising from flood and fire, which is started on Crown land.

Professor Cowen.—So far as flood and fire are concerned, I think you are not really thinking of injury that is suffered on that land, but injury which is suffered by escape.

Mr. Wilcox.—And as a result of the occupation.

Professor Cowen.—That raises the question of the *Rylands* v. *Fletcher* type of liability. I think as the law stands, the Crown may already be fixed with that. The Crown is not only liable for the torts of its servants or agents, but also for the torts of an independent contractor, and *Rylands* v. *Fletcher* itself was a case in which a dam was constructed by an independent contractor, and the water escaped from that land and damaged another person's property. In that particular case, on those facts, I think that the Crown might well be liable as the law stood.

Mr. Thompson.—I was thinking more of untouched Crown lands which might form a landing ground for flood waters that would affect people living further down, or bush fires breaking out in Crown land and spreading on to private land.

Professor Cowen.—Bush fires starting by spontaneous combustion, or by a trespasser coming on to the land?

Mr. Lovegrove.—Or an Act of God.

Professor Cowen.—Under those circumstances, I know of no existing head of liability.

Mr. Lovegrove.—You will recall, Professor, that the principle involved in this legislation is argued in part anyway on our deliberations, on the Water Act. The view taken there was that the liabilities of the State or of the utility in that case were in some way necessarily to be balanced against the benefits it conferred upon persons affected. Now in this case where you take the State as a whole, as a property owner of land and buildings, if you automatically adopted the principle that you propose, would not it be a case that you were doing it without any cognisance of the limitations of the wealth of the State, the benefits conferred by the State?

The Chairman.—In other words, the State might be up, because of a flood, for tremendous damages which it just could not pay.

Professor Cowen.—I think it is perfectly reasonable that there should be qualifications on the liability of the State, I use the word "State," but it might be the Commonwealth of Australia, or the United Kingdom. I think that is true. If you take the sort of problem which Mr. Lovegrove says was dealt with in the Water Act, I think it may very well be that there is a case to be made out for doing as you have done in the Water Act, and qualifying the liability for damage suffered by flooding. I agree with that, and I think that that is a case in which it may well be justifiable to make certain special provisions.

The Chairman.—How could you qualify it in "sue and be sued?"

Professor Cowen.—I think that the only way in which you can qualify such a liability is by maintaining and preserving special exemptions and you may do this by making the general liability subject to special provisions for special cases as set out in other Acts. You must also remember that as the Victorian Crown Proceedings Act stands at present, you have the anomalous situation that Crown protection is withdrawn from public statutory corporations.

Mr. Rawson.—Is that the position with the State Electricity Commission?

Professor Cowen.—I suppose so. Let me take three examples. I walk into the Myer Emporium, because of the slippery condition of the floor I fall and injure myself. On those facts it is very likely that I can recover against Myers. Secondly, I walk into the State Electricity Commission to pay my bill. Again the floor is slippery and I fall. On the assumption that the State Electricity Commission is a Public Statutory Corporation it is very likely that I can recover.

Mr. Thompson.—Prior to this Act could you?

Professor Cowen.—I'm not sure. The State Electricity Commission might have fallen within the shield of the Crown and have been protected by Crown immunity in tort. Thirdly, I walk into some Department of the Government on business. I enter Parliament House. I enter one of a number of State offices, on business. The floor is slippery for precisely the same reason as in the other cases. I fall, I am grievously injured, but I cannot recover. Now this is the case which the English Act has covered by providing for liability.

The Chairman.—The fourth case, you enter my home and slip on a slippery floor.

Professor Cowen.—It depends on the category on which I enter. If I enter simply as a social guest, then of course, if you knew about the slippery patch, I could recover. If I entered your home as an invitee with some common business interest, then there would be no difference between that case and the case of the Myer Emporium.

Mr. Wilcox.—In each of those cases you would have to prove that the defendant was negligent and had therefore been unreasonable in the preparation of the floor?

Professor Cowen.—Yes. It is not a matter of strict liability. However, in this area you would not use the terminology of negligence; you would ask whether the occupier knew or ought to have known of the defective condition of the premises.

Mr. Wilcox.—For instance, if you had a few drinks, and were unsteady on your feet when you entered the State Electricity Commission, that could react against you in the success of your claim?

Professor Cowen.—To be sure. The only point I want to make is that the unsatisfactory anomaly, as the law stands at the present time, is that liability is dependent upon the character of the premises which you enter, and it is that to which I am directing attention. I certainly did not want to say that simply by entering premises and suffering injury liability arose.

Mr. Sutton.—Does that apply to any shop or hotel you enter?

Professor Cowen.—Yes. It is a question of liability for the condition of premises, and I understand that next year you will be addressing yourselves to this general question.

Mr. Lovegrove.—I think the question raised by Mr. Thompson is the one that has agitated us most, the question of land and the difference between the ability of a property owner owning a few hundred acres of land to adequately protect a person entering his property, and the ability of the State, owning thousands of acres of land, to do the same thing.

Mr. Byrnes.—I think that is so. Is it fair and reasonable to say, well, here you are, still in the process of developing, you have land particularly in the north-west of this State, possibly nobody ever goes there, or it is leased to landholders in tremendous areas of country. You have areas such as are controlled by the Melbourne and Metropolitan Board of Works in the watersheds of the State. They prohibit people going into it, to keep the water pure, but still somebody may go in there. Is it a fair thing then to say that the State should have such a perfect knowledge of what is taking place in those areas, even what is done by the occcasional servant who goes there? Is it a fair thing that they should be liable in tort if anything happens in those particular areas?

Professor Cowen.—The first thing I would say in answer to that is that there is no liability to people simply because they suffer injury on land. If, for example, entry into an area is prohibited and a person enters, he is a trespasser, and the circumstances in which an occupier of land is liable to a trespasser are pretty narrowly defined. Broadly speaking, as I said earlier, the occupier has got to do something of a wilful character before he is liable. I should think in a case like that, the practical chances of the State being liable are negligible. Secondly, suppose that a person is not a trespasser, suppose he is in another category. There is no strict liability, as Mr. Wilcox made clear. The liability to a person entering land is a liability determined by legal character of the entry, whether the entrant is as I say, a business visitor, a permissive visitor, or a trespasser, and the highest liability is a liability in respect of dangers of which the occupier knows or ought to know. Now the law works sensibly here in determining whether the occupier ought to have known. The law has regard to the special character of the land, and what I am wondering here, with respect, is whether you are not conjuring up bogies that are not real from the legal point of view. My answer would be so far as I can hazard an opinion, that I believe that you may be doing so. This question of distinguishing Crown land and buildings didn't worry the English legislators.

The Chairman.—There is a difference—they have not quite so much undeveloped land as we have.

Professor Cowen.—The Commonwealth has not apparently been much worried.

Mr. Byrnes.—Take one of these areas with mining land that has now gone back to the Crown, along river beds, creeks, and so on. Well, there are tracks through it used by people, they go through, if they fall down one of these mine pits, could it be said that the State should have taken care of those things, should have bull-dozed in all these old mine pits?

Professor Cowen.—I would only answer that by saying that if people went through as trespassers, I would not worry about liability because I do not think there would be any serious risk of liability. If people went through as permissive visitors, I do not think there would be liability unless it could be shown that the State actually knew of the danger.

Mr. Byrnes.—Well they do know—everybody knows these things are there.

Professor Cowen.—I would say that under those circumstances if you have dangerous areas—again I do not know the local topographical problems—ought people to be allowed to go through them?

Mr. Byrnes.—They go in to shoot.

Professor Cowen.—Without permission?

Mr. Byrnes.—It is the custom to go, by ordinary custom they go to shoot a rabbit, nobody ever stops them from going.

Professor Cowen.—They may very well be trespassers in which case there is no liability. I cannot say categorically that such a person is a trespasser because a person can move out of the category of trespasser into licensee as a consequence of the occupier's conduct. There are cases in which young children have walked across land or played on a particular piece of land for quite some time. The occupier of the land has never said that they could enter, but he knows they were there, and does nothing about it. There are cases which say that in such circumstances, the occupier has acquiesced in their being there, so that he owes them the duties that he owes to a licensee. I think that may pose a problem, but I would think, in that case, that the proper course of conduct would not be to make an exception for Crown liability in respect of land as opposed to buildings, but to be rather more careful with your trespassers' notices, but not to carve your legislation up into categories and sub-categories, drawing distinctions between land and buildings, which of course inevitably makes the law more difficult and more complicated. I think you should have regard to the fact that the imposition of the type of liability which I am advocating is of long standing in a number of other jurisdictions, including Australian jurisdictions. So far as I have been able to discover, it certainly has not caused so much harm to the public pocket that the custodians of the public purse have sought to amend the law, and I would strongly urge you to write in either such a clause as the English clause (if you are going to amend by the specification of separate heads of liability) or to amend the framework of Victorian Crown liability, as I would prefer, by following the Commonwealth and the other State patterns of writing in a " sue and be sued " clause, leaving it to the courts to work out the limits as they have done elsewhere in Australia.

Mr. Lovegrove.—There is an important difference between Victoria and the other States. This is the most closely settled State, has the best rainfall and most production. Your liability here could conceivably be in hard cash I suppose, a bigger liability in that sense, than that which would be incurred perhaps by the same legislation in other States. I

could not say that with any certainty, but there appears to be some room for argument there, and that would be one of the reasons for our concern which you believe to be unnecessary, but which may be based, you see, on some consideration of the differences between Victoria and the other States.

Professor Cowen.—What I would say to that is this, that you have had an imposition of liability of a much broader character in closely settled England than you at present have in section 4 of the Victorian Act. I think that the imposition of liability arises from the realization that in this day and age, it is not proper that persons who suffer injury as a result of governmental activity, should not be entitled to recover from the Government, when they could recover if the wrongdoer were a private person or corporation. I think that is the heart of the matter. It is for that reason that I would respectfully advocate the imposition of liability on the Crown in respect of the occupation of premises. If you want to follow English precedent in imposing liability in respect of the breaches of duty attaching to the ownership, occupation, possession or control of property, I suggest that you copy the English legislation, leaving out the words "attaching at common law." I have set out in this memorandum some of the reasons which were given for including those words in England, but I think that they impose an undesirable limitation and it should be noted that so far as England itself is concerned, liability in respect of the occupation of premises is at present under review with a view to statutory amendment, and as I understand it, you will be looking into this question, and the desirability of statutory amendment next year. If I were adopting the specification plan for Crown liability, I would provide that the Crown shall be subject to all those liabilities in tort to which if it were a private person of full age and capacity, it would be subject in respect of any breach of the duties attaching to the ownership, occupation, possession or control of property. That is to say, I would leave out the words, "attaching at common law" which appear in the English Act. I see no reason for limiting Crown liability to common law liability, particularly in view of the fact that the law in this matter is at present in the melting pot.

The Committee adjourned.

TUESDAY, 23RD OCTOBER, 1956.

Members Present:

Mr. Manson in the Chair:

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. R. R. Rawson,	Mr. Lovegrove,
The Hon. L. H. S. Thompson,	Mr. Wilcox,
The Hon. Arthur Smith,	Mr. Sutton.
The Hon. W. O. Fulton.	

Professor Zelman Cowen was in attendance.

The Chairman.—Once again, the Committee is fortunate in having Professor Cowen present and I ask him, at this stage, to proceed with his evidence.

Professor Cowen.—I should like briefly to sum up my evidence of last week. At that time, I was speaking about the problem of Crown liability in respect of the ownership, occupation, possession or control of property by the Crown. I sought to direct the Committee's attention to the fact that as the law stands at present, it appears that the Crown is not liable as an occupier. The Act was not drawn in such a way as to impose liability on the Crown in its capacity as an occupier. I suggested that it was appropriate that the Crown should be liable as an occupier. Members of the Committee raised a question concerning the distinction between the Crown as an occupier of land and the Crown as an occupier of buildings. I should like to repeat the view expressed last week that no distinction should be drawn, my reasons being as follow:—

First, the mere fact that the Crown is an occupier does not expose it to liability simply because somebody gets hurt. There are different categories of entrants into property. For example, a person may enter as an invitee, a licensee or a trespasser and the duties which the law imposes vary according to the category of the entrant. It would be my view that liability should be imposed on the Crown as an occupier of land in the same way as on the Crown as an occupier of buildings.

I also direct attention to the fact that legislatures of various countries, including the United Kingdom, the Commonwealth of Australia, and a number of other States of the Commonwealth, have imposed liability upon the Crown in respect of the occupancy of land or buildings, without distinction, and, although the information is not available to me, concerning the volume of claims with which the Crown has been confronted, those countries and States have stood firm despite the fact that such actions have been brought against them. My final point in this particular context, and I have repeated it many times, is that if the Crown is carrying on a vast complex of activities it should be liable, within proper limits, for injury caused to individual persons. I would not suggest that the mere fact that a person is hurt is sufficient to justify the Crown being regarded as liable. But in general, subject to certain considerations about State functions, the mere fact that the Crown is the wrongdoer should not exempt it from liability. If a person is hurt through entry on Crown land or Crown buildings in circumstances in which if the land was occupied by a private person the occupier would be subject to liability, it is my belief that in similar circumstances, the Crown should be liable.

Mr. Thompson.—I should like to ask a question concerning the matter being discussed by Professor Cowen at present. In Queens Hall certain renovations are being carried out involving the swinging of iron bars by workmen at a height of 80 feet. I have been using Queens Hall and I should like to ask Professor Cowen what would be my position if one of the workmen dropped a bar on my head. In such a case, the workman would be acting negligently, but he would be acting on behalf of the Crown and on property controlled by the Crown. In the circumstances, would I be entitled to claim against the Crown?

Professor Cowen.—I doubt whether you would be entitled to damages. However, the answer is not clear as I shall endeavour to explain. Assuming that the workman had been negligent and as a result of his negligence, you were injured. Certainly, you could recover damages against the workman, but the Committee is not concerned with that aspect, but rather whether it would be possible to recover against the employer of the workman—in this case, the Crown. The mere fact that the workman has been negligent does not in itself ground liability. As the law stands, it does not say that the occupier of the premises is liable for negligence. Of course, the category of entrant must be considered—that is, whether the person injured was an invitee, a licensee or a trespasser. If the person was an invitee, the Crown's liability, assuming it to have been made liable as an occupier, is in respect of concealed dangers, of which it knows, or ought to know. In the case of a licensee, the Crown is liable only for concealed dangers of which it knows. In the case of a trespasser, the

Crown is liable only for anything wilfully done or done with recklessness. The mere fact of negligence is not sufficient, but the person must come within one or the other of the three categories referred to.

Mr. Wilcox.—Would paragraph (*b*) of sub-section (1) of section 4 of the Crown Proceedings Act cover a person injured as envisaged by Mr. Thompson?

Professor Cowen.—I could not give a conclusive answer to that question. Possibly a person injured would be covered, but there is room for doubt because when you get into the area of liability of an occupier, you are in an area of law with special rules.

Mr. Wilcox.—Supposing the same workman, on the pavement outside, in carrying a piece of scaffolding, negligently clouted Mr. Thompson on the head, what would be the position?

Professor Cowen.—I have no doubt about the answer in that case as it is clearly given in the paragraph of section 4 of the Act previously referred to. The distinction between the two cases is that in the case cited by Mr. Thompson, it occurred within the premises of the employer who was also the occupier of the premises.

Mr. Rawson.—I have discussed this matter with Mr. Thompson, and I should like to ask a further question concerning an accident in Queens Hall. I understood that it was not necessary for the Crown to consider whether the person concerned was an invitee, a licensee or a trespasser.

Professor Cowen.—There is no liability on the Crown as the law stands at the present moment and there will not be until the Crown is made liable in its capacity as an occupier. That is what I think is wrong.

My remarks to this stage have been made to summarize what I put before the Committee on the previous occasion. I shall now turn to the second matter, which is liability with respect to the exercise by servants of the Crown of functions otherwise than on instructions lawfully given by the Crown. A simple illustration is the act of a policeman who makes a wrongful arrest. Is the Crown liable for the wrongful act of the policeman in these circumstances? I have attempted to deal with this matter in paragraph 22 and the following paragraphs of the memorandum I have submitted for the information of the Committee. I draw attention to two cases. One is *Tobin's* case, an English decision, and the other is *Enever's* case, finally decided in the High Court of Australia. Tobin's case goes back to the days in England when the Crown was not liable in tort at all—when no petition of right lay in tort. Action was brought by petition of right for damages by a plaintiff who alleged that his ship had been wrongfully seized by a captain in the Royal Navy. The English court could have dealt with the matter on simple grounds, as no petition or right lay in tort. But the court proceeded to set out views which I think are now recognized as bad law. It said that the captain of a ship could not be regarded as a servant, as he purported to act under a wide discretion and in exercise of an office which was conferred upon him by Act of Parliament. A great deal was said about the discretion conferred on a captain, that he was not a menial servant that he was actuated by a high sense of duty and that he possessed a high degree of skill. Therefore, he could not be regarded as a servant for the purposes of Crown liability. I believe that is no longer the law. The mere fact that a person happens to be exercising a high degree of skill and discretion does not preclude him from being classed as a servant.

The problem dealt with in *Enever's* case is different. A plaintiff claimed damages from the Tasmanian Government in respect of wrongful arrest by a police officer. The High Court of Australia held that the plaintiff was not entitled to recover. The principal reason given was that a policeman so acting was exercising an independent discretion which was conferred upon him by the law. That is to say, in exercising the power of arrest, he is not exercising a power which was delegated to him by the Crown as authority delegated to a servant. It was held that the discretion in making an arrest was a discretion directly conferred upon a policeman. Therefore, he was exercising his own independent discretion. I do not intend to traverse the reasoning in that case in great detail. It has been discussed in recent cases both in the High Court and in the Privy Council, particularly in deciding whether the Crown can recover damages for the loss of the services of a policeman, which is not the problem with which we are concerned at the moment. However, the recent cases tend to reinforce what was held in *Enever's* case in respect of the exercise of such a function as the power of arrest—that the policeman is not acting as a servant but pursuant to an authority conferred upon him by law. As a matter of fact, a recent decision in the Privy Council concerning a policeman gave rise to some uncertainty as to whether such an official could properly be said to be a servant for the purpose of workers' compensation. Doubtless, members of the Committee are aware that special provision was made by the *Workers Compensation (Police) Act* 1956 to clear up those doubts. However, what I have stated appears to be the law at the present time.

If a policeman in the exercise of such a function as the power of arrest wrongly exercises it there is no remedy against the Crown.

Mr. Barclay.—But there is a remedy against the policeman.

Professor Cowen.—For what that is worth. There is always a remedy against the servant himself or the policeman himself, but the whole point of discussing Crown liability here is to fix the Crown with liability for the tortous acts of its servants.

The section of the Act to which Mr. Wilcox directed my attention some little time ago imposes liability on the Crown for the torts of its servants, but it will not necessarily cover the situation we have been considering, as the policeman could be said not to be a servant and not acting as such. The point I have argued in the memorandum furnished to the Committee is that that is not a satisfactory state of the law. Whether a policeman is exercising the power of arrest or travelling along a street in a patrol car in pursuance of directions given to him by his superiors, it seems to me that he is acting as an agent of the Government. To say that because the power of arrest is envisaged as an independent discretion the State should bear no liability for the wrongful exercise of power seems to be unsound. I consider it to be desirable that the State should be responsible for such an officer's wrongful acts. I am not necessarily talking about the special case of a policeman wrongfully arresting a person as a deliberate matter of spite. Such an action might fall right outside the whole master-servant relationship in any case. I am contemplating the case of a policeman wrongfully exercising his judgment although not deliberately and spitefully doing so. I consider that the Crown should be liable in such cases and it is my view that as the Act stands at present, there is no clear provision for liability. In any amendment the Committee might choose to recommend to the *Crown Proceedings Act* 1955, I believe that steps should be taken to include a provision covering the type of case to which I have adverted.

In paragraph 29 of the memorandum which I have submitted I have pointed out why the English provision purporting to deal with the matter is not satisfactory and unless the Committee wishes, I do not intend to repeat those reasons. In paragraph 30, I have included a draft proposal which I think will cover the case with which I have been dealing.

The Chairman.—Have you given thought to the associated problem that if the Crown accepts liability for such acts of policemen, those officers might become careless over the years?

Professor Cowen.—I suppose the best answer to that is that this argument has always been raised in connexion with this question of Crown liability.

If it has any validity it is true of any servant and provision has already been made in the Act for Crown liability for the acts of its servants. I do not see why it would tend particularly to make a policeman more careless.

Mr. Thompson.—I notice that sub-section (5) of section 2 of the English Act specifically excludes officers of the law from the liability mentioned in earlier sections of the Act. Do you agree?

Professor Cowen.—That sub-section is not intended to cover the case of a policeman. It refers to the exercise of *judicial* functions. A broadly similar provision is contained in sub-section (2) of section 4 of the Victorian Act. If I might venture a dogmatic answer to your question, that does not cover the exercise of a policeman's powers of arrest. Sub-section (3) of section 2 of the English Act attempted to cover this case and to provide for liability. For the reasons I have set out in my memorandum, it is my view that they did not do it in a very satisfactory way. The Committee will find my recommendation in paragraph 30 of the memorandum.

Mr. Thompson.—I presume that provision would cover a person like the Solicitor-General?

Professor Cowen.—Without looking at the Solicitor-General's Act, I cannot be sure. But I would say that however grand the servant or however lowly he might be, if he is acting in pursuance of some discretionary power imposed on him, and he acts wrongly, the Crown should stand behind him as master for the purposes of tort liability.

Mr. Lovegrove.—Do you consider that if a policeman's power of discretion were completely indemnified by the Crown he would act less responsibly than if he were not so indemnified?

Professor Cowen.—That is a hard question for a lawyer to answer. One might ask it in a case where the Crown is liable in respect of a person such as a master of a ship. Is the master of a ship so much more careless because the Crown has to pay damages? As the law stands, if a master has to pay damages for the tort of his servant, the master still has a right of recovery from the servant. Let us consider a concrete case. Jack employs Joe; Joe is negligent in Jack's business; and Jack has to pay damages as a master. As the law stands, Jack can then obtain an indemnity from Joe. Translating that into this area, if the Crown has to pay damages for the tort of a policeman servant, the Crown can then obtain an indemnity from the policeman, if the policeman has the wherewithal to pay it. It is not that the servant is wholly excused.

If we tried to find the origin of a master's liability for the wrongful acts of his servant, we would be faced with difficulties. The normal case is that in which the servant is negligent. Why should the master pay? I think that at the back of it all there is a notion that the master has a longer pocket than the servant and that normally the servant is acting about his master's business. It was thought that the person who suffered by the act of a servant ought to have a reasonable chance of recovery. Therefore, it was said that he could bring his action against the master. That does not mean that the servant should get off scot free. All that the law was anxious to ensure was that the third party could be assured, as far as possible, of recovery, leaving the master and servant to fight out the question of the ultimate burden.

Mr. Lovegrove.—I understand that in Great Britain, the Crown accepts responsibility for the actions of a policeman?

Professor Cowen.—As a matter of practice or of law?

Mr. Lovegrove.—Both. What I intended to ask was: If there is a known case where the Crown accepts responsibility for the actions of policemen is the exercise of a policeman's discretion governed by any laws that are not applicable in Victoria?

Professor Cowen.—In England, a number of different Police Forces operate.

Mr. Lovegrove.—From time to time arguments arise as to whether policemen should or should not carry pistols. What I wish to ascertain is whether practices in various countries differ as to the measure of liability accepted by the Crown.

Professor Cowen.—I do not think I am in a position to answer that question. However, I believe that in sub-section (3) of section 2 of the English Act an attempt was made to cover that aspect, although I do not know whether success has been achieved in that regard. With the permission of the Committee, I should like to turn to some other matter. Under section 4 of the Act, the Crown was made liable simply in respect of contract and tort, and it would seem that no liability is imposed upon the Crown in respect of quasi-contractual obligations. There are certain cases that do not fall directly under the heading of contract or of tort.

The Chairman.—Perhaps you could cite a simple illustration?

Professor Cowen.—Money or property might come into the hands of the Crown under circumstances in which the Crown is not entitled to the property, without a claim in contract or in tort. But there are heads of liability outside contract or tort as arising where property comes into the possession of a person and there is an obligation imposed on that person to restore it. That is an example of what I call quasi-contractual liability. As Mr. Wilcox will know, there is a rubric of law called quasi-contract. Some other systems prefer to speak of restitution. Briefly, as the Victorian law stands, there is a gap because the draftsman of the Act in 1955 simply made provision for liability in contract and in tort; no provision was made for liability in quasi-contract. That difficulty could be surmounted by adopting the type of provision which I suggested earlier, whereby the Crown may sue and be sued. What has been done in the 1955 Act, is more or less to pigeon-hole liability so that the only liability of the Crown is in contract and in tort, but not in quasi-contract. With respect, I recommend that the Committee direct attention to that omission. I should like to draw attention to section 2 of the English Act, under which the Crown was made liable in tort—(1) in respect of acts by its servants or agents; (2) in respect of the breach of duties attaching to the ownership, occupation, possession or control of property; and (3) in respect of any breach of those duties which a person owes to his servants or agents by reason of being their employer. At common law, there is an elaborate set of duties imposed upon an employer as such. If an employee suffers injury in consequence of failure

by his employer to satisfy the requirements of law, the servant may recover for the injury which he has suffered. I direct attention to the fact that the Act, as at present drawn, does not provide for liability either in respect of the occupation of premises or in respect of the duties owed by the Crown in its capacity as an employer.

It is a question for the Committee to consider whether that is proper. My view is that the Crown should be liable as an employer and if the Committee is of that opinion, the position could be covered in one of two ways. A general "sue and be sued" provision could be inserted or, alternatively, some special provision could be enacted similar to that in the English Act.

Mr. Byrnes.—Under the present provision, taking the Public Works Department which employs painters to paint school buildings in the country, is it exempt from the ordinary provisions of Acts of Parliament governing the duties of an employer?

Professor Cowen.—I should say that in the absence of any specific provision in particular Acts, the Crown as an employer, has no liability in tort to those people because of the way in which the Act is drafted. There is no general provision in the *Crown Proceedings Act* 1955 which imposes upon the Crown as an employer the duties that are imposed on a private employer.

Mr. Byrnes.—I refer to safety precautions and not to hours of employment.

Professor Cowen.—There is a general provision in the ordinary law that a private employer is bound to provide a safe system of work. The English Act applies that liability to the Crown also, and I think that this Committee should make a similar recommendation.

The Chairman.—What would happen in the case of a motor car provided by the Crown which is supposed to be maintained by a servant of the Crown but is not maintained up to the required standard and another employee of the Crown is injured in an accident involving such a car? Is the Crown responsible through the negligence of its servant or because it did not supply safe equipment?

Professor Cowen.—Supposing a car has defective steering, as a result of which it runs into another Crown employee, then I should think there would be a liability upon the Crown for the negligent act of one of its servants. I should think that the Crown employee injured could recover damages under paragraph (*b*) of sub-clause (1) of clause 4 of the present Act.

Mr. Thompson.—If a Public Works Department painter fell from the sloping roof of a school building he would not be guaranteed indemnity from the State.

Professor Cowen.—That is a good example. There the question would be whether the Crown had provided a safe system of working.

The Committee adjourned.

WEDNESDAY, 24TH OCTOBER, 1956.

Members Present:

Mr. Manson in the Chair:

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. W. O. Fulton,	Mr. Lovegrove.
The Hon. T. H. Grigg,	
The Hon. R. R. Rawson,	
The Hon. L. H. S. Thompson,	
The Hon. Arthur Smith.	

Professor Zelman Cowen was in attendance.

The Chairman.—Gentleman, we have Professor Cowen with us again to give us the final issue of his evidence on several points relevant to this subject.

Professor Cowen.—Thank you, Mr. Chairman. Yesterday, after dealing with the two specific matters on which you asked me to give evidence, I proceeded at your invitation to make some other comments on the Victorian *Crown Proceedings Act* 1955, and I directed those comments to what I regard as difficulties and inadequacies in the present Act. I think it might be useful if I mention some of those to you this morning, with a view to drawing them to your attention, and if you so desire, we shall prepare another memorandum of the type we submitted earlier for your consideration. If I may respectfully suggest, it might be desirable, because a number of the matters about which I wish to speak to you today are rather technical matters which involve some legal learning. That is inevitable in dealing with this subject, because it is highly complex, and a great deal of law has grown up about it. To expound it intelligently to those well-versed in the law, let alone those who do not earn their daily bread in the law, is a Herculean task, and at any rate beyond me. However, there are a number of matters which I would briefly mention in summary form at this stage. I do not purport to be exhaustive, but I will take up certain matters. This will involve me in some repetition of what I said towards the end of yesterday's evidence.

The first matter to which I drew your attention was that the liability which is imposed upon the Crown by the Victorian *Crown Proceedings Act,* 1955, in Section 4 of that Act, is liability in respect of contract and tort. Now I said yesterday that the form of drafting apparently excludes liability for anything but contract and tort, and that omits liability in quasi-contract. Now to expound the various heads of quasi-contractual liability is rather difficult, and I said broadly yesterday, that there are cases falling outside the area of contract and tort in which the law imposes an obligation on a person to restore property which has come to him in circumstances in which he has no right to retain it. So far as the English Crown Proceedings Act is concerned, it is drafted in terms which would cover quasi-contractual claims against the Crown and I suspect that the draftsman's failure in our Act to include liability in quasi-contractual cases was an oversight, but it is certainly one which ought to be rectified. I will elaborate that in the memorandum if you so desire.

Now I turn next to Section 4, Sub-section 2 of the the Act which provides—

> No proceedings shall lie against the Crown under this Act in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibility of a judicial nature invested in him.

I think it was intended that the Crown should not be liable for any act done by a Judge acting as such. The only trouble as it seems to me, is that the draftsman has used too broad a brush; he has not spoken about Judges in the strict sense, but he has spoken about responsibilities of a judicial nature. In various areas of the law, responsibilities of a judicial nature are very widely defined. Again, I am moving into the area of technicalities, but suffice it to say that those words, "responsibilities of a judicial nature" might include the exercise of functions which go far far beyond the discharge of the normal duties of a Judge.

The Chairman.—Would you include the Solicitor-General for instance?

Professor Cowen.—Again, before I could answer that I would have to have a look at the Solicitor-General's Act quite carefully, but what I am thinking of are various hearings conducted by people who are not Judges, various inquiries which might be held by officials. There may be various inquiries in which the inquiring officer might be held to be exercising a function which is of a judicial nature. But I think that all the Act was originally designed to do was to protect the Crown against any liability in respect of the exercise of the functions of a Judge, using the word "Judge" as including not only a Justice of the Supreme Court, but also a Magistrate. I think the draftsman has gone too far, and I think that this clause is in need of revision.

Now I turn to section 4 (3), which is the section which takes away any immunities of what is called a Public Statutory Corporation. The section starts off by providing that the Crown shall not be liable for various acts of Public Statutory Corporations, but it ends up by saying that no such corporation shall on the ground that it is the Crown, or the servant or agent of the Crown, be exempt from any liability to which it would otherwise be subject. Now you will remember when I was speaking about the occupation of premises, that I took the example of the State Electricity Commission and a State office like the Education Department, and I suggested that in consequence of this section, the State Electricity Commission (on the assumption that it is a Public Statutory Corporation) might be liable, whereas the Crown would not be liable in respect of a similar injury suffered on the premises of the Education Department, and I suggested that that was anomalous. Now I want to direct attention to a different aspect of the same matter. The question is, what is meant by a Public Statutory Corporation? Am I right in assuming that the State Electricity Commission is a Public Statutory Corporation within the framework of this section? The only answer I can give to that is that I do not properly know, because the words "Public Statutory Corporation" are not defined anywhere in the Act, and the question "just what is a Public Statutory Corporation" is one about which no clear answer can at present be given.

Mr. Rawson.—There are no legal judgments on that I suppose, involving Public Statutory Corporations?

Professor Cowen.—So far as I know, there are no judgments defining a "Public Statutory Corporation." Previously, when an action was brought against a particular body, say in tort, a question arose as to whether it lay within what we call "the shield of the Crown." If that body were part of the Crown, then, of course it was immune, because the Crown was immune—that is in the period prior to this Act, and it might be immune as part of the Crown although it was a Statutory Corporation. All we were concerned to ask before was, "Is it part of the Crown or is it not?" Now we have to ask the question, "Is it a Public Statutory Corporation," because the Act makes a special provision for a Public Statutory Corporation, and I believe that if I were to consult the books, I would find no clear definition of the words, "Public Statutory Corporation." This is a special case. No doubt the Courts will have to work out a definition, because they will have to interpret this section if it stands in its present form, but I think you could save litigation if you saw fit to define what Public Statutory Corporation meant. You might define it by enumerating the bodies you were thinking of, and say it would include the State Electricity Commission, and this and that body, and I would respectfully urge you to follow this course and merely save time and trouble.

Mr. Byrnes.—You might find yourself in difficulties in defining whether the State Rivers and Water Supply Commission is a Public Corporation. It could be denied they are, and yet in some ways they claim they have certain aspects which entitle them to be considered as such, but they are not. They are a Government Department, acting under a special Act similarly with say, the Railways—the Tramways probably would be.

Professor Cowen.—Well you could always avoid such difficulties by precise definition. You save an argument in each case if you say a Public Statutory Corporation shall include X and Y, but not Z.

Mr. Byrnes.—You have the Housing Commission and so on, just exactly where do they begin and end as State offices and Corporations?

Professor Cowen.—I think in drafting your legislation, you should aim at the greatest possible clarity of definition.

Mr. Fulton.—Would not that be got at by specifying all Government Departments, Commissions, and so on?

Professor Cowen.—If you want to do that. If you did it that way, and you included all Government Departments, then, of course, you would clearly bring in departments which were in no wise incorporated. The words are "Public Statutory Corporation," and what the Act is doing at the present time is drawing a distinction between certain types of bodies which it calls Public Statutory Corporations, and other bodies which are not, and what it appears to do as I read the Act, is to expose Public Statutory Corporations to a greater liability than the Crown.

Mr. Thompson.—If we adopted your suggestions here in regard to a sue and be sued provision to the State, it would not greatly matter—in other words, we would be placing the State in the same position as the Statutory authority.

Professor Cowen.—If you adopt a "sue and be sued" provision, then I would agree that there would be little reason for maintaining any special provision for public statutory corporations.

Mr. Fulton.—What is the position then of the specific legislation setting up these statutory bodies where it is embodied in the Act they can sue and be sued?

Professor Cowen.—Well the answer to that—I am hesitating simply because I want to make sure I have got the question—the answer may be found in section 4 (3) of the Act at present. If what I now say is not an answer, I will try again. The scheme of section 4 (3) was to provide that in the case of these special bodies which are called Public Statutory Corporations, that the Crown should not be liable for contracts made by them or for torts committed by their servants or agents. That was the first point that was made by section 4, sub-section 3. It then went on to say that nothing in the Act should affect any provision in any other Act by which any liability of any such corporation or of any of its members, officers or servants in respect of any matter is specifically limited or conditioned. So that as I read those words, this section provided that where you had special qualifications on the liability of one or other of these Boards (and a special qualification might be a special qualification as to time in which suit must be brought or as to the limits of damages which might be recovered against these specific bodies) those specific provisions limiting or conditioning the liability were to be respected. The section then went on to say that no such corporation should on the ground that it was the Crown or the servant or agent of the Crown, be exempt from any liability to which it would otherwise be subject. So that that section says, *one*, the Crown

is not liable either in contract or tort for the acts of a Public Statutory Corporation—Public Statutory Corporation being undefined—*two*, that qualifications and limitations on the liability of Public Statutory Corporations as set out in specific Acts still stand; *three*, that apart from such provisions, any Public Statutory Corporation is not to retain the protection of the shield of the Crown. I hope that answers the question.

Finally, sir, I want to draw your attention to one other matter with which the Victorian Act does not deal. There are, in fact, a number of other matters, but I think this is the only other one I would like to speak about this morning. I refer now to section 28 of the English *Crown Proceedings Act* 1947. Section 28 dealt with certain procedural aspects of suit against the Crown, and it went on to provide that in certain cases, the Crown might be required to make discovery and to answer interrogatories. In section 28 (2) the Act provides as follows:—

> Without prejudice to the proviso to the preceding subsection, any rules made for the purposes of this section shall be such as to secure that the existence of a document will not be disclosed if, in the opinion of a Minister of the Crown, it would be injurious to the public interest to disclose the existence thereof.

I would like to tell you something of the history of that provision. There was a difference between the views expressed in the Privy Council in a case which came on appeal from South Australia, and the views of the House of Lords as expressed in a later case. The question in these two cases was whether a claim by the Minister that the disclosure of a document was prejudicial to the public interest was conclusive or whether the Court might still decide to inspect a document for itself, to determine whether discovery should be ordered, whether the document must be disclosed. The view that was expressed in the case that came to the Privy Council from South Australia, *Robinson* v. *South Australia,* was that the Court had an ultimate right to inspect though it would respect what the Minister had to say and refuse to order disclosure. But it retained the ultimate right to see the document for itself if it wanted to do so. That case came to the Privy Council in 1931. In 1942, the House of Lords had to decide a case arising out of the unhappy fate of the submarine "Thetis" which foundered just before the war, with loss of life. Civil litigation arose out of the "Thetis" case, in *Duncan* v. *Cammell Laird,* and Duncan and others were the parties suing in respect of the loss of supporters. Now this case was decided during the war in 1942, and the question arose as to whether plans and specifications in the possession of the Admiralty should be disclosed, and although the Admiralty was not a party to the case, it refused to disclose on the ground that it was prejudicial to public interest. The Court had to decide whether the affidavit of the appropriate Minister was conclusive or whether the Court still retained the power to decide for itself by inspecting the document. Now what the House of Lords said in that case, although it wrapped it up with all sorts of prescriptions about the conduct of the Minister and what he must address his attention to, was that the Minister's declaration was conclusive, so that if the Minister said that the document would not be disclosed, that was the end of the matter, and the Court retained no power to make a final decision for itself. That was a decision of the House of Lords denying power to itself, and, of course, the Court had to consider the earlier case of *Robinson* in the Privy Council, which in effect it disapproved. So you have here a clear conflict of authority.

The English Parliament and the draftsmen of the Crown Proceedings Act in England in 1947, dealt with this question, and you will see from the passage I read from section 28, that they preferred to follow the English rule making the Minister's decision conclusive, rather than the rule propounded in the *Robinson* case which gave the court the ultimate right to decide for itself. Now I would suggest, with respect, that this is a matter with which a Victorian Crown Proceedings Act ought to concern itself, because sooner or later our Courts are going to have to decide this type of question. A number of Courts in other parts of the British Commonwealth have had to decide it—New Zealand, and as far as I know, Canada—and the question arises whether the Courts will follow the Privy Council view as expressed in *Robinson* or the House of Lords in the *Duncan* case, and I think you should anticipate that, by writing in a provision about the conclusiveness or otherwise of the Ministerial determination. I would suggest, with respect, that you do not follow the English precedent, but prefer the *Robinson* doctrine giving the court the ultimate right to make the decision for itself. I do not suggest that that means that in every case the court will call for the document, I do not suggest that at all, but I suggest that it is desirable on general grounds of policy, and having regard to the pattern of executive behaviour as disclosed in recent English cases that the courts should retain the right to inspect documents. I think that there is sometimes a tendency in departments to invoke the notion of public safety and public security without adequate justification and if the court retains an ultimate right to inspect and decide for itself, I believe that it may have a salutary effect on what I hope you will forgive me for describing as incipient bureaucratic tendencies.

Mr. Fulton.—In other words, it is not giving any Minister the right for some reason of his own for not disclosing documents that are required in the particular case?

Professor Cowen.—Yes. The Court will have an ultimate right to overlook.

Mr. Byrnes.—There might be instances of course—you take the case you mentioned of *Cammel Laird* and the "Thetis." That might be a very difficult one. Although the court naturally would be very careful with the document, for security it might be undesirable to release it, yet the court might decide they want to look at it. Which is the more important?

The Chairman.—Of course, that was aggravated because it happened in war time.

Professor Cowen.—I think, sir, that the practical answer to that, is that the Court would not ask for a document in such a case. I think if the First Lord of the Admiralty comes along and says, "We are in the middle of a war, these plans and specifications of submarines are matters of the highest national security, and you must take my word for it," I cannot envisage a court which would not take his word for it. I think that is the practical answer.

Mr. Byrnes.—I can see both sides of it, the court might not be able to give a decision unless they had some technical evidence.

Professor Cowen.—Well, of course, as the English Act stands at present, they just cannot have that evidence. If the Miniser says no, that is the end of it.

Mr. Byrnes.—It all depends how you look at these things—if you are a Minister of not.

Professor Cowen.—I look at it from the standpoint of one who is not. I do not think that one should necessarily assume that the courts will be unsympathetic to the problems of government.

The Chairman.—With regard to the other matters, these will be covered by a memorandum?

Professor Cowen.—If you so desire.

The Committee adjourned.

WEDNESDAY, 7TH NOVEMBER, 1956.

Members Present:

Mr. Manson in the Chair.

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. R. R. Rawson,	Mr. Lovegrove,
The Hon. L. H. S. Thompson,	Mr. Sutton.
The Hon. Arthur Smith.	

Mr. R. N. Vroland, representing the Council of the Law Institute of Victoria, and Mr. A. Heymanson, Secretary of the Law Institute of Victoria, were in attendance.

The Chairman.—Once again gentlemen, we are pleased to have with us Mr. Vroland and Mr. Heymanson, who have come along on this occasion to express to us the views of the Law Institute on Crown Proceedings.

Mr. Vroland.—Mr. Chairman, representing the Law Institute of Victoria, Mr. Heymanson and I are here to suggest to the committee that the Victorian *Crown Proceedings Act* 1955 should be amended in three particulars. The reason for our representations is that we feel that the present Act does not go far enough in establishing Crown liability. The previous report of the Statute Law Revision Committee in the matter indicated that it felt that the liability of the Crown should be assimilated to the liability of the citizen, so that the citizen would have the same rights against the Crown as he would against another citizen in the event of there being any breach of his rights. The Act in our view fails in three important particulars. First, it is not made clear that causes of action arising from the ownership, occupation, possession and control of property by the Crown, or its servants, agents or independent contractors can be relied upon by the citizen in order to enforce his rights. Whilst it is clear that the intention was to make the Crown liable in tort, it is not clear that the Crown is to be liable for injury sustained to a citizen by reason, for instance, of the defective condition of its premises. Take the instance cited by Mr. Justice Coppel in giving his evidence before the previous inquiry—a simple case of a person walking into the Myer Emporium, putting his foot in a hole in the floor and injuring himself. That person would have a right of action against Myer's for damages, whereas in a similar case when walking into one of the Government offices, the citizen is not clearly given the same right of action.

Mr. Thompson.—What general field of law would that come under?

Mr. Vroland.—The field of tort or wrongs. Second we feel an amendment should be made to make it clear that not only is the Crown liable for the acts of its servants or agents when they are acting with the authority of the Crown, but that the Crown should also be liable for the acts of its servants or agents when those servants or agents are acting, not by virtue of an authority delegated to them by the Crown, but by virtue of some inherent power vested in them by reason of their office. A clear case is that of a Police Constable. He is a servant or agent of the Crown, but when exercising his powers of arrest, he does not do so by delegation from the Crown, but by virtue of his office as a Police Constable. We feel that the law should be amended so that in such a case, if the servant or agent exercises his power wrongly, the citizen should have a right of action to recover damages from the Crown for the wrongful exercise of that power.

Mr. Barclay.—Would he have the right to prosecute the Police Constable, if he could not prosecute the Crown?

Mr. Vroland.—To sue him. Our suggestion is that if the Police Constable wrongfully exercises his power with the result that the citizen suffers injury or damage, the citizen should be able to sue not only him but also the Crown for damages in respect of that wrongful exercise of power. We feel that if we go so far as that, we should give the Crown some added protection, so that if the servant or agent of the Crown, being the Police Constable for instance, suffers damage by reason of a wrongful or negligent act of a citizen, then the Crown should have a right of action against that citizen for any loss it suffers.

It is in those three particulars that we submit the Act should be amended.

I am sorry I perhaps did not quite follow your case Mr. Barclay. Mr. Heymanson thinks that you were meaning to say this—that if we gave the citizen the right of action against the Crown by reason of the wrongful act of the Constable, would the citizen also have the right of action against the Constable? I think the answer to that is yes, because at the moment he has the right of action against the Constable, but the difficulty at present is he has no right of recourse to the Crown on the grounds that the Constable is a servant or agent, and if the Constable is unable to pay out of his own resources, the citizen gets a barren judgment.

Mr. Rawson.—You think the citizen should have a claim against the Crown?

Mr. Vroland.—Yes, because taking the case of a Police Constable, he is a servant or agent of the Crown, but by reason of a curious twist in the historical development of the law relating to Constables, the Constable exercises certain powers, not because the Crown vests those powers in him, but because the law says his office as a Constable gives him those powers, and although virtually and from the point of view of the ordinary citizen, he is the Crown's servant, it is a bit difficult for the citizen to understand that in exercising certain powers he is not committing the Crown; we feel he should commit the Crown.

Mr. Rawson.—Did you say that the Crown was entitled to some protection too?

Mr. Vroland.—We suggest that the Crown should be entitled to some protection. For instance, if the Constable in the exercise of his duties, suffers injury by reason of the negligence of someone else, then the Crown should be able to sue that someone else to recover the loss which it suffers by reason of its servant being laid low.

Mr. Rawson.—And at present the Crown cannot do that?

Mr. Vroland.—No, but the Constable can.

Mr. Heymanson.—I think the typical case is a case which occurred in the High Court in relation to the Commonwealth and a member of the Air Force who was injured. The member of the Air Force suffered injuries which necessitated hospitalization in a Commonwealth Hospital, and of course he also received his pay whilst he was hospitalized, but the Commonwealth was held not entitled to recover anything for the cost of the medical expenses or the wages which were paid during that period. The same thing could occur, of course, in relation to a Police Constable who is injured in a motor collision whilst carrying out traffic duties. At the moment, the Crown would not be entitled to recover anything for his medical expenses or the pay which was paid to him during the period of his illness. We think it is only right that the Crown should be entitled to recover those damages, just as a citizen should be able to recover damages if he is injured.

Mr. Byrnes.—Does that come within Professor Cowen's definition of the Crown having the right to sue and be sued?

Mr. Heymanson.—In a wide sense, yes, but I think that that phrase you have just referred to covers more than what I have just said.

Mr. Vroland.—We feel the corollary to imposing liability on the Crown for the acts for instance of the Police Constable, is that if the Crown suffers loss by reason of the negligence of someone else, resulting in injury to the Police Constable, the Crown should have the right to recover its own loss. The Policeman himself who is injured, by the negligence of someone else, now has the right to sue for his own damages, but our suggestion is an extension to allow the Crown to sue for the loss it suffers by reason of its servant having been negligently injured. The type of loss it can suffer is as Mr. Heymanson cited, for instance, a Policeman is injured and put into the Police Hospital for weeks at public expense. That expense we feel should, if it were caused by the negligence of someone else, be recoverable by the Crown from that party.

Mr. Thompson.—There is a suggestion that a Police Constable may act with greater discretion if he is liable for any wrongful acts.

Mr. Vroland.—He is personally liable now.

Mr. Thompson.—But because of that, he acts with greater discretion—if they change it, he might act with less discretion.

Mr. Vroland.—This is the position Mr. Thompson. He is still liable for his own negligence, but what is felt is that the citizen should not be put in the position where the servant or agent of the Crown, having caused injury to him negligently, the citizen is confined in his rights to suing the Constable, who may be a "man of straw." But the Constable is still liable and it is not proposed to take away that liability. For instance, it is conceivable and likely that on many occasions, a Constable would be joined as a co-defendant. The situation could arise where it was arguable that what he did was not done in the exercise of his office at all. There may be an argument about the facts to establish whether that is so. In such a case, both he and the Crown could be sued, if our proposal is adopted.

Mr. Thompson.—It would be rather likely that the person wronged would prefer to take action against the State, and not the Constable.

Mr. Vroland.—It would only be where it was not clear that he was acting in such a way as to attract liability, but I think that argument, of course, is a popular argument, that the Policeman knowing that he was personally responsible for his own wrongful acts, is likely to act with greater discretion, but I think the over-riding consideration is the interest of the citizen, the interest of the public, and it is not to the interest of the public, I suggest, to leave the public and members of the public in a position where, if they are negligently injured, they have no redress, because you want to maintain a system whereby a man is impressed with his own liability and therefore likely to act with more discretion. The truth is that there are not many instances where the Policeman is sued, but the Policeman is from time to time sued.

Mr. Sutton.—Would he be sued in the case of say unlawful arrest?

Mr. Vroland.—I think that is probably one of the more usual occasions when he is sued.

Mr. Sutton.—Despite the worthiness of his purpose?

Mr. Vroland.—Yes. There is this, that he must exercise due discretion. There are a number of other matters Mr. Chairman. Attention has been drawn to them by Mr. Justice Coppel and others, but we do not propose to make representations, they relate largely to procedural matters. The things we are concerned with are these basic principles of liability.

Mr. Thompson.—There is one other question which has cropped up from time to time in relation to Crown proceedings, and that is if we made the State fully liable as an occupier of property, would the State be liable to pay very heavy compensation in the case of outbreaks of flooding and bush fires which could be traced back to Crown lands? For example, it might be argued by the landholders of Mildura, that a lot of the flood waters had collected in the first place on Crown lands.

Mr. Vroland.—The liability for flooding of course, is defined in the Water Act, and we have made representations in relation to that here on different occasions, and if I remember rightly, the liability for flooding is limited to the circumstances defined in the Act itself. So that I would not think that you would have any fears on that ground. So far as fire is concerned, I would think the liability would depend entirely on whether or not the origin of the fire on the Crown land was negligently caused by the acts of the servants or agents of the Crown. If someone who was neither a servant, agent or independent contractor of the Crown, went into the forest and lit a fire, I cannot conceive of any circumstances under which the Crown authorities would be liable by reason of the lighting of the fire. If the forest officers for instance, having a duty to control fire outbreaks, failed so clearly in the exercise of those duties that the fire beat the bounds and got into private property, that failure could be a cause of action, but it would not be based on the ownership of the land, it would be based on the failure to carry out a clear duty.

Mr. Sutton.—What about lack of overseership by forest officials, who might be supposed to see that fires are not lit on property?

Mr. Vroland.—Of course, there again, if it is their duty to see that fires are not lit, it would get down to a question of fact as to whether the failure in the duty was negligent or not.

Mr. Byrnes.—The forest area might be conceded to be under-staffed or not sufficiently staffed to keep an absolute check on the country as to whether a fire could be detected or controlled. In that case a fire might start in a forest area and keep going, and if the Crown was absolutely liable . . . .

Mr. Vroland.—It is not absolute liability. The basis of liability is the negligence of the servants or agents or independent contractors in certain cases, of the Crown. As to whether or not negligence had occurred, would depend on the facts of the case. In other words, the question that would be asked would be, has the Crown through its servants or agents, done what a reasonable man would have done in the circumstances? You get back to that test all the time, so that the basis of liability is negligence, and the test as to whether or not negligence has occurred is the test of whether or not the behaviour in the circumstances has been reasonable.

The Chairman.—There are two classes of liability, one vicarious and the other original. Vicarious relates to the servants or agents, and original relates to the possession of the land by the Crown.

Mr. Vroland.—The question I have been asked is if the liability is extended to liability for damage arising from defective premises, would that go so far as to make the Crown in effect, vicariously liable for the escape of fire from Crown lands and forests. My answer to that is there would not be a vicarious liability, the basis of liability would be as to whether or not the fire had either originated by reason of the

negligence of the Crown servants or agents, or having originated for some other reason, escaped by reason of the negligence of the servants or agents of the Crown.

Mr. Byrnes.—Quite a considerable area in Victoria has been mined in the past and there are holes and in some cases small shafts along creek beds and so on. If that were on private property they would have to be filled in and covered up, but there are quite a lot of them uncovered on Crown land. If someone breaks a leg tripping over a hole in the ground or falls down a shaft, would you say that would come into this case?

Mr. Vroland.—In the case of trespassers and licensees, I would think there would be no liability, but in the case of invitees, there could well be liability. An invitee being a person who goes there in connection with and for the purposes of the business of, in this case, the Crown.

Mr. Byrnes.—He might go to get a load of firewood.

Mr. Vroland.—If he goes to get firewood merely of his own volition, without any arrangement or contractual relationship between himself and the Crown, he would be going in there either as a trespasser or a licensee in which case I think there would be no liability, but if he entered into a contract for instance, to purchase timber by royalty and was in that contractual relationship with the Crown, then unless these things were clearly defined and properly protected, it could be—I do not say it would be—but it could be that he would, if he were injured by reason of him falling into one of those shafts, have a right of action for damages.

Mr. Thompson.—In other words, you would be saying that the State would be incurring no financial risk by passing the amendments that you suggest?

Mr. Vroland.—I do not say no financial risk, we feel it is a risk which the Crown should take by virtue of its position. It is dealing so widely with the citizen and it brings the citizen in those dealings so often on to its premises that we feel it is unfair that the citizen should not have the ordinary protection that he has on the premises of another citizen.

Mr. Heymanson.—I was thinking that, whilst Mr. Vroland has been giving an answer to the question raised by Mr. Thompson and also Mr. Byrnes from the purely legal point of view, is not there also the answer that, as a matter of public policy in these days when the Crown has so many semi-commercial and commercial enterprises and engages in so many activities which are much wider than they were in the olden day, the citizen who suffers damage as a result or arising out of those activities should not be in a worse position where the damage is caused by a servant or agent of the Crown than he would be if he were injured by the act of a servant or agent of a private individual. That is the point I think, and if in actual fact a fire does break out or waters do escape, the question of whether a person can recover should not rest on the possibility of whether that fire escaped from private or Crown land. If it escaped in circumstances in which a private individual would be liable for escape from private land, there seems no reason why he should not recover damages if it escapes in the same circumstances from Crown land, but the question of whether or not he can recover is not a question of absolute liability, it is a question of whether, in the circumstances, the law gives him a remedy.

Mr. Byrnes.—That is the case at the present time in regard to the Railways Department. If a fire escapes by virtue of the negligence of a railways officer, the railways have to pay heavy damages.

Mr. Heymanson.—Precisely and that brings me to a rather better example than I have put. Why should the citizen who has suffered damages as a result of fire escaping from railway premises be entitled to recover, but if it escapes from premises which are Crown lands, he cannot recover? There seems to be no logical reason whatsoever. It all depends on the circumstances of the case.

Mr. Rawson.—Mr. Vroland mentioned that it was desirable that the Crown should have the right to recover in the case of any losses suffered through the injury of one of its employees. What is the position to-day regarding a private employer and employee? I have in mind probably that a private employer may guarantee continuation of wages, pay hospital fees and so on, as a part of its contract. Would that employer be able to recover that?

Mr. Vroland.—I think if he is legally liable to pay those payments to the party injured, he would be entitled to recover from the party who injured that party, if it was negligently done. In the case of Workers Compensation, where, if an employer pays workers compensation to his employee and the injury in respect of which it is paid was occasioned by the negligence of some third party then the employer can sue that third party to recover the workers compensation which he has paid. As we all know, behind that there is insurance, but that does not matter, the chain of liability is through the employer.

Mr. Thompson.—What would be the position Mr. Vroland, in a case where a fire broke out in a forest area that was privately owned, and the fire was of unknown origin yet it could be clearly established that it had started in that particular man's land. To what degree would the man be liable?

Mr. Vroland.—Only if it were proved that his negligence occasioned the fire, or the negligence of his servants or agents. There is no other liability on that.

Mr. Byrnes.—Entering buildings seems to me to be in a somewhat different category in broader aspects when you are thinking over this question of Crown liability. For instance you say Judge Coppel's argument was that someone goes into Myers, trips on the floor, and Myers are liable. I think Mr. Ireland, M.L.A., tripped on the floor here, and could not sue the Crown. Is there any way in which you could separate those two liabilities? The Crown has all sorts of buildings everywhere now, schools, police stations and so on.

Mr. Vroland.—The best way would be to enumerate as was done in the English Act, the class of premises in respect of which the liability can arise. I think the English Act sets out in detail, schools, public offices and so on. I can see the difficulty, particularly over forest areas and so on. I do not really think forest areas were in our contemplation. We were thinking more of public buildings, public offices, schools, and all that type of premises, administrative premises and operating premises that were built. We did not contemplate forest areas. At the same time, in referring to buildings, we must not omit the entrance to the building, if, for instance, the yard through which you enter or the front through which you enter is in some way defective and causes injury, then we still think the right to sue should be given, so that in defining the premises which either are to be included or to be excluded, a good deal of care would be necessary. I would prefer myself, if there is anything to be done, to say that they should be liable in respect of all defective premises, properties and so on, other than those which are expressly excluded, because I think it is easier to make an exclusion than to be sure that your list is comprehensive.

Mr. Barclay.—If children at school get hurt, is the Education Department liable for the hospital and so on?

Mr. Vroland.—Not necessarily. At the moment, there is no liability.

Mr. Barclay.—There is a small insurance scheme operating at schools.

Mr. Vroland.—That is not on the basis of liability, that is on the basis of injury, but at the moment there is no liability.

Mr. Sutton.—In your submission the parents of the child would have a right?

Mr. Vroland.—They could. As the law stands at the moment there is no liability. Our submission is that the law should be amended so that in a proper case they would have a right.

Mr. Barclay.—During the floods in the Mildura district, there were hundreds of men working on the S.E.C. and State Rivers installations at Merbein, Red Cliffs and at other different Government offices. They were private citizens who normally worked for themselves. If they had been hurt, they would have had no protection would they?

Mr. Vroland.—At the moment they have no redress.

Mr. Barclay.—I did ask the State Rivers to insure everyone on the job, but prior to that, there would be no responsibility of the Crown.

Mr. Vroland.—In general terms, that is correct.

Mr. Heymanson.—I think in the circumstances Mr. Barclay is envisaging, there would be no liability on the Crown, even if the Act was amended as proposed because these people are purely volunteers, helping to stop a flood. I do not think we would be suggesting that the Crown should be liable in that case.

Mr. Vroland.—The sort of thing we envisage, for instance, is you walk into the Treasury buildings and a tile has come out and there is a hole in the floor and a man can put his foot in and break his ankle. Now we say that if the private citizen could recover from, say, the Myer Emporium in such circumstances, he should have the same right against the Crown.

Mr. Rawson.—What category would a school child come into? Would he be considered as an invitee?

Mr. Vroland.—I do not think there is any question about that—he is an invitee. He would technically be an invitee—he has got to go there—and he is an invitee as far as the law of wrongs is concerned. The basis of determining whether or not a man is an invitee depends on the relationship between the parties. There is a common interest here, and he goes there in pursuance of that common interest.

The Committee adjourned.

TUESDAY, 11TH DECEMBER, 1956.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. W. O. Fulton,	Mr. Lovegrove,
The Hon. R. R. Rawson,	Mr. Wilcox.
The Hon. A. Smith,	
The Hon. L. H. S. Thompson.	

Mr. D. I. Menzies, Q.C., Mr. G. Lush, and Mr. N. H. Dooley, representing the State Electricity Commission, were in attendance.

The Chairman.—Mr. Menzies will tell the Committee the story of Crown Proceedings as it affects the State Electricity Commission. I understood, Mr. Menzies, that you have perused the transcript and therefore know of the background of this matter.

Mr. Menzies.—That is so. Perhaps I should make it clear that I appear, with Mr. Lush, as counsel to put before the Committee the views on behalf of the State Electricity Commission. First, I should like to revert to the time before the Committee's recommendations were, to some extent, embodied in legislation in the *Crown Proceedings Act* 1955, just to look briefly at the position at common law. I wish to do that because there are two rules that affect the Crown which must be considered, otherwise confusion arises. The first one, which is well known to members of the Committee is that, at common law, the Crown could not be made liable in tort or in contract. That is the rule to which this Committee addressed its attention when it brought about that which is regarded as a necessary change in the law. I am aware that the Committee's recommendations were not given effect to in full and that you are now considering the matter further. The other rule affecting the Crown which is different from that previously named, is that the Crown is not bound by statute unless expressly named or included by necessary implication. Again, I assume that as legislators, members of the Committee are familiar with that rule to some extent. The effect of the rule is that when a statute is passed that imposes duties or liabilities in general terms, it does not affect the Crown, nor does it impose any duty or liability upon any instrument of the Crown. If that is to be done, it can only be done by express language or by necessary implication. I hope that I will not weary members of the Committee, but I shall refer to how this rule is applied by reference to one case. I shall refer to a decision of the House of Lords and it may be of some assistance when I come to elaborate on this question shortly. The case to which I refer is that of the *Province of Bombay* v. *Municipal Corporation of the City of Bombay* reported at page 58 of Appeal Cases 1947. The question was whether the Crown which was in this case the Province of Bombay was bound by a law which gave the Municipal Corporation of Bombay the right to lay pipes for the reticulation of water. It was held that the Crown was not bound and that except by arrangement, the Municipal Council could not enter upon Crown lands and lay pipes. In so deciding, the House of Lords stated that the principles established in England were applicable in India, and there is no doubt that they are also applicable here today. The general rule is stated in the following terms, and I quote from page 61 of the report contained in Appeal Cases 1947:—

> The general principle to be applied in considering whether or not the Crown is bound by general words in a statute is not in doubt. The maxim of the law in early times was that no statute bound the Crown unless the Crown was expressly named therein . . . . . But the rule so laid down is subject to at least one exception. The Crown may be bound, as has often been said, "by necessary implication." If, that is to say, it is manifest from the very terms of the statute, that it was the intention of the legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named. It must then be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions.

The City of Bombay said that applied whenever it was necessary to give full effect to legislation that the Crown should be bound. Their Lordships studied that and rejected it, and in doing so, they said, and I quote from page 62:

> It may also be objected that the view taken by the High Court appears to ignore the possibility that the legislature may have expected that the Crown would be prepared to co-operate with the corporation so far as its own duty to safeguard the wider public interest made co-operation possible and politic, and may well have thought to compel the Crown's subservience to the corporation beyond that point would be unwise. As was pointed out by Wills *J.* in *Gorton Local Board* v. *Prison*

Commissioners, it may be reasonable to suppose that the legislature has no less confidence in a department which represents the Crown than in local authority.

It was, therefore, said that the differences between the Crown and the municipality in this case should be settled by negotiation by agreement, and it could not be thought that the Crown was bound by this particular statute. I feel I am on safe ground in saying that this Committee, and Parliament when it passed the Crown Proceedings Act, believed it was dealing with the first rule only, namely that the Crown is not liable in contract and tort, and it was not interfering in any way with the other rule that the Crown is not bound by statute unless expressly named or included by necessary implication. The point I make is that there is some danger because inadvertently there has been some revision of the second rule which may have un-thought-of consequences.

I shall now outline the position of the State Electricity Commission. The Commission is a statutory corporation and it has always claimed that it is part of the Crown—that it is part of the use and office of the Crown. All members of the Committee know the important position occupied by the Commission and appreciate the public duties performed, the extent to which it makes calls upon the loan market, the way in which its functions affect Victoria, and so on, and accordingly, the Commission has assumed—and the courts have assumed—that it is the Crown for certain purposes. At the same time, the Commission has never raised the rule of the Crown when it has been sued in contract or in tort because it is clear from the terms of its statute that it can make contracts upon which it is bound and it can be sued if it breaks those contracts.

Furthermore, although it is not provided expressly, it has always been taken to be reasonably clear that the Commission is bound in tort. Therefore, if a State Electricity Commission truck hits a man on the road, the Commission could be sued. Again, if a linesman makes an error which causes damage to someone else, the Commission could be sued.

Mr. Rawson.—Could it raise the shield of the Crown?

Mr. Menzies.—Not successfully; it is not a matter of grace. As far back as 1921, the Commission was advised by the present Chief Justice of the High Court that it was liable in tort and it has always accepted that position. I do not think there has ever been any doubt about that. That being the case, it is fairly clear that it was not intended that the statute which was passed as a result of the Committee's recommendation should really affect the Commission. The Commission was liable in tort or in contract more fully than the statute makes the Crown liable. It was probably not intended that the statute should affect the Commission in any way.

So far as the Commission's relationships with other Government Departments and municipal corporations are concerned, they are matters for negotiation and discussion between the bodies concerned, but there is the additional provision that where there is disagreement the matter must be resolved by the Governor in Council. That is the type of co-operation referred to by the House of Lords in the case that I cited. Section 49 of the *State Electricity Commission Act* 1948 as amended provides—

(1) Save as otherwise expressly provided nothing in this Act shall affect any rights powers authorities or duties of any Government department other than the Commission.

(2) Where the exercise of any rights powers or authorities or the discharge of any duties by the Commission may affect the exercise of any rights powers or authorities or the discharge of any duties by any other Government department or by any municipality or any local authority within the meaning of the *Public Contracts Act* 1928 the Commission shall so far as practicable confer and co-operate with such department or such municipality or authority.

(3) Any question difference or dispute arising or about to arise between the Commission and any other Government department or any municipality or any such local authority with respect to the exercise of any rights powers or authorities or the discharge of any duties by either or both of them may be finally and conclusively determined by the Governor in Council.

The Committee will notice that in sub-section (1) there is a recognition of the Commission as a Government department.

Assume that there was a dispute between the Commission and a council as to the location of a sub-station; the stand the Commission would take would be that it is not bound by local Government by-laws because it is the Crown, but it is bound to co-operate with the council and in the case of an impasse the dispute is to be determined by the Governor in Council in accordance with the regulations. It is not a matter of the Commission being subjected to by-laws and regulations in the same manner as the subject. The Commission is no more bound than the Board of Land and Works or any other Government instrumentality.

The second aspect of this problem is most important from the point of view of the State Electricity Commission. I shall give one or two instances of the way in which it operates. Section 345 of the Local Government Act provides that no liability in respect of any rates shall attach to the Crown. It has always been regarded that that provision exempted the Commission from rates because it is the Crown and it is entitled to the protection given to it by that section. Again, all the multifarious by-laws and regulations are not regarded as applying to the Commission. Examples of that would be the many regulations made under the Boilers Inspection Act, the Mines Act and others. However, I do not put it that the Commission does not fully comply with these regulations; it usually does a great deal more. It is not subject to inspection by shire officers concerning the manner in which it installs transmission lines. Those lines must be constructed according to the Commission's own specifications and not according to local by-laws. The Commission has always taken the stand that a Local Government inspector cannot interfere and say that a job must be done in such and such a way. The Commission is a responsible body with great power and resources and usually a great deal more engineering skill than that available to councils. It has a duty to carry out important public functions in a manner which it deems to be proper, subject to the condition that when there are differences they will be resolved in the manner that I have indicated.

That being so, it is most important for the Commission to have intact the security that it gets by virtue of the second rule that I have stated, namely, that the Crown is not bound by statute or regulation unless expressly named. Circumstances such as the following could arise: income taxation is the province of the Commonwealth Parliament and the relevant Act provides an exemption in section 26 by which public authorities are not required to pay income tax. Under that exemption the State Electricity Commission is not liable to pay tax. Suppose that the exemption were removed; then the only answer the Commission would have would be, "We are the Crown." I am sure that this Committee would not

wish in any way to imperil the position of the Commission in taking the stand that it is the Crown and is therefore entitled to the immunity of the Crown. I think I have covered the position to this extent: This Act, although important and necessary generally, was not necessary so far as the Commission is concerned and I am sure it was not intended that anything in the Act should affect the Commission and deprive it of immunities and securities that it might otherwise have had.

Mr. Thompson.—You mentioned earlier that the Commission could not avoid a claim for damages on the basis that it was the Crown, yet it could succeed in avoiding to pay income tax on the ground that it was the Crown. What is the reason for the difference?

Mr. Menzies.—The income tax problem is a most complicated one, but the Commission could avoid Commonwealth income tax on the ground that although the Commonwealth has wide powers to impose income tax, it has no power to tax the State. Here I merely give my opinion, which is that it would be *ultra vires* for the Commonwealth to impose a tax on the revenue of the State of Victoria. If the Commission is the Crown, then it would be no more subject to income tax than schools or anything else. The immunity that the Commission has concerning rates and other things depends entirely on the fact that there is in existence a statute which imposes duties and liabilities otherwise than on the Crown and because the Commission is the Crown it is not bound by those duties and liabilities.

Mr. Thompson.—I appreciate that. In answer to a question asked by Mr. Rawson, you stated that the State Electricity Commission could not, on the basis that it was the Crown, avoid a claim for damages.

Mr. Menzies.—Definitely, and that is by virtue of its own statute, which contemplates that it can be sued for tort and contract. It is subject to the obligations of its own statute but not to other statutes which do not apply to the Crown, either because the Crown is expressly exempt or because of the rule I have elaborated.

I should like to examine this enactment for a moment to see whether or not there has been some inadvertent modification of the position of the Commission and other public authorities. The Committee will recall that section 4 imposes liability on the Crown in two respects, first in contract, and secondly in tort, but in respect of tort only to a limited extent. Paragraph (*b*) of sub-section (1) of section 4 provides—

> The Crown shall be liable for the torts of any servant or agent of the Crown or independent contractor employed by the Crown as nearly as possible in the same manner as a subject is liable for the torts of his servant or agent or of an independent contractor employed by him.

Under section 4, the Crown loses its immunity from a suit in contract and, to a certain extent, loses its immunity for suit in tort. Sub-section (3) of section 4 provides, *inter alia*—

> No proceeding shall lie against the Crown under this Act—
>
> (*a*) in respect of any contract made by or on behalf of any public statutory corporation;

That is to say, where a statutory corporation itself is bound by its contract, this statute does not impose an additional liability on the Crown, therefore the other party cannot say, "There are now two parties that I can sue—the Corporation and the Crown."

In paragraph (*b*) of sub-section (3) it is provided that no proceeding shall lie against the Crown under this Act—"in respect of any tort of any such corporation or of any of its servants or agents or of any independent contractor employed by it." Because the Commission is itself liable for the negligence of its servants, this Act provides that the Crown does not become liable. Sub-section (3) continues—

> and nothing in this Act shall affect any provision in any other Act by which any liability of any such corporation or of any of its members officers or servants in respect of any matter is specifically limited or conditioned.

No doubt the Committee has in mind the provisions of liability on the part of the Railways Commissioners and things of that nature. Then there are words that seem, literally, at any rate, to go further, because this is the language that is used—

> but no such corporation shall on the ground that it is the Crown or the servant or agent of the Crown be exempt from any liability to which it would otherwise be subject.

It will be noted that that provision is not confined to tort and contract but it goes further. I do not suggest that a court might not, as a matter of construction, attempt to tie that to the two matters that are dealt with. The position is obviously one that concerns public authorities, if the sub-section is to be given its widest meaning. For instance, suppose a council were to sue the Commission for rates in respect of a power station, the Commission would say, "We are not liable under section 345 of the Local Government Act, because we are the Crown." The council might then say, "But the Crown Proceedings Act provides that a corporation shall not on the ground that it is the Crown be exempt from any liability." There would then be an argument which, I am sure, was never intended.

We suggest for the consideration of the Committee that if the section is to be retained it should be made clear that the words I have just read should be confined to cases that are dealt with in the section itself—that is, cases of contract or of tort where the tort is that of the servant or agent of the Crown, or an independent contractor. That could probably be achieved by the insertion of the word "such" after the words "from any". The passage would then read—

> but no such corporation shall on the ground that it is the Crown or the servant or agent of the Crown be exempt from any such liability to which it would otherwise be subject.

I think that is probably what was intended, and if the provision goes further it has been done inadvertently. I am certain that it was not intended that the Commission should lose any protection that it has by virtue of being the Crown, except in relation to contract and tort and, as I have stated, that is not necessary so far as the Commission is concerned because it is liable.

I have read the evidence tendered to the Committee earlier on this subject, and I recall that there was some discussion on the question of making the Crown liable for breach of statutory duty. I think that matter was dealt with particularly by Mr. Justice Coppel. The report of the Committee did not deal with the matter, but it is one of very general importance and as the Commission takes a view somewhat different from that expressed by Mr. Justice Coppel, perhaps I may be permitted to comment on it at this stage. His Honour proceeded on the footing that liability for breach of statutory duty is not tort. With great respect, we do not share that view. Take the simple case where there is imposed upon the occupier of a factory that is engaged in the manufacture of products by machines that can cause harm to operators the obligation to fence those machines. If the occupier does not have the machines properly fenced and an employee is injured as a result, the employee would normally sue in two ways in the one action. He would issue a writ in the Supreme Court claiming, say, £5,000 damages. His

first ground would be that it was negligence not to have the machines fenced and that he had suffered damage as a result. Secondly, he would say that as the statute imposed a duty upon the manufacturer to fence the machines for the benefit of the employee, and because the employer broke the law he, the employee, suffered damage and should therefore receive payment. The causes of action are different, but the view we are disposed to take is that both are torts, and that to make the Crown liable in tort would in appropriate cases subject it to liability for breach of statutory duty. I am not saying that should not be done—it is a different matter altogether as to whether the Crown should be made liable for breach of statutory duty—but it is important to keep in mind—this was not made clear when the matter was discussed earlier—that if the Crown is liable for breach of statutory duties it must only be in respect of statutory duties that bind the Crown. For instance, if a statute does not bind the Crown, the Crown cannot be made liable for any breach of that statute. The utmost care must be taken to ensure that any provision that makes the Crown liable for breaches of statutory duty makes it liable for breaches of duty imposed by statutes that in fact bind the Crown. I commend to the attention of the Committee the provisions of the English Act in this respect which, quite properly, draws this distinction.

Sub-section (2) of section 2 of that Act imposes liability on the Crown for breach of statutory duty, but it is prefaced by these words—

> Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to the provisions of this Act, the Crown shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

I direct attention to two things. First, this section assumes that an action for damages for breach of statutory duty is tort because it says " shall be subject to all those liabilities in tort." Secondly, it recognizes that the old rule about the Crown not being bound unless specifically named is not being affected at all. Whether it should be is another matter; that is not being considered here, and if it ever arose there would be strong arguments, no doubt, why it should not be done. I need not bother about this, but if there is any disposition to subject the Crown to actions for breaches of statutory duty, it should be done in such a way that the section would apply only to statutes where the Crown is bound by those statutory duties. This is of enormous importance to the State Electricity Commission, which carries on such activities as the recovery of coal, the briquetting of coal, generation of electricity, transmission of electricity, and so on.

Mr. Fulton.—Sometimes without due regard to the rights of private individuals.

Mr. Menzies.—If it does that, the Act gives private individuals substantial rights to complain to the courts.

Mr. Fulton.—It would be a big task for a private person to fight the Commission.

Mr. Menzies.—Many people have done so with some success. The Commission has some extraordinary powers, which are sometimes exercised in such a way that private people do not like it very much. Parliament has thought it proper to give the Commission powers to take land compulsorily, and one would have thought that was justified, but sometimes people do not like their lands being taken and sometimes do not agree with the compensation awarded, and they complain. There are other ways in which the Commission unquestionably affects private persons. But, by and large, if a person is injured by the Commission, that person has his redress, because the Commission is liable in tort and in contract. It has these very substantial public obligations.

Mr. Fulton.—And, likewise, some responsibilities.

Mr. Menzies.—It has very real responsibilities. Speaking as counsel for the Commission, I would say that the Commission does appreciate its responsibilities, not merely to the people of Victoria generally, but to the individuals who are affected by its operations, and there have been many cases in which the Commission has spent vast sums of money to prevent what it considered to be avoidable damage to other people by virtue of the works which it carried on. Some damage perhaps is unavoidable, and about that it can do nothing, but it has not stinted expense in protecting individuals from harm by virtue of the works it does. That is its public responsibility, and it would not wish to shirk in any way that responsibility. However, when it comes to dealing with other Government authorities, including rule-making authorities, such as local municipal councils and similar bodies, it feels that it is entitled, as Parliament has said it shall be, to deal with them on the basis of negotiations rather than being bound by section 49. Therefore, where there are rules made under the Mines Act or the Boilers Inspection Act, or by-laws made under the Local Government Act, and they do not bind the Commission at the present time, nothing should be done by this Committee, by virtue of this Act, to affect that state of affairs.

If anything is to be done to get rid of the rule that the Crown is not bound by a statute unless it is named either expressly or by necessary implication, we would say that was an altogether different inquiry and one which would, doubtless, affect the Crown very substantially. I merely put it on the basis that, while that rule exists, no legislation should be adopted under the heading of Crown Proceedings, which is merely dealing with the enforcement of rights that would affect that rule, and therefore if there is the imposition of liability for breach of statutory duty, it should be prefaced in some such way as the English Act is prefaced to preserve the existence of the other rule which is not under examination at present.

I wish to make this point perfectly clear, because I would not like there to be any misunderstanding about it. In a case where the State Electricity Commission is at present bound by statute, where there is a breach of that statute on the part of the Commission, and that breach results in damage or injury to some private citizen, the Commission is already liable, and it requires no amendment of the law to make it liable. The law should be such that it does not impose other liabilities unintentionally by depriving the Commission of its immunity as the Crown from the operation of statutes and regulations.

The Chairman.—Is the Commission liable for damage which someone may suffer on its premises, for example, as a result of a loose board on a staircase?

Mr. Menzies.—Certainly. I shall pass to that aspect of the matter now, because I appreciate that one of the questions the Committee is about to examine is the Crown's liabilities as owner or occupier. The view that we put is that the State Electricity Commission is bound at common law for carelessness or liability generally as owner or occupier in exactly the same way as a private citizen, and it cannot raise the shield of the Crown to any action that may be brought against it. I realize that what the Committee is about to investigate here is whether

or not the Crown should be subjected to similar liability. The reason why the Commission is so liable, notwithstanding its character as part of the Crown, is because that is the true meaning of the statute under which it has been established. The position is dealt with by sections 4 and 10. The Commission is incorporated as a corporation, and the Act provides that it is liable to suffer the same acts and proceedings as any other corporation. There are special provisions which relate to the making of contracts, and so on, and those taken together debar it from raising the shield of the Crown to liability of this character.

The general question whether this Act should be extended to bind the Crown as the owner or occupier of Crown premises is something upon which it would not be proper for the Commission or its counsel to put any concluded opinion. That does not affect us. All we would say is that there are important considerations to be kept in mind in examining such a proposal. For instance, the Crown occupies forests, and it does not exclude people from them; those who enter are not trespassers. If anybody was walking in the forest and happened to be hurt by a falling branch of a tree, one might well say the Crown should not be subject to an action; that it should not have to prove that it was not negligent in its inspection of the trees to ensure that branches would not fall and hurt those who were underneath.

These problems do not touch the Commission but they would touch the Crown. In that regard, we have no general view to submit.

Mr. Rawson.—If a person walking into a forest were not regarded as a trespasser, how would he be designated?

Mr. Menzies.—His legal category would be that of licensee. The Crown allows him to enter. He commits no offence by entering, but he has no enforceable right to do so.

Mr. Fulton.—There is no prohibition against his entering.

Mr. Menzies.—That is so but there may be a prohibition against his chopping down trees. I do not wish to expound the obligations of the law imposed on occupiers in respect of licensees, but whether the Committee desires to expose the Crown to those liabilities is another matter. All I say in that regard is that a case could be made out to put the rest of the Crown on the same basis as the Commission in respect of its liability at common law as the occupier of premises. I merely point out that our premises are different from those of the Forests Commission or the Lands Department, and different considerations might be thought to apply. It might be thought proper to put the property of the State of Victoria on the same basis as to Crown right as that of the Commonwealth of Australia, which is clearly liable as the occupier of premises and can be sued as such. But it can only be sued at common law. Suppose that some statute, in general terms, imposed duties on occupiers of premises. The view we would put to the Committee is that it would not bind the Crown. The Crown could not be sued unless it were named. Further, the Crown could not be sued for breach of statutory duty for the reason that the statute would not apply to it. However, it could be sued at common law perhaps as occupier of premises.

Assuming that the Commission is already liable as occupier of premises at common law, it could still adopt the defence that by reason of its being the Crown a statute which imposed a general duty on the occupier of premises had nothing to do with the Commission, and therefore no person could complain that the Commission had not complied with the statute. The submission we make is that, with respect to the Crown generally and the Commission in particular, the imposition of liability as occupier of premises should be substantially a common law liability, in exactly the same way as is that of the Commonwealth in similar circumstances. However, care should be taken to ensure that any change made in the law does not expose the Crown in general or the Commission in particular to complaints that there has been lack of compliance with statutes, regulations or by-laws that would impose duties generally but which do not apply to the Crown or to the Commission. We seek no exemption from our existing common law liabilities, which are substantially as wide as those of a private person. Nevertheless, we have an advantage inasmuch as the Crown is not bound by statutes unless it is named. We ask that in drafting any amendment to the prevailing law care be taken to ensure that there will be no abrogation of that rule for, by so doing, further obligations could be imposed upon the Crown.

Mr. Fulton.—In other words, all the present rights and privileges of the Commission should be preserved?

Mr. Menzies.—Yes, as well as the liabilities. I emphasize that the Committee is not investigating the rule that the Crown is not bound by statutes unless it is expressly named.

Mr. Fulton.—The Commission has power to push a person out of premises he has owned for years, without regard to his rights or privileges.

Mr. Menzies.—That power, which was conferred upon the Commission by statute, sometimes reacts harshly against individuals. After all, transmission lines must be taken through the properties of some persons, who may be affected adversely. Many people claim that the exercise of the Commission's power of compulsory acquisition has resulted in hardship to themselves but, in proper cases, the Commission has no option but to exercise that power; if it neglected to do so it would fail in its duty.

Mr. Fulton.—There must have been some change in the powers of the Commission since it was first constituted.

Mr. Menzies.—The Commission has always been liable in tort.

Mr. Fulton.—It has claimed that it has not the same responsibilities as other employers under the Labour and Industry Act, the Health Act, and so forth.

Mr. Menzies.—We would still contend that that is so.

The Chairman.—Why?

Mr. Menzies.—Because the Commission is the Crown. If there are differences between the Commission and a department as to what the Commission is doing, section 49 prescribes that such differences should be resolved not by a court of law, but in the final resort, by the Governor in Council. It is not that the legislation has not made provision—it has made a different provision.

Mr. Lovegrove.—Could you advise the Committee of the total number of compensation claims lodged over some specific period and the amount of compensation paid in each case?

Mr. Menzies.—I could not answer that.

The Chairman.—Perhaps Mr. Dooley could supply the relevant information covering, say, a period of five years.

Mr. Dooley.—I would not be able to supply that information immediately, but it should not take very long to obtain it.

The Chairman.—It would be advisable for the Committee to send you a memorandum on that aspect.

Mr. Dooley.—I am a little undecided as to how extensive it might be, but if a letter were forwarded seeking the relevant information, I would undertake to supply it.

Mr. Lovegrove.—Does the Commission regard itself as being subject to the uniform building regulations framed under the Local Government Act?

Mr. Menzies.—No. Again, I would say that differences between the Commission and those responsible for the enforcement of the regulations would be resolved under section 49 of the Act rather than by a court of law.

Mr. Thompson.—At present, under the Labour and Industry Regulations, an employee of a private industrial concern who is injured by machinery which should have been fenced in would be able to claim damages. If an employee of the Commission were injured under identical circumstances, what would be his position?

Mr. Menzies.—He could sue for negligence under the common law.

Mr. Rawson.—If a person entering the Commission's premises slipped on the floor thereby injuring himself, would he be entitled to sue for compensation?

Mr. Menzies.—Yes.

Mr. Rawson.—Is that the pattern of legislation followed in other corporations?

Mr. Menzies.—Yes. It does not arise by virtue of any special provision; it is rather the general character of the provision which leaves the statutory corporation in exactly the same position of private individuals at the suit of the subject. For instance, the same would apply to the Commission, the Melbourne Harbor Trust, the Gas and Fuel Corporation, and so on.

Mr. Rawson.—Is it something put into the statutes?

Mr. Menzies.—It is brought about by section 4 of the State Electricity Commission Act which provides, *inter alia*—

(1) For the purpose of carrying this Act into execution there shall be a Commission constituted as hereinafter provided to be called the State Electricity Commission of Victoria.

. . . . . .

(4) The Commission shall be a body corporate by the name of the "State Electricity Commission of Victoria" with perpetual succession and a common seal; and shall by that name be capable in law of suing and being sued and subject to and for the purposes of this Act of purchasing taking holding selling leasing taking on lease exchanging or disposing of real or personal property and of doing or suffering all such other acts and things as bodies corporate may by law do and suffer.

In order to complete that it is necessary to refer to section 10 of the Act which provides—

Subject to the Minister the Commission shall administer this Act and shall have and may exercise the rights powers and authorities and discharge the duties conferred or imposed on it by this or any other Act.

Mr. Smith.—What is the Commission's position in connexion with the payment of municipal or water rates in respect of properties owned by the Commission?

Mr. Menzies.—The Commission pays no rates on any of its properties.

Mr. Dooley.—If a tenant occupies a Commission house he is rated, although sometimes the Commission pays the rates. For example, at Newborough, where the rates are substantial, the Commission collects them from the tenants and pays them to the Council. If the Commission occupied a private person's office, it would be necessary for rates to be paid.

Mr. Menzies.—The property of the Commission which is owned and occupied by the Commission, does not carry rates.

Mr. Smith.—What would be the position if a water works trust desired to cut off the supply of water to a property owned by the Commission and tenanted by an employee?

Mr. Menzies.—It could do so. Perhaps that question could also be raised in the letter from the Committee, otherwise we might be answering categorically and incorrectly.

Mr. Dooley has reminded me of one point in connexion with the elaboration of the submission that I made that the Commission is liable at common law for negligence. Whenever there is a breach on the part of the Commission or its servants of the standard of reasonable care, then the person who is injured by that breach already has his action.

The Committee adjourned.

THURSDAY, 13TH DECEMBER, 1956.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. A. Smith.	Mr. Lovegrove,
	Mr. Sutton,
	Mr. Wilcox.

Mr. J. L. Baskett, Estates Officer, Forests Commission, was in attendance.

Mr. Baskett.—The Forests Commission has consulted the Crown Solicitor concerning its position under the Crown Proceedings Act. That officer has given a somewhat lengthy opinion, which I submit to the Committee.

The Commission has been invited to express its views to the Committee during examination of anomalies of the Statute Law relating to civil proceedings by and against the Crown in relation to—

(*a*) the ownership occupation possession or control of property by the Crown or its servants agents or independent contractors;

(*b*) the exercise by servants of the Crown of functions otherwise than on instructions lawfully given by the Crown.

The Forests Commission, *vide* Section 10 *Forests Act* 1928, is a corporate body which exercises complete control over 5,500,000 acres of reserved forest constituting approximately 10 per cent. of the area of the State of Victoria. In addition the Commission controls the timber on, and is charged with the fire protection of, some 9,000,000 acres of unoccupied Crown lands. The Commission is therefore responsible for certain functions of government in relation to one quarter of the total area of the State.

Government Departments are usually constituted to fulfil one specific function of Government such as mining, water supply, railways, road construction or health. The Forests Commission, although primarily concerned with trees and the growth, preservation and marketing of timber also controls such functions as fire protection of Crown areas of the State, road-making and maintenance, grazing, bee farming, forest township and recreational forestry. The primary

consideration of the Forests Commission is reserve forests, but, apart from those forests, such areas as water frontages, unused roads and land of various descriptions come under its jurisdiction, either directly or indirectly.

In view of the mileage of the boundaries of the forest reserves of the State, the Commission considers it imperative that exemption under the Fences Act in relation to liability for contribution to boundary fences should be maintained. I do not suggest that there is any particular likelihood that the Commission's immunity under the Fences Act shall be removed, but that could happen inasmuch as the Commission does not hold its land under its corporate name. On the other hand, the State Rivers and Water Supply Commission holds all its land under its corporate name, and in its Act there is a provision relating to rateability. That body is liable for half the cost of all fences between its land and privately owned land. That is quite a big consideration in its expenditure. If the Forests Commission were faced with that responsibility and expenditure, it would "throw its hand" in.

Mr. Wilcox.—The Forests Commission is not liable to make a contribution to the cost of boundary fences?

Mr. Baskett.—No, but we wish to make sure that our exemption under the Fences Act is continued.

Mr. Wilcox.—Is there any case in which the Commission is liable to make a contribution towards the cost of boundary fences?

Mr. Baskett.—No, the Commission is not liable but can take advantage of the Fences Act. It can require a contribution to be made by the adjoining owner. That situation could arise in relation to pine plantations, which the Commission wishes to protect during the period when rabbits attack the young trees. However, normally the Commission does not require an adjoining landowner to contribute to the cost of wire netting in such circumstances. That policy is one of long-standing, and is implemented particularly because such areas generally are remote.

Mr. Smith.—What is the position in regard to wire netting when vermin come from forest land on to a farmer's property?

Mr. Baskett.—The Commission cannot be forced to contribute to the cost of the wire netting. The responsibility for vermin destruction on all Crown lands rests with the Vermin Destruction Branch of the Lands Department.

Exemption from rateability of reserved forests under the Local Government Act should also continue. *Ex gratia* payments in lieu of rates are made to municipalities by Government Departments in respect of residential buildings. Leaseholders or occupiers of such property would be liable for rates, but not the Commission.

The Commission does not normally hold title to land in its corporate name. The Commission purchases land for a number of purposes, such as broad acres for conversion to forestry purposes. The title to such land is transferred to Her Majesty, and in due course is dedicated as permanent forest reserve under the Forests Act. It is a policy of the Commission to house its officers, particularly in remote districts. From time to time land is purchased for that purpose. Of course, when suitable Crown land is available it is used. The titles to property purchased for housing, also strips of land acquired for roads and other purposes, are transferred to Her Majesty and, by arrangement with the Secretary for Lands, are reserved under the Land Act for purposes of the Forests Commission.

Mr. Smith.—What happens when farms are acquired by the Commission in watershed areas, for example?

Mr. Baskett.—They are reserved as permanent forest land. In that regard water trusts throughout the State work closely with the Commission.

The Commission has consulted the Crown Solicitor regarding its position in relation to the Crown Proceedings Act and I submit his advice, dated December 5th, 1956, for consideration by the Committee.

Sub-section (1) of section 15 of the *Forests Act* 1939 provides that the Forests Commission "shall be liable for any damage caused by any fire which was lit kindled or maintained by or on behalf of the Commission or any forests officer and which was negligently permitted to spread." This liability was provided for in legislation passed shortly after the Forests Commission was held in a road accident case—the *Forests Commission* v. *Marks*—to enjoy the Crown common law immunity in tort, but the Crown Solicitor in clause 11 of his advice suggests that the *Crown Proceedings Act* 1955 conceivably extends the Commission's liability beyond the extent provided for in sub-section (1) of section 15 of the *Forests Act* 1939. This could be quite important.

The Commission's staff, organization and financial resources make it impossible for it to do a fire protection job to the degree attainable by a small waterworks trust. The Commission controls vast areas of land which are largely unroaded and inaccessible, and fires start for a number of reasons. This section could be very dangerous. It is an integral part of fire fighting that other fires be lit, kindled and maintained, and it may need only a change of wind for a fire, lighted by a forest officer as a break to stop another fire, to be sent right into another property.

Mr. Wilcox.—The provision includes the words, "and which was negligently permitted to spread."

Mr. Baskett.—That is a matter of onus of proof.

Mr. Wilcox.—There must be some negligence.

Mr. Baskett.—Yes. The Crown Solicitor is doubtful whether the Forests Commission would be held liable; he leaves the matter fairly open. In clause 12, the Crown Solicitor points out that because the Forests Commission is a public statutory corporation, the *Crown Proceedings Act* 1955 apparently has greatly extended the Commission's liability in relation to persons entering forest reserves. I am not in a position to comment on the extent to which a Department of the Crown controlling lands should be liable for injury which a person could sustain within the vast Crown areas. Some of the Commission's country is studded with prospectors' holes, and in forest operations hidden hazards of various kinds could be created. I do not refer to roads, but rather to the bush itself. I fear that this provision is capable of wide interpretation.

Clause 13 of the Crown Solicitor's advice deals with the Commission's position in relation to section 4 of the *Forests Act* 1939, which provides:—

> It shall be the duty of the Commission to carry out in every State forest proper and sufficient work for fire prevention and control.

This duty of the Commission is in relation to an area of some 14,500,000 acres of land and should any failure of the Commission to carry out this duty result

in a fire spreading from a State forest and damaging private property, it is suggested that a tort might result. Examination of this position would be appreciated by the Commission. Frankly, we do not expect a great deal from this.

Mr. Wilcox.—Does the figure of 14,500,000 acres of land represent the area over which the Commission has control in Victoria, or is there more land under its jurisdiction?

Mr. Baskett.—A strip of land with a fire protection aspect extends for one mile beyond the boundaries of the State forests, which cover a total area of 14,500,000 acres, including reserve forests and Crown lands. That additional strip of land represents a very big area over which the Commission has limited powers in order to protect its own country.

Mr. Wilcox.—That is the total amount of land vested in the Commission?

Mr. Baskett.—Yes, wholly or partly.

Mr. Smith.—That strip is provided to enable the Commission to make fire protection breaks?

Mr. Baskett.—Yes. There is provision for the Commission to compel landholders to burn off.

Mr. Smith.—Who else is responsible for that strip?

Mr. Baskett.—The land is privately owned, but it marks the boundary of the respective areas over which the Forests Commission and the Country Fire Authority have responsibility regarding fire protection measures. The latter body has similar powers over any lands. Incidentally, these powers are not often exercised.

Mr. Smith.—Does the private landholder have the use of that strip?

Mr. Baskett.—Yes. He is not interfered with in any way. Private landowners co-operate very well with the Commission in fire protection measures, both for their own benefit regarding fires emanating from the forests and vice versa.

In clause 14, the Crown Solicitor suggests that the Commission might place before the Committee the possibility of an amendment of sub-section (3) of section 4 of the *Crown Proceedings Act* 1955 as follows:—

(*a*) by inserting after the words "exempt from any liability" the words "in contract or in tort."

In suggesting that, I think the Crown Solicitor wished to make abundantly clear that the responsibility of the Commission would be confined to just those things; but he was doubtful whether it was necessary.

(*b*) by inserting words which would prevent a general liability attaching by force of the *Crown Proceedings Act* 1955 in a matter in relation to which the Legislature has previously seen fit to impose specifically a less extensive liability but yet did not specifically limit liability to that so imposed.

This could be very important concerning the present liability of the Commission in respect of fire protection. As previously mentioned, the *Forests Act* 1939 embodies certain provisions following on the finding that the Commission was the Crown, and that fact might lead to action required in this matter.

The Commission considers that the existing clause 8 of the Fourth Schedule of the *Forests Act* 1928 No. 3685 should be maintained.

8. No matter or thing done by any commissioner or by any officer or other person appointed or employed by the Commission if done bona fide in the exercise of his powers or in the performance of his duties under the *Forests Act* 1928 shall subject such commissioner officer or other person to any personal liability in respect thereof.

That clause may not be so important with regard to lesser officers of the Commission, but it is extremely important as regards our Commissioner, who does not come under the Public Service Board.

In summary the Commission submits that in view of the extent and dispersal of its territorial responsibility and the diversity of its functions it appears to be liable to an unreasonable degree under its own legislation combined with the current provisions of the *Crown Proceedings Act* 1955.

In particular some degree of protection if not immunity is sought in relation to:—

(*a*) the Fences Act;
(*b*) the Local Government Act;
(*c*) torts arising from entry of persons upon reserved forest;
(*d*) liability in respect of section 4 of the Forests Act No. 4703;
(*e*) provisions of clause 8 of the Fourth Schedule of the Forests Act No. 3685.

The Commission desires that the Committee effects amendments to the *Crown Proceedings Act* 1955 in accordance with the proposals contained in paragraph 14 of the Crown Solicitor's opinion.

Mr. Wilcox.—I take it that the reference to the Local Government Act is in relation to rates?

Mr. Baskett.—That is so.

Mr. Wilcox.—Is the Commission liable for rates?

Mr. Baskett.—No.

Mr. Wilcox.—Does the Crown Solicitor suggest that the Commission would become liable under the *Crown Proceedings Act* 1955?

Mr. Baskett.—No, but I do not think the Crown Solicitor has referred to rateability at all. There is a possibility that further legislation relating to ownership, occupation, possession or control of property by the Crown could lead to the Forests Commission's land being rateable. I am bringing that matter under notice because other Crown lands might be affected similarly.

Mr. Smith.—Do you refer to Crown lands or to lands purchased by the Commission for the erection of residences for employees?

Mr. Baskett.—We are not concerned about our residence lands. We are happy to do the correct thing with relation to municipal rates, water rates and other imposts.

Mr. Smith.—Are lands controlled by the Forests Commission leased to graziers for agistment purposes at certain times of the year?

Mr. Baskett.—Yes.

Mr. Smith.—How does the Commission view the payment of rates on those particular lands.

Mr. Baskett.—I do not think we would be concerned if they were rateable. Normally the Commission does not issue leases, which would involve long terms. Licences are issued for comparatively short periods.

The Committee adjourned.

THURSDAY, 7TH FEBRUARY, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. W. O. Fulton,	Mr. Barclay,
The Hon. R. R. Rawson,	Mr. Lovegrove,
The Hon. Arthur Smith,	Mr. Wilcox,
The Hon. L. H. S. Thompson.	Mr. Sutton.

Mr. J. J. Lynch, Assistant Parliamentary Draftsman, was in attendance.

The Chairman.—Mr. Lynch has been invited this morning to give his views on a few of the outstanding problems the Committee is considering.

Mr. Lynch.—The Committee has already heard a great deal of evidence on matters which have to be determined in connexion with this legislation, particularly concerning the addition of two specific heads of liability. I do not think there is very much I can add to what has been said about these policy matters except to point out that the ommission of the two heads of liability to which I have referred was not due to inadvertence but to the policy of the Government. It decided that this Committee should give further consideration to the points in question. There is little I can add to what has been said on both sides of these questions whether police and similar officers should be included in the liability that has already been imposed and whether the legislation should be extended to introduce liability attaching to the ownership or occupation of property.

As to the first point, I agree with the suggestion made by several witnesses that if the Crown is to be liable for torts of officers exercising a discretion, the Crown should then have the complementary right of action for the loss of services of such officers. I refer for example to the case of a policeman injured on duty. Whilst he is off work probably he is in receipt of workers' compensation payments or perhaps part of his salary. Whatever expense is thereby incurred by the Crown through the loss of his services should be made good by the person responsible for the injury.

With respect to the property liability, and more particularly with respect to some of the other liabilities that it is suggested should be added, there is the matter of the application of statutes to the Crown. If, as has been suggested, liability as an employer and liability for statutory obligations imposed on the Crown were added, then in a very acute form there would be raised this question whether statutes generally, particularly those which are for the protection of the public, should apply to the Crown. At the present time, the rule is that they do not.

I now turn to the additional matters mentioned principally in the evidence that was given by Professor Cowen in relation to the Act generally. The first was the basic one as to the mode of imposing liability on the Crown. It may be remembered that Professor Cowen classified into two kinds the various Acts dealing with this matter. One was the specification type, where it is said that the Crown shall be liable for certain specific heads of liability. The other was what the Professor called the "sue and be sued" kind where it is merely said that the Crown can be sued, implying thereby that since there is the right to sue the Crown it becomes generally liable in tort.

In the Act now under consideration, we deliberately chose the specification method for quite a number of reasons. The first one was that in 1947 in England action was taken similar to what was contemplated here, and the problem there was almost precisely the same as ours. In England there had been a long tradition of Crown immunity in tort and liability was to be imposed for the first time. Therefore, they chose the direct method of imposing it. The fundamental difference between the two methods is that the specification system says quite directly "the Crown shall be liable", and then it sets out those matters for which it will be liable. The other method adopts the fashion of saying that a person having a claim against the Crown may take it in a certain fashion. It is thought that by implication that makes the Crown liable in tort—that the real reason for the Crown's immunity in the past was the lack of a method of procedure against the Crown, and that once that is provided then the Crown by implication becomes liable in the same fashion as an ordinary subject. I think that the direct method is the one which appears certain to achieve what the Government desired. It has been provided that the Crown shall be liable, and provided that the liabilities are set down correctly there is no doubt that the Crown will be so liable. I think we have chosen a just and proper method of dealing with the problem. It is my view that, whatever may be the legal history of the Crown's immunity in tort, the real basis of construction when cases have been considered by the courts has been, in effect, that where there has been a pre-existing liability in tort, a general "sue and be sued" clause has been held to continue that liability. In cases where there has not been a pre-existing liability, it has been conceded that such a clause did not always create one. That is true of practically all of our Crown corporations. The Forests Act, for example, sets up the Forests Commission as a body corporate, and provides that it can hold property and can sue and be sued. Nevertheless, it has been held that the Forests Commission was not liable in tort because it was the Crown. In spite of the "sue and be sued" clause it could still escape liability in tort. For that reason, I think we would have been inviting difficulty had we adopted the indirect method. It would, moreover, have been adopting a method based upon Acts which are 100 years old in the case of the States and 50 years old in the case of the Commonwealth. Therefore, we followed the modern precedent of England and New Zealand in dealing with a situation very similar to our own.

The evidence the Committee has heard reveals that there are four additional possibilities of Crown liability as well as that expressed in the Act as it stands. Two are those which are specifically before the Committee now—the question of police and other officers having a discretionary power of their own, and the property liability. There is also proposed liability as an employer, and liability under statutes which bind the Crown and also bind others in common with the Crown. I think that if the Committee wishes to adopt the principle of Crown liability generally, these would be quite proper additions to make. But as I have already said, they raise acutely the question of the application of statutes to the Crown. Take for example the liability of the Crown as an employer. The liability of an employer to his employees is largely governed by statute. One can refer to the safe-working provisions and regulations in and under the Labour and Industry Act and various other Acts of that nature. Similarly, liability with respect to dangerous property brings in the question of the application of rules and regulations made under the Health Acts with respect to public buildings. There are also provisions of the Lifts Regulation Act to be considered. The question whether a building is dangerous or not might relate to the condition of the lift. In a Government building a departure might have been made from the rules and regulations which govern the safe working of lifts. If so, a question could arise whether the Crown should have conformed to the statute, which in the past has not governed it. If these liabilities are added, it might well be a task for the Committee to consider the question of the applicability of the statutes governing the regulation of these matters.

The Chairman.—Would it be necessary to include reference to all the statutes concerned?

Mr. Lynch.—I have not carried my consideration to that point. In England, there are a greater number of statutes of this nature which apply to the Crown than is the case here. The safe working provisions of their factories legislation apply generally to the Crown.

The Chairman.—Why is that not the case here?

Mr. Lynch.—Because here they are included in an Act which binds only the subject. The general rule is that unless such provisions are expressed to bind the Crown they do not. In England, they are expressed to bind the Crown, or at least some of them are. In England, there had been a line of cases which had rather inclined to the view that provisions of this nature, made for the safety of the subject, were applicable to the Crown. However, more recently that view has been set aside and return has been made to the old complete immunity of the Crown unless it is specially named. Glanville Williams, who has written a book on Crown proceedings in England, has suggested that that view might be adopted as a general rule, that is, that all statutes which are enacted for the protection of the public or for a large section of the public should be applicable to the Crown as well as to ordinary citizens unless it is expressly stated in the Act that the contrary is to apply.

The Chairman.—Suppose the Committee decided to make a recommendation along those lines, what machinery would it need to adopt? Could we include a general recommendation and leave the details to the draftsmen?

Mr. Lynch.—I suppose some general rule could be put into this legislation.

Mr. Wilcox.—Does Mr. Williams suggest how it could be done or does he merely say that legislation along those lines would be desirable?

Mr. Lynch.—He suggests that that would be a good rule for the interpretation of statutes. My view is that it is sometimes impracticable to tie up these matters fully by the expression of general rules. It is generally necessary to examine the specific Acts. That procedure has been adopted in England. Professor Cowen has proposed that in the additional provisions relating to these liabilities the words "attaching at common law" which are in the English Act should be omitted here. I submit that even if that course were followed, there might still remain immunity of the Crown unless some special provisions about the application of statutes were made. My suggestion is that the English pattern be adopted or that such special provision be made.

One of the matters that it is suggested has not been dealt with is "quasi contract", which is, I think, a sort of borderline between contract and tort. My own impression is that if both contract and tort are dealt with, the borderland as it were, will be covered. The question whether this matter is related to contract or to tort is one about which lawyers argue. I can discover no other legislation of this sort in which quasi-contract is mentioned specifically.

Mr. Lovegrove.—Can you illustrate that point?

Mr. Lynch.—Yes. Before the law of contract was developed in its modern form, there were some vestiges of this idea in the law of torts. I do not profess to speak accurately on this matter, but suppose that a person came into possession of a sum of money to which he was not rightfully entitled. There may be deemed to be an implied contract that he should hand it over to whoever is entitled to it. Or the person who gained possession of the money without any lawful right to it might, in American parlance, be deemed guilty of unlawful enrichment. The fact that the person has the money places on him an obligation, whether in contract or in tort, to turn it over to someone else who is entitled.

Mr. Rawson.—Contract is a later development, historically?

Mr. Lynch.—Part of it is. Contracts under seal existed before the development of the present law of contracts in writing or verbal contracts. Moreover, the law of delict or tort existed before the development of the present laws of contract.

Reference has been made by previous witnesses to the exemption in our legislation in respect of persons exercising judicial functions. It has been suggested that the exemption should be limited to Judges—including magistrates. I think the idea behind this exemption is that it should relate to any person who by law is empowered to make determinations in a judicial capacity. If he makes a wrong determination, that is not the responsibility of the Crown, even though he may be employed by the Crown. I can see no reason for cutting down the generality of the words of the English Act which we followed here. If we reduce the expression to "judges, magistrates, coroners" and so forth, there will be some classes such as arbitrators, referees, umpires, etcetera, that, perhaps, should be covered. I consider that it is the character of the function that is the ground for the exemption. I suggest that the legislation be left as it is in that regard.

Mr. Barclay.—Would the exemption apply to justices of the peace sitting in courts of petty sessions?

Mr. Lynch.—Yes. A justice of the peace may, in some sense, be a servant of the Crown, but any decision he makes in a judicial capacity while sitting on the bench would be exempted from the possibility of an action against the Crown.

Mr. Thompson.—Would you agree that the following expression from sub-section (3) of section 4 is ambiguous and is capable of too wide an interpretation:—

> . . . but no such corporation shall on the ground that it is the Crown or the servant or agent of the Crown be exempt from any liability to which it would otherwise be subject?

Mr. Lynch.—I was about to discuss the question of public statutory corporations. The provision in that regard has been criticized but is, I think, defensible. One school of thought holds that in putting the statutory corporations outside this legislation and in removing from them the shield of the Crown altogether, we have gone too far. The other school of thought holds that we have done the right thing with respect to the corporations, but did not go far enough with regard to the Crown proper—that is, the Crown in respect of the ordinary Government Departments. I refer to the Law Department, the Premier's Office, the Chief Secretary's Office, and so forth, which, in the main, represent the older function of the Crown—the purely governmental function. When it comes to running coal mines, gas works, electricity undertakings, and so one, other private corporations have done and are still doing that kind of thing, but no one other than the Crown proper has ever run the Law Courts or the ordinary business of a Government Department. Accordingly, I consider there is justification for drawing a distinction between the Crown proper and the Crown in public statutory corporations. Those corporations carry out manufacturing and trading enterprises on behalf of the Crown but of a kind very different from the older governmental function. For that reason, I do not think it is very anomalous that the Crown proper should retain certain exemptions or privileges which the statutory corporations are not to enjoy.

Mr. Lovegrove.—What is the test, the ordinary practice of common law?

Mr. Lynch.—I do not think there is any single test. It may be fairly said that no corporation in Victoria —that is, no body that has been established as a statutory corporation—is finally and for all purposes the Crown. There is one—the Forests Commission—of which it can be said that the law at present, as established in the Supreme Court, establishes it as the Crown and that therefore prior to this Act it was not generally liable in tort.

Mr. Thompson.—Would it have been wise to define "public corporation" in the 1955 Act?

Mr. Lynch.—If I may I shall defer answering that question for the moment but will advert to the point shortly.

Mr. Wilcox.—All the other public corporations would be covered by particular Acts, sections of which would render them liable in tort?

Mr. Lynch.—That is so. Corporations are bodies corporate; they are established as legal entities. When Parliament established them so, it obviously intended that to some extent at least they should be separate from ordinary governmental control. The ordinary function of government is carried out through the Governor in Council by the Ministers and the various Departments. However, in the case of a corporation, another body has been set up; it has been made a legal entity and, like a person, it is capable of owning land and so on.

Mr. Lovegrove.—What I had in mind was, when a distinction was drawn between a statutory corporation and the Crown; was the test of the distinction based, for instance, on how the working of private enterprise affected the individual as compared with the workings of a statutory corporation, or as compared with the workings of the Crown? That is what I had in mind when I referred to the test at common law.

Mr. Lynch.—As between the Crown proper, as I call it, and a statutory corporation——

Mr. Lovegrove.—What is the Crown proper?

The Chairman.—The Law Department and the Chief Secretary's Department are examples.

Mr. Thompson.—That is in general, but at law is it the same?

Mr. Lynch.—There is in the Law Department, for example, so far as I know, no corporation. That Department is governed by the Attorney-General as a Minister of the Crown.

The Chairman.—There are also ministerial heads of the State Electricity Commission and the Railway Department.

Mr. Lynch.—There are Commissioners of those corporations. They are established as bodies corporate and are legal entities. They have funds and property of their own.

Mr. Wilcox.—In each case there is an Act which states specifically that the Railways Commissioners or the Commissioners of the State Electricity Commission will be liable in tort.

Mr. Lynch.—Not necessarily specifically.

Mr. Lovegrove.—Does an act of a Minister constitute an act of the Crown proper?

Mr. Lynch.—Yes.

Mr. Lovegrove.—If the Housing Commission bought land from A. at £10 a foot and, with the consent of the Minister, sold it to B. at £100 a foot, thus making a profit and committing an injustice, could proceedings be taken against the Housing Commission, the Minister, or both?

Mr. Lynch.—The Housing Commission is one of the few public corporations in Victoria that is definitely stated in its Act not to be the Crown, so there would be no action against the Crown. However, there would be an action against the Housing Commission if it took some action outside its powers, or if someone was unlawfully hurt as a result of its activities. It would depend upon circumstances whether any action could be taken against the Minister or not. At any rate, I think it would not be against him as a representative of the Crown, but possibly against him personally for having done something he should not have done.

It has been pointed out that Crown corporations have been dealt with differently from the Crown proper. I think that is justifiable for the reason I have already stated, namely, that the corporations carry out most of the commercial activities and the Crown usually does not. Moreover, if any limitation is to be placed upon the liability of the Crown proper, it must be done under this Act which is the only legislation that imposes liability on the Crown proper. But each of the corporations is established by an Act in which there are or may be provisions with respect to liability. The Crown Proceedings Act is based upon the idea that it is not the only legislation that one should refer to in order to ascertain what limitations on liability there are in the case of corporations, whether they are the Crown or whether they are not the Crown.

Mr. Rawson.—Would the position be met by defining "statutory corporation"?

Mr. Lynch.—No. The term "statutory corporation" appears only in sub-section (3) of section 4, which reads:—

> No proceeding shall lie against the Crown under this Act—
>
> (*a*) in respect of any contract made by or on behalf of any public statutory corporation; or
>
> (*b*) in respect of any tort of any such corporation or of any of its servants or agents or of any independent contractor employed by it—
>
> and nothing in this Act shall affect any provision in any other Act by which any liability of any such corporation or of any of its members officers or servants in respect of any matter is specifically limited or conditioned, but no such corporation shall on the ground that it is the Crown or the servant or agent of the Crown be exempt from any liability to which it would otherwise be subject.

In referring to public statutory corporations, we mean such bodies as the Railways Commissioners and the State Electricity Commission and the like. In my view, there is no doubt whatever that such bodies are public statutory corporations. They are all bodies corporate, they are all established under statute, and they are all carrying out public functions. If a definition were included, it would be similar to that which is usually used where clarification is necessary, namely, "a body corporate established by or under statute for a public purpose." It can be seen that the definition adds very little to the term, "public statutory corporation."

In the English books dealing with the subject of Crown proceedings, these bodies are called "public corporations," and I think that term is well understood. The difference between England and Victoria is that in England there are some corporations which may not owe their origin to statute. Some of them—for instance, the Trinity House Corporation—are very ancient and arose apart from statute. Their origin is either by charter or prescription, or they are just deemed to be in existence at common law. In Victoria, every body of that nature has been established under a specific Act. I do not think there is any necessity to go further than the phrase I have read.

It has been suggested also that we should enumerate the various corporations. However, I would point out that all we are doing is to say that if in the past these corporations have had immunity, which other companies and corporations have not enjoyed, in the future they are to be in the same position as other corporations and are no longer to have any privilege by reason of being the Crown. There is no need for a special definition or enumeration to distinguish them, when the purpose of the legislation is to ensure that any distinction between them and other corporations is no longer to exist. If the provision is too wide, it does not matter, as long as it is wide enough to cover the corporations which may make some claim to be the Crown. To enumerate these particular corporations would be impossible, because, as I have said, we do not know with certainty which ones are the Crown.

Under the Crown Proceedings Act, statutory corporations have been placed outside the shield of the Crown, but they have not been denied any protection that they may receive under their own statutes. I suggest that if the limitations of their liability are confined to their own statutes, the situation will be much clearer than it is at the present time, and it will not matter for liability purposes, whether any corporation is the Crown or not. A study of the relevant statute will indicate what a particular corporation is liable for.

The Chairman.—If it is decided to make the Crown liable, it will become necessary to review all the relevant statutes to determine the nature and extent of the provisions relating to liability?

Mr. Lynch.—No. The legislation as it stands is to the effect that the public statutory corporations which are the Crown shall be robbed of their shield of the Crown, but they will not be deprived of any of the special exemptions that are provided for in their own individual Acts. The Railways Commissioners are liable over a very wide field, but there are some limitations for example regarding the maximum amount of compensation that may be paid. However, if the Commissioners cannot find such a specific exemption to cover them in certain circumstances, they will be unable to raise the shield of the Crown. There are some instances—such as the Forests Commission—where amendments should be made to the specific Acts as a result of the Crown Proceedings legislation, because there are special circumstances applying to those public statutory corporations which cannot possibly be covered very well by a general rule. Any attempt to formulate a general rule so as to make it right for the Forests Commission for example would be ineffectual because it might make it wrong for some other corporation.

The Chairman.—To pursue the matter to its logical conclusion, it would be necessary to review all the relevant statutes?

Mr. Lynch.—That aspect should be considered on the basis of whether the corporations have had Crown exemption previously. However, the question is always a doubtful one because, in the majority of cases, it is not known whether the corporations concerned are the Crown. The proper basis is that they will be liable unless they are specially exempted.

Mr. Thompson.—I understand that Mr. Justice Lowe had to ponder the actual position of the Forests Commission.

Mr. Lynch.—In that case there was of course no doubt that the Forests Commission was a corporation. It was set up as a corporation under the Forests Act, and it is capable of suing and of being sued. The principal difficulty is that there is no single test that can be applied to determine whether a corporation represents the Crown. Consideration must be given to its source of revenue and the manner of its expenditure as well as its status and the method of payment of its employees and other matters. The present position is very unsatisfactory. It has been said that if another case against the Forests Commission were heard by the High Court, the previous decision as to the status of the Commission might well be reversed. That matter is adverted to in an opinion by the Crown Solicitor.

Mr. Lovegrove.—In other words, the Crown means what the court says it means?

Mr. Lynch.—Yes. With respect to a statutory corporation, the question arises whether it has been removed so far from the Crown that it is no longer the Crown. In New South Wales recently cases in that regard have been tried with respect to the Housing Commission in that State. In one instance it was held that for one purpose the body concerned was the Crown and in another case that for another it was not.

Mr. Barclay.—What would be the position of the Lands Department?

Mr. Lynch.—It would be covered by sub-section (1) of section 4 of the Act, or whatever alteration to that provision might be decided upon.

The Chairman.—Could a provision be included deeming all governmental statutory bodies and corporations to be part of the Crown?

Mr. Lynch.—What we have done has been to say that they will be deemed *not* to be part of the Crown for purposes of liability. That I think is already the true position with respect to nine out of ten of them. Very few I think are in a position to successfully put forward the view that they should be regarded as part of the Crown.

Mr. Wilcox.—Did the Forests Commission manage to do so because it has a liability clause in its incorporating Act?

Mr. Lynch.—The Forests Commission has the care and control of large sections of unalienated Crown land, and it is the successor of an officer in the Forests Department. On balance, the Judge found reluctantly that it must be deemed to be part of the Crown, but would have liked to find otherwise. The decision was necessarily made not on a consideration of whether the Commission should in fairness be liable or not, but on other artificial considerations. What is set out in the Act we are considering are provisions which take away the shield of Crown from these bodies and thus force them to rely upon the particular legislation governing their functions. If no specific limitations on liabilities are included there, the organization concerned should if it wishes move to have them inserted. Very few of the Acts to which I refer were apparently drawn on the basis that the body concerned was part of the Crown. Most of them were regarded just as being corporations which might or might not be liable in particular circumstances, just as an ordinary corporation would be. The Forests Commission is an exception because its present liability with respect to fire was enacted just after the Commission had been held to be the Crown and therefore the provision is now slightly on the wrong foot and needs adjustment. If adjustment is made in the Commission's own Act, the change will be certain, whereas if it is attempted in this legislation as a matter of general Crown liability any limitations placed on the Crown's liability would be lost to the Commission or any corporation which was held hereafter not to be the Crown.

The Chairman.—Would it not be better for the Committee to make an omnibus recommendation rather than search through all the various Acts concerned?

Mr. Lynch.—Yes. The corporations concerned have been circularized twice in this connexion and the Forests Commission has put forward a few suggestions for the alteration of this legislation and the State Electricity Commission one. They are not alterations of liability so much as alterations to the manner of statement. The Crown Solicitor in an opinion given to the Forests Commission has suggested some alterations. I would agree with the alterations suggested, but I do not think the matter can be finally or fully fixed by any general rules embodied in a short Act of this kind. I consider that the legislation governing each body needs to be examined by the people concerned. Most of them up to date have shown no interest in having that done. Those that have will possibly succeed in achieving what they want.

Mr. Lovegrove.—Is there available any definition of the Crown? Can it be said that the Crown proper is the functioning of the State when one has subtracted all the functioning of the statutory public corporations?

Mr. Lynch.—Yes. I think that all servants of the Crown proper are servants of the Queen direct.

The Chairman.—An omnibus definition might be all those servants of the Queen who are not engaged in statutory corporations. That would take one back to the Crown Departments proper.

Mr. Lynch.—That is so, but I do not know that there is any necessity to provide such a definition in this Act. Where the Act concerned provides that the Crown corporation or its servants shall be liable, the matter is clear. Take the railways as a typical example. When the action in issue is that of a porter or some other servant or officer in the railways service—an employee or officer of the Railways Commissioners.

Mr. Wilcox.—But not an officer of the Crown.

Mr. Lynch.—He might be in an indirect fashion. But for the purposes of this Act he is to be set apart from the Crown. If a tort is committed by him the person injured can sue the Railways Commissioners and the Commissioners cannot raise Crown status as a defence, but they can raise anything that is in the Railways Act.

Mr. Lovegrove.—I raise my query because one of the witnesses has expressed the view that the Crown proper should be liable in all matters. That means the entire functioning of the State. I should like to consider the practicability of that having regard to the productive forces in society.

Mr. Lynch.—It will be recalled that at present there is only liability on the Crown proper in respect of torts of a servant or agent of the Crown. A Cabinet Minister is a servant of the Crown and so are all the officers of Departments, and they are not servants one of one another. If liability is to be accepted for actions of police and other similar officers I think that the extended definition of "servant of the Crown" which was formerly in the draft legislation should be brought into the Act.

The Chairman.—Mr. Lovegrove's hypothetical point is that if we decide to recommend that liability should be accepted for actions of police officers and the general care of property what action should be taken? Should some general recommendation be made irrespective of the present provisions in all the various statutes covering corporations and so on?

Mr. Lynch.—I do not think that it has been suggested that existing restrictions which are in legislation should be removed. Take the Railways Act as an example. The Railways can be held responsible for persons injured on trains due to negligence of railways officers. I think that at present liability is restricted to £2,000. If one intended that the Crown and Crown servants, including railways officials, were to be completely and wholly liable one would have to examine all the relevant legislation and remove all restrictions that were included. Each of these corporations has a specific job to perform. Those concerned with floods and fires have heavy liabilities, and I think it is proper that each corporation's obligations should be considered separately. It is not desirable or possible to make a general rule for all cases.

Mr. Lovegrove.—I presume you mean that it would not be economically possible. It would be legally possible, surely?

Mr. Lynch.—It would be legally possible to say that the Crown and all aspects of the Crown under the corporations will be completely liable. Some time ago a survey was made with the object of determining whether some general scheme of liability could be formulated, but it was ascertained that all the bodies concerned who replied were desirous of retaining their own limitations and exemptions. Most suggested that they should have a few more that they were not already provided with. My view is that if there are to be limitations and exemptions, the corporations should not have the shield of the Crown in addition. They have been established as separate entities and they should be regarded as liable unless their Act reduces their liability in some way.

Mr. Wilcox.—That overcomes the position that formerly arose when the Forests Commission took the defence that it was not liable because by its incorporating Act it was the Crown proper?

Mr. Lynch.—That is so. The English legislation embraces all liabilities of the Crown, irrespective of whether the Crown was in the form of a corporation or otherwise. Accordingly, instead of suing a particular corporation, a person must sue, say, the Attorney-General on behalf of the Crown. That procedure gave rise to tremendous difficulties, and it was adverted to by Glanville Williams in his book to which I have previously referred. Those who engaged in litigation of that character had to take action against either the Crown or the corporation according to which they considered to be appropriate, and so the practice grew up in doubtful cases of launching the proceedings against both. But in such a case the plaintiff would probably lose costs against the defendant against whom he did not succeed unless he could get an order from the court against the party found liable for the payment of the costs in respect of the other defendant. Such an order was not always issued. The Victorian legislation is based differently inasmuch as the statutory public corporation is held to be independently liable in contract and in tort. That is the simplest basis. If an attempt were made to limit the liability of the Crown in the Crown Proceedings Act and then to specify limits for the various corporations and to combine the two there would be some surprising results. The problem of the public statutory corporations that may be the Crown cannot be ignored. We have attempted to deal with it by saying that whatever claims the corporations may make, they cannot claim to be the Crown on the question of liability. Perhaps each corporation could be asked to examine its own position and submit any alterations to its legislation that are

thought to be desirable. In my view, there are few cases where such alterations could be justified. The Forests Commission and the Soldier Settlement Commission are possible exceptions. These bodies have large areas of Crown land under their control. Conversely, the State Electricity Commission could, I think, have little justification for regarding itself as the Crown in respect of liability in tort.

The Chairman.—What about the anomalous position concerning the payment of compensation by the Railways Commissioners, which matter was referred to by Mr. Lovegrove?

Mr. Lynch.—The limitation in that regard could be altered by Parliament. That aspect should, perhaps, be reviewed.

The Chairman.—Is the Act complete with or without that review?

Mr. Lynch.—I think it is complete without it. What we have done is to set the corporations outside the Act, and to treat them as though they were not the Crown, subject to whatever limitations of liability they have in their own Acts. There could be a rider to the Committee's recommendation to the effect that the situation of the corporations should be reviewed in view of the fact that basically now they will be corporations liable in contract and in tort.

There is another matter related to interrogatories and discoveries that was suggested by Professor Cowen. His suggestion has considerable importance. Professor Cowen thinks the immunity which the Crown has from answering interrogatories and the like questions is not based on immunity in tort but is rather a prerogative immunity. There are provisions in that regard in the English legislation.

Mr. Lovegrove.—Some statutory corporations exercise them here.

Mr. Lynch.—That is so, if they are the Crown.

Mr. Lovegrove.—Such provisions are availed of by bodies that are not the Crown.

Mr. Lynch.—We have, I think, taken away the power of statutory corporations to do so, but so far as the Crown proper is concerned we may have difficulty in regard to, say, the Lands Department. However, I have no specific recommendation to make in that regard.

Mr. Fulton.—Do you consider that public statutory corporations should accept the same liabilities as trading concerns in the outside world?

Mr. Lynch.—Yes, subject to any special provisions in their own Acts. Of course, those special provisions are capable of being reviewed.

Mr. Fulton.—There is no other way of dealing with those corporations than under the Act by which they are constituted.

Mr. Lynch.—I would not say that is the only way but I think it is the best way. An attempt could be made to formulate some general rule, but I consider the only satisfactory method is to deal with each on its merits. To attempt to have them as the Crown and as corporations also would only confuse the issue as it has done in England.

Mr. Fulton.—If the present legislation sets up those corporations, it would be better for them to be dealt with individually than to try to cover them in one general Act?

Mr. Lynch.—That is so. However, this change is made that whereas previously they were not liable in tort, they will be so liable in future subject to their own particular Act.

Mr. Fulton.—I am uncertain whether, say, the Hospitals and Charities Commission would be regarded as a corporation or not.

Mr. Lynch.—It would be regarded as a corporation. It can, I think, sue and be sued. The Department of Health is a Crown Department, and the Commission of Public Health is not incorporated, and so it is not a public statutory corporation within the meaning of the Act; it is rather a local departmental committee.

The Committee adjourned.

WEDNESDAY, 13TH FEBRUARY, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. R. R. Rawson,	Mr. N. Barclay,
The Hon. Arthur Smith,	Mr. D. Lovegrove,
The Hon. L. H. S. Thompson.	Mr. P. K. Sutton.

Mr. A. E. Poynton, Secretary of the Victorian Public Service Association, was in attendance.

The Chairman.—I ask Mr. Poynton, Secretary of the Public Service Association, to submit his evidence.

Mr. Poynton.—When the Crown Proceedings Act of November, 1955, came into operation, the Association which I represent considered that it met a need that had been felt for many years. However, I have been asked to put before the Committee certain suggestions which the Association thinks should be incorporated in the legislation. First, it is considered that a definition of "servant" in the terms contained in Appendix "B" of the report of 1952, should be included. In my opinion, that would meet the situation admirably. As the matter is at present, we are of opinion that it is too open.

Throughout the Victorian Public Service, there are a number of different classes of employees. Firstly there is the permanent officer, who is known as an "officer." Secondly, there is the temporary employee. Thirdly, there is the casual employee. To the ordinary person outside the Service, they are all public servants or Crown employees. In our view, if a definition was included in the legislation, it would be watertight so far as its coverage of public servants is concerned.

Paragraph (*b*) of sub-section (1) of section 4 of the *Crown Proceedings Act* 1955 refers to "any servant or agent of the Crown or independent contractor." At the moment, we are not concerned with the reference to "independent contractor," but we are as regards "servant or agent." We feel that the definition indicated should be included to dispel any doubt which may occur.

The Chairman.—Have any instances occurred where the present legislation has worked to the detriment of members of your association?

Mr. Poynton.—No. The Crown Proceedings Act is a relatively new enactment, and I suppose that throughout the Service it is not generally known to be in existence.

The Chairman.—Have you received any information from any other State which would lead you to believe that the legislation as it stands could cause trouble, without the definition suggested?

Mr. Poynton.—No. However, some of the Acts dealing with this subject in other States and elsewhere contain a definition along the lines I have suggested.

Mr. Thompson.—Do you feel that a difficulty arises because of the rather fine distinction we have here between Government Departments and statutory corporations?

Mr. Poynton.—There is that distinction, and the matter needs to be covered precisely. There is also a tendency for temporary employees in the Service to be regarded as outside the scope of the Public Service Act. In our opinion, that is a bad thing. At present, temporary employees are at a disadvantage as far as the Public Service Board is concerned. We want to ensure that this Act does not only cover permanent employees of the Service, but also covers temporary and casual employees. There is a further distinction made between the temporary employee and the casual employee. We feel that the definition contained in the 1952 Bill would meet the situation.

The Chairman.—Have you any idea why it was not included in the 1955 Bill?

Mr. Poynton.—No. I have not pursued that angle.

Mr. Thompson.—Do you consider that a temporary employee could not accurately be labelled either a servant or an agent of the Crown, or an independent contractor?

Mr. Poynton.—Yes.

Mr. Rawson.—As the legislation is at present, it would be left to the courts to decide whether a person was a servant of the Crown or not?

Mr. Poynton.—That is where we consider there is a distinction. It is our opinion that the word "servant" should be fully defined, and everybody should be aware just who is covered by the Crown proceedings legislation. In the Service at present, there is a certain amount of confusion about the rights of temporaries and casuals. Temporary employees are engaged under one section of the Public Service Act and casuals under another. The Public Service Board lays down the conditions governing their employment, and in some instances the conditions of casuals are those stipulated in the award covering the particular calling in which they are engaged.

The other aspect of the Act with which the association is concerned is that of officers who act under instructions. A number of inspectors of different types police various Acts of Parliament, and they are employed by different Departments and instrumentalities. In our opinion, the relevant section should be extended in the same way as it has been suggested in a memorandum should apply to police officers. A number of members of the Public Service Association are in almost exactly the same position as police officers regarding some aspects of their employment. For instance, an inspector of the Fisheries and Game Department is required to police the Game Act. In the course of his duties, he may be called upon to confiscate a rifle or gun or fishing gear of an offender. Some persons act on their own initiative regarding the proper means of carrying out instructions. For example, the appropriate Act may lay down that an inspector shall confiscate an article, but it does not say how. It may be open to debate whether the inspector could be held liable in tort. In the original Bill, there was a different provision compared with the 1955 Act. The earlier one was altered in the 1955 Act to read that "the Crown shall be liable for the torts of any servant or agent of the Crown." In our opinion, that provision should be extended to cover the case of an officer who, in the course of his duty and whilst not acting upon strict instructions, finds himself in a position in which he could be proceeded against.

Although I have instanced only one officer, there are hundreds of others so employed in various categories of inspectors. For example, a warder of the Penal Department may have to escort prisoners from Pentridge to Geelong. Sometimes such warders are armed and all sorts of things could occur during the transportation of the prisoners. It is the view of the association that such an officer should be protected in cases where he has to use his discretion in the carrying out of instructions given to him in a broad manner.

Mr. Smith.—Have there been many instances involving inspectors of the Fisheries and Game Department?

Mr. Poynton.—No. In fact, I know of no case in which such an inspector has been proceeded against, but that is not to say that action will not be taken against one. I suppose the instances would be very rare. However, it is felt that officers of the Crown should be adequately protected.

Mr. Barclay.—If action were taken along the lines you have suggested, Mr. Poynton, might there not be a tendency for servants of the Crown to become careless in the exercise of their duty?

Mr. Poynton.—No. I do not consider that they would be any less careful in carrying out their duties.

Mr. Rawson.—Would the wording of sub-clause (3) of clause 4 of the 1952 Bill meet the position?

Mr. Poynton.—Yes.

Mr. Lovegrove.—Do you want the definition of "servant" to include "any employee"?

Mr. Poynton.—I think the definition contained in the 1952 Bill would cover the point. "Any person" would cover both officers and employees. There is a tendency to confuse permanent officers and employees in relation to the term "public servant."

I thank the Committee for receiving the submissions I have made on behalf of my association. I hope that a suitable definition will be included in the proposed Bill.

Mr. Rawson.—What powers are possessed by Departments to discipline an officer if he exceeds his duty?

Mr. Poynton.—The powers are contained in section 55 of the Public Service Act. Such an officer may be charged with negligence or disorderly conduct and a number of other offences. The permanent head may fine him up to £5. The Minister can disallow such action if the officer appeals to him. The permanent head of the Department also has power to suspend an officer and have him charged after referring the case to the Minister. In that case the matter is heard by the Public Service Board, which can impose a fine, or take an increment of salary from the officer concerned, or dismiss him from the Service.

Mr. Rawson.—Do you consider such powers are adequate to deter an officer from wrongfully exercising his powers?

Mr. Poynton.—Yes. One must remember that out of many thousands of employees only a very small number are charged.

Mr. Sutton.—But that does not afford redress to or protect the person against whom an excess of powers is exercised.

Mr. Poynton.—That is true, but the officers concerned are a responsible body of men who are well schooled in the relevant regulations before they go out into the field.

Mr. Barclay.—Do you think the various Departmental inspectors should be covered in the same way as policemen?

Mr. Poynton.—Possibly an all-embracing clause in the Bill would meet the situation, but I point out that there are many categories of inspectors in the Service. For instance, there are dairy supervisors, fisheries and game inspectors, seed inspectors, fruit inspectors, factories and shops inspectors, health inspectors, and licensing inspectors. A number of them are required to use a certain amount of discretion and initiative. In many ways a licensing supervisor exercises functions similar to that of a policeman.

Mr. Rawson.—Would a municipal health inspector be backed by his council in the event of a claim being made against him?

Mr. Poynton.—I think so.

Mr. Sutton.—Surely if he exceeded his duties, or was grossly impertinent or under the influence of liquor, the council would not support him.

The Chairman.—I do not think the point concerns the Committee at the moment.

Mr. Thompson.—Does it not hinge on the manner in which a subject is liable for the torts of his servant? Under the Act the Crown is made liable in nearly the same way as a subject.

The Chairman.—Mr. Poynton is pointing out that a number of persons are in the peculiar position of being servants of the Crown but having to act on their own initiative.

Mr. Thompson.—There may be many persons placed similarily in the civil sphere.

Mr. Lovegrove.—The duties of the average inspector are limited to inspection and report. Perhaps Mr. Poynton could indicate how many public servants hold positions whose functions are analogous to tasks performed by policemen which might be termed inspection?

Mr. Poynton.—There would be many hundreds of such officers in the various Departments. For example, a stock inspector has power to order stock to be destroyed. A fruit inspector on finding evidence of fruit fly could order a tree to be cut out.

Mr. Barclay.—He can confiscate the fruit or have it burned or buried, and then compensation may be claimed by the owner from the Government.

Mr. Poynton.—That is so.

Mr. Sutton.—Say a supposed epidemic of pleuropneumonia breaks out among cattle and the inspector orders their destruction, and later it is found that he has made a mistake. Can the inspector concerned be sued by the owner of the cattle?

Mr. Barclay.—That position would be covered by compensation.

Mr. Smith.—To what extent would an honorary fisheries and game inspector be affected by the proposal?

Mr. Poynton.—That is one of the reasons why I asked originally to have the definition include the words "any person in the services of the Crown whether honorary . . . . . "

Mr. Thompson.—Could an inspector who was refused the right of entry forcibly enter a dairy?

Mr. Poynton.—I could not give a direct answer to that question.

Mr. Thompson.—That is probably the stage at which his powers move from those of an inspector to those of a policeman.

Mr. Poynton.—That could be so.

The Committee adjourned.

APPENDICES

INDEX.

APPENDIX A.

MEMORANDUM BY THE HONORABLE A. G. RYLAH, M.L.A., ATTORNEY-GENERAL.

During the passage of the Crown Proceedings Bill through the Legislative Assembly I stated that it was the Government's intention to refer the outstanding questions of Crown liability to the Statute Law Revision Committee for further investigation (see *Hansard*, 12th October, 1955, p. 989).

Accordingly it is recommended to the Statute Law Revision Committee that they should examine anomalies in the Statute Law relating to civil proceedings by and against the Crown in relation to—

(*a*) the ownership occupation possession or control of property by the Crown or its servants agents or independent contractors;

(*b*) the exercise by servants of the Crown of functions otherwise than on instructions lawfully given by the Crown;

(*c*) generally, any other matter.

8th November, 1955.

APPENDIX B.

MEMORANDUM BY PROFESSOR ZELMAN COWEN AND MR. PETER BRETT.

1. We begin by presenting a table of legislation concerning Crown liability in tort in England, New Zealand, and the various Australian jurisdictions. The implications to be drawn therefrom are referred to at appropriate points in this memorandum.

2. We turn first to the first of the two matters under consideration by the Committee, namely the liability of the Crown as owner or occupier of property. It is clear that on this matter there is a lacuna in the 1955 Crown Proceedings Act.

3. Tort liability is either original or vicarious. Original liability is imposed by the law on a person (in which term we of course include corporations) in respect of damage or injury occasioned by his own failure to discharge his legal duties. In contrast, vicarious liability is imposed on a person, not by reason of his own default, but in his capacity as the employer or principal of a servant or agent whose breach of legal duty has occasioned injury. Various jurists have attempted to show that there is some kind of fault attributable to a person who is made vicariously liable in tort. It is, however, clear that the legal policy behind vicarious liability is one of providing a defendant who is likely to have sufficient means to answer the claim. That this is so is demonstrated by the rules that a master made vicariously liable for his servant's acts or default (i) need not have derived any benefit therefrom (*Lloyd* v. *Grace Smith & Co.*, (1912) A.C.716), and (ii) may claim a complete indemnity from the servant (*Semtex Ltd.* v. *Gladstone*, (1954) 1 W.L.R. 945).

4. In considering these two types of liability, some difficulty may be encountered with the idea that a corporation may be subject to original liability. It is true that a corporation can act, or fail to act, only by means of its servants. It might be deduced from this fact that it can be subject to vicarious liability only. But it must be remembered that corporations are legal entities, to which the law attributes, among other capacities, a capacity to own or possess property. There is thus nothing to prevent the law attributing to a corporation such tort liability as may spring from the ownership or possession of property. In short, the difficulty which we mentioned at the beginning of this paragraph arises from a failure to keep constantly in mind that a corporation is a legal, not a physical, "person".

5. Section 4 of the *Crown Proceedings Act* 1955 imposes on the Crown a vicarious liability in tort. It would appear, however, that it was Parliament's intention to exclude original liability from the ambit of the Act.

6. On principle, it seems that the distinction which the Act seeks to achieve is indefensible. If it is accepted that the Crown should be liable in tort, why should it be made only partially liable? When it is remembered that Crown immunity in tort resulted from an historical accident (see *Holdsworth, History of English Law*, ix 42-45), there appears to be no rational answer to this question.

7. An example may help to reveal the extent of the anomaly. If X goes into the shop of Y, a large corporation, with a view to buying something, and is there injured by encountering some unusual danger on the premises of which Y knew or ought to have known (e.g. a defective stair, on which he trips and breaks his leg), Y is liable to him in damages and on the principle of *Indermaur* v. *Dames* (1866), L.R. I C.P. 274. Likewise, if X is run down by the carelessness of a van driver employed by Y, Y is liable. In the former case Y's liability is original, in the latter it is vicarious. If we substitute the Crown for Y, and assume that in the former case the injury occurs on Crown property, and in the latter is caused by a Crown servant, then as a result of the Act, the Crown is not liable in the former case, but is liable in the latter. This is of course better from X's point of view that it would be were the Crown not liable in either event, as was the case before 1956. But the distinction is one which cannot be justified on principle.

8. We pause at this point to note the argument, which may be raised, that in such a case as the former of the two we have envisaged the Crown might be made vicariously liable under the 1955 Act. It might be urged that since liability under the *Indermaur* v. *Dames* principle is based essentially on a failure to warn the "invitee" of an unusual danger, there would always be some Crown servant for whose negligence in failing to give such a warning the Crown could be made vicariously liable. We think, however, that such an argument would fail. This is not the place to canvass the legal arguments pro and con; but we draw the Committee's attention to the decision of the Court of Appeal in *Royster* v. *Cavey* (1947) K.B. 204, in which it was held that, in the circumstances analogous to those we have envisaged, the plaintiff was without a remedy; see particularly the observations of Bucknill L.J. at 211.

9. The Act has in fact not only created this anomaly, but also (perhaps unwittingly) created a further one. Consider the position of public statutory corporations. Before 1956, they were either (*a*) as fully liable (in the absence of express statutory provision to the contrary) as a private person, or (*b*) completely immune, as protected by what is termed "the shield of the Crown". Under the Act, however, those public statutory corporations which formerly enjoyed complete immunity are now subjected to full liability in contract and tort. Hence our hypothetical plaintiff X, who has no remedy if he is injured by tripping over a defective stair in the Treasury building, may recover damages if his injury occurs on the premises of the State Electricity Commission. Yet from X's point of view, the one body is as much part of "government" as the other.

10. Assuming, then, that the present anomalous situation should be remedied, what is the best method to adopt? At this point, we invite attention to the legislation of other common law jurisdictions. It will be seen from the annexed table of legislation that, broadly, two distinct methods of making the Crown liable in tort have been adopted elsewhere—(*a*) that of declaring that the Crown may in all respects sue and be sued as a private person (which we hereafter call a "sue-and-be-sued" provision), as in the case of the Commonwealth, New South Wales, Queensland, South Australia, Western Australia, the Dominion of Canada, and the United States; (*b*) that of specifying types of liability to which the Crown shall be subject (which we hereafter call the "specification" method), as in England, New Zealand, and Victoria. The Tasmanian statute, while in form adopting the specification method, is so widely drafted (with the inclusion of a "catch-all" section 65) as to deserve classification as, in substance, a sue-and-be-sued enactment. It will be noted that (Tasmania apart) the two Australasian jurisdictions which have adopted the specification method appear to have borrowed it from the English legislation.

11. To understand the reasons which may have led in recent years to the adoption of the specification method, it is necessary to consider the basis of the common law immunity of the Crown. Originally it was thought of as essentially an immunity from process; the courts were the King's courts, and the judges the King's judges and servants, deriving their authority to deal with a case from the King's command embodied in the King's writ, which was issued by the King's Chancellor and servant. How could the latter command his master to appear before his own servants and abide by their judgment? And how, if need be, could he enforce obedience to such a command? The answer to these questions was simply that these things could not be done.

Yet this answer was bound to prove unacceptable when in the course of the constitutional development of the Middle Ages, the government of the country came to be carried on by a gradual widening of the duties of the members of the King's household staff. The personal immunity of the King thus developed into the immunity of the government; and a way round that immunity had to be found. It was found by a combination of two factors—(*a*) insistence on the doctrine that obedience to the King's command should not afford a defence to a charge of breaking the law and (*b*) the development of the petition of right.

12. The doctrine referred to in (*a*) above afforded some alleviation, as it enables the injured citizen to sue the particular Crown servant who had caused him injury. It is an essential feature of our law to-day, and distinguishes the common law jurisdictions sharply from those civil law countries (e.g., most European countries) where the command of the State affords a defence. In the civil law countries, the problem has been solved by the creation of a special administrative jurisdiction (e.g., that of the French *Conseil d'Etat*) to deal with claims against the government; such a jurisdiction has its own courts in which its own special law is administered. It has, however, been generally thought in the past that such an institution offends against the traditional British concept of the rule of law; and we do not think it proper to canvass here the question whether this belief is justified. We wish, however, to emphasize two points. (*a*) In England the principle referred to placed the citizen in a strong position because the Government (i) *always* stood behind its servant who was sued and paid any damages awarded against him (a practice which has not, we believe, been followed in Victoria) and (ii) in cases where the intending plaintiff did not know the actual Crown servant who had injured him, supplied him with the name either of that person or of a "nominal defendant". It was the action of the Court of Appeal (in *Royster* v. *Cavey,* above paragraph 8) in refusing to entertain an action against a nominal defendant (who was not personally at fault) which precipitated the passing of the English Act. (*b*) The United States Government, when it subjected itself to liability by the Federal Tort Claims Act, at the same time relieved its servants of personal liability. This seems a fair thing to do, though it has not been done elsewhere, and is not in harmony with the general principles of tort liability applicable to subjects.

13. The petition of right was a proceeding by which the injured subject could petition the King for relief. The Attorney-General would then, on behalf of the King, refer the petition to the court for decision, endorsing it with his command, "let right be done". This procedure, developed in the seventeenth century, would have solved the problem, had it not been for the subsequent refusal of the courts to apply it in cases of tort claims. Holdsworth has demonstrated (*op. cit.* paragraph 6) that this action of the courts was unsound and unjustifiable; but it is too late now to question it. It will be observed, however, that in creating Crown liability in New South Wales, Queensland, and South Australia a petition of right procedure was adopted, modified by the removal of the discretion which the Attorney-General possessed at common law to refuse to allow the action to proceed. This discretion was in fact exercised only on rare occasions; one of the best known is the Archer-Shee case, which has been immortalized by Terence Rattigan in the play the Winslow Boy.

14. It will be seen that Crown immunity in tort started out as a procedural immunity, but by a historical accident became one of substantive law. As a result, it was held much later in a number of cases (see, e.g., *Mackenzie-Kennedy* v. *The Air Council,* (1927) 2 K.B. 517) that when an English statute provided that a Minister might sue and be sued in the same manner as a subject, the effect was to remove only the procedural obstacles. The result was that the Minister could be sued for breach of contract, but the substantive immunity of the Crown in tort could still be invoked by him, as in such cases he was sued as the representative of the Crown (this did not, of course, apply in those rare cases where he was sued as being personally at fault). Thus it was that when the English Act was drafted, resort was had to the specification method rather than a sue-and-be-sued provision. The object was not to limit the liability of the Crown, but to ensure its liability.

15. We think, however, that the English draftsman misconceived the law. Despite such cases as *Mackenzie-Kennedy,* we believe that a sue-and-be-sued provision applying to the *Crown* and not merely to a specified Minister would have been construed as removing the substantive immunity of the Crown in tort as well as the procedural immunities. Our belief is founded on the interpretation given to the New South Wales and South Australian Statutes by the Judicial Committee of the Privy Council in *Farnell* v. *Bowman* (1877), 12 App. Cas. 643, and *Welden* v. *Smith* (1924) A.C. 484. We regard this interpretation as settled; and it is reinforced by the High Court's interpretation of the Commonwealth provisions in *Baume* v. *The Commonwealth* (1906), 4 C.L.R. 97, and *The Commonwealth* v. *New South Wales* (1923), 32 C.L.R. 200.

16. The difficulty which confronts the draftsman who adopts the specification method is that of foreseeing all cases which may arise. For example, no provision is made in the Victorian Act for any quasi-contractual liability of the Crown. Whether this omission was designed or accidental we do not know. But in the case of tort liability there are some designed omissions. The English Act provides for Crown liability in tort in three cases—see section 2 (1), heads (*a*), (*b*) and (*c*). The New Zealand Act has (section 6 (1)) copied these provisions. It will be observed that head (*a*) refers to vicarious liability, while heads (*b*) and (*c*) deal with original liability. As tort law then stood, the draftsman was probably justified in thinking that he had equated Crown liability with private liability. But cases of tort liabiility may in future arise which are not covered by section 2 of the English Act. If so, there will again be a partial, and undesigned, Crown immunity in tort.

17. The Victorian Act has not made provision for the two types of original liability to which the Crown in England is subjected by section 2 (1) (*b*) and (*c*) of the English Act. That this was a deliberate omission we cannot doubt. But we are not aware of the reasons for it. As regards head (*b*), Mr. Normand's evidence before the Committee some years ago suggests that there may have been a fear of the consequences of submitting the Crown to original liability of the kind exemplified by the well-known case of *Rylands* v. *Fletcher* (1866), L.R. 1 Exch. 265. If so, we would merely comment that the inclusion in our Act of liability in respect of the defaults of independent contractors might well subject the Crown to liability of this kind. But on principle we do not think such fears well-founded. The Governments of England, the Commonwealth, the other Australian States, New Zealand, the Dominion of Canada, and the United States remain firm and unshaken despite their being subject to these original tort liabilities. We have enough confidence in the Government of Victoria to believe that it would remain firm and unshaken in like circumstances.

18. If, as we believe, the Crown in Victoria should be subjected to tort liability by virtue of its ownership or occupation of property, what form should the provision take? Section 2 (1) (*c*) of the English Act is a well-drafted provision, with one exception—the inclusion of the words "at common law". We see no reason why the Crown should not be subject to liability arising under statute.

19. When the English Bill was being considered in Committee in the House of Commons, this point was raised. The Attorney-General refused to delete the words referred to; he reasoned that when the statutes creating liability were passed, the question of Crown immunity had been considered and decided, and it would be wrong to reopen it without a reconsideration of each statute, a well-nigh impossible task (439 H.C. Deb. 5 s. 2611). This argument, though attractive at first blush, is in our view unsound. For any immunities then expressly given were so given against a background of general Crown immunity; very different decisions might have been made against a background of general Crown liability.

20. There is a further matter which we should mention. The original liability of an owner or occupier of property at common law has recently in England been weighed in the balance by the Law Reform Committee and found wanting (see Cmd. 9305). A statute to remedy the position in England is currently under consideration. Doubtless in due course the vigilant scrutiny of this Committee will be turned on this sector of the law. The result may well be that the present common law liability will be replaced by a new statutory liability. In that event a provision on the lines of the present English section 2 (1) (*c*) would become otiose.

21. These difficulties would be met by the adoption of a sue-and-be-sued provision in place of the present section 4 (1) of the Victorian Act, with consequential amendments. To this it may be objected that the Government is in a special position, and that some limitations are necessary. We agree in principle. But we do not think that the limitations should be specified in the Act. An

attempt at such specification occurs in the United States Federal Tort Claims Act, and has caused the Supreme Court there some difficulties (see *Indian Towing Co.* v. *United States,* 100 L. ed. (Advance p. 83) (1955), and cases there cited). Such difficulties are inevitable, for draftsmen are only human, and cannot be expected to foresee everything. If, instead, the matter is left to the good sense of the courts, we believe that the trust imposed in them will not be abused; and in support of this belief we cite the action of the High Court in *Shaw Savill and Albion Co. Ltd.* v. *The Commonwealth* (1940), 66 C.L.R. 344.

22. We new turn to the second of the problems under consideration by the Committee, which section 2 (3) of the English Act is designed to meet. In order to understand the point at issue, a brief reference must be made to two well-known decisions on Crown liability, namely, *Tobin* v. *The Queen* (1864), 16 C.B.N.S. 310, and *Enever* v. *The King* (1906), 3 C.L.R. 969.

23. In *Tobin's Case* the petitioner sued, by petition of right, for damages sustained when his ship, engaged in the African trade, was seized by a captain in the Royal Navy under the mistaken impression that it was engaged in the slave trade. The captain acted in pursuance of an English statute which authorized commanders of R.N. ships to seize vessels engaged in the slave trade. It was held that the petitioner's only remedy was to bring an action against the captain personally. Several reasons were given by the court, and with one of them (that a petition of right could not be brought in respect of a tort committed by a Crown servant) there can be no quarrel. But it was also said by the court that the Crown could not be made liable in respect of Captain Douglas's action because he had purported to act, not under the Queen's authority, but under an authority expressly conferred on him (as the holder of a certain office under the Crown) by Act of Parliament.

24. In *Enever's Case* the plaintiff claimed damages from the Tasmanian Government in respect of his wrongful arrest by a police officer. It was held that the action could not succeed. The court said, following *Tobin's Case,* that the police officer was not acting in pursuance of instructions from the Crown, but in execution of an authority with which police officers were clothed by the common law. But they advanced a further reason, namely that he was exercising an independent discretion of his own in making the arrest, and that accordingly he alone was responsible in law for the consequences of his mistake.

25. The reasoning in these two cases is open to criticism on several grounds, but we do not wish to weary the Committee with an unnecessary technical discussion. One point only needs to be made. It appears that in each case the court conceived itself to be applying general principles of vicarious liability in tort. Subsequent cases have shown that, if so, they were in error. But this development has led, not to the view that the two cases are no longer of authority, but to the view that they embody a special principle applicable only to servants of the Government. Thus in the recent case of *Attorney-General for New South Wales* v. *Perpetual Trustee Co. (Ltd.),* (1955) A.C. 457, the Judicial Committee of the Privy Council at several points used language suggesting that public servants are not in a true sense servants of the Crown, but rather are "holders of public offices", and that their only claim to be regarded as servants of the Crown springs from the fact that they are paid by the Crown. In this case, although it was concerned with a matter not involving Crown liability, *Enever's Case* was cited by the Judicial Committee without disapproval.

26. How far the doubts and difficulties raised by these cases are well-founded may in some instances have to await further judicial decision. That they exist cannot be controverted. For instance, there was some doubt, since the *Perpetual Trustee Co. (Ltd.)* decision, whether a policeman could properly be said to be sufficiently a servant to bring him within the ambit of workers' compensation. Accordingly, Parliament settled the point in his favour by the *Workers Compensation (Police) Act* 1956. Similarly, we think that Parliament should settle doubts concerning the extent of Crown liability in this context by legislation.

27. What principle should be adopted? In our view, there is only one proper principle—the Crown should be responsible for the torts of all persons whom it employs in the governance of the State.

28. One point may be raised here—what if the Crown servant has abused his authority? Suppose, for example, that a policeman wrongfully arrests an innocent citizen merely to satisfy an old private grudge; should the Crown pay? Or should its liability be confined only to those cases where there has been a tort committed by its servant in good faith? In our view, the question of good or bad faith should not be dealt with *in the legislation.* There may be some cases where the abuse of power, and the bad faith, are so gross that the Crown servant can no longer be said to be acting within the scope of his authority. In such cases, the Crown would be absolved from liability by the general law. But in cases where there has been a malicious exercise and abuse of power within the scope of the servant's authority, the Crown should be liable. The private employer is liable in such cases, and there is no justification for affording the Crown a privileged position. The remedy for such cases —if they arise—is the exercise of greater care in the selection of public servants. But if mistakes in selection occur, their consequences ought, we think, to be visited upon their author, the Crown, and not on the unfortunate citizen who suffers damage therefrom.

29. Assuming that some provision should be made—and it would be necessary whether Crown liability is imposed by a sue-and-be-sued provision or by the specification method—what form should it take? In England section 2 (3) of the Crown Proceedings Act attempts to meet the point, and New Zealand has copied this provision (section 6 (3)). We believe, however, that this sub-section leaves a large loophole. It refers to "functions conferred or imposed upon an officer of the Crown *as such*" (emphasis added). It might be held in the case, say, of a tort committed by a police officer that his functions are imposed on him as the holder of a public office and not as a Crown servant. Furthermore, the sub-section does not appear to meet the argument in *Enever's Case* that there is no liability where the Crown servant (if we may properly so refer to him) is exercising an independent discretion vested in him.

30. We think that it would be better to adopt a provision which meets the problem more directly, and we suggest the following draft for consideration by the Committee:—

> "The liability of the Crown in tort [under this Act] shall include liability in respect of the acts neglects and defaults of any person in the employment of the Crown acting within the scope of his authority, whether or not that authority is derived from any statute, the general law, or the express or implied instructions of the Crown, and whether or not the act neglect or default complained of arose as the result of the exercise of a discretion by that person."

The words in square brackets would be unnecessary if a sue-or-be-sued approach were adopted.

31. It will be noted that in the above draft we have avoided the use of the term "servant", for reasons which have already been mentioned. If, however, the Crown Proceedings Act continues to use the term "servant", we think that it is essential to define the term, so as to avoid the difficulties which may result from its use. We would add that in this respect section 2 (6) of the English Act is inadequate.

32. We now summarize our recommendations:—

(1) the Crown ought to be made originally liable in tort as well as vicariously liable;

(2) this could best be achieved by adopting a sue-and-be-sued provision in place of section 4 (1) of the present Act;

(3) if it is preferred to retain the present approach, then the Act should be amended by adding heads (*b*) and (*c*) of section 2 (1) of the English Act, with the omission, in each case, of the words "at common law"; or it might be preferred to adopt the more general wording of the Tasmanian section 64 (1) 1 (*b*);

(4) provision should be made to deal with the problems created by *Tobin's Case* and *Enever's Case,* and we have suggested a form which it might take;

(5) if section 4 (1) of the present Act continues to include a reference to Crown servants, the term "servant" should be carefully defined.

33. We have, so far as possible, kept within the ambit of the Committee's inquiry. But it would not be right for us to leave the matter without pointing out that there are grave defects in the present Act to which the Committee has not, as yet, turned its attention. For example, section 4 (3) of the Act, coupled with the absence of any definition of the phrase "public statutory corporation", creates many problems. There are also certain matters which the Act does not attempt to touch, but which urgently demand attention. We will, if the Committee wishes, be happy to present a further memorandum dealing with these matters.

34. Before concluding, we think that we should advert to one question which, although not of a legal nature, is of great practical importance. We mean the question, where is the money to come from if Crown liability in tort is widened? Our answer is that this question is probably based on a false assumption that a widening of Crown liability would result in a crop of heavy damages awards against the Crown. It is of course true that any large and wealthy organization may have spurious claims made against it; people will no doubt venture on actions against the Crown in the speculative hope of succeeding. But this possibility is one to which every person or body with large funds at his or its disposal is subject; the wealthy citizen, or corporation, is in as bad a position from this point of view as the Crown would be. We believe, however, that if every existing limitation on Crown liability were removed (including such special limitations as are found in the case of say, the railways) the cost would form a negligible proportion of the State budget. And we think that he who asserts the contrary should be called upon to prove his case. The matter is certainly one which need not be left to speculation; figures should be readily obtainable from comparable jurisdictions such as New South Wales.

35. Even if we are wrong in our belief, there remains the matter of principle. The complexities of modern life are such that in the course of governmental administration mistakes are bound to occur. It seems to us but proper that the burden of paying for such mistakes should fall on the community as a whole, and not on the unfortunate victims. And that, after all, is all that is implied in the removal of Crown immunities in tort.

(NOTE:—The table of legislation referred to in the foregoing memorandum is not reproduced herein. It comprises extracts from the *Crown Proceedings Act* 1947 (10 and 11 Geo. VI. c. 44) of the United Kingdom, the *Judiciary Act* 1903 (No. 6 of 1903) of the Commonwealth of Australia the *Claims against the Government and Crown Suits Act* 1912 (Act No. 27 of 1912) of New South Wales. *The Claims against Government Act* (29 Vic. No. 23 as amended by 38 Vic. No. 3 and 8 Edw. VII. No. 18) of Queensland, the *Supreme Court Act* 1935 (No. 2253 of 1935) of South Australia, the *Crown Suits Act* 1947 (No. 11 of 1947) of Western Australia, the *Supreme Court Civil Procedure Act* 1932 (23 Geo. V. No. 58) of Tasmania, *the Crown Proceedings Act* 1950 (1950, No. 54) of New Zealand, and the *Federal Tort Claims Act* (28 U.S.C.A., Chapter 20) of the United States of America.)

APPENDIX C.

MEMORANDUM BY THE UNDER-SECRETARY.

With reference to your letter of the 19th September seeking the comments of this Department on certain aspects of the law relating to Crown Proceedings, I desire to advise you that this matter has been fully considered by the Chief Commissioner of Police and the State Insurance Commissioner and I now forward herewith copies of their reports.

This Department has no other comment to offer.

22nd October, 1956.

APPENDIX D.

MEMORANDUM BY THE CHIEF COMMISSIONER OF POLICE.

Crown Proceedings Act 1955.

The above Act came into being following a report of the Statute Law Revision Committee. In the Draft Bill submitted by that Committee was an extended meaning of the term "servant". It read: "Servant in relation to the Crown means . . . (*b*) Any person in the service of the Crown whether or not subject to . . . the *Police Regulation Act* 1928 . . ."

That definition was omitted from the Act in its final form. In the case of the *Attorney-General* v. *Perpetual Trustees Company* (1955) A.L.R. 469, the position of a member of the Force was considered and it was explained that he is not a servant in the ordinary sense but a person acting independently of the Crown.

The result of that decision is that a member of the Force gets no protection as a result of the new Act. His main liability would arise through accident and in order to protect himself he must take out adequate insurance cover when he uses his own motor car in the course of his duties.

It is very desirable that a member of the Force should have full protection and to obtain this the Act should be amended to include him as was suggested in the original Bill.

18th October, 1956.

APPENDIX E.

MEMORANDUM BY THE INSURANCE COMMISSIONER.

Effect of the Crown Proceedings Act and the Suggested Amendments.

The effect of the *Crown Proceedings Act* 1955 (No. 5874) has already been fully considered by the Officers' Committee formed by direction of the Premier to consider matters associated with the liability of the Victorian Government as a result of the passing of that Act and their report has been presented by Mr. Macgibbon, Chief Clerk of the Premier's Department.

However, I now set out a brief summary of the position—

Before the passing of the Crown Proceedings Act the Crown was not liable in tort, but after that Act was passed the Crown became liable for the torts of its servants, agents and independent contractors in the same manner as a subject is liable for the torts of his servant. Thus, *inter alia,* the Crown became vicariously liable for any act of negligence on the part of these individuals driving vehicles on Crown business.

The Third Party and Comprehensive Motor Vehicle Insurances already arranged on Government Vehicles covered the new liability of the Crown except that the liability to passengers was limited to £2,000. The Comprehensive Motor Vehicle Policies have since been extended to cover full liability for all authorized passengers.

With regard to public servants' vehicles used on Government business for which a mileage or commuted allowance was paid, it was recommended that they should be insured under a Comprehensive Motor Vehicle Policy and that the existence of this cover should be a condition of the payment of the allowance. It was also recommended that a blanket non-ownership liability motor vehicle policy be arranged with the State Motor Car Insurance Office to provide protection in respect of all cases where, for some reason, there was no cover under a private policy. This blanket policy also provided indemnity for privately owned vehicles which are occasionally used for Government purposes, but for which no allowance is paid. A cover note in respect of this blanket policy has been issued but the insurance is not yet finalized.

In the original recommendation of the Statute Law Revision Committee, the word "servant" was defined to include Ministers of the Crown and employees under the Teachers Service Acts and the Police Regulation Acts. This definition was not included in the *Crown Proceedings Act* 1955 and as the law now stands the Crown is not liable for the torts of any persons who are not "servants of the Crown". It has been held by the Courts that the Police are not servants of the Crown and as members of the Police Force, in the normal course of their duties, could be held to be personally liable for very extensive damages an extension of the Act to include Police, driving official and other vehicles, appears desirable to place them in the same position as "servants of the Crown". As already advised by the State Crown Solicitor, the extension of the Crown Proceedings Act to include liability in respect of Members of the Police Force would create a much greater potential liability than the inclusion of liability in respect of Public Servants as Police use motor transport more extensively and run greater risks in attempting to apprehend wrongdoers, moreover there is a heavy potential liability for torts involving trespass to the person. If insurance protection were required in respect of the latter liability it would be necessary to arrange Public Risk Policy, as the Blanket Motor Vehicle Policy is limited to torts arising out of the use of Motor Vehicles.

The extension of the Act to include property damage would create a considerable potential liability in respect of fire, flood and the like. Complete Public Liability insurance in respect of this liability would be expensive and difficult to obtain.

With regard to liability for functions otherwise than on the instructions lawfully given by the Crown, if the wrongful act is done in the course of the servant's employment, and it is so if it is authorized by the master or a fellow-servant entrusted with the duty of superintendence, or it is a wrongful mode of doing an authorized act, then liability cannot be avoided by the Crown even if the wrongful act is expressly prohibited; provided the authority under which the servant acts is either express or implied. However, further advice in this respect could be best obtained from the State Crown Solicitor.

In conclusion I would say that the extension of the definition of the word "servant" to include the members of the Police Department would remove what might be regarded as an anomaly under present day conditions and is desirable from the point of view of the Police and the community as a whole. As already stated only part of the additional potential liability of the Crown could be covered by motor car insurance. The remainder could however be insured under a Public Liability Policy.

I might mention that Public Liability cover would I believe be available at reasonable cost from either the Government Insurance Office of New South Wales or the State Government Insurance Office of Queensland, should the Goverment not be prepared to authorize the State Government Insurance Offices of Victoria to underwrite the business.

12th October, 1956.

APPENDIX F.

MEMORANDUM BY THE CROWN SOLICITOR.

Re Crown Proceedings Act 1955; *Forests Commission.*

1. The Forests Commission desires to be advised whether there are any submissions which should be made on its behalf to the Statute Law Revision Committee in relation to certain questions of Crown liability which are now under consideration by that Committee.

2. I understand that the principal questions engaging the attention of the Statute Law Revision Committee are:—

(*a*) the question whether the Crown should be made liable in respect of those torts in which in the case of a subject liability attaches by reason of the ownership, occupation, possession or control of the land; and

(*b*) the question whether the Crown should be made liable for torts committed by servants of the Crown in the exercise of functions which are in law autonomous.

3. The rule at common law (*i.e.* apart from statute) was that the Crown was not liable in tort. This rule had been excluded or modified in the case of particular instrumentalities of the Crown by the provisions of special statutes relating to those instrumentalities.

4. By the *Crown Proceedings Act* 1955 the Crown was made liable for the torts of any servant or agent of the Crown or independent contractor employed by the Crown as nearly as possible as a subject is liable for the torts of his servant or agent or an independent contractor employed by him. The only liability in tort so imposed on the Crown is limited to those cases in which—

(*a*) a servant, agent or independent contractor employed by the Crown has committed a tort; and

(*b*) if such servant, agent or independent contractor had been employed by a subject, such subject would have been liable for such tort.

5. A number of bodies corporate have been established by statute for the carrying out of public purposes. Some of these bodies corporate have been held to be the Crown while others of them have been held not to be the Crown. In each case the determination of the question depended on the statutory provisions defining the powers, functions, status and financial position of the body corporate in question.

6. Bodies corporate which are established by statute for public purposes but which are not the Crown have no immunity at common law from liability in tort. In the absence of some statutory provision such bodies corporate are liable in tort to the same extent as a subject is liable except for such limitations as may derive from their nature as corporations and from the limitations imposed on the powers and functions conferred upon them.

7. Bodies corporate established by statute which are the Crown had, prior to the coming into operation of the *Crown Proceedings Act* 1955, the same general immunity from liability in tort which was enjoyed by the Crown subject, of course, to any exclusion or limitation of that liability arising from any special statutory provisions applicable to them.

8. By section 4 (3) of the *Crown Proceedings Act* 1955 public statutory corporations which are the Crown were deprived of any immunity from liability in tort which they had theretofore possessed by virtue of the common law principle of Crown immunity, but without affecting any provision in any other Act by which the liability of any such corporation or any of its members, officers or servants in respect of any matter was specifically limited or conditioned. It will be seen that the liability in tort of each public statutory corporation is (subject to any special statutory provision) now wider than that of the Crown in that the liability of the Crown depends upon a tort being committed by a servant, agent or independent contractor of the Crown. It is clear that (except in the cases where there are provisions in Acts other than the *Crown Proceedings Act* 1955 specifically limiting or conditioning liability) public statutory corporations which are the Crown are now liable by virtue of the *Crown Proceedings Act* 1955 in respect of those torts liability for which depends upon the ownership, possession, occupation or control of property.

9. Difficulty may arise from the fact that the words of section 4 (3) of the *Crown Proceedings Act* 1955 depriving of Crown immunity any public statutory corporations which previously possessed that immunity are not confined to contract and tort. The relevant words are—

> "but no such corporation shall on the ground that it is the Crown or the servant or agent of the Crown be exempt from any liability to which it would otherwise be subject."

The question is whether these words should be read as if after the words "any liability" there were inserted the words "in contract or in tort". The earlier references in section 4 to "contract" and "tort" may furnish ground for argument that the question should be answered affirmatively but the Courts might well refuse to read into the provision words which have not been written into it.

10. In *Marks* v. *Forest Commission* (1936) V.L.R. 344 the Forests Commission of Victoria was reluctantly held by Lowe *J.* in the Supreme Court of Victoria to be an agent of the Crown entitled to the Crown immunity in tort. However, in *Commonwealth of Australia* v. *Bogle* (1953) 89 C.L.R. 229 Fullagar *J.* in the High Court of Australia said (at p.267):—

> "In such cases as *Marks* v. *Forest Commission* (1936) V.L.R. 344 we have a statutory corporation claiming to share the immunity of the Crown at common law from liability in tort. I must say, that with the greatest respect to the learned judge who decided it, I cannot think that that case was rightly decided."

Of course, what was said by Fullagar *J.* was *obiter dictum* and therefore the decision in Marks's case is still binding on all courts below the Supreme Court. In *ex parte Graham*; re *Forestry Commission* 45 S.R. (N.S.W.) 379 the Full Court of the Supreme Court of New South Wales held that the Forestry Commission of New South Wales was not the Crown or an agency of the Crown. The Court said (at pp. 382-383)

> "We were pressed with the Victorian case of *Marks* v. *Forests Commission* 1936 V.L.R. 344 in which it was held that the Forests Commission of Victoria is in substance a body incorporated by statute to administer a department of the government and is an instrumentality of the Crown. The relevant Act, however (*Forests Act* 1928), provides by section 4 that there shall be a Department of the Public Service called the State Forests Department having under the direction of the Minister of Forests such powers, authorities and duties as are provided for by the Act. Since the Forests Commission provided for by the Act appears to be intended to be a Branch of this Department, it is obvious that it is itself a mere Branch or Department of the Government; and the decision is, therefore, no assistance in arriving at the position of the New South Wales Forestry Commission under the New South Wales Act."

In *re Matthrick* (1941) 12 A.B.C. Lukin *J.* in the Court of Bankruptcy said with regard to the judgment of Lowe *J.* in Marks's case:—

> "If I may say so I agree with that decision."

There have been certain changes in relation to the Forests Commission since Marks's case was decided and in particular I would refer to the changes made by the *Public Service* (*Transfer of Officers*) *Act* 1937 (now repealed) which, I think, make the case for the view that the Forests Commission is the Crown somewhat stronger than it was when Lowe *J.* decided Marks's case. However, any confidence in the correctness of the view that the Forests Commission is the Crown must be tempered by the view that as recently as 1953 a very distinguished lawyer holding office as a Judge of the High Court of Australia expressed quite clearly the opinion that Marks's case was wrongly decided.

11. Section 15 (1) of the *Forests Act* 1939 provides that the Forests Commission "shall be liable for any damage caused by any fire which was lit kindled or maintained by or on behalf of the Commission or any forest officer and which was negligently permitted to spread." This provision was introduced some three years after it had been held in Marks's case that the Forests Commission enjoyed the Crown common law immunity from liability in tort. That is to say, that provision was introduced on the basis that the Commission had theretofore been under no liability in respect of damage caused by fire and that it was desirable that the Commission should be made liable in the circumstances specified in the section. Section 15 may well not be regarded as a provision specifically limiting or conditioning the liability of the Commission in respect of damage caused by fire and in that case the *Crown Proceedings Act* 1955 would have subjected the Commission to whatever liability it would be under in accordance with ordinary legal principles other than the principle of Crown immunity in tort. It may be assumed that when section 15 (1) of the *Forests Act* 1939 was enacted the Legislature gave consideration to the extent to which the Forests Commission should be liable for damage caused by fire and came to the conclusion that the extent of such liability should be that imposed by that provision. I have no confidence that section 15 (1) of the *Forests Act* 1939 would be held to be a provision specifically limiting or conditioning the liability of the Commission. The result is that the *Crown Proceedings Act* 1955 may well have widened the scope of the Commission's liability for damage caused by fire beyond that which the legislature in 1939 considered it proper to impose. It may be that a result of that kind was intended by the Legislature in passing the *Crown Proceedings Act* 1955. On the other hand, it may be that it is not the sort of result which the Legislature foresaw or intended. In my opinion, the attention of the Statute Law Revision Committee should be invited to this example.

12. It appears that any duty owed in respect of the condition of premises to persons entering upon those premises rests upon the person having occupation or control of those premises and not upon the owner of the premises as such. The Forests Commission is by section 18 of the *Forests Act* 1928 given the control and management of (*inter alia*) all State Forests. I understand that the total area controlled by the Forests Commission amounts to something like 5,000,000 acres. Because the Forests Commission is a public statutory corporation the *Crown Proceedings Act* 1955 has operated to place the Forests Commission under the same duties in respect of property occupied or controlled by it to persons entering upon such property as attach to a subject unless the Forests Commission has been specifically exempted from those duties by some statutory provision. So far as I am aware, the Forests Commission has no specific statutory exemption in this regard.

I understand that members of the public are commonly permitted to have access to State forests without let or hindrance. It would seem to be at least arguable that persons injured by reason of some dangerous condition existing in a State forest would have a claim against the Forests Commission.

In dealing with the question whether the Crown ought to be made liable in respect of injuries sustained by persons going upon property controlled by the Crown the Statute Law Revision Committee might come to the conclusion that liability ought to be imposed in respect of buildings and not in respect of "vast tracts of unalienated Crown land". If the Committee came to that conclusion it would seem to be desirable that the Committee should have in mind that by the *Crown Proceedings Act* 1955 liability has, or may have been, imposed in respect of large areas of Crown land because they are controlled by a public statutory corporation, albeit a public statutory corporation which has been held to be the agent or steward of the Crown.

13. Section 4 of the *Forests Act* 1939 provides that—

> "It shall be the duty of the Commission to carry out in every State forest proper and sufficient work for fire prevention and control."

Let it be assumed that the Commission failed to carry out that duty and that as a result of that failure a fire originating in a State forest spread beyond its limits and caused grave damage to private property. In *Salmond on Torts* (11th Ed.) it is stated (at p. 604) that—

> "The breach of a duty created by statute if it results in damage to an individual is *prima facie* a tort, for which an action for damages will lie at his suit."

In the case of this particular duty it would be held, I think, that a breach of it would not give rise to a cause of action in an individual who suffered damage by reason of such breach. The instance does, however, direct attention to the difficulty which may arise from the fact that prior to the enactment of the *Crown Proceedings Act* 1955 Acts dealing with public statutory corporations enjoying Crown immunity may have imposed duties on such public statutory corporations which, because they were imposed in a form influenced by the background of immunity, might now be construed as giving rise to rights of action in individuals in the case of breach.

14. In addition to the matters which have been adverted to in the last two paragraphs, I think that the Forests Commission might properly place before the Statute Law Revision Committee the suggestion that section 4 (3) of the *Crown Proceedings Act* 1955 should be amended—

(*a*) by inserting after the words "exempt from any liability" the words "in contract or in tort";

(*b*) by inserting words which would prevent a general liability attaching by force of the *Crown Proceedings Act* 1955 in a matter in relation to which the Legislature has previously seen fit to impose specifically a less extensive liability but yet did not specifically limit liability to that so imposed.

5th December, 1956.

APPENDIX G.

MEMORANDUM BY THE SECRETARY FOR RAILWAYS.

With reference to your letter of 3rd October, my Commissioners have no comments to offer in regard to the investigation into certain aspects of the law relating to Crown Proceedings to be undertaken by the Statute Law Revision Committee.

It is suggested, however, that, in Section 4 (3) of the *Crown Proceedings Act,* 1955, the words "in contract or in tort" be added after the words "exempt from any liability".

20th December, 1956.

APPENDIX H.

MEMORANDUM BY THE SECRETARY, STATE ELECTRICITY COMMISSION OF VICTORIA.

With reference to your letter of 11th December, 1956, regarding claims for compensation against the Commission and the Commission's liability for municipal and water rates, the desired information is detailed hereunder—

1. Details of Claims for Compensation or Damages over the Last Five Years.

(*a*) *Claims for Compensation.*

—	Number of Claims.	Amount Claimed.	Amounts Obtained.	
			Judicial Decision.	Negotiation.
		£	£	£
1. Public Risk ..	466	50,421	50	17,523
		In addition one claim for £40,000 in which the Commission has been joined as co-defendant with two other parties has been received and is outstanding.		
2. Common Law excluding Workers' Compensation	10	58,500	7,612	9,225
Pending ..	7	29,000	..	29,000 estimated
3. Motor Vehicles ..	2,801	240,000	65,750	38,300
			In addition to these amounts other claims coming within the scope of Knock for Knock Agreements have been settled as between the Insurance Underwriters concerned, but details are not available to the Commission.	

(b) *Compensation paid for Freehold Land Acquired and Easements Created.*

Freehold—Negotiation	..	£1,124,222
Easements—Judicial Decision	..	£2,670
Negotiation	..	£41,673

2. Liability for Rates.

As an agent of the Crown the Commission is not liable for municipal rates on its properties. However, the Commission makes an annual contribution to Councils for services such as sanitation and garbage rendered to property used for operational purposes, e.g., power stations, terminal stations, sub-stations, depots, stores, offices and showrooms, and similar contributions are made to Water and Sewerage Authorities for services provided. In special cases, payments are made to municipalities for road maintenance in the vicinity of Commission works, and payments for the construction of private streets are met where they adjoin Commission property.

Without prejudice to the general question of the Commission's liability for rating, the Commission recently agreed also to make ex gratia payments to those municipalities concerned in respect of the showroom portions of its various Branch and District offices.

With regard to residential premises owned by the Commission, provision is made for all rates to be paid by the tenants, except at Yallourn and Kiewa where the normal municipal services are provided by the Commission.

26th February, 1957.

APPENDIX J.

SUPPLEMENTARY MEMORANDUM BY PROFESSOR ZELMAN COWEN.

The Position of the Crown in Victoria.

1. In a memorandum on the *Crown Proceedings Act* 1955, which we put before the Committee during the previous Session, we drew attention to the existence of certain difficulties touching the legal position of the Crown, which were outside the scope of our earlier memorandum. At the request of the Committee we now tender this memorandum regarding those difficulties.

2. The first problem to which we call attention derives from the legal principle shortly described as "invoking the shield of the Crown". Under the British tradition of government which we have inherited the position of what may compendiously be called "the Executive" has never been the subject of strict legal definition. Originally, government meant the personal rule of the King. From the earliest times he was, naturally, assisted in this task by the officers of his personal household; and in the course of time those (originally domestic) officers came to be Ministers heading the great Departments of State.

3. Even in the early days, certain of the larger urban communities were permitted to exercise a considerable degree of self-government; their rights in this respect were, as a matter of common practice, confirmed by Royal Charter. Thus arose the municipal corporations, such as the boroughs and cities, which for centuries governed the everyday lives of those resident within the area of their authority.

These autonomous local corporations were, during the nineteenth century, for the most part abolished and replaced by new organs of local government, which were created by, and derived their powers from, Acts of Parliament. Local government in Victoria has always been carried on by statutory bodies of this type. We have digressed briefly into the history of local government to show why, despite the fact that it is part of the Government of the State, it has never been regarded as connected with the Crown. There are, however, certain legal rules applicable to it which, while not derived from the special prerogatives and immunities of the Crown, have a clear analogy to rules derived from that source; such rules may be considered as necessary, to enable the function of government to be carried on.

4. In addition to the central Departments of State, which are plainly part of "the Crown", and the various local government bodies, which are equally plainly not part of "the Crown", it has been found necessary to set up *ad hoc* bodies of a governmental or executive nature to deal with specific aspects of government. This necessity has resulted from the gradual widening of the concept of government over the centuries, and particularly during the past 100 years. At one time government, it was thought, ought to be confined to what have sometimes been described as its "inalienable functions"—the preservation of the peace, the administration of justice, and the defence of the realm. To-day, no one would confine "government" within such a straitjacket, though opinions very naturally differ as to what are the proper bounds to governmental interference. With those limits we are not concerned. What is beyond question is that, over the years, numerous officials and bodies have been created by Parliament for the purpose of exercising governmental functions in the broad sense. Examples which spring to mind are the Housing Commission, the Victorian Railways Commission, the State Rivers and Water Supply Commission, the Grain Elevators Board, the Registrar-General, the Public Trustee, and the Commissioner of Police.

5. The legal position of these bodies is not always made clear in the relevant statute. It may be conceded that their general function is governmental in nature. But that fact does not of itself mean that they are part of "the Crown"; the very existence of local government bodies shows that governmental bodies of a non-Crown nature are known to the law. Thus in each case the question arises: is this body within "the shield of the Crown" and thus entitled to assert Crown privileges and immunities?

6. The legal tests to be applied in answering this question have been discussed in numerous cases, of which the best known are *Grain Elevators Board* v. *Dunmunkle Corporation* (1946), 73 C.L.R. 70, and *Bank voor Handel en Scheepvart N.V.* v. *Administrator of Hungarian Property*, (1954) A.C. 584. An examination of the cases would be out of place here. Suffice it to say that the tests they adopt leave considerable room for difference of opinion in their application to a specific case. Thus there is always the likelihood of litigation over the matter.

7. The *Crown Proceedings Act* 1955 makes a commendable attempt to lessen the prospect of such litigation. In section 4 (3) it removes the "shield of the Crown" from "public statutory corporations", and at the same time declares the Crown immune from suit in respect of the contracts and torts of "public statutory corporations". It is, however, our opinion that the sub-section both fails to deal with all existing problems and creates as many new problems as it solves.

8. The major defect of the sub-section is that there is no definition of the term "public statutory corporation". While, no doubt, many public bodies would appear to be clearly "public statutory corporations", the position of other bodies is not so clear. Thus, the possibility of litigation still remains, but it will be concerned with the question, "Is this body a public statutory corporation?", instead of the question, "Is this body within the shield of the Crown?". Apart from the extra expense of litigating this unnecessary question (unnecessary because in any event the liability of the body, if established, will ultimately be borne by public funds), the unfortunate plaintiff who wrongly sues the Crown instead of the corporation (or *vice versa*), and fails, may find himself out of time when he attempts to begin his suit afresh against the proper defendant.

A further difficulty arising from the term "public statutory corporation" is that it would not appear apt to cover such officials as the Commissioner of Police, for although his office is created by statute, he is not a corporation. Indeed, it is not even clear that the term covers an official (such as the Public Trustee) who by statute has been made a corporation sole.

9. There are two other serious defects in the sub-section, albeit of a more minor nature. Firstly, it provides that the Crown is to be liable in respect of the torts and contracts of public statutory corporations. This, however, leaves unsolved the problem of the Crown's liability for claims in quasi-contract. Secondly, it provides that the shield of the Crown shall not exempt a public statutory corporation "from any liability to which it would otherwise be subject". But this exemption is too narrow. For example, under the terms of the sub-section, a body such as the State Electricity Commission could not raise the shield of the Crown as a defence to an action in contract or tort; but it could still use that shield to give it exemption from statutes which do not bind the Crown. It seems to us irrational that the same body should be considered as the Crown for some purposes but not for others.

10. We think that all these problems could be met, consonant with what we believe to have been the intention of Parliament, by a re-drafting of the sub-section. The new provision ought, in our view, to state simply that no "declared public body" (or whatever other term may be thought suitable) shall for any purpose whatsoever be treated as the Crown or a servant or agent of the Crown. This would achieve the two main objects of the provision. If it is thought desirable, the proviso that "nothing in this Act shall affect any provision in any other Act by which the liability of any such body or of any of its

members officers or servants in respect of any matter is specifically limited or conditioned" could be added; we doubt, however, if it is really needed.

The sub-section would then go on to define "declared public body" as meaning any person official or corporation (being a person official or corporation created by, or performing duties or exercising powers under, any Act of Parliament) declared by the Attorney-General, by proclamation published in the Gazette, to be a person official or corporation to whom the provisions of the sub-section apply; and any person official or corporation declared by the provisions of any Act of Parliament to be a person official or corporation to whom the provisions of the sub-section apply.

Finally, it should be provided that (*a*) every person official or corporation created by, or performing duties or exercising powers under, any Act of Parliament shall, unless declared to be subject to the provisions of the sub-section, be treated for all purposes whatsoever as the Crown (or a servant or agent of the Crown), and (*b*) no declaration of the Attorney-General shall be of any effect in any proceedings actually instituted at the time when the proclamation was published in the Gazette.

While a provision on these lines would confide great powers in the Attorney-General, we believe that he might safely be entrusted with them, particularly as his activities are subject to the constant and vigilant scrutiny of Parliament.

11. There is one other defect in the existing Act to which we would call attention. Section 4 (2) confers a sweeping exemption in respect of acts done in the course of discharging any "responsibility of a judical nature". This sub-section was apparently modelled on section 2 (5) of the English Act, and so far as it protects the Crown in respect of the acts of the judiciary we are in agreement with the principle it expresses. But the wording appears to be wide enough to cover what are commonly termed the "quasi-judicial" activities of members of the Executive; and we do not think that the Crown should receive protection in respect of such activities.

If our view is accepted, we think that the Parliamentary Draftsman should be invited to suggest a formula embodying the limitation of the exemption which we have in mind. In view of the recent strictures of the House of Lords (in *Vine* v. *National Dock Labour Board,* (1956) 3 All E.R. 939) on the use of the adjective "quasi-judicial", we think it would be undesirable to use that word. It might perhaps be best to re-draft the sub-section.

12. We now turn to some general problems affecting the relation between the State and the citizen, which the 1955 Act does not attempt to deal with. We shall confine ourselves to what are, in our view, the four most important in everyday practice. These are (i) the evidentiary privileges of the Crown, (ii) the position of the Crown in relation to representations made by its officials, (iii) the position of the Crown in relation to statutes and, (iv) the contractual powers of the Crown.

13. The right of the Crown to withhold certain categories of evidence—usually, but not necessarily, of a documentary nature—from the courts of justice has been the object of heated controversy during recent years. In Australia, the problem presents exceptional difficulties which are not encountered in other jurisdictions. We do not wish to burden the Committee with an analysis of the relevant cases, but instead shall state shortly what we conceive to be the position.

14. Three types of official information which the Executive may seek to withhold can be distinguished—(i) State secrets (ii) the names of informers, and (iii) State confidential information (we use the term "State" here in its broadest sense). It is quite clear from the cases that evidence of State secrets cannot be given in a Court, for obvious reasons. Likewise, it has long been conceded that the names of informers should as a rule be withheld, though the exigencies of justice may require their disclosure in a particular case. But a much more difficult question arises in regard to State confidential information. It is generally agreed that the governing consideration should be whether disclosure of the information will be harmful to the public interest. But this does not put an end to the dispute. For it has been claimed by the Executive in England—and the claim has received judicial recognition in the House of Lords, in *Duncan* v. *Cammell Laird,* (1942) A.C. 624—that the disclosure of communications between officials of the same or different Departments is necessarily harmful to the public interest, in that the possibility of future public examination of his remarks may militate against complete candour on the part of the official concerned.

15. We may say at once that we do not think the claim is well-founded. In essence, it amounts to a claim that the Executive may withhold information on the ground that it is "official" or "confidential"; yet if put in that bald form, the claim would be denied, just as it is denied to the large business concerns which are a feature of modern life. We deliberately put this analogy, because many of the Crown's activities at the present day are of a commercial rather than a governmental nature.

An example may clarify the matter. If a pupil at a private school sustains an injury on the school premises, the headmaster's report thereon to his governing body would not normally be privileged from disclosure. If, however, the same matter occurred at a State school, the Minister for Education could claim the right to withhold the headmaster's report to the Department. What rational basis can be assigned for such a result?

16. There is a further complication. In *Robinson* v. *South Australia* (*No.* 2), (1931) A.C. 704, the Judicial Committee of the Privy Council held that a judge could investigate a claim of the Crown to withhold information, and could override it if he thought fit. Eleven years later, in *Duncan's* case, the House of Lords held that no such investigation could be made, and that the judge is bound to give effect to the Crown's claim if made in proper form, i.e., if supported by an affidavit of the responsible Minister. There is thus a conflict of opinion between the two highest courts in our legal system. The result, so far as Australian courts are concerned, is obscure. As a general rule, they defer to the decisions of the House of Lords, though not bound to do so; yet they are formally bound by the decisions of the Privy Council. We cannot confidently predict what our courts will do when the question comes before them; but we think that there is a reasonable possibility that they will follow the decision of the House of Lords in *Duncan's* case.

17. We ought to draw attention to developments in other jurisdictions.

(*a*) In England, the rule in *Duncan's* case can be changed only by legislation, since the House of Lords is bound by its own prior decisions. Moreover, the rule received legislative recognition, and to some extent endorsement, in section 28 of the *Crown Proceedings Act,* 1947. Yet last year the Lord Chancellor formally announced that privilege would no longer be claimed for a number of classes of documents for which it had formerly been claimed. This action followed protests, both judicial and extra-judicial, against alleged abuses of the privilege.

(*b*) In Scotland, the House of Lords itself has conceded that the courts may override the Minister's claim: *Glasgow Corporation* v. *Central Land Board,* (1956) Scots L.T. 41.

(*c*) In New Zealand, it has been held, at first instance, that *Duncan's* case should be followed in preference to *Robinson's* (*Hinton* v. *Campbell,* (1953) N.Z.L.R. 573.) The decision seems to have been based purely on a prediction of future Privy Council action. The Full Court has not, as yet, decided the point.

(*d*) In Canada, the Supreme Court discussed the whole matter at length in *Re Regina* v. *Snyder,* (1954) 2 D.L.R. 483. They decided in favour of judicial review of the Minister's decision. It may be pointed out that appeals from the Supreme Court of Canada to the Privy Council have been abolished, and thus the Court could feel itself free to deal with the matter on principle. It will be seen that there is such conflict of opinion as to justify legislative action to set doubts at rest. What form should that action take?

18. It will readily be conceded that no evidence of any State secret should be permitted in court, except with the consent of the responsible Minister. By "State secret" we mean information affecting foreign relations, the defence of the realm, or the security of the State. Plainly, in such cases the interest of the public safety must be overriding. But it should remain open to the responsible Minister to decide, if he wishes, that the information sought can be disclosed without harm; apart from such consent, it should be the Judge's duty to prevent disclosure.

As to the names of informers, the rule should be that they should not normally be revealed, but that the judge may order disclosure in a particular case if he thinks that the interests of justice so require.

It is with regard to information of other kinds that the keenest controversy arises. Here, however, we think that the proper rule should be that each case should be judged on its merits, having regard to the proper claims of government on the one hand and the interests of justice on the other.

19. The question still remains: who is to decide the issue in case of dispute? We do not think it proper to approach this problem by considering the possibility that irremovable Judges may also be irresponsible or that Ministers may be actuated by unworthy motives. In our view, it must be assumed that both the Judge and the Minister will act on the proper considerations and be moved solely by the desire to reach a just decision. If the assumption were to prove ill-founded in a particular case, the proper remedy is the removal of the Judge or Minister by the appropriate procedure.

There still remains one factor which we think makes a decision in favour of the Judge essential. This is the fact that the Judge is by the very nature of his office impartial, whereas the Minister would inevitably be acting as judge in his own cause.

20. We recommend, therefore, that the task of deciding on Crown claims to withhold information be assigned to a Judge. In the case of alleged State secrets, his task would of course be confined to deciding whether the information could properly be classed as such. In the other cases, he would have to balance conflicting interests. Necessarily, his inquiry would have to take place in private, and counsel for the person seeking disclosure could not be heard (if he were, the whole object of the Crown claim would be defeated); but, despite the contrary remarks of Lord Simon in *Duncan's* case, we cannot think that this would cause great injustice. At least the citizen would be better off than he now is.

21. We now turn to the problem of the status to be accorded by the law to official representations made by Crown servants (including Ministers). These representations may be as to the law, as to facts, or as to a mixture of law and fact. For instance, it is becoming increasingly common for Government Departments to issue administrative guidance to citizens concerning the effect of statutes; the field of taxation offers numerous examples of this practice. Can the citizen rely on these rulings? If he does, and subsequently becomes involved in litigation on the matter, what status should the courts accord to the rulings (*a*) if the other party is the Crown, (*b*) if the other party is a private citizen?

22. There has been much judicial discussion in the United States on this matter, but no clear principle emerges from the decisions. By contrast, the English and Australian decisions appear to pass over the matter in silence; it seems to have been accepted that administrative rulings on questions of law are of no weight. But in one case, an administrative ruling on a question of fact was treated as binding. The case is *Robertson* v. *Minister of Pensions*, (1949) 1 K.B. 227, in which the plaintiff was an army officer who in 1939 sustained injuries while on active service. In 1940 he wrote to the War Office asking whether his injury was accepted as one attributable to military service. The Director of Personal Services informed him by letter that it was so accepted; the Director had not communicated with the Ministry of Pensions before writing the letter. After the war, when the plaintiff sought a pension, the Minister of Pensions denied that the injury was "attributable". Denning *L. J.* held that the Minister was precluded from taking this defence. He said, "In my opinion if a government department in its dealings with a subject takes it upon itself to assume authority upon a matter with which he is concerned, he is entitled to rely upon it having the authority which it assumes. He does not know, and cannot be expected to know, the limits of its authority."

23. Not long after this decision, Denning *L. J.* applied his principle in a different context. The main question for decision in *Falmouth Boat Construction Co. Ltd.* v. *Howell*, (1950) 2 K.B. 16, was whether a licence to repair a ship, required by war-time regulations, had to be in writing or could be given orally. The Admiralty licensing officer had given oral permission for certain repairs, but did not issue a written licence until they had been completed. Denning *L. J.* held that, on these facts, an oral licence sufficed; the Crown, in his view, could not have prosecuted the repairer for doing the work without a licence. In the House of Lords, however, the decision was based on the ground that a written licence was required, but could be given retrospectively. Lord Simonds referred to the remarks of Denning *L. J.* quoted above, and said "I know of no such principle in our law". He went on to suggest that there might have been a successful prosecution of the repairer, adding that reliance on the oral permission would not be a defence, though it would bear on the penalty. The other Law Lords agreed.

24. We must accept the House of Lords as correctly determining the present state of the law. But we believe that the principle for which Lord Justice Denning contended is urgently needed. The citizen is forced to rely on the assurances of government officers. He cannot know the extent of their powers; in many cases, that extent could be precisely determined only after arduous research, often into documents and files which are not open to public inspection.

25. We therefore recommend legislation to provide that in any case to which the Crown, or a servant or agent of the Crown acting in his official capacity, is a party, the Crown (or servant or agent) shall be bound by, and precluded from disputing, all representations made by any servant or agent of the Crown acting in his official capacity, whether these representations relate to matters of law or of fact or of mixed law and fact; provided that the representations were made to the suitor in the case (or to all members of the public generally, or to all members of the public of a class to which he belongs), were intended to be acted upon, and were in fact acted upon by him in the transaction concerned.

26. We add two observations. Firstly, it would be wrong to object to our proposal on the ground that a corrupt or irresponsible Crown servant could greatly prejudice the Crown if it became law. As we have already mentioned, questions of this kind must be approached on the footing that Crown servants act honestly and responsibly. Secondly, the principle should be rigidly confined to cases in which the Crown is a party. It is, we think, wrong to seek to extend it to cases between private citizens (as Denning *L. J.* sought to do in the ship repairing case). Such an extension would in effect concede to the Executive a power to make law by administrative rulings, without Parliamentary authority. Our aim is the limited one of preventing the Executive from blowing hot and cold in one and the same transaction.

27. We can deal briefly with the position of the Crown in relation to statutes. The rule is that the Crown is not bound by any statute unless expressly stated to be bound or unless there is a necessary implication that it is bound. There is a great number of cases on the question when such an implication should be made. Whether the Crown should be immune from any given statute is of course a matter for Parliament to decide at the time; we merely observe that immunity ought to be granted only for good cause shown to Parliament. The present rule, since it protects the Crown when the statute is silent, means in practice that the question often passes unnoticed during the passage of the Bill.

28. We propose that the rule should be reversed by legislation. This would provide that all future statutes shall bind the Crown unless the contrary is expressly stated therein. The only exception, which may be a practical necessity, should be for consolidations which include, in whole or in part, statutes enacted prior to the enactment of the new rule.

It may be objected that this proposed new rule would in practice be frustrated by the insertion in every Bill of an exemption clause, as a matter of routine. We would be content to leave Parliament to guard against such an abuse. If it occurred, our aim of preventing unnecessary litigation would still have been achieved. But it would be desirable to check such a practice at the outset by providing that the Crown shall not be permitted to take advantage of any of the provisions of a statute by which it is stated not to be bound. We think that this is a correct statement of the law as it stands; but there is enough doubt to make the rule worth restating by statute.

29. A further point here is whether our statutes should be declared binding on the Crown in all its aspects, or merely on the Crown in right of the State. The cases on this topic are numerous, conflicting, and perplexing. We do not propose to discuss them, but merely to state our recommendation. This is that the proposed legislation should make statutes binding on the Crown in right of the State, and, so far as may lawfully be done, on the Crown in right of the Commonwealth and the other States. A "severability clause" could be added if thought necessary. Thus the legislation would express Parliament's desire to bind the Crown as fully as it constitutionally can.

30. We now turn to the contractual position of the Crown. The law on this subject is, to say the least, somewhat obscure. We may begin with certain basic principles.

The Executive Government of the State is, in form, in the hands of the Queen, acting through the Governor. Thus executive contracts are made by or on behalf of Her Majesty. But in practice the Executive Government is in the hands of the Executive Council, a body responsible to Parliament for its acts. Secondly, nobody supposes that moneys payable under a contract by Her Majesty are to be paid out of her own pocket. Such moneys are payable out of public funds. But no payment can be made out of those funds without the consent of Parliament. In practice, Parliament does not usually deal with specific contracts in its appropriations, but rather makes a sum available to the Executive Department, leaving the latter body to determine in detail how it shall be spent.

31. It follows that every governmental contract requires a partnership, as it were, between Parliament and the Executive. We would have thought that if differences arise between those two organs of government, they could be settled by the organs themselves, without the intervention of the courts. But the latter have, on occasions, assumed the task of ensuring that Parliament is not in any degree deprived by the Executive of financial control. The result has not been happy.

It also follows that for the most part governmental contracts are made pursuant to the prerogative powers of the Executive. Here again, the courts have intervened. with unhappy results, to place artificial restrictions on those prerogative powers, allegedly in the public interest.

32. With this background, we can examine the rules of law which have emerged. Firstly, it is said that contracts with the Crown can be made only by Executive officers possessing authority in that regard. Since the authority is derived usually from constitutional or departmental practice, the citizen contractor is placed at a grave disadvantage. He has not, as a rule, the information which will enable him to know whether the Executive officer is duly authorized to make the contract; nor has he the means of acquiring that information. Moreover, if the Executive officer has no proper authority, the contractor cannot sue him (as he could sue any other self-styled agent) for breach of warranty of authority. This last rule has been much criticized, but we believe it to be the law.

33. Secondly, it was held by the English Court of Appeal, in *Dunn* v. *The Queen,* (1896) 1 Q.B. 116, that the Crown could repudiate a contract duly made by an authorized officer on its behalf to engage a civil servant for a fixed period of service. The reason given was that such a contract is against the public interest. It seems odd that the courts should claim to be able to override the decision of a high Executive officer on the ground of public policy. But they did so in that case, and their language is wide enough to be capable of application to other types of Crown contracts. The contractor is thus placed in a difficult position, for he cannot foresee at the outset what some future court's decision on public policy will be.

34. Thirdly, a Crown contract which has been running for some time may be declared invalid by the courts on the ground that the Crown cannot by contract hamper its future executive action. This rule was announced by Rowlatt *J.* in *Rederiaktiebolaget Amphitritre* v. *The King,* (1921) 3 K.B. 500. It has become much criticized by learned writers, but appears still to be good law, though its exact scope has not been settled. The curious feature of this doctrine is that supervening executive necessity is invoked, not to excuse further performance, but to invalidate the contract from the outset.

35. These doctrines have been invoked in the past to aid governments to repudiate obligations undertaken by their predecessors or their agents. We do not, however, think that the law should aid governments in such a process, and we have accordingly thought it right to draw the Committee's attention to the present state of the law. That some changes are needed seems fairly clear; but the precise nature of those changes involves difficult questions of policy, and we do not feel that we should enter on a discussion of the form those changes should take.

36. There are doubtless many other minor Crown privileges which should perhaps be abolished or varied; but we have concentrated on what we believe to be the worst features of the present system. We have not set out all the arguments pro and con at length in submitting our proposals. But before submitting them we have carefully considered those arguments and satisfied ourselves that opposition to proposals of this kind is not well-founded. In the final analysis, such opposition is usually found to be based on the dislike of the Executive for surrendering privileges which it—for purely historical reasons—possesses. Much as we sympathise with this attitude, we think it must give way to the general principle that the Executive should be subject to the law. Unless this principle is recognized and fully implemented, democracy, we believe, cannot justify its claim to pride of place among systems of government.

12th March, 1957.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57

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VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

PROPOSALS TO CONSOLIDATE THE LAW RELATING TO STATE FORESTS; RACING, BOOKMAKERS AND TOTALIZATORS; AND POLICE OFFENCES

Ordered by the Legislative Council to be printed, 16*th April,* 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

3718/57.—D.—No. 3.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Director of Statutory Consolidation, Mr. R. C. Normand, brought before the Committee drafts of the following Bills :—

Police Offences Bill—a Bill to consolidate the Law relating to Police Offences ;

Racing Bill—A Bill to consolidate the Law relating to Horse Pony Trotting and Dog Racing, the Registration of Bookmakers and their Clerks, and Totalizators ; and

Forests Bill—A Bill to consolidate the Law for the Management and Protection of State Forests.

In the exercise of the function conferred upon it by section 344 of *The Constitution Act Amendment Act* 1956 to examine *inter alia* "proposals for the consolidation of statutes" the Committee undertook an examination of the proposed consolidations.

2. The evidence of the Director of Statutory Consolidation is appended to this Report.*

Police Offences and Racing Bills.

3. Of the three Bills examined by the Committee, two are inter-related, viz., the Police Offences Bill and the Racing Bill. The latter measure brings together existing legislation dealing with horse, pony, trotting and dog racing and allied subject-matters. The Police Offences Bill consolidates with the *Police Offences Act* 1928 the various Acts and enactments which amend it or are read in conjunction with it, except those dealing with race-courses and race-meetings.

4. The Director informed the Committee that the Racing Bill has its origin in the Police Offences legislation, but subsequent legislative accretions have developed the racing aspect to the extent that it is now more properly treated as a separate subject-matter.

Portion of the Bill reproduces legislation which, though dealing with racing, was enacted independently of the Police Offences Acts.

5. In the preparation of the two related consolidating Bills, the existing legislation has been extensively re-arranged and the presentation altered. The Committee commends the Director for his modernization of the archiac language and form of the existing provisions. The division of the existing legislation into two consolidating measures conforms to an approach adopted in the 1929 consolidation (*vide* Explanatory Paper in Vol. 1 of the Victorian Statutes 1929 at p.ix). Such a division, together with the re-arrangement of the subject-matter, should result in easier reference, greater intelligibility, and greater compactness.

6. The Director drew the attention of the Committee to clause 21 of the Police Offences Bill relating to the use of fire. Following the repeal of the Division of the *Land Act* 1928 dealing with the Mallee, at the time when the *Country Fire Authority Act* 1944 was enacted, it is no longer appropriate to exempt the "Mallee country" as such from the operation of the clause, for the Country Fire Authority Act provides a code of fire protection for the whole of the country, including the Mallee. Hence the clause has been expressed as exempting from its operation "the country area of Victoria within the meaning of the *Country Fire Authority Act* 1944".

* Minutes of evidence not printed.

7. In conformity with the provisions in the *Crimes Act* 1949 which abolished whipping in all cases except crimes accompanied by brutality and violence, reference to whipping has been omitted from clause 72 of the Bill. The existing section 72 of the *Police Offences Act* 1928 had provided for the whipping of offenders found guilty of indecent exposure.

8. In the amalgamation of the Police Offences (*Dog Racing*) *Act* 1940 which deals with dog racing but not coursing and the *Dog Races Act* 1954 which deals with both dog racing and coursing, it has become necessary for the Director to arrive at a form of definition of the term " dog races " in the Racing Bill to fit the differing needs of the various sections.

The wider definition which includes coursing has been applied to clause 54 so that coursing as well as dog racing will be prohibited on Sundays and certain public holidays. Whilst technically under the existing legislation, coursing races could be held on such days, they have not in fact been held, and the Committee concurs in the view expressed by the Director that it would be anomalous to permit certain dog races on specified days but to prohibit others. It is therefore appropriate to apply the wider definition to this clause.

9. Clause 58 of the Racing Bill which relates to the issue of licences has been clarified so that it is now clear that its application is limited to established grounds. Similarly the provisions of the *Totalizator Act* 1930 have been applied, by the use of a limited definition, to dog races on established grounds only and not to coursing where they would be inappropriate.

Forests Bill.

10. The Director has advised the Committee that section 44 of the *Forests Act* 1928, providing for the setting apart of portions of reserved forests as forest townships and the sub-division and leasing of allotments therein, is obsolete. It can no longer be of any effect because the authority concerned with its operation, the Closer Settlement Board, no longer exists, and the Act providing for finance for the purposes of the section has been repealed. For these good reasons therefore the Director has omitted the section entirely from the consolidating Forests Bill.

11. To correct an error of reference, the Director has made it clear that the fire prevention provisions of the Bill, referred to in clause 70 (4) (*a*), mean clauses 63 to 69 since these clauses obviously are the fire prevention provisions.

Conclusion.

12. The Committee has examined each of the above Bills and is of the opinion that no material has been embodied in any of them which may not properly be included in a consolidating measure.

It accordingly recommends that the Bills, when introduced, be given a speedy passage.

Committee Room,

4th April, 1957.

By Authority: W. M. Houston, Government Printer, Melbourne.

1956-57

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VICTORIA

FURTHER REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

PROPOSALS CONTAINED IN THE

TRUSTEE COMPANIES BILL 1955

TOGETHER WITH

MINUTES OF EVIDENCE

Ordered by the Legislative Council to be printed, 8th May, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

3077/57—D.—No. 5.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, that the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Statute Law Revision Committee has further considered the proposals contained in the Trustee Companies Bill 1955—a Bill to amend the law relating to Trustee Companies—which was initiated and read a first time in the Legislative Assembly on 26th October, 1955.

On 10th November, 1955, the Legislative Assembly referred the proposals contained in the Bill to the Statute Law Revision Committee for examination and report. The Report of the Committee, together with Minutes of Evidence and Appendices, was presented to the Legislative Council on 17th April, 1956, and to the Legislative Assembly on 10th April, 1956. (Victorian Parliamentary Papers, D. No. 6. Session 1955-56).

On 19th September, 1956, the Legislative Assembly referred the proposals contained in the Bill back to the Statute Law Revision Committee for further examination and report.

2. During the course of its further inquiries the Committee has received evidence from the following persons who represented the Trustee Companies Association—

Mr. J. B. Tait, Q.C. ;
Mr. M. Chamberlin ; and
Mr. W. E. Orr.

In addition, the Committee conferred on a number of occasions with Mr. John Finemore, Assistant Parliamentary Draftsman.

The Minutes of Evidence are appended to this Report.

3. The Committee's further inquiry related to four main issues—

(*a*) the definition of " gross value " in clause 2 of the Bill ;

(*b*) the time at which a trustee company may take its corpus commission (see clause 5 of the Bill) ;

(*c*) the amendment or repeal of section 23 of the *Trustee Companies Act* 1928 (amendment is provided by clause 3 of the Bill) ; and

(*d*) an amendment to sub-section (5) of section 17 of the *Trustee Companies Act* 1928 (as re-enacted by section 2 of the *Trustee Companies (Commission) Act* 1953).

4. In its first Report, the Committee recommended amendment of the definition of " gross value " in the Bill to provide for perpetual charitable trusts, the assets of which are not distributed. The trustee companies accept this recommendation and are satisfied that their corpus commission in respect of perpetual charitable trusts should be calculated upon the " gross value " at the time the trust fund is set up.

The definition of " gross value " in clause 2 of the Bill draws a distinction between " deceased estates " and " all other estates ". The gross value upon which corpus commission is calculated in the case of deceased estates is to be the value at the time of distribution of assets and the value in the case of all other estates is to be that at the time the assets are committed to the care of the trustee company.

The Committee heard evidence that it has been the practice of the trustee companies to assess commission in respect of estates other than deceased estates upon the value at the time of distribution, and has been advised that the legality of this practice is doubtful. The companies contended that there is no logical basis for the distinction proposed by the definition.

5. The Committee, after further consideration, agree with the trustee companies that, except in the case of a perpetual charitable trust, corpus commission should be calculable upon the " gross value " at the time of distribution of assets and without deduction of liabilities.

The Committee therefore recommends that, for the definition of " gross value " in clause 2 of the Bill, there should be substituted the following or a similar definition—

> " Gross value " means in relation to an estate the aggregate of—
>
> (*a*) the actual amount paid out of an estate in the due course of administration or management from capital, for debts, duties, liabilities and administration expenses and to or on behalf of beneficiaries ;
>
> (*b*) the amount of the value at the time of distribution or appropriation of any assets distributed or appropriated in specie to any beneficiary without deduction of any liabilities.
>
> PROVIDED that where there is a perpetual trust in relation to the whole or any part of an estate the gross value of that part shall be its value at the time it is committed to the trustee company without deduction of any liabilities.

6. In its 1956 Report (at paragraph 6) the Committee recommended " that clause 5 be amended to provide that not more than one-half of the corpus commission may be deducted by a trustee company during the administration of the trust, the remainder to be deducted at the conclusion of the trusteeship ".

7. Further evidence submitted by the trustee companies leads the Committee to believe that the recommendation, if enacted, would lead to injustice in a number of cases (examples of which are outlined in the evidence) where most of the work of a trust has been completed and a small part of the estate must remain in trust for some years. In any such case, not more than one-half of the fee may be taken before the trust is completely wound up.

The Committee withdraws its previous recommendation and recommends that sub-clause (1) of clause 5 of the Bill be proceeded with in its present form.

8. The trustee companies pointed out that sub-clause (2) of clause 5 of the Bill relates to deceased estates only. The Committee agrees that a provision similar to that of sub-clause (2) of clause 5 is desirable and should apply to all estates. This is particularly so as the Committee has adopted the principle that commission payable in respect of deceased estates and all other estates, excepting perpetual charitable trusts, should be similar (see paragraph 5 ante.). Accordingly it recommends that the present sub-clause (2) be deleted and the following proviso be inserted to follow sub-clause (1)—

> PROVIDED however that a Trustee Company shall not be entitled to draw after the commencement of this Act such commission in respect of any portion of the estate that has not been distributed over and above an amount of commission which is calculated on the value of that portion at the time it was so committed to the administration or management of the Company, the amount of commission so drawn being adjusted when such portion of the estate has been distributed.

9. The Committee recommends that for the word " chargeable " in sub-clause (3) of clause 5 of the Bill there should be substituted the word " charged ". Sub-section (4) of section 17 of the *Trustee Companies Act* 1928 (as re-enacted by section 2 of the *Trustee Companies (Commission) Act* 1953) provides that " the commission charged by a trustee company on the gross value of an estate or on the income thereof shall not exceed the amount of the published scale of charges of the company current at the time when such estate was committed to it ....." and sub-section (1) of the section prescribes the maximum rates of commission. The alteration of the word "chargeable" to "charged" is recommended to make clear that the provisions of sub-section (1) of section 17 shall apply—that the calculation of commission for the purposes of clause 5 of the Bill shall not be necessarily at the maximum statutory rate.

10. Clause 3 of the Bill proposes substitution of a new paragraph (*d*) of section 23 of the *Trustee Companies Act* 1928. The Committee in its previous Report (Victorian Parliamentary Papers D. No. 6, Session 1955-56.) recommended the following amendments to the section—

(i) the deletion of paragraph (*b*);

(ii) the inclusion of words expressly prohibiting a trustee company from investing its own funds in trading companies;

(iii) the insertion of a new paragraph similar to that proposed by clause 3 of the Bill except that the power of a trustee company to engage in the purchase of land or the erection of buildings should be limited to lands or buildings which the company intends to occupy at least partly for its own use; and

(iv) the addition of power for a trustee company to engage in the businesses of insurance and brokerage.

11. The trustee companies urged the Committee at both this further inquiry and the previous inquiry to recommend repeal of section 23 or, alternatively, to recommend amendment of the section to either—

(i) retain the present list of permissible trustee company activities and extend it to include—(*a*) acting as custodian or management trustee; (*b*) providing safe deposit facilities; (*c*) acting in a corporate capacity as director or governing director of another company; (*d*) establishing or managing staff superannuation funds for other companies and private businesses; (*e*) insurance broking; (*f*) forming wholly-owned subsidiary companies for carrying on any of the authorised business activities of trustee companies; and (*g*) investing in stock and shares listed on the Stock Exchange; or

(ii) list prohibited activities.

The companies submitted to the Committee the following suggested draft of a new section 23 of the *Trustee Companies Act* 1928—

Notwithstanding anything contained in Part I. of the *Companies Act* 1938 or in the memorandum or articles of association of a trustee company—

(*a*) no trustee company to which this act applies shall for the purpose of profit buy or sell or deal in any land goods or merchandise on its own behalf PROVIDED that this prohibition shall not apply when a trustee company is acting in its capacity as executor, trustee or otherwise in the administration or management of any estate.

(*b*) no trustee company to which this Act applies shall invest its own funds in—

(i) the shares debentures or securities of any company which is engaged in buying selling or dealing in land goods or merchandise PROVIDED that this prohibition shall not apply in the case of a company whose shares debentures or other securities are listed on a stock exchange or a company owning a building to be occupied or partly occupied by a trustee company.

(ii) the purchase of land or the erection of buildings other than lands or buildings which the company intends to occupy at least partly for its own use.

12. Five courses were then open to the Committee, viz:—

(i) to affirm its previous recommendations with or without further recommendations;

(ii) to recommend repeal of section 23;

(iii) to recommend substitution of the suggested re-draft for the present section 23;

(iv) to list permissible trustee company activities; and

(v) to list prohibited trustee company activities.

13. The Committee, after consideration of the whole of the evidence and in particular the more detailed evidence tendered at this further inquiry, believes that section 23 of the *Trustee Companies Act* 1928 should be repealed.

14. The Committee is not at present disposed to recommend that companies other than those named should enjoy the privileges of grant of probate and administration and statutory right to commission.

15. The attention of the Committee was drawn to sub-section (5) of section 17 of the *Trustee Companies Act* 1928 (as re-enacted by section 2 of the *Trustee Companies (Commission) Act* 1953). It was contended that the sub-section should and was intended to include directions as to commission in respect of the management of all estates, but in fact includes only directions of testators and settlors. The Committee believes that the sub-section should apply to all estates and recommends that it be amended accordingly.

Committee Room,
7th May, 1957.

MINUTES OF EVIDENCE

WEDNESDAY, 20TH MARCH, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. T. H. Grigg,	Mr. Barclay,
The Hon. R. R. Rawson,	Mr. Sutton,
The Hon. L. H. S. Thompson.	Mr. Wilcox.

Mr. J. B. Tait, Q.C., Mr. R. F. Fullagar, of Counsel, Messrs. M. Chamberlin, W. E. Orr, L. F. North, J. Larritt, R. J. McArthur and D. R. Howard, representing the Trustee Companies Association, were in attendance.

The Chairman.—To-day the Committee is to consider the Trustee Companies Bill, and I shall call on Mr. J. B. Tait to give his views on the matter.

Mr. Tait.—I am appearing, with my learned friend, Mr. Fullagar, on behalf of the Trustee Companies Association, which is the Association of all the trustee companies that operate in Victoria and are concerned under the Trustee Companies Act. I do not propose to go at any length into an explanation of the matter or give its background, because I understand that the Committee has received that information previously. Because of that and preliminary discussions held by the Committee, my task is somewhat shortened, and I shall come directly to the problem facing the trustee companies in connexion with this Bill.

I wish to speak about three points. In the Bill that was introduced into the Legislative Assembly in October, 1955, there is a definition of "gross value." We are concerned with some rather technical problems that arise in connexion with that definition. The second matter that I shall mention is contained in clause 5 of the Bill, which deals with the commission of the companies. Again, technical matter is involved in the way that the clause has been expressed. The third matter is more substantive and is a matter of principle. It relates to an amendment to section 23 of the 1928 Act, contained in clause 3 of the Bill.

As to the first matter, the Bill gives a definition of "gross value." It is necessary, I think, to explain shortly how that definition came to be inserted. The trustee companies draw their commission under the statutory provision appearing in section 17 of the 1928 Act. That section provided a limit to the commission that a trustee company could draw. That limit was divided into two types of commission—one which we call "corpus" commission and the other "income." Perhaps those terms explain themselves, but, quite shortly, when a man dies, his assets are not called his "capital" but his "corpus." The trustee company, or any executor who applies for and receives probate on a man's will has to deal with the estate as it stands at his death; they have to receive any income from the investment of it. The first is called the "corpus" and the second "the income of the estate." The statute provided for a commission on corpus and also on income, and that is in line with the sort of commission that is allowed by the Supreme Court to private trustees. Section 17 of the principal Act, which provided a limit on those commissions, was amended in 1953 by, I think, the Cain Government, after representations had been made to the then Attorney-General, Mr. Slater. I do not think that measure was referred to the Statute Law Revision Committee. That amending Bill dealt only with section 17 of the principal Act, and related to the amount of commission. When representations were made at that time, the trustee companies pointed out to the then Attorney-General that there were certain anomalies and matters in the principal Act relating to trustee companies—they really go back to the early history, to 1888 or 1890—which in the course of time were becoming unworkable and required attention.

I understand that the Government accepted that view and gave it consideration, but that in the session of Parliament it could do nothing more than to deal with the one urgent matter relating to section 17. The "gross value" arises in this way: Under section 17 dealing with commission, the corpus commission was to be based on what the section called "the capital value." It was an amount of not more than 2½ per cent. on the capital value of the estate. In 1953 the percentage was increased to 4 per cent. on the gross value of the estate. We are not concerned with the amount; that was the limit allowed by the Act.

The trustees found also that they could not charge more than that, and they cannot charge on any individual estate more than the published scale of charges. It was for that reason that the term "gross value" required some definition.

Representations made to the Government of the day were that a change should be made in the way of calculating this corpus commission. Under the old Act, in the case of a deceased estate, the amount of corpus commission was calculated on the value of the estate at the date of death, whereas in all other trusts that the trustee companies handle, with the exception of perpetual charitable trusts, the commission was based on the value as distributed, which was a more logical basis. The Government agreed with us that that basis as regards a deceased estate should be changed, and that is what the definition of "gross value" in the 1955 Bill does. We are quite happy with that; it is what we asked for and what we got. We do not like the wording, but I shall not trouble the Committee with that matter. In clause 2 of the Bill it is provided that "gross value" means—

> (*a*) in relation to the estate of a deceased person being administered by a trustee company, the sum of the following amounts—
>
> (i) in so far as assets are realized, the amount for which they are realized;
>
> (ii) in so far as assets are distributed, the amount of the value of all such assets as accepted for the purposes of duty under the Administration and Probate (Estates) Acts; and
>
> (iii) in so far as any assets are appropriated in or towards the share of any beneficiary, the amount of the value of such assets as fixed for such appropriation—without deduction of any liabilities;

When the term "gross" is used, it means, of course, without deducting liabilities. The trustee companies were not consulted as to the actual drafting of this Bill and because of some misunderstanding—perhaps the matter was not fully explained to the Government—the basis of calculation that had always appeared was changed in regard to all other estates

than deceased estates. As I stated, the trustee companies had, except in regard to deceased estates, always drawn their commission on the realized or distributable value. The Bill proposes to change that, because paragraph (*b*) of the definition of "gross value" states that "gross value" means—

> In relation to all other estates managed by a trustee company, the total value of all assets at the time that such estate is committed to the management of the trustee company without deduction of any liabilities.

In other words, the position was reversed. The commission relating to deceased estates was put right, as we suggested, and the others were put back where the deceased estates previously were.

There is one other point, and this matter was dealt with by the Committee previously. The position regarding perpetual trusts was generally overlooked in this Bill. We pointed out that in the case of a charitable or perpetual estate, where the deceased said that, say, £20,000 of his estate should be held in perpetuity as a charitable trust, that goes on for ever and there is, of course, no realization or, at any rate, distribution, of the capital. It has always been the practice that in such a case the commission shall be based upon the value of the estate at the time it comes into our hands. I do not wish to labour the point, but all we ask is that the Committee shall accept our representations that the principle in such cases as these—I am confident that it was always intended—is that the commission should be based upon the value of the estate at the time we are finished with it, except in the one case of perpetual trusts where that cannot be done. In that case the commission should be on the basis of the value of the estate when it comes into our hands.

I now hand to the Committee a suggested re-draft of the definition of "gross value." It is in the following terms:—

> "Gross value" means in relation to an estate the aggregate of—
>
> (*a*) the actual amount paid out of an estate in the due course of administration or management from capital, for debts, duties, liabilities and administration expenses and to or on behalf of beneficiaries; and
>
> (*b*) the amount of the value at the time of distribution or appropriation of any assets distributed or appropriated in specie to any beneficiary without deduction of any liabilities.
>
> Provided that where there is a perpetual trust in relation to the whole or any part of an estate the gross value of that part shall be its value at the time it is committed to the trustee company without deduction of any liabilities.

This re-draft follows the wording of the suggested re-draft made by Mr. Finemore, except that at the end of the proviso instead of using the words "gross book value," which would then have to be defined, the words "its value at the time it is committed to the trustee company without deduction of any liabilities" are substituted, these being the words which would be the definition of "gross book value" if a separate definition was inserted. As the words are quite short it has been thought better to use them in the section itself instead of the words "gross book value" with a definition of the latter phrase added. In the same way in the re-draft of clause 5 of the Bill instead of using the words "gross book value" in the proviso the same form of words is used again, thus obviating the necessity for a definition of "gross book value."

I do not ask the Committee to accept the suggested re-draft but I do ask that the principle I have enunciated should be adopted, namely, that the gross value should be the amount as at the time of distribution, when an estate leaves our care, except in the case of perpetual trusts. Recommendation No. 4 in the 1956 report of the Statute Law Revision Committee stated—

> The Committee recommends amendment of the definition of "gross value" in clause 2 to provide for perpetual charitable trusts, the assets of which are not distributed.

We have accepted that and have suggested a proviso to correct an anomaly that crept into the 1955 Bill.

Mr. Wilcox.—I understand it is intended that "gross value" shall apply in respect of all other estates. What is the significance of "all other estates"?

Mr. Tait.—The work of trustee companies is often regarded by the public as being related solely to dealings with the estates of deceased persons. Although those dealings constitute the bulk of the work of trustee companies, those organizations handle a good deal of other trustee work such as settlements; for example, when a person makes a settlement in favour of his children before his death and hands over the relevant assets. Trustee companies handle many transferred trusts also; for example, when an executor dies before the full period of administration and a trustee company is appointed by the court to carry on. Moreover, in many cases trustee companies are asked to take over on trust the property of a living person under particular terms that he stipulates. Trustee companies handle many estates which strictly, in law, are not trusts at all. Frequently we act on behalf of an absentee person to manage part of his business affairs—investments and the like. All of these are grouped under "other estates." Indeed, they form a substantial and growing part of the business of trustee companies because, in the complexity of modern business affairs, living persons are evincing a desire more and more to take advantage of the skill and experience of the staffs of trustee companies to handle matters of this character.

Mr. Barclay.—When do trustee companies draw their commission under a perpetual trust?

Mr. Tait.—From time to time, as funds are available, although trustee companies are entitled technically to take corpus commission when it comes in. However, it may not then be available. Incidentally, that is the very matter which I now intend to discuss. Clause 5 relates to that aspect, and sub-clause (*i*) provides—

> Any commission which a trustee company is entitled to receive in respect of an estate may be paid or deducted out of the estate at any time after the estate has been committed to the administration or management of the company; and a trustee company shall be deemed to have been so entitled in respect of all estates committed to it prior to the commencement of this Act.

That is the principle that the trustee companies have acted in conformity with since the 1880's. They have drawn their commission from time to time at the most convenient period having regard to the interests of the estate and of the beneficiaries. Sub-clause (2) states—

> Pending the actual realization or distribution of any asset a trustee company may be paid or may deduct out of an estate the amount of commission payable in respect of such asset on the basis that the value of such asset shall be the value of the asset as fixed for the purposes of the Administration and Probate (Estates) Acts but any amount so charged for commission shall be adjusted when the estate is fully administered and the commission properly chargeable is ascertained.

We feel that having provided for the quantum of commission to be calculated on the value at the time of distribution, there should be provision also for some kind of interim commission, particularly in view of the fact that much of the heavy work in relation to an estate occurs during the early part of its administration.

Probably because the matter was not presented properly to the Government of the day or to the Parliamentary Draftsman, there is an anomaly in sub-clause (2) inasmuch as it states—

. . . the value of such asset shall be the value of the asset as fixed for the purposes of the Administration and Probate (Estates) Acts . . .

There is no reference to all other estates.

While we agree with the terms of sub-clause (1) and accept the idea of an interim commission being provided for, we contend that it should apply generally and not to the estates of deceased persons only.

Recommendation No. 6 of the Statute Law Revision Committee in its 1956 Report is in the following terms:—

The Committee recommends that clause 5 be amended to provide that not more than one-half of the corpus commission may be deducted by a trustee company during the administration of the trust, the remainder to be deducted at the conclusion of the trusteeship.

That recommendation is one of the important reasons for our asking the Government to reconsider the matter which, I understand, has been referred back to this Committee. I believe members of the Committee are familiar with the manner in which trustee companies operate, and I venture to suggest that they would be embarrassed and their businesses jeopardized if the Committee's recommendation were to become law.

In many cases the testator makes provision for his widow and children. In other words, there is provided what we in law regard as a life interest, followed by a gift of corpus in remainder. Let me cite the case of a man who conducts a suburban business. He dies leaving assets valued at £50,000 in charge of a trustee company as executor, and he wants that business to be carried on by his family. He also wishes to provide an annuity for one of his young children. The will provides that part of the assets—maybe a small part of the total—is to be held. The rest may be used for the payment of duty. There may be debts to be paid and legacies to be given. When those disbursements have been made, there may be left a business valued at £10,000, and that business is to be kept—may be for twenty years—and conducted by the trustee company. The company does all its work essentially in the first part of that period, in looking after the balance of £40,000 in my example; in realizing and distributing it. The rest is kept for twenty years.

Out of the commission that the trustee company gets, costs of administration are paid. As businessmen, members of the Committee know how the costs side of all businesses is mounting these days. It is not the case that this commission is the net profit of the company—far from it. I have not exact figures here, but something like 90 per cent. of a trustee company's commission is used in the running of the company, and of that sum between 80 per cent. and 85 per cent. represents salaries of staff. Only a small residue of the commission is left as profit.

Mr. Sutton.—The companies are becoming philanthropic, are they?

Mr. Tait.—No, I am not saying that.

Mr. Sutton.—I am afraid I took that impression.

Mr. Tait.—In any company, the amount of the net profit is very different from the amount of the gross income—that is obvious. All I am saying is that of the commissions trustee companies receive, approximately 90 per cent. or more is used in the payment of expenses, of which salaries are a large item. It is the staff that does all the work of the realization and administering of trusts, and a company cannot say to its staff, "It will be thirty years before this estate is fully administered. We will pay only half your salaries in the meantime for the work you have done, and you must wait thirty years for the balance."

The Chairman.—That is fallacious, is it not, when it is considered that the staff administers many estates?

Mr. Tait.—Of course, I put that only to illustrate the point I am trying to make. It is a fact that a great deal of the work done in many estates is undertaken in the early stages, and what the companies have always done has been to draw the commission as it is convenient having regard to the assets available and to the interests of the estate and the beneficiaries.

Mr. Rawson.—That is according to the present law?

Mr. Tait.—Yes. It has always been the position. This matter of the 50 per cent. drawing was not, as it worked out, submitted to the managers of the companies when they came before the Statute Law Revision Committee previously. The managers are here to-day and I would ask them to express their view that it would be quite impossible as a practical matter. If this arbitrary rate of 50 per cent. were laid down, they would be in great difficulties in carrying on their businesses, and it would endanger the financial stability of the companies. They will give illustrations of estates where small amounts have to be held for many years, and all the work is done long before that time has expired.

The Chairman.—Would you like the managers to speak now?

Mr. Tait.—It would be convenient. Mr. Chamberlin will speak for the other managers.

Mr. Chamberlin.—I am a director and the manager of the National Trustees Executors and Agency Company of Australasia Limited, and chairman of the Trustee Companies Association. I have been manager for 24 years of my company, which is one of the trustee companies set out in the Schedule to the *Trustees Companies Act* 1928. I am duly authorized by the managers of the other existing companies set out in the Schedule to refer to information from their companies forwarded to me by them.

Definition of "gross value": A substantial portion of a trustee company's business consists of appointments as trustee of settlements and of transferred trusts. Settlements are trusts declared during the lifetime of the settlor and are of the same nature as a trust declared by a testator in his will. For example, in his will a man might leave £20,000 for life as a trust fund for a married daughter. If he wishes, he can do that in his lifetime. He can create a settlement on a trustee—which, in our case, would be the company. This would be in the form of a capital fund which would be the subject of the trust, and a direction would be given as to the disposal of the income. Such a settlement is precisely the same in character as a settlement that a man makes under a will, the only difference being that in one case he is alive and in the other he is deceased.

Transferred trusts are where the trustee company was not the original trustee but has been appointed a trustee after the "estate" has been partly administered.

The Chairman.—Are there many?

Mr. Chamberlin.—It is not a determining section of our business, but I assure you it is a substantial one which cannot be ignored. Transferred trusts occur both in respect of deceased estates and settlements.

The practice of the companies generally has been to charge corpus commission in these cases—that is in settlements and transferred trusts—on the value of the gross assets at the time of the termination of the trust, unless special arrangements are entered into.

Mr. Sutton.—Is that practice in accordance with the law, or is it one of those things not forbidden by law?

Mr. Chamberlin.—It is long established. In advertisements we have undertaken specifically in the case of transferred trusts and of settlements not to take the commission until distribution. If that had been a determining share of our business, we could not have done it, but it was an inducement to people to come to us with business. I shall not pursue that, as I think it is self-evident. It amounts to good public relations.

Over the years the principle to which I have referred has proved completely equitable and satisfactory both to clients and to company, the company's remuneration being based on the value of the assets at the time they are handed over by the company in terms of the trust. An alteration of this practice in regard to settlements and transferred trusts would mean a re-casting of the companies' financial commitments and would seriously upset the financial stability of the companies. No case has been made to reverse the established practice and no complaints have come to the notice of any company ever. I take the responsibility of giving that assurance.

This is the established practice of the Supreme Court in allowing a private executor or trustee remuneration for his pains and trouble, the amount allowed being a corpus commission based upon the value of the assets at the time of distribution and in addition an income commission on a yearly basis.

There is no logical basis for a distinction to be made in this matter between the case of deceased estates and other estates, in particular, settlements and transferred trusts.

Mr. Tait.—Mr. Chamberlin has spoken on behalf of the managers of the companies on that particular matter. That is my first point.

Mr. Wilcox.—In the definition of gross value, Mr. Chamberlin has stated, "A substantial portion of a trustee company's business consists of appointments as trustee of settlements and of transferred trusts." Is he able to give an estimate?

Mr. Chamberlin.—The representative of one company informed me that it was about 12½ per cent. to 15 per cent. In my company, it is not less than 10 per cent. Mr North, from Ballarat, says that in his case it has been up to 30 per cent.

Mr. Orr.—Of the total amount of new business received by my company last year, approximately 25 per cent. was represented by settlements and transferred trusts. That is not a constant figure, but is variable, depending upon the clients. It is an appreciable part of our business.

Mr. Larritt.—It is a most variable figure with my company. Some of the biggest trusts we administer are transferred trusts.

Mr. Wilcox.—Could not the companies reach agreement as to the rates of commission to be charged in the case of these transferred trusts and settlements.

Mr. Chamberlin.—Not always; we could with a settlor in regard to settlements.

Mr. Wilcox.—A company does not have to take over a trust, so could not one of the conditions imposed when one was taken over be that a rate of commission be agreed to?

Mr. Chamberlin.—You know from your experience, Mr. Wilcox, that in the case of many estates it is not possible to make an agreement. For instance, no agreements can be made with infants.

Mr. Tait.—A company cannot make an agreement with a testator.

Mr. Wilcox.—But agreements could be made with settlors.

Mr. Chamberlin.—We are able to at times and do. However, it would be a good thing to have a universal general principle from the point of view of both the public and the administrative side of the work of the various companies. The nature of the work is precisely the same.

Mr. Tait.—Will you now proceed with your statement, Mr. Chamberlin?

Mr. Chamberlin.—Yes. Clause 5 of the 1955 Bill—time when corpus commission may be collected.

The recommendation of the Statute Law Revision Committee that not more than one half of the corpus commission may be deducted by the trustee company during the administration of a trust was most disturbing and it was regrettable that the considered view of the companies was not presented to the Committee.

The Chairman.—You had the opportunity.

Mr. Chamberlin.—No, we did not. However, I hope we will have that opportunity now.

Mr. Rawson.—Were you not given the opportunity previously?

The Chairman.—Mr. Chamberlin was in attendance before the Committee to plead his case. Whether he did so to his own satisfaction is a matter for him.

Mr. Tait.—If one examines the Committee's report one finds that the question of achieving this on a 50 per cent. basis or some other arbitrary figure was not raised at the sitting attended by the managers. It appeared during the following sitting when the managers were not present. They did not hear of the proposal till they examined the Committee's report. That is what Mr. Chamberlin means.

Mr. Chamberlin.—It only requires some knowledge of the nature of the companies' work and the necessities of its administration of trusts to know that such a provision would be unworkable and grossly unfair to the companies. Indeed it would impose an intolerable financial burden on the companies and would seriously endanger their financial stability.

The work that a trustee company does in connexion with the administration of a trust, whether in the case of a deceased estate or a settlement made by a settlor in his lifetime, varies greatly as to the time at which the main work is done. It depends on the terms of the particular trust and the nature of the assets. In many cases the main and onerous work which requires the expert attention of our large staffs is done in connexion with the proper and advantageous realization of particular assets.

The Chairman.—Is not one of your main arguments that most of the work is done before realization takes place?

Mr. Chamberlin.—Leading up to the realization and conversion. When this realization has taken place, and as it takes place from time to time, there may be distributions to pay liabilities and legacies but there may be a portion, sometimes a comparatively small portion, of the total trust fund which has to be retained for a long period during the life of a beneficiary entitled to the income. The final winding up of the estate thus must await the death of such beneficiary or beneficiaries. In such cases the trustee

company could not carry on business if it had to wait until the final winding up of the estate for 50 per cent. of its corpus commission.

I have been supplied with many examples of trusts of this nature, both by the officers of my own company and by the managers of the other trustee companies, and from these examples I propose to state only a few which will illustrate the position.

Case 'A'.

The testator died in 1927 and left a gross estate of £7,800.

That was a fair-sized estate in 1927; of course it would be a very poor one to-day.

The estate had been distributed with the exception of a trust fund of £1,500 which has been held since 1930 on a life interest for a daughter now aged about 55 years whose life expectancy is 21 years.

Need I labour the equity of a submission that we should not stand out of our corpus commission on 50 per cent. for another 21 years.

The Chairman.—Because you have had to withhold one-third of the estate?

Mr. Chamberlin.—Yes.

Mr. Tait.—Mr. Chamberlin, do you know whether the trust fund of £1,500 in that case is invested in authorized trustee securities—probably Government investments?

Mr. Chamberlin.—Yes.

Mr. Tait.—So practically no work remains to be done apart from collecting the interest and paying it to the beneficiaries?

Mr. Chamberlin.—Substantially, that is the case.

Case 'B'.

Value of estate		£13,935
Death duties, debts and expenses	£2,903	
Legacies and funds bequeathed for immediate distribution	10,032	
		12,935
		£1,000

The fund of £1,000 has already been held for three years and the annuitant has a life expectancy of 25 years.

The Chairman.—That would not be a normal case?

Mr. Chamberlin.—No. but running right through is this anomaly.

The Chairman.—However, it is a bad case to cite as an example because it is not a normal one.

Mr. Chamberlin.—No, but it is a factual case.

Case 'C'.

Testator died in 1942 leaving an estate of £12,000. The estate has been distributed with the exception of approximately £2,000 (which is held for the life of testator's daughter aged 48 years), this and a house property passed for probate duty at £1,320 (which is held on a life interest for the widow who is now 55 years). There would be a life expectation, according to the tables, of about 28 years. She was a second wife.

Case 'D'

Testator died in 1950 leaving an estate of £94,000. This estate has been distributed with the sole exception of a trust fund of £8,500 in which a man now aged 47 years has a life interest with an expectancy of 33 years. The estate therefore cannot be finally wound up until his death. That is not an infrequent case. I am reminded that duty alone on a £94,000 estate would be at least £35,000, which is distributed immediately.

The Chairman.—That is paid out of the first 50 per cent?

Mr. Chamberlin.—Yes.

Mr. Larritt.—A notable part of our work is concerned with the assessment of duties and proving that the valuations are reasonable and so on.

The Chairman.—I do not want to be nasty, but the examples you have quoted, Mr. Chamberlin, are ones which present your case in the most favourable light.

Mr. Tait.—Mr. Chamberlin is in possession of a great number of examples and he has picked out these as some worthy of quoting. Of course, they are variable. However, his evidence is that there are a great many of these cases supporting his views. Case 'D' reveals that except for £8,500, an estate of £94,000 has been fully administered and realized. Most of the work in connexion with it has been performed. That shows the type of thing encountered.

Mr. Rawson.—In a case like that, you have now to collect all the interest due on the securities?

Mr. Chamberlin.—Yes. £8,500 would be held in authorized trustee securities.

Mr. Thompson.—In relation to this point, Mr. Chamberlin, were you satisfied with section 5 of the 1955 Bill which covers this matter?

Mr. Chamberlin.—It is limited to deceased estates; that was one of our difficulties.

Mr. Thompson.—But in general principle you approved of section 5 apart from that point?

Mr. Chamberlin.—Yes.

Case 'E'.

The testator left		£80,907
Death duties, debts and expenses required ..	£32,003	
There were legacies and funds for immediate distribution of	45,885	
		77,888
Fund retained to secure annuity		£3,019.

This fund has already been retained for seven years and the annuitant has an expectancy of many more years of life (15 years). It will be apparent from this example that the great bulk of the estate has been distributed, leaving only £3,000 odd which must be held by the trustee company and administered by it for many years to come.

Case 'F'.

The testator died in 1945 leaving an estate of £45,000. This estate has been distributed with the exception of an annuity fund of £2,750 and the annuitant is still living and the final distribution may be postponed for some years.

Mr. Tait requested me to pick out half a dozen cases as example. In my bag I have at least fifty.

Mr. Thompson.—Would it be possible to estimate what percentage of your business would deal with cases which would require more than three years to wind up?

Mr. Chamberlin.—I should think approximately 50 per cent. of our business.

Mr. Tait.—I think I asked you to consider what was the average life of the estates you handled. Did you do that?

Mr. Chamberlin.—Yes. As anybody can readily imagine, it is very difficult to make such an estimation. One company told me that the average life of their trusts was 23 years. My own company estimates it at a little over 15 years. Another company says 20

years. I should think that 20 years would be a good practical figure to work on. I believe Mr. Thompson asked me a similar question on this point previously.

Mr. Thompson.—That is so.

Mr. Chamberlin.—Because of that question we examined the position. As I said before, 20 years would be a good working figure. Fifty per cent. of our business would be subject to trusts. With one company the figure would be 55 per cent., but it may not be so great with other companies.

Mr. Tait.—Before we leave this section, I wish to inform the Committee that we have again prepared a draft amendment, copies of which I shall hand to members. This amendment has been discussed with the Parliamentary Draftsman. It merely expresses the principle which I have enunciated. In our view, the suggested proviso overcomes the faults of the clause as at present drafted, namely the limitation on a deceased estate. It states:—

> Provided however that a Trustee Company shall not be entitled to draw after the commencement of this Act such commission in respect of any portion of the estate that has not been distributed over and above an amount of commission which is calculated on the value of that portion at the time it was so committed to the administration or management of the Company, the amount of commission so drawn being adjusted when such portion of the estate has been distributed.

That is what I called an interim distribution; it leaves out the arbitrary amount of 50 per cent.

The Chairman.—You would prefer that course to laying down any percentage?

Mr. Tait.—It is true that the suggested proviso does not lay down any particular amount, but we say that there is no reason to do so. May I point out that the present practice has been operating since the companies came into existence in the 1880's, and that no attempt was made to alter the position until the amending Bill of 1955 was drafted. I would be surprised if there had been any complaints of the existing practice. There is no evil that Parliament should set out to remedy. It is in the interests of the companies to satisfy their clients; it is their goodwill. People are not bound to appoint trustee companies, it is purely a voluntary act.

Mr. Sutton.—It is responsive to a good deal of advertisement.

Mr. Tait.—Yes, that is quite true.

Mr. Sutton.—When you speak about goodwill, you are talking about six or seven companies.

Mr. Tait.—That is so. However, what I am pointing out is that we have no monopoly of the trustee business. The great majority of trusts are administered privately, and people come to us only if they desire to do so. However, I shall deal with that aspect later. All I wish to say now is that there has been no call that I know of for any arbitrary distinction. The present system has worked satisfactorily and it is in our interests that people should be satisfied. We have to judge whether it is proper to take the commission. I do not know of any forced realization in order that a company might get its fee. That would not be regarded as proper. If an arbitrary figure of 50 per cent. were laid down, we would probably be compelled to take that course. However, I am pleading that the matter should be left where it has remained very satisfactorily for many years, there being no evil to be corrected.

I wish now to refer to the need for a consequential amendment that is required as a result of the 1953 amendment to section 17 of the principal Act. Subsection (5) of the amended section is as follows:—

> Nothing in this section shall prevent the receipt by a trustee company from any estate, in lieu of the commission hereinbefore provided, of any commission directed to be allowed or paid by the testator or settlor not withstanding the commission so directed by him to be allowed or paid is in excess of the commission hereinbefore provided.

That provision means that the percentage in respect of testators and settlors is fixed, but if a private arrangement is made, that—not the provision—governs the matter. The trouble in respect of section 17 is that it was made to apply to all estates and not only to those of deceased estates and settlors. But by some oversight, the paragraph which I read referred to private arrangements in respect of only deceased estates and settlements. We submit that there should be a consequential amendment to remedy the position.

I have another important aspect to discuss, namely, the question of repealing section 23 of the principal Act, but I shall defer presenting my views on that matter until the next sitting of the committee.

The Committee adjourned.

THURSDAY, 21ST MARCH, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. R. R. Rawson,	Mr. Barclay,
The Hon. L. H. S. Thompson.	Mr. Sutton.

Mr. J. B. Tait, Q.C., Mr. R. K. Fullagar, of Counsel, Messrs. M. Chamberlin, W. E. Orr, R. J. McArthur and D R. Howard, representing the Trustee Companies Association, were in attendance.

Mr. Tait.—I shall proceed to deal with the vexed question of section 23, as I outlined yesterday. This is a most important matter from the point of view of the trustee companies. Clause 3 of the 1955 Bill amended that portion of section 23 dealing with investment of the companies' own funds. The recommendations made by the Committee in 1956 on this matter went a good deal further. Clause 5 of the report recommended that paragraph (*b*) be deleted from section 23. That paragraph allows the companies to carry on agency business. Secondly, the Committee recommended the inclusion of words expressly prohibiting a trustee company from investing its own funds in trading companies. The third recommendation of the Committee was the insertion of a new paragraph similar to that proposed by clause 3 of the Bill, except that the power of a trustee company to engage in the purchase of land or the erection of buildings should be limited to lands or buildings which the company intends to occupy at least partly for its own use. The final recommendation relating to section 23 was the addition of power for a trustee company to engage in the business of insurance and of brokerage. That seems to be very wide, but we are not concerned with that point at the moment.

Section 23 has existed from about 1888. It appears in its present form in the Companies Act of 1890, which was apparently drawn up to meet the requirements of the then existing situation. At that time the trustee companies were in their infancy, so to speak. Our submission is that whatever the reasons may have been for the enactment of that provision at that time, they no longer exist. The companies believe that any such restriction is no longer necessary, and that the section is difficult to apply in modern conditions. It is difficult to interpret in law and it is cumbersome. Further, the provisions are at present unreal and discriminatory against the companies.

The section provides *inter alia*—"Notwithstanding anything contained in Part I. of the *Companies Act* 1938 or in the memorandum or articles of association

of a trustee company it shall not engage in carry on or be concerned in any business trade venture or undertaking of any kind whatsoever except . . . ." The companies are not concerned with the word "trade" because they are not in a position to engage in trade in the ordinary way, but the words "venture or undertaking" are very wide, and this is where we run into trouble. As a simple illustration, it is the considered view of the advisers of these companies that because of those words a company could not prepare for the beneficiaries of an estate an income tax return. The new Bill contains a clause which allows the companies to make a charge for doing that very thing. Being in close touch with beneficiaries, the companies often assist them by preparing income tax returns, for which the companies may or may not make a charge. The legal view is that the expression "venture or undertaking" is so wide that is prevents the companies from assisting beneficiaries in their own affairs. There are many other matters to which the words can apply. Now I should like to say something briefly about the general work of a trustee company.

Mr. Thompson.—Would not the restriction you have mentioned be qualified to some degree by the existence of paragraph (*b*) which allows the companies to engage in general agency business?

Mr. Tait.—You are quite right. I am not unmindful that the recommendation, with which we do not agree, is that the general agency provision be deleted. The substantial work of trustee companies can be divided under two headings, namely, deceased estates and all other matters concerning trusts, settlements, agencies and so on. Yesterday some evidence was given of the relative proportions. The second class is substantial, in some cases being up to 25 per cent. or more of the total work. A trustee company dealing with deceased estates is appointed executor, or administrator if there is no will by order of the court. In that capacity the companies have no monopoly of the work. They are competing for business with private executors who may be appointed. Under wills and estates the number of private executors who are appointed far exceeds the number allotted to trustee companies. For example, a relative or business friend, or an accountant or solicitor, may be appointed by the testator. None of these private executors is under any restriction whatsoever as to how they conduct their own affairs and what they do with their own moneys and funds. Parliament has not given a monopoly of this business to trustee companies in any sense. The testator has the choice of whom he appoints.

Mr. Sutton.—But the primary purpose of a trustee company is to be a trustee company and to hold things in trust.

Mr. Tait.—That is so, and the companies want the business.

Mr. Sutton.—On the other hand, the holding of a trust on the part of a solicitor is only a secondary part of his work.

Mr. Tait.—That is quite true. People who have had experience in acting as trustees know that it is not an easy job. In addition, they do not receive a commission, although they can do so by applying to the court. In that case they receive a commission for their pains and trouble. Nowadays the commission received by a trustee company is regarded as a standard. As soon as a man—whether a solicitor, an individual, or a business man—takes on an executorship, he is under the strict supervision of the law. Breaches of trust may be taken to the court and the judges are very severe on trustees who offend in this manner. In certain cases, trust funds must be kept separate, and other resrictions applied. Of course, the trustee companies are not the only ones who may be appointed executors.

Mr. Thompson.—Is the statutory limit for the commission chargeable by companies 5 per cent.

Mr. Tait.—Five per cent on income and 4 per cent. on corpus—that is under the 1953 amendment. More than the public scale of charges cannot be provided—the scale of charges applicable at the time the matter came into their hands.

Mr. Thompson.—Does the same limit apply to solicitors?

Mr. Tait.—No; solicitors can get considerably more commission.

Mr. Rawson.—Would the trustee companies prefer not to be under a special statute? In other words, would they prefer to be free, like other companies?

Mr. Tait.—That is a difficult problem. Briefly, in the 1880's, when the companies were formed by special Act of Parliament, companies were comparatively new. It was not then understood whether the court could grant probate to a corporation. Some authorities considered that the court could grant probate only to an individual, and accordingly, it was essential when companies were set up, for Parliament to legislate to enable corporations to be included. It is still uncertain whether, in the absence of the enabling legislation, the courts could grant probate to a corporation. However, we rely upon the Act. Of course, the ordinary restrictions applicable to any trustee are also applicable to us.

Regarding settlements and other trusts, we, as trustee companies, are competing against the world, as it were, including other companies. There is no restriction on a company becoming the trustee of a settlement or of any other form of trust, or of doing what we call agency work. "The world"—whether a corporation, an individual or a firm of business people—is not restricted at all. Of course, corporations are bound by their articles and they must act within their powers. For example, a public company must publish balance-sheets. As far as trustee companies in the other mainland States are concerned, restrictions of the type contained in section 23 do not apply. In New Zealand, the work carried out by trustee companies here, particularly in regard to deceased estates, is conducted by the insurance companies which run separate trust departments. They are not restricted. In England, speaking generally, a good deal of the trust work in connexion with deceased estates is undertaken by the banks which have separate trust departments and charge commission and manage the business along similar lines to the Victorian trustee companies. There are no restrictions applicable in England.

Mr. Rawson.—Is there no Act of Parliament covering their operations?

Mr. Tait.—There is no Act similar to the Victorian legislation. The difficulty of the court not being decided as to whether it can appoint a company as the executor of a deceased person is overcome by enabling certain named companies to be thus appointed.

I shall now deal with existing "protections" and the first protection is the common law—the Court of Chancery. All lawyers know that the judges have considered this question and anybody can challenge the action of a trustee. A trustee must account for everything. As regards public companies—we are in this category—the protection is that the powers of a public company are known to the public and balance-sheets and so on must be made available. In our case, there is another restriction. The 1928 legislation lays down that any of the trustee companies in

Victoria must have paid up capital of a certain stated amount. Furthermore, there is a provision whereby they must have an uncalled capital of a certain amount that can only be called up in case of a winding up of operations.

Thirdly, in each case, there is a limit to the number of shares that may be held by any one shareholder. In some cases the number of shares is limited to 1,000, and in other cases a limit of 500 is imposed. Furthermore, companies must deposit, and leave on deposit with the Government, a stated amount which is invested in Government bonds.

Bearing in mind the freedom from restriction of our competitors for the business, we contend that there is no case whatever for the restrictions imposed by section 23. In the first place, section 23 does not make a clear distinction between what the companies do as trustees and what they do for themselves with their own funds. The Legislature attempted to do this by the first sub-paragraph (*a*) whereby we cannot engage in any trade except "such as expressly authorized by this Act." There is a good deal of difficulty about this and it does not cover the whole position. I mentioned during the previous hearing the case of a grocer with a small business who wished to continue the business until his son became of age. He expressly stated in his will, "You, my executor, shall carry on this business for fifteen years until my son is of age." It would be difficult to find an express authorization in the 1928 legislation permitting this to be done. The acts of the trustee companies, in their capacity as trustees, must be excluded; if they are accepted as executors and accept the trust, they must abide by the terms laid down in the trust document. I do not know what would be the position if a trustee company applied to a court for probate of a will which directed that a grocery business was to be carried on. The court would probably rule that the company could not carry on a business which was not expressly referred to in the Act. Of course, the position would be impossible because the company would be bound by the directions contained in the will or trust instrument because a company cannot accept a trust without being under an obligation to carry out the terms of that trust.

The Chairman.—Are you suggesting that a company could not carry on a business if the trust instrument specifically directed that it should?

Mr. Tait.—I am suggesting that a court could not grant administration of the trust because of the wording of section 23 of the principal Act. Any restriction to be placed on the company will be contained in the instrument. The words "any business trade venture or undertaking" as contained in Section 23 are so wide that they impose a restriction upon what a company may legitimately do, and that is our main objection to the section. Trustee companies have no desire to actively enter the field of selling goods. In fact, they have not the resources to do so. The aggregate amount of funds owned by trustee companies in Victoria, deducting the value of fixed assets such as buildings used for business purposes, is less than £500,000. I understand that life assurance companies and other similar businesses have difficulty in investing the millions of pounds that they have available.

The trustee company with which I am directly connected recently announced that it had trust estates to the value of £25,000,000 to administer, yet its own funds are a mere pittance. The companies have no desire to enter into active trading, but they are called upon to give expert advice on matters not related to trusts. That involves engaging in certain business and undertakings, and the companies consider that there should be no restriction in that regard.

Mr. Rawson.—Could you draft a clause along those lines for the guidance of the Committee?

Mr. Tait.—I have already done that. In view of the other restrictions that are placed upon trustee companies, I consider that there is a strong case for the repeal of section 23. The present Bill and the recommendations of the Committee give some slight relief but contain vital restrictions in other directions.

Mr. Sutton.—Are the restrictions greater than those already in existence?

Mr. Tait.—Yes, all agency business is to be taken away from the companies.

Mr. Thompson.—When you refer to interstate companies do you mean those that have a network of branches throughout the Commonwealth?

Mr. Tait.—No, I mean companies that operate only in the other States. However, there is nothing to prevent such companies from carrying on agency business and trust business other than deceased estates in Victoria. I do not think the Victorian Parliament could prevent them from doing so because of the provisions of section 92 of the Commonwealth Constitution. It is true that such companies could not be appointed executors in Victoria.

Mr. Rawson.—Presumably there is nothing to stop a Victorian trustee company from setting up headquarters in New South Wales and operating a branch office in Victoria.

Mr. Tait.—That is so. Two Victorian companies operate in other States. I propose now to submit some figures to support the statement that I made yesterday that total expenses, excluding income tax, are not less than 90 per cent. of the total commissions obtained by trustee companies. Of course, salaries comprise the greater part of those expenses.

Mr. Sutton.—Those figures seem to indicate that in certain cases the companies are losing money.

Mr. Tait.—The revenue figures relate only to commissions. Fortunately all the companies own buildings from which they obtain rent.

Mr. Thompson.—What is the significance of "etcetera" after the word "commission"?

Mr. Orr.—It probably covers special fees paid for special agency services. That would be the case with my company. We may provide a special agency service for a person who has gone abroad—look after his affairs whilst he is away—and charge, say, 100 guineas for the work. That would not be a commission, but a fee charged for the agency work.

Mr. Tait.—The companies are permitted to make special arrangements with clients and charge a fee instead of a commission.

Mr. Orr.—I think it would be more helpful to the Committee if we withdrew the statement at this stage and recast the figures so as to show the relevant figures without including income tax. The inclusion of tax throws the figures out of balance.

Mr. Tait.—If the Committee agrees the statement could be presented at a later sitting when the managers are present again.

The Chairman.—I think that would be the best course to follow.

Mr. Thompson.—Would it be possible to also show the revenue earned from other sources?

Mr. Tait.—That could be done.

Mr. Orr.—We are required by the Companies Act to show separately our revenue from other sources.

Mr. Sutton.—If it is considered not desirable to disclose the identity of the companies concerned numbers could be used.

Mr. Chamberlin.—None of the information in the statement is confidential.

Mr. Tait.—The trustee companies desire repeal of section 23 so that they may be left in the ordinary position under company law in regard to their activities and the conduct of their own affairs. They desire to be free to engage in activities appropriate to and not in conflict with their principal fiduciary function, and in which their accumulated experience of business and commercial affairs, and their trained and experienced staffs may be profitably employed.

Last century, the corporate trustee—the trustee company—was a novel and untried conception. The position to-day is very different. Not only have trustee companies accumulated a vast store of experience and precedent, which is being added to continuously, but their financial strength—and, in consequence, the security offered to their clients—has increased immeasurably.

In the period which has elapsed since trustee companies were first incorporated, very great changes have taken place in commercial usage and practice. The ramifications of property ownership have been greatly extended, and new techniques in management and administration have been evolved. The diversity and complexity of property interests and ownership have increased enormously. As a direct result, the duties and responsibilities of trustee companies have become equally diverse and complex, and to-day necessarily extend over a much wider field than was contemplated by the legislators of seventy years ago.

In order to carry out efficiently its lawful duties as executor, trustee or agent, a trustee company must necessarily be skilled in contemporary business practices and administration, and must maintain a trained, experienced and expensive staff. Trustee companies contend that it is entirely anomalous, under modern conditions, that a trustee company should be prohibited by statute from employing that skill and experience, and its own funds, in business operations on its own behalf.

Trustee companies have no wish to engage or employ their funds in ordinary trading operations, the buying and selling of merchandise and goods and the like, or, for that matter, to engage in any business which requires considerable investment of capital. Rather they wish to be free to use their organization, and their skilled and experienced executives and staff, in offering to the public services generally of a like nature to those they are performing daily now in the course of administration of estates. They wish to be able to sell service to the community in all kinds of management and the skilled conduct of affairs.

To provide an illustration of the services that we can usefully provide and which we have the opportunity to perform, Mr. Orr, the manager of the Perpetual Trustee Company, has consulted with the other managers and has prepared a statement for submission to the Committee. I propose that the presentation of that statement should be held over till a future sitting when the managers are present on their own. If that procedure is suitable to the Committee, it will be convenient to me.

Reverting to the plea for the repeal of section 23, I wish to point out that it does not draw any clear distinction between the activities of a trustee company in its capacity as an administrator or manager of an estate of a deceased person or of a settlement and its activities on its own behalf with its own capital. The second point is that whatever may have been the position when the Victorian trustee companies first commenced business, at the present time, having regard to the strength of the companies and the safeguards that exist in the jurisdiction of the court to supervise the administration of trusts, the complexities and ramifications of modern affairs are such that there is no need for the limitations which section 23 seeks to impose.

The third point is that there is ample protection in statutory requirements covering the amount of uncalled capital required, the sums to be deposited with the Government and in the supervisory jurisdiction of the court. Fourthly, like most other financial institutions—life assurance offices are perhaps the best example—the trustee companies have invested a large part of their share capital in office buildings, portions of which they occupy and let the space not immediately required. Such investments give stability to companies carrying on this type of business. In fact, the companies emphasize that point in their advertisements. As events have shown, investments in buildings have been sound due to the great increase in values. Life assurance companies have found it necessary in recent years to widen their field of investment and have approached the court for that purpose. Some of them have undertaken big land development schemes and other investments of that nature. Of course, we have not the millions available for that type of thing, but we should have authority to widen our field.

It must be realized that a person who approaches a trustee company to appoint it to act as his agent is acting in a voluntary capacity. He has ample opportunity to decide for himself whether he thinks the company is carrying on its business in a competent manner and has the skilled staff available to safeguard his interests. As there is no compulsion I feel that it should not be necessary for the Government to impose on trustee companies any further restrictions on their activities.

The companies regard agency business as a form of service they are well equipped to perform. Frequently men who do not wish to hand over their properties to the companies for complete agency control request the companies to help in the administration of their affairs. The staffs of the companies do the work of filling in the many Government forms required and so on. In view of that I make a strong plea that the Committee's recommendation regarding general agency business should be deleted. If that is not done we will be left high and dry so far as agency work is concerned and the companies have done good work in this field for many years. I refer to the first recommendation of the Committee in paragraph 5 of its report. If that were adopted we would be cut out from agency business. I believe that members of the Committee will now realize that that would impose a serious hardship on the companies. Firms from other States would be able to move into Victoria and take over the business now being undertaken by our companies. I am sure that there would have been no complaint that the present companies have been guilty of abuse of powers conferred. It just seems that an approach to the Committee for relief from restrictions has resulted in further restrictions being imposed. Naturally, we do not like that nor do we understand it.

Mr. Rawson.—The restriction to which you refer is not in the Bill.

Mr. Tait.—No, but it is in the Committee's recommendations.

The Chairman.—But it was not carried into effect.

Mr. Tait.—Technically, as I understand it, the Bill has come back to this Committee for further consideration. I do not think you are concerned with or bound by anything the other Committee did.

Mr. Chairman.—This is the same Committee.

Mr. Sutton.—You are pleased that our recommendation has not been adopted by the Government but are concerned that we might reassert it?

Mr. Tait.—We are concerned because we feel that whilst that recommendation is there we are under a sentence of death so far as our agency business is concerned. We ask for a withdrawal of the recommendation.

I wish to deal briefly with one other aspect. Failing acceptance by the Government of our request to repeal section 23, two alternatives remain. The first is to list in the section what the companies may do, as the Parliamentary Draftsman has suggested. We submit that that is impossible because of conditions which are changing from day to day. It would not be a flexible arrangement, which is desirable from the companies' point of view. The other alternative is to set out in the section what the companies may not do. We have prepared a draft of a suggested new section 23, based on this principle. It reads as follows:—

Notwithstanding anything contained in Part I. of the *Companies Act* 1938 or in the memorandum or articles of association of a trustee company—

(*a*) no trustee company to which this Act applies shall for the purpose of profit buy or sell or deal in any land goods or merchandise on its own behalf: Provided that this prohibition shall not apply when a trustee company is acting in its capacity as executor, trustee or otherwise in the administration or management of any estate.

The reason for the proviso is obvious. If restrictions are to be imposed, we have neither the resources nor the desire to enter into commercial trade dealing in goods, merchandise, the sub-division of land and so on. The wording was more or less copied from the statutory provision in the Companies Act dealing with investment companies. I refer to section 590 of the *Companies Act* 1938, which states—

No investment company shall for the purpose of profit buy or sell or deal in any raw materials or manufactured goods whether in existence or not otherwise than by investing in companies trading in such raw materials or manufactured goods.

We have added the word "land" and have accepted that as a general prohibition, subject to the provision that it cannot apply when a trustee company is acting in the capacity of an executor. That could not be regarded as unreasonable. We wish to use our services and staff and to provide the service of preparing income tax returns, and so on.

Our suggested new section 23 proceeds—

(*b*) No trustee company to which this Act applies shall invest its own funds in—

(i) the shares debentures or securities of any company which is engaged in buying selling or dealing in land goods or merchandise: Provided that this prohibition shall not apply in the case of a company whose shares debentures or other securities are listed on a stock exchange or a company owning a building to be occupied or partly occupied by a trustee company.

(ii) the purchase of land or the erection of buildings other than lands or buildings which the company intends to occupy at least partly for its own use.

Again, we have accepted a prohibition, in that we are not able to engage in certain activities, nor can we "dodge" the prohibition by forming a subsidiary company to act on our behalf. Sub-paragraph (ii) means that we could purchase buildings only for our own use, and again, we would not be able to avoid the prohibition by the formation of a subsidiary company. Our suggestions, in draft form, really give effect to some of this Committee's earlier recommendations.

My main submission is that section 23 should be repealed.

Mr. Rawson.—The Committee previously recommended the inclusion of words "expressly prohibiting a trustee company from investing its own funds in trading companies." Your suggestion is—

No trustee company to which this Act applies shall invest its own funds in—

(i) the shares debentures or securities of any company which is engaged in buying selling or dealing in land goods or merchandise: Provided that this prohibition shall not apply in the case of a company whose shares debentures or other securities are listed on a stock exchange . . . . .

Would not that provision allow investment in a trading company?

Mr. Tait.—That is so, but I think the Committee wished to prevent a trustee company from forming a separate company for the purpose of trading.

Mr. Rawson.—Take mining shares as an example.

Mr. Tait.—They could only invest in it if it was listed on the Stock Exchange. A trustee company could invest its own funds in Broken Hill Proprietary Limited, but it could not obtain sufficient shares to enable it to control the company. I think the Committee wished to prevent a trustee company from forming a separate company, in which it would hold all the shares, and engaging in trade by means of that subsidiary company.

I am indebted to the Committee for the hearing it has given us.

The Committee adjourned.

TUESDAY, 9th APRIL, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. W. O. Fulton,	Mr. Barclay,
The Hon. T. H. Grigg,	Mr. Lovegrove,
The Hon. R. R. Rawson,	Mr. Wilcox.
The Hon. A. Smith,	
The Hon. L. H. S. Thompson.	

Mr. W. E. Orr and Mr. D. R. Howard, representing the Trustee Companies Association, were in attendance.

Mr. Orr.—My name is William Earle Orr and I am manager of the Perpetual Executors and Trustees Association of Australia Limited. I have been an officer of that company for 30 years and manager of it for eleven years. Trustee companies in Victoria are seeking repeal of section 23 of the Trustee Companies Act for two reasons: Firstly, to put beyond doubt the powers of a trustee company lawfully to carry on or engage in any business activity which may be required of it when acting in a fiduciary capacity—that is, required of it by the trust instrument, the will or trust deed, as the case may be, creating the trust; and, secondly, so that a trustee company in the conduct of its own affairs and the investment of its own funds, and subject to the statutory provisions relating to uncalled capital and guarantee fund lodged with the Government, may be in the ordinary position under company law of all other public companies.

With regard to the first reason, Mr. Tait has previously pointed out to the Committee that section 23 as it now stands does not draw any distinction between what a trustee company can do for itself as a company with its own funds and its own organization and what it can do as a trustee or when acting for other people. It would be ridiculous if the legislature on the one hand empowered a trustee company to act as trustee, executor or administrator, and, on the other hand, because certain business activities were prohibited to trustee companies, prevented the trustee company from acting in a specific trust. I am confident that the Committee will agree that this anomalous position should be cleared up.

I am more concerned with the second reason, as to which Mr. Tait has made it clear that—

(*a*) trustee companies enjoy no monopoly of the sort of business they are engaged in. On the contrary, it is a highly competitive business. They are in competition with private persons who may act as executor, administrator or trustee—and, of course, many more estates and trusts are administered by private persons than by trustee companies—and other companies and corporations, all of which may, and many do, act as trustee. None of these competitors is subject to the restrictions that are imposed on trustee companies in Victoria by section 23. Trustee companies claim that, in consequence, they are unfairly handicapped in carrying on their own business; and

(*b*) the trustee companies do not wish to engage or employ their funds in ordinary trading operations such as the buying and selling of merchandise and goods and the like, or, for that matter, to engage in any business which requires a considerable investment of capital. Rather they wish to be free to use their organization and their skilled and experienced executives and staff in offering to the public services generally of a like nature to those that they are performing now daily in the course of administration of various types of estates. In other words, the companies wish to be able to sell service to the community in all kinds of management and skilled conduct of affairs.

Mr. Thompson.—You, Mr. Orr, said, "None of these competitors is subject to the restrictions that are imposed on trustee companies in Victoria by section 23." Would there not be some equivalent restrictions such as the fixing of the maximum rate of commission for private individuals acting as executors?

Mr. Orr.—There is nothing at law to prevent a private person from acting as an executor provided he is not a criminal or a lunatic and that he is of age. Unless the relevant document provides for a remuneration, the person so acting must perform his task without payment unless the court awards him such payment. I point out that many persons do act as executors, administrators or trustees without charging for their services. That is common practice within a family circle where a son frequently administers his father's estate without charge. In other words, he is legally able to act. The question of remuneration is a separate issue. The law provides that the court may award an executor, administrator or trustee such commission as it thinks fit, but not exceeding a maximum of 5 per cent. In the case of trustee companies, the law fixes a maximum of 4 per cent. on capital and 5 per cent. on income or such lesser amounts than those maxima as the trustee companies advertise they will do the job for.

Mr. Rawson.—Do you know on what basis the percentage for private trustees would be calculated?

Mr. Orr.—It is very closely allied to the commission that a trustee company would receive in like circumstances. The court always has in mind—without actually saying so—what a professional trustee would receive for doing the work but, if anything, is inclined to be generous toward a private individual who undertakes the task on a part-time basis. Possibly Mr. Wilcox would like to add to my remarks, because of his experience in this particular field.

Mr. Wilcox.—Does not a trustee company receive, as of right, the rate stipulated in the Act?

Mr. Orr.—The maximum rate is fixed by the Act, but if a trustee company advertises that it will accept business at a lower rate, it is bound to accept that lower rate. The Victorian companies operate on that principle at the moment.

Mr. Wilcox.—I am not sure of the figure but I believe that 2½ per cent. is the rate of commission allowed to private trustees. I realize, of course, that it is a court that finally assesses the figure. Do you know if the figure I quoted is standard?

Mr. Orr.—I do not think I have sufficient experience of private trustees acting alone to answer that question. Where a private person is acting as a co-trustee with a trustee company the Master might allow about 1½ per cent. commission on the assumption that the trustee company is doing the book work. The principle appears to be that the total of the two commissions will not exceed 5 per cent. However, I point out that every case is treated on its merits. From my knowledge and if a rule could be deduced from what has happened in the past, I would consider that a private trustee acting alone would receive more than 2½ per cent. commission.

Mr. Lovegrove.—Concerning the second reason for the repeal of section 23, does it include a request for the investment of the capital of trustee companies in the stock market?

Mr. Orr.—That is not specifically asked for, but it is inferred. Trustee companies wish to be free to invest their own funds in any way that seems most advantageous, as do, for example, the A.M.P. Society or the National Bank. However, there is protection in the fact that the Boards of trustee companies which oversee the investment of many millions of pounds of trust moneys are much more experienced in these matters than are most other boards. I am sure that a trustee company would invest its own funds and use the same measure of business acumen that it now exercises with trust funds.

Mr. Lovegrove.—If a trustee company were faced with the choice of investing its own funds or those of a trust estate, what decision would it make?

Mr. Orr.—It is inconceivable that that position would arise because investment opportunities are not so restricted. If the position did arise, I am sure that the trust estate would receive any benefit available.

The Chairman.—I think Mr. Lovegrove's point is that if a trustee company had £50,000 to invest for a trust estate and £10,000 to invest of its own funds and a golden opportunity for investment of £10,000 in B.H.P. shares arose, which money would be used?

Mr. Orr.—My own personal knowledge and experience is that a trustee company would never take advantage of a trust. The first principle of our existence is that our duty to trust estates is preferred to all other considerations. I cannot be dogmatic about that because a new manager or a new

Board might hold a different opinion. There is nothing in the request made by the companies that brings about a new set of circumstances. If the risk to which Mr. Lovegrove refers is likely to exist in the future, then it exists to-day.

Mr. Wilcox.—Apart from any exemptions granted by the Act, trustee companies are subject to all the onerous duties that are cast upon any trustee?

Mr. Orr.—That is so; we believe that a higher standard of business prudence would be expected of us by the Court than of a personal trustee. If we hold ourselves out as professional trustees, then we have no excuse if we fall down on the job. The Court has the same jurisdiction over our actions as it has over those of anyone else. The law does not exempt us from any responsibility. For Mr. Lovegrove's information I might add that the total funds of their own that trustee companies have available for investment do not exceed £400,000. I have explained the two main reasons why the trustee companies should be exempted from these outmoded restrictions. Now I shall cite examples of activities which trustee companies wish to be able to engage in, but which section 23 does not permit a trustee company to undertake. Of course, it is impossible to make anything like an exhaustive list of the activities of the nature indicated in which a trustee company will wish to engage, partly because the nature of the matters which they will be asked to do by clients will vary as widely as the wishes and desires of settlors, testators and other persons, and will vary also with the increasing variety and complexity of modern business transactions. These examples are intended only to indicate some of the kinds of business activity in which the organization, skilled knowledge and experience of a trustee company could, under modern conditions, be appropriately and profitably employed. None of these activities is expressly authorised by the Trustee Companies Act, and under the present section 23 the trustee companies are accordingly prohibited from engaging in them.

(A) *Acting as "custodian" or "management" trustee, and holding property and assets for safe custody.*

Private trustees, without relinquishing the discretionary powers vested in them by the trust instrument, not infrequently desire to free themselves from the routine mechanical work involved in the custody and management of the trust investments and the keeping of accounts. The appointment of a trustee company as custodian trustee would achieve this purpose and also would ensure continuity in the legal ownership, thereby avoiding the delay and expense of transfer or transmission of title in the event of death or retirement of a trustee. The private trustee would remain in control and be responsible for the administration of the trust.

Our own Government has already indicated that the custodian trustee of a unit trust scheme should be a trustee company. I shall give a further example of this when dealing with unit trusts. There are numerous other forms of activity of a like or analogous nature which could not be defined as custodian trusteeship, but which could most appropriately be undertaken by a trustee company.

(B) *Provision of safe deposit facilities.*

Trustee companies in other States have established safe deposits, and are maintaining them successfully and profitably. It is a service which trustee companies can readily perform.

(C) *Acting in a corporate capacity as Director or Governing Director of another company.*

The widespread existence in the community of the private or family company means that frequently, upon the death of the principal shareholder, the direction and management of the company comes under the control of a trustee company. For example, take the case of a small shopkeeper whose shop business is the only substantial asset; he dies holding all the shares in and being the governing director of the company through the medium of which the shop business is run; he directs that this business be carried on by the trustee company as his executor until his children are able to take over.

Even after an estate has been wound up the testator's family, or settlor's family, not infrequently desire to retain the services of the trustee company in the direction of the family business.

Mr. Rawson.—I understand that at present trustee companies administer such businesses for which they receive commission. How is that done?

Mr. Orr.—It is done in this way. For example, I or the assistant manager or accountant might be appointed as a director. The company, as trustee, may own all the shares in the family company and thereby control the private or family company. The Trustee Company will appoint its manager or assistant manager as director of the company. However, that is not what the testator wanted. He wanted to be certain that the Perpetual Trustee Company would control the family business. An example is the case of a wealthy man who died at Geelong, leaving the whole of his estate for charitable purposes in Victoria. Prior to his death, he brought into existence a proprietary limited company as a convenient modern means of ownership of the property. By will he directed the Perpetual Trustee Company to be governing director, and wanted to be certain that an individual was not appointed to the post. He desired the company to be responsible. Of course, if I, as the company's manager, was appointed to act as director, the company would in fact be responsible because the company can control my actions. But if, for example, my company appointed an outside person as director it would not have control over him. There is quite an important distinction at law.

(D) *Establishment and management of Staff Superannuation Funds for other companies and private businesses.*

There is a growing need in the community for specialized management providing skill, security and continuity for superannuation funds established by employer organizations. Trustee companies are eminently well equipped to receive the regular periodical contributions by employer and employee, and to invest and manage the fund and pay out in due course to the beneficiaries of the fund. I believe no one could render such a service in a better manner than a trustee company, which continues to function indefinitely.

Mr. Lovegrove.—Do the insurance companies do much of that work at present?

Mr. Orr.—Yes.

Many firms, companies and corporations manage their own superannuation funds and sometimes invest those funds in their own businesses although personally, I doubt if that is desirable. A company may set up its own fund and invest the superannuation fund in the business it is running. That might be good or it might be bad.

(E) *Insurance Broking.*

The Statute Law Revision Committee has already recommended that the business of insurance brokerage is appropriate for a trustee company to carry on.

There is no need for me to traverse that point as the members of the Committee have already discussed this aspect and in fact have indicated that it is the type of business in which trustee companies could justifiably be engaged.

(F) *Formation of wholly owned subsidiary companies for carrying on any of the authorized business activities of the trustee company.*

The wholly owned subsidiary or nominee company is a widely used commercial and administrative medium nowadays. All the trading banks, several if not all of the life insurance offices and several of Melbourne's leading stock and sharebrokers and legal firms have formed nominee companies to carry out specialized functions. It is for example a simple and convenient means for segregating assets and investments held on one account from those held on any other account. It greatly simplifies administration, increases efficiency in accounting and, by reducing the risk of loss through fraud or error, improves security. Trustee Companies contend that it is unreasonable, under modern conditions, that a Trustee Company should be prohibited from using such a commonly accepted commercial practice, and from delegating to a nominee Company under its control any specific function the Trustee Company may have to carry out in the ordinary course of its business.

I shall interpose here and mention one or two examples. All banks act for their clients who are travelling abroad, and so on. A client may have shares in Australian companies and may not know who to ask to look after them while overseas. The bank will undertake this service and it does so by taking the shares into the name of, for example, Australian and New Zealand Nominees Pty. Ltd., or some other such name, because it does not wish to identify the shares with its own assets. Similarly, some of the trustee companies' activities are such that they should be able to segregate them clearly in order that there will be no dispute as to ownership. We cannot do that at the present time.

Mr. Lovegrove.—Does the definition contained in paragraph (F) also include subsidiary companies constituting investments of the trustee companies themselves?

Mr. Orr.—It would. Supposing it was said that the company should be allowed to carry on insurance broking—it would be desirable to do so, not as the Perpetual Trustees in Queen-street, but by the medium of a subsidiary company known as Perpetual Queen-street Pty. Limited. To that extent, it would be a company brought into existence by the parent trustee company to carry out a function authorized to the parent company. A subsidiary company can do only that which the parent company is authorized to perform, and on occasions, it would be commercially sensible to do so.

Mr. Lovegrove.—Do the trustee companies have anything to do with hire-purchase investments?

Mr. Orr.—No, not with their own funds. My company is the trustee for people who have had loaned £12,000,000 to I.A.C. However, we are not concerned in the slightest in the hire-purchase business in our own way. The Company Law requires the appointment of a trustee for the lenders when people lend money to a public company. If that is not carried out, the shares cannot be listed, and, in fact, it is against the law. When I.A.C. borrowed largely from the public, it was necessary to appoint a trustee company to make it conform with the law. It was a remunerative business and I was happy to act in that capacity. Furthermore, our company is acting in that capacity in connexion with a trust estate—a gentleman, who was running a hire-purchase business, died, and we have not been able to dispose of it as yet.

(G) *Types of agency business now conducted.*

A substantial proportion of the work currently performed by trustee companies is agency business, and has been or many years. In addition to the administration of the estates of deceased persons and trusteeships of settlements and other *inter vivos* trusts, trustee companies provide a multiplicity of services to clients in their lifetime. These services include the preparation of income tax returns, advice on investments, the purchase and sale of investments, the management of property, the collection of rents, the supervision of repairs and a host of kindred matters. These services do not necessitate the appointment of the company as an attorney under power, and generally do not involve the surrender by the client of the management of his own affairs. The trustee company in such circumstances merely acts as agent for the client whenever its services are sought and charges an appropriate fee for the particular service generally do not involve the surrender by the client Many people, particularly elderly and widowed women, have come to rely upon the availability of such services. To deprive Trustee Companies of power to do these things would be a departure from established practice and the destruction of a useful service performed by the trustee companies and one by means of which they build up a goodwill.

Mr. Rawson.—I understand that you charge an individual fee for each of all these services, apart from the commission you are allowed on the estate?

Mr. Orr.—This does not refer to an estate. You, Mr. Rawson, may come to us and say, "I shall be in New South Wales for three months. Please look after a couple of houses I own, see that the tenants behave, and collect the rents," or whatever else it may be. You would probably say to me, "What will you charge?" I would say, "What is a fair thing—5 per cent. on the rents or £10 10s.," or something else. That is an example of what we call agency services for living clients. We are able to make arrangements about our fees with them. If they do not like it, they do not have anything to do with us; if they do, we get the business. I have to mention, lastly, a topical subject—

(H) *Unit Trusts.*

A Victorian trustee company—and, to be frank, it is my company with the approval of the Attorney-General, indeed, the Attorney-General indicated that no one should do this job except a trustee company, recently agreed to act as trustee in Victoria for the holders of units issued in Victoria by one of the Australian Fixed Trusts group of companies. The trusteeship necessitated the bringing of the investments—which are mostly ordinary shares listed on the Stock Exchange—representing the units purchased by the public from time to time, under the control of the trustee company. To ensure beyond doubt that such investments were segregated from investments in the same companies held in the name of the trustee company on account of trust estates under administration, the trustee company concerned decided to form a nominee company wholly under its own control, to act as "custodian trustee" for the investments. In other words, the Fixed Trust investments, while under the

control of the trustee company, would be registered in the books of the companies concerned in the name of the nominee company. The Crown Solicitor, while conceding that the proposed machinery for the trusteeship was administratively sound and provided maximum security for the unit holders, reluctantly advised that in his opinion it was *ultra vires* the powers of a trustee company as restricted by section 23. This illustration of the unreasonable restrictive effect of section 23 is stated because, first, the issue is currently before the Crown Law Department, and, secondly, because it emphasizes the fact that Section 23 actually prevents a statutory trustee company from exercising its function as trustee in an efficient manner.

I had the pleasure of discussing this question with the Attorney-General, and with Mr. Mornane, the Crown Solicitor, both of whom realize that our difficulty can be resolved only by legislative action. Naturally, the Attorney-General does not wish to take legislative action in an isolated case such as this, and I think he is hoping fervently that the Statute Law Revision Committee will do something about the matter. So, Mr. Chairman, am I.

I have mentioned the sort of things which we think are knocking on our door to be done, which we consider we can do, and which the public would want us to do, but which we are not able to do. We think the present position is most unreasonable. The foregoing list of examples of the unreasonable restrictive effect of section 23 and the suggested amendments thereto, is, as I have already indicated, necessarily not exhaustive. It is impracticable to set out a list of *all* the activities in which trustee companies should be able to engage, and equally impracticable to list *all* the activities that they have no wish to engage in. The constantly changing complexities of business affairs and commercial practice makes the listing of such activities, even in general terms, virtually impossible. It is therefore respectfully suggested that any attempt by legislation to specify restrictions will inevitably result in injustice to trustee companies and their clients. So much for the sort of business that we ought to be allowed to do. I shall touch briefly, if I may, on the power of investment of our own funds.

Mr. Wilcox.—You say that you cannot list the things that you want to do, and you do not want us to list the things you cannot do.

Mr. Orr.—We have tried both.

Mr. Wilcox.—What is the answer to the problem?

Mr. Orr.—Repeal of the section.

The Chairman.—It is put that the door should be opened wide and the matter left to the good sense of the companies.

Mr. Orr.—Bearing in mind that we are in a competitive field, and that there are all the processes of law to ensure that we do the proper thing.

Mr. Wilcox.—I wanted to get that quite clearly. I do not know that anybody has said specifically that you want the section repealed.

Mr. Orr.—To continue—

3. *Powers of Trustee Companies to invest their own funds.*

The Bill repeals paragraph (*d*) of section 23, thereby taking away from trustee companies the right—which they have had since 1888—to invest their own funds in the "stocks, debentures or marketable securities of any government corporation or company, or on mortgage of real property or crown leasehold." It is my firm conviction that the repeal was inadvertent. What was proposed to be done was to extend the power of investment by adding something more, but unfortunately the new clause was substituted for this.

I must point out that the trustee companies have relied upon the authority of paragraph (*d*) to invest their funds; if that authority is withdrawn, existing investments would become unlawful and would have to be realized upon, possibly at a loss. The investments for some companies—and may I quote specifically my own company—include loans on mortgage to enable members of the staff to own their own homes. The company I represent has lent £13,000 to young members of its staff who have married to enable them to purchase their own homes. Paragraph (*d*) taken away means that each of those loans is an illegal investment by my company and should be called up. I am sure that was never intended. If they had to be called up, serious hardship would result, because we have lent generously to these young men in our employ. We have not lent merely half the value of the house, but an amount representing 80 per cent. of its value; we know their salaries, and, under our superannuation scheme, their lives are well insured, and there is no risk of loss. We can make these loans as generous as indicated, but no outside lending institution could do so. There has been no misuse of this power of investment that we have always had, or complaints about it, in the long time since the trustee companies have been in existence, including the periods of two financial depressions.

The Committee adjourned.

TUESDAY, 16TH APRIL, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. W. O. Fulton,	Mr. Lovegrove,
The Hon. R. R. Rawson,	Mr. Sutton,
The Hon. A. Smith,	Mr. Wilcox.
The Hon. L. H. S. Thompson.	

Mr. M. Chamberlin, Chairman of the Trustee Companies Association, was in attendance.

Mr. Chairman.—Mr. Chamberlin is present at the request of the Committee, so that certain questions can be put to him.

Mr. Barclay.—At a recent meeting, I asked whether it would be advisable for the whole Act to be repealed, instead of only section 23.

Mr. Chamberlin.—Although section 23 is restrictive—and I recollect Mr. Rawson throwing this question up to Mr. Tait—there are many sections of the Act which are positive, constructive, creative, enabling provisions. For instance, supposing Mr. Manson, Chairman of this Committee, were appointed an executor and trustee of a complex estate. He would have power under the Trustee Companies Act to go to a trustee company and say, "Mr. X. was a friend of mine. He did not consult me about my being appointed as executor and trustee. It is a very onerous task. There is a big family, and there are some difficult aspects of administration. I propose to exercise my rights under the Act to authorize this company to take over the administration." That can

be done in a facile way, but if there were no Act, Mr. Manson could not have that facility, nor would the trustee company have an opportunity of getting the business. I assure the Committee that is a very substantial part of the business of the National Trustees Executors and Agency Company of Australasia Limited.

Some persons who are not consulted, and even some who are, do not have an appreciation of the responsibilities and difficulties entailed in an executorship. In some cases, there are two executors, and one can appoint a company to act and the other can prove the will with it. All those facilities are given by the positive and enabling section of the Act. If that were not there, it would all be destroyed.

Mr. Barclay.—I did not mean that the whole Act should be destroyed, but only certain sections.

Mr. Chamberlin.—The only formal request put to the Committee from us is in connexion with section 23, upon which Mr. Orr gave evidence. That is a very great facility which the legislation gives. If there is a sole executor, one section applies, and a company can apply for the grant of letters of administration. If there are two or three executors, one might say, "I do not feel competent. I should like the family to have the specialized knowledge that a company can apply, with, say, a member of the family to consult regarding the grant of probate." That is a simple process under the section. Great complexities would be involved if that ready facility were not available.

Mr. Rawson.—Would it be a practical proposition to put certain parts of the Trustee Companies Act into the Trustee Act and repeal the Trustee Companies Act?

Mr. Chamberlin.—No. I think the whole structure of the legislation is related to corporate trusteeship and does not affect the actual administration of trusts. The technical controls which flow out of the legislation are all in the Trustee Act. I think it would be complicating matters to destroy the Trustee Companies Act. The Act itself is related to what was at the time of its creation a new thing—the coming of corporate trustees into the field. The Act is specifically related and directed to that end. I should like to examine the legislation before giving a definite answer but I think I would be humbugging the Committee if I said that I felt there was any real creative idea behind the suggestion.

Mr. Rawson.—There should not be any objection to making it possible under the Trustee Act for a corporate body to be named as a Trustee, quite apart from any effects upon the Trustee Companies Act.

Mr. Chamberlin.—Our companies carry out a specialized function in the community and we would not like to see all corporate institutions given the authority. If that were done large firms might overwhelm our field and create many problems for us.

Mr. Rawson.—What are the main safeguards the Trustee Companies have in the legislation controlling them?

Mr. Chamberlin.—To answer that I think it best to go through the Act. I refer the Committee to sections 4, 5, 6, 7, 8 and 9. Section 10 sets out liabilities of a trustee company.

Mr. Rawson.—That is the first section to which you have referred which applies specifically to trustee companies.

Mr. Chamberlin.—Yes. What is envisaged in section 11 rarely occurs these days. Section 12 makes it lawful for trustee companies to act under Power of Attorney. Section 13 provides that a company may be appointed to act as a temporary executor, administrator or trustee.

The Chairman.—That provision is also in the Trustee Act.

Mr. Rawson.—Under the Trustee Act individuals would have power to act under many of the provisions you have cited. The purpose of my question was to ascertain what protection trustee companies have under the Trustee Companies Act.

Mr. Chamberlin.—There is grave doubt in law whether a company can do any of the things I have named. It certainly would not be able to substitute itself for the persons who have been primarily appointed as executor so far as those earlier sections are concerned.

The Chairman.—Sections 7 and 8 seem to be relevant.

Mr. Chamberlin.—Yes, they are very important.

The Chairman.—And section 10?

Mr. Chamberlin.—Yes. Sections 14 and 15 are used by the companies. Section 16 covers a personal liability. Section 17 refers to charges that may be imposed, a subject which has been fully discussed before this Committee. Section 18 imposes the same liability on a trustee company as is imposed on an individual.

The Chairman.—That is not really necessary, is it?

Mr. Chamberlin.—I would not be prepared to answer that question off hand. I have never known sections 19 and 20 to be availed of. Sections 21 and 22 are protective measures. There is no need for me to refer to section 23 at this stage.

Mr. Manson.—How effective is section 24?

Mr. Chamberlin.—We have never found it necessary to really test it. Of course, the schedule is meticulously honoured. Section 25 provides that separate accounts of each estate must be kept and sets out also that a director, member or officer of a trustee company improperly dealing with monies shall be guilty of a misdemeanour. Section 26 provides that monies remaining unclaimed for five years shall be paid to the Receiver of Revenue. A statement of unclaimed monies is also furnished to the Treasurer and penalties for non-compliance are imposed.

Mr. Rawson.—Only four or five provisions apply particularly to trustee companies?

Mr. Chamberlin.—Probably.

Mr. Byrnes.—I suppose they all apply to trustee companies, but not only to the companies?

Mr. Rawson.—That is so.

The Chairman.—Could not those that do not apply to the companies be deleted from the Act?

Mr. Chamberlin.—Seven or eight companies have been constituted and are operating under this statute, which has been substantially satisfactory over 70 or 80 years, and we hope that the committee will give careful consideration to the matter before wiping it out.

The Chairman.—Of the 32 sections in the Act, four apply especially to the trustee companies, and 28 in some shape or form, are covered in other enactments Why keep them in the legislation dealing with the trustee companies?

Mr. Chamberlin.—I should think that more than four provisions would affect trustee companies; I agree that some are only padding.

Mr. Wilcox.—Most of the sections in the Act apply specifically to trustee companies.

Mr. Sutton.—How many apply exclusively to trustee companies?

The Chairman.—Approximately 50 per cent. are unnecessary; the others might apply to the companies.

Mr. Wilcox.—I hope that we are not at cross purposes. As I understand it, the question was, "How many sections in this legislation apply specifically to trustee companies." Although there may be similar provisions in other Acts, I should say all of the sections in the legislation dealing with trustee companies apply specifically to those companies.

The Chairman.—A provision similar to section 13 is contained in other legislation, therefore it could be deleted.

Mr. Wilcox.—The whole point is that trustee companies are quite different from many other companies and are established under this legislation.

The Chairman.—Mr. Rawson has been submitting that there are four, five, six or seven special provisions that apply to the trustee companies and would need to be retained but that all the other sections are either unnecessary or are embodied in other Acts under which the trustee companies can operate. His final point was that out of the 30 odd sections only six or seven deal specifically with trustee companies, therefore why retain the remainder?

Mr. Wilcox.—My only comment is that in nearly every section the phrase, "trustee companies" is used.

The Chairman.—If a similar power to that contained in section 13 of the Trustee Companies Act is included in other legislation dealing with normal companies, it is not mandatory that it should be retained in the Trustee Companies Act.

Mr. Wilcox.—A further definition would have to be included in the Companies Act or the relevant legislation.

Mr. Byrnes.—It might be a matter of convenience if all these points were included in the Trustee Companies Act.

Mr. Chamberlin.—After all, it is our charter.

The Chairman.—It might be equally convenient to say that trustee companies shall have the power of ordinary companies plus five or six special provisions. Would you care to express an opinion on the scrapping of the unnecessary or duplicated provisions and a reduction in the size of this consolidating Bill?

Mr. Chamberlin.—If it were proved beyond doubt that certain provisions were duplications, quite obviously elementary common sense would dictate that they are unnecessary. However, I would point out that this legislation is the charter of the companies; it enables them to function in a field in which there were grave doubts whether they could function or not. It is convenient for the public to have the legislation in a special Act.

Mr. Lovegrove.—What proportion of the total trustee business in the State of Victoria would be administered by trustee companies?

Mr. Chamberlin.—In value, about 15 per cent. As to number, I do not know.

Mr. Lovegrove.—Would not the amounts paid in salary give some indications of the number of staff employed?

Mr. Chamberlin.—My company is the National Trustees Executors and Agency Company of Australia Limited. The number of our staff is 65.

Mr. Lovegrove.—Would it be fair to assert that the great bulk of trustee work is being done by financial organizations other than trustee companies?

Mr. Chamberlin.—No. Such work is being done largely by families, individuals, solicitors, accountants, and so on.

Mr. Wilcox.—Do you know any companies, other than trustee companies, that act as trustees in the State of Victoria?

Mr. Chamberlin.—No.

At this stage Mr. Chamberlin withdrew and Mr. W. E. Orr, representing the Trustee Companies Association, attended.

Mr. Orr.—I submit the following statement showing income and expenditure of six Victorian trustee companies for three financial years:—

Company.	Year.	Commission and Fees.	Salaries.	Total Income.	Total Expenses (excl. Income Tax).
Trustees Exors. and Agency Co. Ltd.	1954	154,527	120,282	179,245	163,381
	1955	154,576	122,393	184,412	167,956
	1956	164,389	128,474	197,518	177,963
Union Trustee Company Ltd.	1954	273,210	239,688	291,176	269,686
	1955	289,605	259,411	308,328	282,082
	1956	299,922	266,042	320,532	293,179
Equity Trustee Company Ltd.	1954	96,602	92,848	109,962	100,573
	1955	104,539	98,670	118,797	108.758
	1956	113,348	109,021	132,328	120,471
Perpetual Trustees Association Ltd.	1953	68,199	49,366	73,636	64,437
	1954	71,568	51,016	77,195	67,042
	1955	77,125	56,240	83,239	73,833
National Trustees Company	1953	65,535	47,156	66,244	61,346
	1954	71,911	48,791	72,443	63,832
	1955	74,185	50,928	74,715	66,652
Fidelity Trustee Company Ltd.	1954	52,440	39,748	54,833	50,299
	1955	56,418	42,657	60,018	54,859
	1956	61,027	44,226	64,450	58,009

Mr. Lovegrove.—I take it that the columns in the statement headed "Total Income" and "Total Expenses (excluding Income Tax)" do not take into account the use of freehold premises.

Mr. Orr.—Taking the top line of the statement as a guide, it would be better to say that in 1954 the Trustees Executors and Agency Company Limited earned commission and fees amounting to £154,500. The total income for that year was £179,000, and so they had an income of £25,000 from investments. They have £10,000 lodged with the State of Victoria, and that sum earns about £350 a year. They may have another £20,000 in bonds or stock earning a further £1,000 a year. Substantially their invested income is derived from valuable freehold premises they own in Collins-street and another property which is theirs in Sydney.

Mr. Sutton.—Their net profit of approximately £16,000 in that year does not represent total profit, I presume. To that must be added the amount derived from rents and so on?

Mr. Orr.—The profit shown includes invested income. I cannot emphasize too strongly that trustee companies are not highly profitable undertakings. The return from funds employed is astonishingly low.

Trustee companies in Victoria and, indeed, throughout Australia, for years past have been engaged in a "bread and butter" industry.

I must emphasize again that our salary levels are too low to attract the type of employees we require. We cannot compete with banks, accountants' offices and so forth.

Mr. Lovegrove.—In the first case referred to in the table of statistics, salaries increased by £8,000, total expenses by £14,000 and total income by £18,000. Could you tell me the amount of income tax paid by the company.

Mr. Orr.—It is an inconsiderable amount because the net taxable profit of the Trustees Executors and Agency Company Limited in 1954 was about £16,000. The tax, therefore, would be about £5,000. The capital of that company is about £100,000 and it pays about £8,000 to shareholders by way of dividends.

Mr. Lovegrove.—In 1956 total income went up by approximately £18,000 and total expenses, exclusive of income tax which would be at least £5,000, by £14,000.

Mr. Orr.—In 1956 the profit was about £20,000, from which income tax of about £6,000 or £7,000 would be paid. The net profit, therefore, would be about £14,000. Out of that amount the company would pay a dividend on its modest capital and the rest would be transferred to reserves. I again point out that this is not a highly profitable industry. As I said before, that company is managing £40,000,000 worth of trust estates and is making a profit of a mere £14,000 a year.

Mr. Lovegrove.—In his submission to the Committee, Mr. Tait submitted that trustee companies are engaged in a highly competitive business with private persons and with other companies and corporations all of which may and do act as trustees. Mr. Chamberlin told me that trustee companies handle approximately 15 per cent. of all trust business. He pointed out that in the main competition came from private individuals.

Mr. Orr.—I agree that competition comes largely from private individuals.

Mr. Lovegrove.—A further submission to the Committee was that section 23 should be repealed. Where there is any freedom allowed in the Act, apparently many other companies and corporations are handling at least the same business in value, so would it not be logical to repeal the Act?

Mr. Wilcox.—Mr. Chamberlin said there were no other companies in Melbourne engaging in this business.

Mr. Lovegrove.—I am taking the statement from the record.

Mr. Orr.—Perhaps I can clear the matter up. No corporation or company in Victoria can apply for probate of a will and act as executor. If I died tomorrow, the A.M.P. Society could not act as my executor. Only a trustee company can act in such a capacity. If, on the other hand, I wanted to set up a fund to provide scholarships for children attending the Melbourne Technical College, I could appoint any company in Victoria to act as trustee of that fund. However, that rarely happens in fact because companies such as Broken Hill Proprietary Limited would not want to undertake that work. The Dunlop Rubber Company has set up a fund and constituted itself as trustee to provide scholarships at the University.

Mr. Lovegrove.—Another submission relating to the highly competitive nature of the business was that none of the competitors is subject to the restrictions placed on trustee companies in Victoria by section 23 of the Act. In consequence, trustee companies claim that they are unfairly handicapped in carrying on their businesses. How does that area of competition in value compare with the value of the business carried out by the trustee companies?

Mr. Orr.—It is not possible to answer that question because there are no sources of information from which to obtain the data. It is not required by law in Victoria that a trust must be registered or that any returns be forwarded to the Registrar-General or any other person. I have no idea of the amount of trust funds that are handled by persons other than trustee companies. However, one obtains some guidance by recording the information contained in the *Government Gazette* of advertisements for applications for probate and so forth. Frankly, I think Mr. Chamberlin's estimate of 15 per cent. is too high. My estimate would be about half that amount.

Mr. Sutton.—You said that one of the trustee companies in Victoria handled trust estates to the value of £40,000,000.

Mr. Orr.—That is so.

Mr. Thompson.—Earlier you mentioned the difficulty of a trustee company acting as a corporate body rather than through an individual appointed by the company. I notice that probate may be granted to a trustee company, as a company, to carry out the terms of a will. If one of those terms is that the company shall act in a corporate capacity as director of the type of company you mentioned, why is it necessary for the trustee company to appoint one specific representative to perform that function?

Mr. Orr.—Putting it briefly, no man can give authority in his will that goes beyond the law. Section 23 does not expressly authorize a trustee company to act as a director. Our view is that a legal doubt exists as to whether a trustee company can legally act as a director of another company in the circumstances I have mentioned. We have been advised in respect of a case in which we are so acting that dubious legal authority supports our action.

There would be a danger, if some loss resulted from our so acting, in that we would be personally liable because we acted outside the law. I do not think any trustee company should be placed in such a position when it is carrying out the direction of a testator.

The Chairman.—What would be your reaction to the repeal of the Trustee Companies Act?

Mr. Orr.—That would be a serious matter for the trustee companies. It would mean that such a company could no longer accept or act in the appointment of executor of a will.

Mr. Sutton.—In other words, the trustee companies would be brought down to the level of ordinary companies?

Mr. Orr.—Yes. The Act was placed on the statute-book so that trustee companies would be the only companies that could act as executors or administrators. If the Act were repealed we could not apply to the Supreme Court for the grant of probate. The community depends on this service being available.

Mr. Barclay.—You would not recommend the repeal of the Act?

Mr. Orr.—No.

Mr. Rawson.—There are no trustee companies in England, are there?

Mr. Orr.—No. Under the English Companies Act, probate may be granted to a bank, with special rules to administer. Some such law could be substituted for our Trustee Companies Act, enabling banks, insurance companies and trustee companies to perform the service. The Trustee Companies Act applies to those companies shown in the schedule. Parliament could add to the schedule.

Mr. Thompson.—Is it necessary to pass legislation in order to add additional companies to the second schedule?

Mr. Orr.—Yes.

Mr. Thompson.—Do you think it would be reasonable to admit a new company by regulation passed by the Governor-in-Council?

Mr. Orr.—It would not be possible to get anyone in Victoria to put up the necessary capital.

(*The Committee adjourned.*)

By Authority: W. M. Houston, Government Printer, Melbourne.

1956–57

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

PROVISIONS OF SECTION 187 OF THE

JUSTICES ACT 1928

TOGETHER WITH

MINUTES OF EVIDENCE AND AN APPENDIX

Ordered by the Legislative Council to be printed, 22nd May, 1957.

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21st NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L.H.S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGLISLATIVE ASSEMBLY.

WEDNESDAY, 21st NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Honorable the Attorney-General, by letter dated the 27th March, 1957, recommended to the Statute Law Revision Committee that it should examine certain anomalies created by section 187 of the *Justices Act* 1928. The Committee adopted this recommendation and commenced its inquiries.

2. Appended to this Report is the evidence given by Mr. W. M. Irvine, Crown Prosecutor, who appeared before the Committee.

3. Section 187 of the *Justices Act* 1928 excludes Courts of General Sessions from jurisdiction in respect of a number of indictable offences specified therein. It was suggested to the Committee that due to the existence of this section the Supreme Court has been burdened with many cases with which Courts of General Sessions would be quite competent to deal, but in respect of which, however, the Supreme Court has sole jurisdiction. To enable the Supreme Court to expeditiously dispose of the more serious indictable offences therefore, it was proposed that section 187 be amended to extend the jurisdiction of Courts of General Sessions.

4. The present law appears to the Committee to disclose certain anomalies as instanced by the example of the offence of robbery with wounding, the death penalty for which was removed by the *Crimes Act* 1949, and which offence still cannot be heard in Courts of General Sessions, whereas such Courts have jurisdiction to hear cases of robbery and cases of wounding.

5. The Committee recommends that paragraph (II.) of section 187 of the *Justices Act* 1928 as amended by section 2 (4) of the *Crimes Act* 1949 be amended so as to confer jurisdiction upon Courts of General Sessions in respect of the offences of—(*a*) rape ; (*b*) carnal knowledge of a girl under the age of ten years ; (*c*) buggery with violence or with any person under the age of fourteen years ; (*d*) robbery with wounding ; (*e*) burglary with wounding; and (*f*) unlawfully and maliciously setting fire to any dwelling-house, any person being therein.

All the offences listed above are offences which were, until the passage of the *Crimes Act* 1949, punishable with death, but which are, pursuant to the provisions of that Act, no longer so punishable.

6. The Committee further recommends the repeal of paragraph (v.) of Section 187 of the *Justices Act* 1928, thereby conferring jurisdiction on Courts of General Sessions in respect of offences of bigamy and offences against the laws relating to marriage.

Committee Room,
21st May, 1957.

MINUTES OF EVIDENCE

THURSDAY, 9TH MAY, 1957.

Members Present:

Mr. Manson in the Chair.

Council.	*Assembly.*
The Hon. T. H. Grigg,	Mr. D. Lovegrove,
The Hon. R. R. Rawson,	Mr. V. Wilcox,
The Hon. L. H. S. Thompson.	Mr. P. K. Sutton.

Mr. W. M. Irvine, Crown Prosecutor, was in attendance.

The Chairman.—We have Mr. Irvine from the Crown Law Offices, and he is going to explain to us what is the problem put up to us by the Attorney-General, dated 27th March, when he referred to the jurisdiction of the Court of General Sessions being extended so as to enable a better distribution of work between that court and the Supreme Court.

Mr. Irvine.—Well the main purpose I understand, is to give to General Sessions jurisdiction in certain matters which at present is only held by the Supreme Court, and one of the main reasons for that is the number of murder cases we are unfortunately having at the present time, and to deal with them of course is the privilege of the Supreme Court only. I have got the figures for this year, and already we have had three murder cases in February, two in March, one in April, one finished last night, and there are I think, two pending. Now the Supreme Court only sits usually for a little over half of each month in the criminal jurisdiction. That may not be quite accurate —they sit in the Court of Criminal Appeal in the beginning of the month, and that takes, from two up to four days, and normally I think the starting dates of the actual Supreme Court work for different months has been the 11th, 18th, 25th, 8th and 6th. It shows that really they do not sit and cannot sit, under pressure of work, for longer than about half of each month. Because of the number of murders, the work is getting rather ahead of the Supreme Court, when you consider they must deal with murders first, and the other matters which are within their exclusive jurisdiction, for instance, rape, buggery, robbery with wounding and bigamy.

Last year, there were twelve cases of rape, two of buggery against a boy under fourteen, four of wounding, and eleven of bigamy. So that cases of that character, owing to the number of murder charges, are falling behind very much in the hearing, which is thought by all lawyers, and the Attorney-General, to be highly undesirable.

I have not had an opportunity of talking to the Attorney-General about this, but I should think that another reason for amending this Act, is that it is a modern trend to enlarge the jurisdiction of inferior courts. It has been done all the way through with the ordinary County Court, in civil work the jurisdiction has been much increased, and it is thought that the Courts of General Sessions are quite capable of dealing with most of these cases, which they are not enabled to deal with at present.

In New South Wales, Courts of Quarter Sessions, which are the same as our Courts of General Sessions, have jurisdiction for all indictable offences, other than those punishable by death.

That is a summary of the position as I see it. For some reason I cannot fathom, the jurisdiction of the County Court is given by section 187 of the *Justices Act* 1928. You will see there some eleven different offences which are excluded from the jurisdiction of the Courts of General Sessions, starting off with treason and misprision of treason and felonies punishable by death, and it is mainly with two that we are concerned, although there are others, such as attempts to murder and bigamy later on, regarding bigamy and offences relating to the laws of marriage. The Attorney-General proposes that you should consider amending that section to enlarge the jurisdiction of the General Sessions by giving to them jurisdiction in the following matters—the first is rape, the second is carnal knowledge of a girl under the age of ten, the third is buggery with violence or buggery with a boy under fourteen, the next is robbery with wounding, burglary with wounding follows that, setting fire to an inhabited house, and the last one is bigamy.

It is thought that if jurisdiction in those matters were given to Courts of General Sessions, the burden of the Supreme Court would be greatly lightened, and they would be in a much better position to deal with the cases expeditiously, in which they would then have exclusive jurisdiction.

I think I should start off by saying this, that were this Act amended in the manner suggested, it would still leave the Supreme Court with jurisdiction over those seven or eight matters to which I have just referred, and it is a discretion which is exercised at present by the officers acting under the Attorney to put a case which falls either under the Supreme Court or the County Court, into the more appropriate court. For instance, you might have one under the Court of General Sessions which is a simple offence, but owing to the facts in the particular case, may be most involved and complex and contain difficult questions of law. Well in that event, the clerks would have that put into the Supreme Court list. That discretion would still remain.

Mr. Sutton.—It would not be necessarily taken away from the Supreme Court?

Mr. Irvine.—No, the Supreme Court has jurisdiction in all criminal matters and would still have jurisdiction in all matters.

I think I should refer to those offences over which it is proposed to give the General Sessions jurisdiction. The first is rape, which as you all know, is having carnal knowledge of a female without her consent. I gave you the figures earlier, I think there were twelve cases of rape last year. This offence is one which varies tremendously as to particular facts and in many cases where females suggest that rape has occurred, when the facts come out, it is quite obvious there is no rape at all, and the time of the Supreme Court is taken up in cases which are really in substance, petty cases. To show that the Court of General Sessions is quite competent to deal with this case, they deal already with cases of attempted rape, so the only difference there is whether the attempt was successful or not. In other words, they have to deal with every other element, and they deal with attempts to have carnal knowledge of a girl under ten years of age. That is the second one in this list which it is proposed to deal. They can deal with

attempts, but not successful attempts. They can deal at present with any carnal knowledge case of a girl between the age of ten and sixteen, and a different offence, girls between sixteen and eighteen.

My only purpose in drawing attention to the jurisdiction in this regard, is that Courts of General Sessions already have to decide all the important elements which appear in a case of rape, except the actual consent, which is a small question of fact which any jurisdiction should be competent to decide, and what I have just said applies really very largely, to the other offences.

Before going further with the others, I think I should have said first of all, that this section 187 of the Justices Act, when it excludes from the jurisdiction of General Sessions, these offences, is largely excluding from that jurisdiction, offences which up to 1949, were punishable by death, but which since that Act, are not punishable by death.

The Chairman.—That actually is the fundamental reason for the change?

Mr. Irvine.—That is so. You see, under the old ones, the offence of wounding or administering poison with intent to murder, that carried death, so did setting fire to ships with intent to commit murder, rape, carnally knowing a girl under ten, buggery with violence on a boy under fourteen, robbery with wounding, burglary with wounding, and setting fire to an inhabited house.

When the 1949 Act repealed the provisions relating to the imposition of the sentence of death, they made no corresponding amendment of section 187 of the Justices Act. One might have thought that was a mistake, except that the 1949 Act does specifically amend section 187, by instead of leaving it under the general terms to which I have just referred a moment ago, sub-section 2, felonies punishable with death, the legislature must have had that in mind, because they have gone on to delete that and to substitute for it in sub-section 4 of section 2 of the 1949 Act, the paragraph sub-section 2 of section 187 of the Justices Act—there shall be substituted the following paragraph—the offences referred to in section 3 subsection 1 of section 8, and then it goes on dealing with other sections which did impose under the old Act, the death penalty. But it specifically sets them out here by name for some reason which is not thought to be a good reason at present. It is not a normal one, we could not understand why that had been passed at all, because it is unnecessary to alter it if you wish to have that effect. The whole purpose of this is to give the General Sessions jurisdiction in cases where the death penalty no longer stands, and the death penalty under the 1949 Act now only applies to cases of treason and murder.

The other specific offence, in case some people think the jurisdiction should not be given to General Sessions is of buggery with a boy under fourteen. Well General Sessions already has jurisdiction to try buggery, and the only extra question in that case again, is with the age of the boy. There again it is obvious of course, that as the death penalty then stood, it was not dealt with in General Sessions.

So far as robbery with wounding, the Courts of General Sessions at present have jurisdiction as to robbery, and also as to offences of wounding, which do not cover the death penalty, wounding with intent to murder did cover the death penalty, but it already has jurisdiction both as to robbery and as to wounding, so it seems very illogical, once the death penalty has been removed, not to give the Courts of General Sessions jurisdiction for that offence, and I might say exactly the same reasoning applies to the next offence which the Attorney-General thinks you might consider, and that is burglary with wounding.

I have only two others to deal with, one is setting fire to an inhabited house, and that is not the offence of setting fire to a house with intent to murder anyone in the house, that is still arson with intent to murder, but it is just setting fire to a house in which someone happens to be, and it now does not carry the death sentence for I think obvious reasons.

The last one is rather different, as I say I have not had an opportunity of seeing the Attorney, he has been in Sydney for most of the week, but the last one which he thinks should be given to the Court of General Sessions is the crime of bigamy. We had eleven cases last year, and most of them are really extremely simple in character, either he has married two women or he has not, and that is a question of formal proof of the first marriage and the second marriage and things of that nature. There are some difficult cases, there was one extremely difficult one last year, a case of Bonnor, a case where a man is married in England, and there are different laws regarding his domicile and things of that sort, which do raise difficult questions, but those questions, so far as I know, always appear on the face of the papers when it comes up to the Court, and when the depositions showing that sort of thing come up, they would immediately go to the Supreme Court, but the ordinary run of them are simple.

Mr. Smith.—Should the case become a special case, it could still be referred to the Supreme Court?

Mr. Irvine.—The Supreme Court always has jurisdiction in even the smallest offence.

The Chairman.—Suppose you start off at the General Sessions, and then find difficulties.

Mr. Irvine.—It would never be transferred, but if some very difficult point of law does arise in General Sessions, and it does sometimes, a case can be stated to the Full Court, which would be done, and is done, but very rarely, for the reason I gave—it is nearly always apparent from the papers before they get to Court, whether any of these difficulties will arise.

The Chairman.—But the safeguard is still there?

Mr. Irvine.—Yes. The Solicitor-General in his letter to the Attorney-General merely has bigamy as such. You might notice section 187 (5) of the Justices Act says, bigamy and offences against the laws relating to marriage, and it is upon that that I have not seen the Attorney-General, and what I am saying now is only said for myself. In bigamy charges, it is nearly always accompanied with another charge of making a false statement—the man will swear that he is a bachelor, and you usually put the two in, and if for some reason you fail on the major charge, you can nearly always prove that minor one, and that is almost universal practice. Well that is making a false statement in a Marriage Register as it is called, and that offence comes from a section in the Registration of Births, Deaths and Marriages Act. Also, before marriage, as most of us know, the parties go to a Minister who asks them for particulars which they give to him, and which they say in a statutory declaration are true, and any false statement in such a statement to the Minister in itself is perjury, and under the Marriage Act, that becomes an offence. Well on my reading of it, for the last two offences, General Sessions has not jurisdiction at the moment, there is no doubt about that, and if bigamy were given to General Sessions, they would still not have jurisdiction in the minor matters, which would be ridiculous, and I think that must have been overlooked by the Solicitor-General.

The Chairman.—So you would recommend it to read, bigamy and offences against the Marriage Act?

Mr. Irvine.—Yes. The offences which I have just read out represent carnal knowledge, girl under ten, buggery with violence, buggery with a boy under fourteen, robbery with wounding, setting fire to an inhabited house, and bigamy, with my own suggestion —and all offences relating to marriage. Those are the only offences which being at persent in the exclusive jurisdiction of the Supreme Court, the Attorney-General suggests you consider should be given to the Courts of General Sessions.

I say that those are the only ones. You see section 187 contains such things as sub-section 10, for instance, which excludes from the jurisdiction of the Court of General Sessions, offences by corporate bodies. Well some of those, or most of them, are criminal offences by corporate bodies, they are rare and contain very difficult points of law, and both the Solicitor-General and the Attorney-General consider, and I agree, that they should not go to General Sessions. The other one, 9, relates to similar types of things, frauds by agents, bankers, trustees, partners and others. Some of those involve very complex questions of law as you might imagine, so also do those enumerated in sub-section 7, unlawful combinations and conspiracies. It goes on to say to commit any offence which the Courts of General Sessions have jurisdiction to try when committed by one person. Even although they can try one person, when it becomes a conspiracy, it is thought unwise to give that to General Sessions.

Offences against the King's title prerogative, and things of that nature of course, and composing, publishing blasphemous and seditious articles, and so on, these matters are not included in the list.

Mr. Lovegrove.—Apart from the reason of modernization, is the equation between the increase in the population and the increase in these crimes much the same as it was before, over a period?

Mr. Irvine.—I should say yes, it is, except that crimes of violence or rather murder trials at any rate, are much more common, even taking in the population equation, than they were some years ago.

Mr. Lovegrove.—Is there a need then for an extension of the physical and the human requirements of the judiciary?

Mr. Irvine.—You all know as well as I do, one of the most important things of administration of law is that it should be administered expeditiously. The delays at present are startling and have a very bad effect. The best way of stating that is to show the difference between American Courts and English Courts. It has been noted that any murder trial in England, except the most complex one, is heard almost immediately after the offence, whereas in America, it may be a year or so afterwards. All the witnesses are open to bribes or threats, and honest witnesses forget facts, apart altogether from the injustice to the accused, who has this hanging over him for a long time. At present, the state of the administration of the law is very unfortunate for two reasons, one is there are not sufficient judges, secondly, there is not adequate accommodation. That is the main trouble as you know. The courts have been rebuilt, and are still being rebuilt.

The Chairman.—How do we compare with other States?

Mr. Irvine.—New South Wales is very much better provided for, the number of judges they have is double, and the population is only about one-quarter more.

Mr. Wilcox.—You would not say their court accommodation was any better?

Mr. Irvine.—I am unfamiliar with their court position.

Mr. Wilcox.—I do not know the position in criminal jurisdiction, but in their civil juries, I know it and the delays in New South Wales are far greater than ours. I wondered if you knew the position in relation to criminal jurisdiction?

Mr. Irvine.—I do not know, but really that does not answer the problem. People often say it would be very unfortunate if the work fell off and a judge was not working full time, but really with the amount of money involved, I do not think that is a very powerful argument. The court was very inconvenienced yesterday, they are rebuilding and because of the noise it was impossible to hear. It was only that the High Court was in Sydney that we managed to get one room for one day.

Mr. Lovegrove.—Is the level of competency of the lower courts to which it is proposed to remit these cases considered to be completely adequate?

Mr. Irvine.—Well, you place me in an invidious position when you ask me a question like that. I can answer it quite generally by saying that the Attorney-General would not ask for an amendment of this character if he did not think the appointments he has made were proper appointments.

Mr. Wilcox.—Could I just point out one thing with which I think Mr. Irvine will readily agree, and that is that so many criminal cases turn entirely on the facts, simple facts, and juries are always there to determine the issues of fact, whether it be in the Supreme Court or the County Court. If you are bringing in the question of the competence of the Court, you have to consider the competence of the juries, to be fair.

Mr. Lovegrove.—Have the judges expressed an opinion about this proposal?

Mr. Irvine.—I do not think it has got to them, but I can say this in that regard. I have often been myself concerned in cases where the judge has said, "Why on earth was a petty thing like this brought before the Supreme Court." In a wounding case, whether it is a wounding with intent to murder, which is a question for the jury, whether intent to cause grievous bodily harm, or just unlawful wounding, those are all questions of fact, and it is fundamental that we do not consider ouselves rightly to be in a position to say that man's intention must have been to kill, wound seriously or wound, that is a matter for the jury.

I have myself had many discussions with the Solicitor-General where I thought the Attorney-General should be advised to enter a *nolle prosequi* on the grounds there was not the slightest chance of a conviction anyway, that was the main ground on the evidence, and the answer always is, that is a matter for the jury to decide, not for me or the Attorney-General, that is one of the things left to a jury, so you get these simple cases which might conceivably be an attempt to murder, but it all depends on the actual intention of the person, which must be decided by a jury, and so the courts take one and a half or two days to decide.

Mr. Rawson.—Would you advocate a change in the jurisdiction of the courts, if we had adequate Supreme Court judges and adequate court accommodation?

Mr. Irvine.—Well, one of the reasons for the proposed amendment would then go of course, that is that there would not be a lag in the trial of the more serious cases, but as against that, I do think that the category of offences which it is asked to put in the jurisdiction of General Sessions contains so many cases of minor importance, both as to fact and law, that it is more appropriate that they should be tried by General Sessions and not Supreme Court. The Supreme Court is very busy, outside the Criminal Court. As Crown Prosecutor, perhaps the thought is that our own branch should get first consideration, but we are rather apt to overlook the immense volume of civil work outstanding. It is a question of striking a balance.

Mr. Thompson.—Has not there been as great an increase in the number of crimes falling in the jurisdiction of General Sessions as in the number of crimes falling within the jurisdiction of the Supreme Court?

Mr. Irvine.—Well, if you take the serious offences, such as murder, the Supreme Court has 50 per cent. more than they used to have. Figures have been taken out by all sorts of persons as to the incidence of crime. I myself have great difficulty in determining whether they are accurate or not, we often see in the press that there is no further crime due to the influx of new Australians—well, I gravely doubt that, because we are overwhelmed with cases of knife woundings.

The Chairman.—I do not think they have said that. They say the proportion of crime amongst new Australians is no higher.

Mr. Irvine.—That is more accurate, but I think when they take some of those lists, all offences such as motor car offences and things of that nature, must be included. But in my own experience, that type of crime has greatly increased.

Mr. Thompson.—I presume from what you said, that the Court of General Sessions would be able to handle the additional cases which would come to it as a result of the adoption of this suggestion?

Mr. Irvine.—We do need at least two more County Court judges, but at present it is the accommodation that is the trouble.

Mr. Wilcox.—There would still be the same number of courts and judges to handle them at the moment, whichever court they went to.

The Chairman.—Then there is the point, as you build up your Police Force, you must build up your crime detection, and then the number of customers for the court are built up.

Mr. Irvine.—Of course we have an immense body of new crime which we never had before, and that is, there is drunken driving, that was always previously dealt with by a Stipendiary Magistrate. It is now dealt with by a Court of General Sessions.

Mr. Sutton.—Does not he come before Petty Sessions?

Mr. Irvine.—Yes, but they have the option of a trial before a jury, and they all claim it, because juries will not convict, only very rarely. You get a very strong case, where there should not be any doubt, and the jury is being dishonest, there is no doubt about it. They have made themselves legislators.

Mr. Thompson.—Relating to that same point, unless General Sessions has time, personnel and accommodation, are we going to be any better off?

Mr. Irvine.—Well, we would be better off in as much as the more important cases would be more expeditiously dealt with; it is the lag in the important cases which is the main consideration.

The Chairman.—So that we have a priority in crime?

Mr. Irvine.—That is so. It is obvious there should be a priority for murder cases. The liberty of the subject is of prior importance. The death penalty still stands, and it is very unfair to have a possible death sentence hanging over a person's head for a long time. That has always been so thought. It always has priority in England.

The Chairman.—That is a nice point of ethics, whether it is more important to punish the possible murderer, than it is more important to punish the man who has deceived two women.

Mr. Irvine.—I suppose it is the magnitude of the possible penalty hanging over his head.

The Committee adjourned.

APPENDIX.

Memorandum by the Honorable A. G. Rylah, E.D., M.L.A., Attorney-General, re Jurisdiction of Courts of General Sessions in respect of indictable offences.

Having regard to the growth of criminal business which is having to be dealt with by the Courts at present, it would seem that certain anomalies created by section 187 of the *Justices Act* 1928 might well be given consideration by your Committee.

It appears to me that the jurisdiction of the Court of General Sessions should be extended so as to enable a better distribution of work between that Court and the Supreme Court.

If your Committee feels disposed to do so, I would be very glad if it would carry out an examination on this matter.

Mr. W. M. Irvine, one of the senior Crown Prosecutors, will be available to your Committee should you desire to undertake this inquiry.

27th March, 1957.

By Authority: W. M. Houston, Government Printer, Melbourne.

1956-57

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VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

A PROPOSAL TO CONSOLIDATE THE LAW

RELATING TO

CRIMES AND CRIMINAL OFFENDERS

Ordered by the Legislative Council to be printed 3rd September, 1957

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

8603/57.—D.—No. 7.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Director of Statutory Consolidation, Mr. R. C. Normand, brought before the Committee a draft of the Crimes Bill—a Bill to consolidate the Law relating to Crimes and Criminal Offenders.

In the exercise of the function conferred upon it by section 344 of *The Constitution Act Amendment Act* 1956 to examine *inter alia* "proposals for the consolidation of statutes" the Committee undertook an examination of the proposed consolidation.

2. The evidence of the Directory of Statutory Consolidation and of the Crown Solicitor, Mr. T. F. E. Mornane, is appended to this Report.*

3. The Director drew the attention of the Committee to the procedure adopted in the proposed consolidation with regard to certain transitory provisions at present contained in Division 2 of Part III. of the *Penal Reform Act* 1956. Rather than omit these provisions from the consolidation entirely, the Director has adopted the novel procedure of reproducing them as a Ninth Schedule at the end of the proposed consolidation. When the operation of these purely transitory provisions is spent, it will then be possible to omit them from the new Act without impairing its permanent frame-work. The Committee commends this method of arrangement as being both desirable and farsighted.

4. The attention of the Committee was also drawn to the provisions of sub-clause (1) of Clause 390, the latter portion of which requires the Crown Solicitor to "deliver or cause to be delivered . . . . . a signed calendar of all persons committed for trial . . . . . who are not in custody". It examined a suggestion that this requirement is unnecessary and may well be omitted from the proposed consolidation. The Committee, having heard the evidence of the Crown Solicitor on this matter, considers that the provision should be retained.

5. The Committee has examined the proposed consolidation, which brings together with the *Crimes Act* 1928 the whole or portion of sixteen other Acts, and is of the opinion that no material has been embodied in it which may not properly be included in a consolidating measure.

The Bill, when introduced, is accordingly recommended to Honorable Members for a speedy passage.

Committee Room,

26th June, 1957.

* *Minutes of evidence not printed.*

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57

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VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

UPON THE PROVISIONS OF

THE COMPANIES ACTS

(*re* FREIGHTERS LIMITED)

TOGETHER WITH

MINUTES OF EVIDENCE

AND

APPENDICES

Ordered by the Legislative Council to be printed, 3rd September, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

5308/57—D.—No. 8.—PRICE, 2s. 3D.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT.

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. On 6th July, 1956, Mr. P. D. Phillips, Q.C., was appointed by the Governor in Council pursuant to the *Companies (Special Investigations) Act* 1940 to be an Inspector to investigate the affairs of Freighters Limited in relation to certain specified matters. The Report of Mr. Phillips, Q.C., was laid upon the Table of the Legislative Assembly on 4th October, 1956 (Victorian Parliamentary Papers C. No. 2. Session 1955–56).

By memorandum dated 16th October, 1956, the Honorable the Attorney-General directed the attention of the Statute Law Revision Committee to Mr. Phillips' Report, particularly in relation to the powers of an investigating competent inspector, the disclosure by directors of direct and indirect benefits, and the issue of employee shares.

The Committee undertook an examination of the law relating to these several matters with a view to recommending the removal of any anomalies.

2. The following witnesses appeared before the Committee and submitted formal evidence :—

Mr. P. D. Phillips, Q.C. ;

Mr. A. Dodgshun and Mr. J. H. Kirkhope, representing the Institute of Chartered Accountants ;

Mr. J. Finemore, Assistant Parliamentary Draftsman ;

Professor F. P. Donovan, Professor of Commercial Law, University of Melbourne ;

Mr. J. S. Elder, representing the Law Institute of Victoria ; and

Mr. H. C. Collingwood,

Mr. G. Noall, and

Mr. D. S. Rogers, representing The Stock Exchange of Melbourne.

Memoranda were received from Professor Donovan and the Australian Society of Accountants. The Committee conferred with Mr. Ian Potter, sharebroker, and Sir Henry Winneke, Q.C., Solicitor-General.

The Minutes of Evidence and memoranda are appended to this Report.

3. The question of the existence of a privilege against self-incrimination in the case of an inquiry such as that conducted by Mr. Phillips, Q.C., was raised during that inquiry but not then resolved. Those with whom the Committee conferred were not agreed as to whether or not the privilege exists, nor were they agreed as to whether or not there should be such a privilege.

4. The Committee believes that the law should be clearly ascertainable and recommends amendment of the Companies Act to provide—

(*a*) that no director officer agent or auditor of the company or former director officer agent or auditor of the company the affairs of which are being investigated by an inspector shall have the right to decline to answer any relevant or material question on the grounds that his answer might tend to incriminate him ; and

(*b*) that evidence given before an inspector in answer to a question which the person answering claims at the time to be liable to incriminate him shall not be admissible in any subsequent criminal proceedings except a prosecution for perjury.

5. The Committee is of opinion that any person other than a present or former director officer agent or auditor of the company the affairs of which are being investigated by an inspector should have the privilege of declining to answer a question which may tend to incriminate him and recommends that the present doubts as to the existence of such a privilege be dispelled by legislation.

6. The Committee suggests the following amendments to the *Companies Act* 1938 to give effect to the recommendations contained in paragraphs 4 and 5 of this Report :—

In sub-section (8) of section one hundred and thirty-six of the *Companies Act* 1938 as amended by any Act—

(*a*) in paragraph (*b*) for the words " For the purposes of this and the next succeeding section " there shall be substituted the words " In sub-sections (3) (4) and (5) and the next succeeding section but not in the next succeeding paragraph " ;

(*b*) for paragraph (*c*) there shall be substituted the following paragraphs :—

" (*c*) No person who is (or has formerly been) a director officer agent or auditor of a company whose affairs are being investigated under this Act shall be entitled to refuse to answer any question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him, but if any such person claims that the answer to any question might incriminate him, and but for this paragraph such person would have been entitled to refuse to answer the question, the answer to the question shall not be used in evidence in any subsequent criminal proceedings except in the case of a charge against such person for perjury committed by him in answering such question.

(*d*) Except as expressly provided in the last preceding paragraph any person shall be entitled to refuse to answer a question if the answer might tend to incriminate him.

(*e*) An inspector may cause notes of any examination under this section to be taken down in writing and to be read to or by and signed by the person examined and any such signed notes may, except in the case of any answer which such person would have been entitled to refuse to give but for the provisions of paragraph (*c*) of this sub-section, thereafter be used in evidence against such person."

7. The Honorable the Attorney-General pointed out that " a perusal of that (i.e., Mr. Phillips') report would seem to indicate that the powers of an investigating competent inspector are deficient and . . . . . limit the scope of his investigation . . . . . ".

The Committee believes that the infliction of penalties for refusal to answer questions should remain a matter for the courts and that enactment of the amendments outlined in paragraph 6 of this Report will ensure that the difficulties experienced by Mr. Phillips in regard to obtaining answers to questions will not recur.

8. Section 387 of the *Companies Act* 1938 (as re-enacted by section 18 of the *Companies Act* 1955) provides, *inter alia*, " Nothing in this Part shall require disclosure . . . . . by a company's bankers as such of any information as to the affairs of any of their customers other than the company ". The Committee feels that in the event of a present or former director officer or agent of the company being a customer of the company's bank, the bank should be required on request of the investigating inspector to disclose information as to the affairs of that customer, and recommends that the section be amended by adding at the end of paragraph (*b*) the words " and its several directors officers and agents ".

9. Section 149 of the *Companies Act* 1938 provides that it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company, and that it shall be the duty of the secretary to record such

declaration in the minutes of the meeting. The Committee recommends an extension of the provisions of the section by the insertion of the following new sub-section to precede the present sub-section (3) of section 149 :—

"( ) It shall be the duty of the Secretary where more than one of the directors of a public company have disclosed pursuant to the provisions of this section an interest in the same contract or transaction to notify all the shareholders of the company of the interest so disclosed by a letter posted to the address of each shareholder shown in the register of shareholders."

10. The Committee notes that the maximum penalty provided for failure to comply with the provisions of section 149 is One hundred pounds and, in view of the large amounts which may be involved, feels that this amount should be increased.

11. The Committee examined a proposal that the legislation should provide that where a declaration and/or notification to shareholders required by section 149 should have been made and was not made in respect of any transaction, such transaction shall be void. The Committee recommends the addition of such a provision.

12. The Committee recommends that any intention to allot to directors of a public company shares in excess of their *pro rata* entitlement should be disclosed to the shareholders at the time an offer of shares is made to the shareholders.

The following provision is suggested :—

"No allotment of any share capital of a public company shall be made to a director of that company unless—

(*a*) the allotment is made on the same basis as shares have been allotted to all other shareholders of the company ;

(*b*) the intention to allot shares on a different basis to directors of the company has been disclosed to the shareholders at the time the offer of shares was made to the shareholders ; or

(*c*) the allotment has been approved at a general meeting of the shareholders."

13. The Committee recommends the insertion of the following new sub-section at the end of section 136 of the *Companies Act* 1938 :—

"( ) If from any such report as aforesaid it appears to the Attorney-General that proceedings ought in the public interest to be brought by any company dealt with by the report for the recovery of damages in respect of any fraud misfeasance or other misconduct in connexion with the promotion or formation of that company or the management of its affairs or for the recovery of any property of the company which has been misapplied or wrongfully retained he may himself bring proceedings for that purpose in the name of the company."

This provision is similar to that in the Companies Act of New Zealand.

The Committee recommends a further provision for the Attorney-General to be indemnified for his costs of any such proceeding out of the funds of the company.

14. Listing requirement (10) of The Stock Exchange of Melbourne provides—

"(10) Where a company makes an issue of shares to employees and allots any portion to a director holding office in an executive capacity either with the company or a subsidiary thereof, official quotation of the whole issue will be withheld until such time as shareholders have approved of the specific allotment made to any such director.

NOTE.—Unless a director holds office in an executive capacity he should not participate in an issue of shares to employees."

The Committee agrees with the principle of that listing requirement and recommends that legislative sanction be given to the requirement by provisions—

(*a*) that of the directors of a public company only those holding office in an executive capacity either with the company or a subsidiary thereof may participate in an issue of shares to employees; and

(*b*) that prior to the issue of any shares of an employee share issue to any such director the consent of the shareholders shall be first obtained.

15. The Committee further recommends that the prior consent of the body of shareholders of a public company to any issue of shares to employees shall be first obtained. The Committee believes that apart from the recommendation in this and the preceding paragraph of this Report the control of employee share issues should remain with the companies.

16. The Committee appreciates both that employee shares are not dealt with specifically in the present Act and that it may be difficult to distinguish between an "executive director" and a "non-executive director" and that therefore difficult drafting problems will be faced. The Committee is confident that a conference of representatives of The Stock Exchange of Melbourne and those experienced in company management with the Parliamentary Draftsman would resolve the difficulties.

17. The position of auditors holding shares of public companies which are their clients was examined by the Committee. It is felt that no legislation is required—that this matter can be left to control by the professional bodies concerned.

18. The Crown Solicitor, by memorandum dated 26th July, 1957, advised the Committee that, in his opinion, a failure to appear before an inspector in answer to a summons issued by an inspector appointed by virtue of the provisions of sections 136 or 137 of the *Companies Act* 1938 does not attract any penal sanction.

The Committee agrees with the Crown Solicitor that it seems rather futile to empower inspectors to issue summonses to persons without providing for some sanction in the event of the person summoned failing to obey the summons, and recommends that the present position be rectified by amendment to section 136 of the *Companies Act* 1938.

Committee Room,

1st August, 1957.

MINUTES OF EVIDENCE.

THURSDAY, 23RD MAY, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. W. O. Fulton,	Mr. Lovegrove,
The Hon. T. H. Grigg,	Mr. Sutton,
The Hon. R. R. Rawson,	Mr. Wilcox.
The Hon. A. Smith,	
The Hon. L. H. S. Thompson.	

Mr. P. D. Phillips, Q.C., was in attendance.

The Chairman.—We have with us this morning, Mr. P. D. Phillips, who prepared the report on this matter which we have been studying, and I have asked Mr. Phillips to summarize briefly the points which are at issue.

Mr. Phillips.—Mr. Chairman and gentlemen, I think perhaps I had better just indicate what the existing law is, so that you will appreciate how the difficulties arose. Two matters I have in mind relate really to the right of witnesses to refuse to answer questions at an inquiry, and it is convenient if you look at section 136 of the principal Act, as amended, on page 107 of the Consolidated Act. Sub-section 8 (*b*) has been amended to extend very much the people who may be interrogated. It used to read, as you can see, in 1938—

> For the purposes of this sub-section, the expression "agents" in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

At that stage, and rather parallel to the law in England, the inspector did not have very much room for manoeuvre as you can see. He could interrogate agents, and the agents were employees, bankers and solicitors and persons employed as auditors, but it was a very limited inquiry. It obviously began by really having a go at particular persons who were closely related to the company.

Now, that suffered a series of changes, and in 1955, by Act No. 5935, section 13, that sub-section was amended, and the amendment really resulted in revolutionizing the nature of these provisions for inspectors to report, because it goes like this—

> For the purposes of this and the next succeeding sub-section, officer or agent of a company includes—
>
> (1) the directors, bankers and solicitors of the company and any persons employed by the company as auditors;
> (2) ex-directors and ex-employees including bankers, solicitors and auditors;
> (3) persons known or suspected to have in their possession any property of the company, or supposed to be indebted to the company;
> (4) persons believed to be capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

Now at that stage, you see the door had been completely opened and this was virtually all the world, and the statute went on to provide "whether or not such person is an officer of the company." Well you can see gentlemen, the term officer or agent has become entirely artificial. This is not any criticism, it is just an explanation of the situation. Although the statutes now provide that an inspector may interrogate officers or agents, the term officer or agent has become entirely artificial, because it now extends to persons believed to be capable of giving information concerning the affairs of the company—which is everybody.

Mr. Fulton.—No one who has had any connexion with the company in any shape or form could escape that?

Mr. Phillips.—No. Perhaps it is a bit more difficult than that. If you just imagine an inspector issues a summons and directs some entirely strange person, not a director or employee, to come along, and asks him some questions. As soon as the man is sworn, he says, "I know nothing about the affairs of the company and therefore I do not propose to answer any questions." The inspector then says, "I believe you to be capable of giving information, and therefore you must answer the questions until you dissipate that belief, until you show there is no foundation for the belief." Of course, the man might take a risk and say, "I don't think there can be any foundation for supposing that I know anything and I am not answering any questions." If he was sent before a Judge, the test would be whether the inspector had any grounds for a belief that he was capable of it. However, it is clear enough, the inspector is told this and that by various people, sometimes perhaps in confidence and he forms a belief that Jones or Smith or Brown is capable of giving information and then he issues a summons and asks questions. If we assume everybody is willing to help, Jones, Smith or Brown will tell him what they know, or say, "You are mistaken in believing that I know anything, I don't know anything." You have to understand that, to understand how the problem arises.

Mr. Thompson.—What is the position if you establish in court that he has quite a close association with the company, and yet refuses to answer any questions?

Mr. Phillips.—I will come to that later, if I may. All I wanted to do by way of referring to this, is to indicate what had begun as a very narrow investigation of people directly related to the company, is now directed to everybody who can give information. Now that has raised a real problem, the problem of privilege, because whilst the investigation was limited to very small classes, nobody worried very much about privilege, but now that it can extend to anybody and everybody, there is perhaps a more real problem as to privilege.

Let me just illustrate what happens, and then come to the question of how you deal with it. What happened in Freighter's case is set out at page 25. I will read that paragraph, and indicate what did take place.

In the case of the directors, Collins, Mardling and Brown, when each of these individuals appeared, pursuant to summons to give evidence, at a relatively early stage in their interrogation they each declined

to answer questions relating to transactions under investigation, on the ground that their answers might incriminate them. This claim for privilege was put forward as a result of legal advice tendered to the individuals by their Counsel. It is therefore legitimate to conclude that they acted in accordance with the well recognized rules of law in this matter. They claimed the privilege only because of a bona fide belief in the danger of incrimination to which they referred. Of course these slightly ironical remarks do not look the same when you see them in print. What they had been told by their lawyer was, "As soon as he begins asking you anything of any importance at all, you just claim privilege, and keep on claiming it." So that you get to this sort of thing. You ask him some questions, "When did you become a director of this company?"

"Well Mr. Inspector, I claim privilege."

"What do you mean?"

"I claim privilege against incriminating myself."

"I only asked when you became a director, can that incriminate you?"

"I don't want to answer that, I claim privilege."

"But I only asked whether that question could incriminate you?"

"I claim privilege."

In other words, he is told, "Now don't let him trick you into answering any questions which may be dangerous, and because you will not know whether it is dangerous or not, you had better just say you claim privilege with regard to every question." If I had asked him whether he was married, he would have claimed privilege, because he would not know where that was leading. It is very difficult not to be irritated by it, or frustrated by it. They say, "Well, I don't know what he might have in mind, I will just keep on repeating in this parrot fashion." What he ought to do of course, is not to claim the privilege until he really might be incriminated. I am telling you this because it can really frustrate the whole inquiry by a man saying, "I claim privilege."

Then what happens is this. When such a matter arises before a court, it is open to the judge before whom the privilege is claimed, to inquire as to the nature of the incrimination as to which the witness bona fide believes himself to be threatened. If a judge is not satisfied of the existence of such a bona fide belief, he would rule against the existence of such a belief. If a witness does it in court, the judge says, "How may this incriminate you?" and the witness or his counsel try and explain how it might incriminate him, and the judge makes up his mind if it could or could not, and if he thinks it could, he says, "Very well, you need not answer," and if he thinks it is a lot of nonsense, and could not incriminate him, he says, "There is no privilege, answer the question." Then of course, if a man did not answer, the judge would commit him for contempt, and so the matter would go.

When the matter comes up before an inspector, all the inspector can do is to say, "Well you are under a statutory duty to answer questions," and if you look at the amending act, 1938, section 136, subsection 5, you will see how it works out—

> (*a*) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hand, to the court;
>
> (*b*) The court may thereupon inquire into the case and after hearing any witnesses who may be produced against or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

What happens, if a man refuses to answer, perhaps claims privilege, and it is not possible for the inspector to find out whether the privilege is well founded, or possibly the inspector decides it is not well founded, he reports the question and the refusal to answer it, to the court. The court has the witness up there, and then the court investigates the matter and determines if there is any privilege, whether it exists in the particular case, or whether it is a fictitious claim and not well founded, and the judge having made up his mind, can then deal with the witness, commit him for contempt, or direct him to answer. He would probably say, "Go back to the inspector and answer, or go to gaol for contempt." It is rather a clumsy procedure. People could of course, seriously embarrass the course of an inquiry of this kind, by constantly raising questions as to privilege or refusing to answer and delaying the whole matter and sending it off to court and perhaps a week later they would come back and two or three questions later they would refuse to answer, and off it would go again. You could really embarrass the course of an inquiry, but that is the way it works.

When it arises before a court, the judge determines it, but no such power of inquiry is enjoyed by an inspector conducting an investigation. When a man raises the question of privilege, the inspector has simply got to take out a summons, send him up before a judge, and have the matter investigated, and it might be very difficult, because the question of whether it did incriminate, might involve the judge going over the whole course of the inquiry to find out enough facts to determine whether there was any bona fide claim. The much more fundamental question is, ought there to be any protection for these people against self-incrimination?

Mr. Byrnes.—The inspector in a case like this is in a judicial capacity?

Mr. Phillips.—Yes, but he is not controlled in any way. There are various examples of inquiries of this kind, where the man is not protected from self-incrimination. The standard one is the investigation in bankruptcy. When a man goes bankrupt, he is brought up for a statutory examination, and then it is a free for all. Anyone can ask him anything that is likely to throw any light on the course of his dealings and what caused his bankruptcy, and how he has treated his creditors and so on. He must be examined. There is a statutory obligation to examine him in bankruptcy. Sometimes it is a very formal business, a few questions, just to comply with the statutory requirements, but sometimes of course, the creditors who are going to lose a lot of money turn up, and grill him. He is subject to this examination, and what he says in that examination is evidence against him, if offences are disclosed. For instance, he may be charged with not keeping proper books, or having gambled, which led to his bankruptcy, and if the judge decides he has to stand trial on one of these bankruptcy offences, everything that is said in his examination is evidence against him on the charge. So that is the example of a series of interrogations on which a man cannot refuse to answer on the ground it may incriminate him. The answer is, that is why we are investigating this, to see whether you should be punished.

On the other hand, the normal rule in court for a witness, is that he is not bound to answer any questions if there is a bona fide belief that it may incriminate him. Now what ought to be the rule with regard

to these people who are examined on these investigations? On the one hand, so long as it was only directors and employees of a company and auditors who were liable to be questioned, there would I suppose have not been any real room for debate. You would have said, "The very people this system is designed to chase up are directors, auditors and employees who may have defrauded the company, or acted improperly. It would be nonsence to have a power of summoning them and interrogating them, and then for them to be free to refuse to answer on the very matters which surely the inquiry is directed to." But now that the door has been opened so that it really extends in effect to anyone who can give information about the company, a new question of principle does arise. Ought the privilege to be taken away from everybody?

Now if you give these witnesses privilege, you do two things. It is very cumbersome to determine whether they have properly got it or not. If they like to plot together to claim privilege, you could virtually make an inquiry very difficult, but that is only a minor thing. Ought you subject these people to unlimited investigation, or ought they to have the same kind of protection as witnesses in court have? It is a nice question of policy you see, and I do not know that I can say any more about it than that. Now you have opened the door to everyone, you have to choose between subjecting the people to the risk of self-incrimination on the one hand, and on the other hand, very severely limiting the inspector in ascertaining the truth, because as he gets really near to something of importance, it may be the witness at that stage shuts his mouth and says, "I will not tell you any more." Those are the two things. I do not suppose any one thought this was a real problem until the door had been opened by this amendment, and now it becomes a real problem. Now I had formed the view that it was not legally possible to substantiate the claim to privilege under the act as it now stood, that taking into consideration the nature of the statutory power and the purpose of it, and the way it had grown up, on a true construction of the whole of the act, there was no well-based claim to privilege, and under those circumstances, let me tell you what happened.

As soon as these directors refused to answer, I said, "Very well, we will adjourn the matter and take proceedings to test the claim for privilege either on the grounds you have no bona fide belief, and in any case, there is no right to claim privilege." So we adjourned it, and issued the summons, and they delayed that a bit. I wanted to bring it on the next day and get it over, but they then said it raised very far reaching questions of law, and they wanted to investigate it. I said, "Very well, we will bring it on in a week's time." Then some other business took me to Sydney and I was rung up by the senior counsel appearing for these directors, and he said, "This is a very serious business. We understand you have a summons coming on on Friday morning." I said, "Yes." He said, "You can't do that." I said, "I am going to." He said, "This is very serious, this will have a catastrophic effect if it becomes public." I said, "That is for your clients, they will not answer questions." He said, "We would like to see you." I said, "I will not be back in Melbourne until Thursday night. This is due in court at 10.30 on Friday. I will hear you at 9.30. If your clients want to answer the questions at 9.30, they can answer them." What had happened was they had realized if it went into court and the directors were reported in the press as refusing to answer questions on the grounds it would incriminate them, it would not do them much good, and would have a disastrous effect on the market price of the shares—I was concerned about the innocent shareholders, that they might suffer. At 9.30, they wanted to talk, and I said, "I don't propose to talk about this, I will repeat the question which you would not answer." I asked the shorthand writer to read the question, then the witness said he would answer it. I said, "We will just go on until we come to some question you will not answer, then we will go ahead with the summons. They answered all the questions. It did not go to court, and no opportunity arose to debate before a judge whether there was a privilege or not. My view was that there was not, but I think it is a thoroughly bad plan to leave it like that, because it will lie low perhaps for quite a while until some other inquiry takes place, something of importance a fellow is feeling a bit frightened, and the lawyers are bound to say, "Look at that Freighters inquiry, they raised the question of privilege, it was not decided then, you had better do it all over again." What is more, if Parliament thinks that people should be properly deprived of privilege in circumstances such as in this case, I think it ought to say so, and if they think the privilege against self-incrimination is so important, they ought to say so, and not leave it to a judge, who although he will say he is interpreting the intention of Parliament, will scratch round to find some indication somewhere, which is not really a genuine indication, but a kind of theoretical basis upon which to deduce there is or is not privilege. I think Parliament ought to make up its mind.

Of course you will realize in America, this problem has arisen before bodies other than courts, congressional committees and so on. Mr. McCarthy and the rest of them get witnesses and interrogate them. The question there arises under the constitution. Congress cannot take away a man's privilege against self-incrimination. On the other hand, there have been lots of cases in English law, where Parliament has decided that it is desirable so to strengthen the power of investigation, that you ought to take away the privilege against self-incrimination in order to enable the investigation to proceed. I suppose nobody would have had much feeling about that, if it had not been that the door has been so widely opened now that anybody may be brought up and asked questions about dealings with a company. So there is perhaps a little bit more to be said for having the privilege. My own feeling is that I am not sure that I have much sympathy with the privilege against self-incrimination. A few centuries ago, there was more reason for protecting a man from un-disciplined inquiries, but I cannot see why a man is morally entitled to refuse to give the State information because it may reveal that he has been guilty of a crime, although no doubt in courts it is a different thing.

Mr. Lovegrove.—What is the principle underlying it?

Mr. Phillips.—It is rather curious when you examine the classical authors on it. The famous one is Wigmore on Evidence. He was the great authority, an American professor, on all parts of the law of evidence, and Wigmore says this thing grew up historically because the people feared the powers of government and authority and the crown and the judges, and thought that they would use their authority too severely, and therefore it ought to be limited and so in the early days, the privilege against self-incrimination grew up as a kind of protection against unlimited authority or tyrannical power. It is not really based I think, on any philosophical principle, but on historical fact, the possibilities of torture and other things. However, there is no doubt when the American Constitution was framed at the end of

the 18th century, this was looked upon as one of the rights of man, and it was put into the American Constitution as a legitimate right against governments, like due process of law and so on. I do not suppose anyone would support the idea of abolishing the privilege as it exists in courts, with all the adequate control of it which a judge exercises. He makes up his mind, is it bona fide, is there a real danger of self-incrimination and of course in courts, you are faced with this, that anyone can be brought along, you get a subpoena and anyone can be brought in as a witness, he is no relation to the parties, knows nothing, except he sees the motor car flash by or the burglar get out of the window. So that just because the courts can bring any citizen along and make him give evidence, there is perhaps more reason for maintaining the privilege. When you come to a statutory inquiry, designed for a particular purpose, it raises a question then, should you have protection against self-incrimination, when the whole purpose is to find out what really happened, and locate the evil doer. On the one hand, you defeat the very purpose of it if you allow the privilege to remain. On the other hand, you may say if ever there was a case for protection against self-incrimination, it is this one. I am bound to add this, these investigations can take place in private, the inspector may be a legal man, interrogating laymen, he could refuse any legal assistance to the witnesses he is interrogating, he could as it were, investigate them in his own room with no press, no public present, no legal advice, and make a record of it, so that it might be said, if ever there is a case for protection against self-incrimination, it is in proceedings of this kind, where a man does not have, first of all, the trained responsibility of a judge, and secondly, the publicity of proceedings in court, and thirdly, the protection of adequate legal advice present in court. All the things that go to protect a witness are absent, or may be absent in the inquiry, and if the inspector has not got a high sense of responsibility, if he is determined to ferret out the facts at all costs, it may be the situation is one where the protection against self-incrimination is more important than ever. Those are all questions of policy.

Mr. Lovegrove.—Would the frequency of any particular type of occurrence such as this, have a relevancy to the application of the principle?

Mr. Phillips.—I do not think it would, because I suppose everyone would hope that there will not be many investigations, that the business community will behave itself, but of course the question will not arise until there is an inspector conducting an investigation, but if there is an inspector conducting an investigation, the probabilities are that prima facie, there is some reason for suspecting wrong doing, and therefore someone may feel he may be incriminating himself, and therefore the question of privilege is more likely to arise in connexion with cases of this kind. I would think the next time something really important crops up on an investigation of this kind, the people concerned are bound to be told by their legal advisers that they raised the question of privilege in Freighters case and it went off, but you had better try it all over again.

Mr. Byrnes.—The object of this inquiry is to ascertain if there is anything wrong, if they have acted improperly, how are you going to find out?

Mr. Phillips.—Other people may know, not the person himself who is guilty of some offence, and that is always true in court, you cannot make a man admit. Very often a man is charged with (say) breaking and entering. No doubt if you could summon him as a witness and put him in the box and ask him questions, you could convict him out of his own mouth, but you cannot make him a witness against himself. What does happen of course, is that the Police interrogate him, and then they tender his statement, then he says he was forced to make the statement by threats or violence, so there is a long history of protecting individuals, and you have always got to weigh, ascertainment of the truth on the one hand, and the dangers if they are such, of self-incrimination, on the other.

Now here is a real problem. Do we prefer the ascertainment of the truth, or the protection of the guilty against self-incrimination. It does arise, and in the present form of the statute, it is very doubtful whether the privilege is there or not, and I had a feeling that Parliament should make up its mind on this question of principle, and either put it in that any witness summoned under these proceedings may refuse to answer on the grounds that the question may incriminate him, and the matters will then be referred to the court, or put it that witnesses so summoned shall not be entitled to refuse to answer on the grounds that it may incriminate them. On the present situation, it is a matter of principle of far reaching importance to freedom, and the ascertaining of truth, but remains extremely dubious and will only embarrass the inspectors.

Mr. Wilcox.—You just put to us Mr. Phillips, the two fairly simple ways in which the law could be amended. Do you consider that that covers the situation, it is considered to be one or the other, in such simple terms as you state?

Mr. Phillips.—Yes. I have no doubt once anybody concerned said, we will either retain privilege, or we will abolish it, you could say to the draftsman, do that. There are all sorts of existing precedents in the Statute Book where either privilege is expressly included or taken away. He would just need to turn it up and put it in. I think perhaps I should emphasize this. I have been putting pro and con, I hope reasonably equally. The probabilities are that if it is left alone, ultimately the judge would say, there is no privilege, but only after a long time and a lot of expense, so that it is just one of those things Parliament ought to clear up, I think.

Mr. Rawson.—You mentioned that the need for attention to this in particular is because of the extension to other persons, other than directors and employees, yet the case used in illustration has been one connected with directors. I thought from what you said previously, there was no problem when it only referred to directors and people like that?

Mr. Phillips.—When the act was in the form it was in 1938, and the people who could be summoned were very limited classes, bankers and solicitors and persons employed by the company as auditors, I think if the matter had been raised, it would have been said there is less to be said for any privilege against self-incrimination when you are investigating a limited class of persons who were on the whole, in positions of trust, and who ought to reveal all they know, but now, the inspector can really pull in almost anybody he thinks is likely to give him information, and interrogate him. Let us consider, a director says that he was in London at the relevant time, and therefore had nothing to do with what happened in the company, and the inspector gets the idea that he was not in London, that he was having a week-end with his girl friend in Frankston. So he issues a summons to the lady in question to get her to come up and say whether in fact she was spending the week-end in Frankston at the relevant time. She says, "I know nothing about the business, I have no shares in the company, why have I got to give information?" The inspector says, "I think this might throw some light

on the affairs of the company, because it will show he was in Melbourne." That is all right, perhaps she could not claim privilege against self-incrimination, but you have extended the inquiry to people whose connexion with the company is fairly remote, who have no business connexion, who do not get any salary or income, who were just caught up in the affairs of the company by accident. That is what I had in mind. If someone had raised it in 1938, you would have said, there is no point in protecting people of a very limited class, but there might be something more to be said when anyone can be brought in, without any activity of their own, by accident, and it makes the debate about privilege or no privilege, much more substantial than if the privilege is that of a very limited class, who it may be said, because they have taken on the job, because they have become directors or employees, if something goes wrong with the company and there is an investigation into their affairs, well they have not got any good ground for claiming privilege, because they are connected with the company and must make a clean breast, but when it is outsiders who happened to get connected, the situation is very different.

The other matter is a rather more technical one, but this also has really happened. If you look at section 387 of the 1938 Act—

> "Where criminal proceedings or any proceedings pursuant to section 277 of this Act are instituted under this part against any person, nothing in this part shall be taken to require any person who has acted as Solicitor for the defendant to disclose any privileged communication made to him in that capacity."

Now that was a not unnatural provision I suppose, retaining the professional privilege of a solicitor against disclosing communications from his client, in criminal proceedings under the Companies Act, and it was quite limited. Well it was amended in 1955 in a very curious way—"nothing in this part shall require disclosure," now this part embraces the powers of the inspector to conduct inquiries, so that was saying, nothing in this part shall require disclosure, and that meant either to an inspector, or criminal proceedings for misfeasance by directors or anything else. It included the proceedings before the inspector, whereas the unamended section 387 clearly referred to criminal proceedings in a court, so this applies to the inspection—

> Nothing in this part shall require disclosure—
>
> (*a*) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client.

I took the view, and I think I still do, that the fact that Parliament specifically provided for a solicitor's privilege before the inspector, and did not say any more, is the best indication, as a matter of construction, that there is not any privilege against self-incrimination, because there is a particular reference to a particular privilege, and the assumption is that no other privilege was intended to exist, no common law privilege was intended to exist, because if all common law privileges which exist in court, existed, there was no reason for putting in the solicitors, and having specially mentioned one, the normal rule would be that you do not consider any others exist, because they are not mentioned. It was for that reason that I thought this summons should go to court, and these people be compelled to answer, that the court would take the view there was no privilege. This is the doctrine where one is expressed, that others are not.

It is simply, "By a solicitor of any privileged communication made to him," or "By a Company's bankers as such, of any information as to the affairs of any of their customers, other than the company." The meaning presents some difficulty. This really will cause some trouble if these investigations become at all common. What happened was that in order to find out how money had been dealt with, it was necessary to trace the activities of the directors, in going to their banks and making provisions through their banking accounts, to have money made available on account of Freighters. They bought shares in the Queensland company and they each put up £16,000. To cover up their tracks, by going to their own banks and each saying to his own bank, "I want to send £16,000 up to Brisbane and make it available to the Commercial Banking Company of Sydney, Brisbane Branch, in the name of the Bank Trustee, so that I do not appear in the matter at all." To the outsider looking at the matter, all he could see was that bank trustees had purchased shares in Brisbane with funds of the bank, and you could not find out that the directors were concerned, unless you investigated the directors' own bank accounts, and found that the directors had provided the £16,000 from their bank accounts and sent it up to Brisbane, where it had been handed over to the trustees of the Commercial Banking Company of Sydney. There were four separate banks concerned in this, because more than one director banked at the same bank, and three of the banks, when I saw them and said, "I want full information about these directors and their monies and how it got to Brisbane, I will give you a week, and in my view, you are bound to answer, but you can take advice if you like, and I will enforce my rights against you so far as they exist, but I will give you a week to get advice, and if you let me know we will decide what is a convenient way to get this information." Well three of the banks within the week came back and said, "We are happy, to tell you all you want to know," and that was done. But the fourth bank said, "We consider that we are privileged against revealing this information." I said, "But you are not the company's banker, and the provision in the Act requiring no disclosure refers to company's bankers and you are not the bankers for the company, so you do not come within that section at all." They said, "We have taken leading counsel's advice. He has told us that we are privileged." I said, "There is not any banker's privilege anyhow. All that happens is that you might break a contract with your customer if you reveal some information, but there is no legal privilege, you are just liable for damages to your customer. Are you really afraid that this director will sue you for damages? I do not believe it." They said, "This is a matter of principle, we do not think that banks ought to disclose information about their customers." I said, "Except when bound by law to do it," and they said, "Well we have been advised we are not bound." I said, "It is a very muddled section, and I am very loath to start proceedings against the bank, but I will have to, if you will not tell me." I said, "I think this is probably a lot of nonsense. Before you tell me you have a privilege and would be liable to your customer for breaking it, you had better ask your customer whether he has any objection to you revealing it. We will adjourn for 24 hours. They came back and said the customer had no objection, so there was no further question of privilege, but that bank certainly will do the same thing I have no doubt, if the situation occurs again. They will say they have had leading counsel's advice that they are privileged, and in view of that, they would be liable for damages. It is quite likely that since that time that bank will have told the other banks what happened, and all the banks may therefore claim privilege. I have no sympathy with that at all. This is a lot of nonsense. There is no banker's privilege. The relation between the banker and customer is confidential, it would be a breach of the contract to reveal the confidence, unless there is a

legal obligation to do so. It all arises over this provision which is badly framed. I have no idea where it came from. It is a privilege against disclosure by a company's bankers as such, of any information as to the affairs of any of their customers, other than the company. I think what the draftsman overlooked, was that the company's bankers might also be the bankers for some very important witness, a director of the company, who happened to be a customer of the company's banker, and the company's bankers might then say, "Well this is inquiring into the affairs of one of our customers, and we are not bound to disclose it," and the answer is, "you are being investigated, but not as the company's banker *as such*, you are being investigated as the director's banker." All sorts of difficulties arise with that. I think what the draftsman had in mind to say in this section was that there should be no disclosure of persons quite unconnected with the inquiry, and that is all he intended to protect. It is a very confused section, and my own view is that it ought to be made quite clear to the banks that they are bound to answer all questions relating to the affairs of the company, just like every other witness, and the only protection they have is against disclosing anything unrelated to the affairs of the company dealing with some customer, and unrelated to the affairs of the company. Now that the door has been opened, and now that agent means any person who is believed capable of giving information about the affairs of the company, that must often be a bank. A bank is a person capable of giving information about the affairs of a company, and never more so than when you are trying to trace proceeds which an employee or director may have abstracted, or some illicit gains. You want to investigate the bank account, and you say to the bank, "You are a person who has information about the affairs of the company, and I want to find it out." This section, or any implications derived from it, might stand in the way. I would make it clear that that sub-section is not intended to stop the investigator from going to any bank whom he believes capable of giving the information about the affairs of the company, and getting the information. The information he may want may very well be something to do with some customer's account, a director's account, or bookkeeper's account, or the accountant to the company, or something like that. You want to chase up information about the company, and I have suggested in the report how that could be done.

The Committee adjourned.

WEDNESDAY, 29TH MAY, 1957.

Members Present:

Mr. Manson in the Chair.

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. W. O. Fulton,	Mr. Lovegrove,
The Hon. T. H. Grigg,	Mr. Sutton,
The Hon. R. R. Rawson,	Mr. Wilcox.
The Hon. L. H. S. Thompson.	

Mr. A. Dodgshun and Mr. J. H. Kirkhope, representing the Institute of Chartered Accountants in Australia, were in attendance.

Mr. Dodgshun.—First, I might state that the Institute feels that as the entire Act is under review it is not advisable to press for any immediate amending legislation connected with the matter under review. Nevertheless, we feel that we should attempt to help the Committee by expressing views on whatever subjects might be brought up in the course of this Inquiry. I shall ask Mr. Kirkhope to later enlarge on the views I express, but firstly I wish to run briefly through our thoughts at the moment.

In connection with the question of witnesses giving evidence and the right to call witnesses, we feel that such powers should be in the hands of the court as the inspector appointed under the Act has virtually no power to inflict penalties, and we do not believe he should be armed with such authority. I am attempting to give a résumé of the views of our members, and I ask Mr. Kirkhope to correct me if any of my remarks are incorrect.

The second question under review concerns the right of directors to take up or acquire shares in a company. We think they should retain that right in line with any other shareholders. I am running through the letter of the Attorney-General and am answering the questions in the order he raised them.

The third point covering dealings in companies' shares by directors really comes down to a disclosure of business dealings by such persons. The matter falls into two divisions. The first is dealing with a company in anything other than shares, and the second is dealing in the shares themselves. We believe it is impracticable to attempt to enforce a disclosure of all dealings by directors with companies. A good example is that of a fruit grower who is also a director of a preserving company. As a fruit grower, automatically he has dealings with that company, and it would not be at all practicable in my opinion to attempt to force him to disclose all of his dealings with the firm.

In regard to the allotment of shares and dealings with shares, we do not think that a director should be prohibited from participating in such activities in connexion with companies' shares. However, we do suggest that sub-section (4) of section 169 of the United Kingdom Companies Act might be incorporated in our legislation. It provides:—

> If from any such report as aforesaid it appears to the Board of Trade that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud misfeasance or any other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained they may bring them for that purpose in the name of the body corporate.

In place of the words "Board of Trade" we suggest should be substituted the word "Registrar". Although it will not give any great strength to the legislation, we think the inclusion of such a provision might act as a deterrent.

Mr. Kirkhope.—In effect, the sub-section provides that if the Board of Trade thinks there has been some action taken by the directors of a company where a civil action would lie, following a report by an inspector appointed by the Board, it can, on behalf of the company take the necessary steps to recover civil damages. In Victoria, the Attorney-General takes action in the case of indictable or criminal offences, but civil offences are left in the hands of the company concerned. The Board of Trade has additional power to act on behalf of a company to recover damages from a defaulting director.

Mr. Dogshun.—We suggest that when a board of directors proposes to issue shares to employés that intention should first be disclosed to the shareholders but the power over the issue should remain with the Board and working executive directors should be entitled to their proportion of the shares so issued. If there is an issue of shares to shareholders or to the public and the whole of the issue is not taken up,

then we consider that the directors should have the right to take up the remainder of that issue but it would be advisable to state in the prospectus or the notice of issue that the directors reserve the right to take up the balance of the shares.

Mr. Wilcox.—Could not the directors apply in the ordinary course?

Mr. Dodgshun.—Yes, but with an issue of one share for two the directors are entitled only to so many shares. Quite a number of shareholders do not take up their full allotment and those shares are dealt with in several ways. The directors often take them up.

Mr. Byrnes.—I take it that those shares would be issued at a definite price and there would be no reduction for directors.

Mr. Dodgshun.—That is so.

The Chairman.—Do the directors disclose to the shareholders that they are taking up so many shares? Assume that there is an issue of 5,000 shares and 600 are left; the directors then split them up amongst themselves.

Mr. Kirkhope.—The point Mr. Dodgshun is making is that at the time an offer is made to shareholders if it is the intention of any member of the board of directors to take up more than his pro-rata interests of the total issue, having regard to his then shareholding, the intention should be disclosed when the offer for subscription to new shares is announced. We consider that if shareholders are put on their guard in regard to this matter there is then no necessity for a subsequent announcement to be given to shareholders that Mr. A. will take 400 shares, Mr. B. 300 and Mr. C. 200. After every allotment a public document is lodged with the Registrar in which is shown the number of shares allotted and that document could be inspected by any interested party. We take the view that once a shareholder is informed of an intention to raise more capital and has his specific rights in the matter he either has the opportunity of selling his rights or ignoring the offer because he has not the means available to take up his proportion. He might say, "I should like my friend to take up the shares for me." He may give another shareholder the right to make an application. We are concerned primarily with the possibility of directors acting improperly. We consider that a prior disclosure of intention by the directors is as much as is necessary when an offer is made. The subsequent return to the Registrar gives all the further information that may be required and a separate disclosure to each shareholder is not necessary.

Mr. Sutton.—Do you recommend the disclosure to the shareholders of the intention of the directors to take up additional shares?

Mr. Kirkhope.—Yes. We think it is proper for the shareholders to know whether the directors have it in their minds to take up more than their quota of shares.

Mr. Sutton.—Do you suggest a disclosure of the number of shares to be taken up by the directors?

Mr. Kirkhope.—No, because the directors would not know the number at the time the offer was made. The directors would simply state that if there were any shares not taken up by the shareholders they would reserve the right to take up that balance.

Mr. Sutton.—Is your proposal that only shares not taken up be allotted to directors?

Mr. Kirkhope.—Over and above their quota according to their shareholding, yes.

Mr. Fulton.—Do you consider that such an announcement would give the shareholders the impression that the issue of shares was more valuable?

Mr. Kirkhope.—I suspect that it would. In a public company no special privilege can be given to one shareholder against another.

Mr. Wilcox.—Including a director.

Mr. Kirkhope.—That is so. If a deceased estate or a shareholder without means forgets to do anything about the rights, then a number of shares are left. The directors are interested in increasing the capital of the company and instead of leaving the shares undistributed they take them up at the same price—par or above—at which they were offered to the shareholders. However, if the directors propose to adopt that course they should disclose their intention at the time the offer is made.

Mr. Wilcox.—What would be the purpose of such a disclosure?

Mr. Kirkhope.—The principal purpose would be to avoid a suggestion that the directors may gain an unfair advantage by knowing that they are entitled to take up the shares that are left and not disclosing that fact.

Mr. Wilcox.—Many such share issues would be underwritten.

Mr. Kirkhope.—That is so, and when they are underwritten, the underwriter has the automatic right of finding his own clients to "take up" the shares.

Mr. Wilcox.—Would it not be an automatic obligation?

Mr. Kirkhope.—Yes, under an underwriting agreement. It is only a right if they are "taken firm." If they are not "taken firm", it is only a matter of arrangement between the company Board and the underwriter concerned as to how the shares are taken up.

Mr. Wilcox.—Is the underwriter obliged to take up the shares?

Mr. Kirkhope.—He is obliged to see that the money is paid for the shares. Only if the directors come to his aid, it relieves him to some extent, or it minimizes his financial burden.

Mr. Rawson.—The directors have two opportunities of taking up the shares, whereas the shareholders have only one. Is that not unfair to the ordinary shareholders?

Mr. Kirkhope.—Yes, although it is minimized to a certain extent. Issues of shares are not always underwritten—when making an issue to your own shareholders, they are not always underwritten. In times of financial stringency because of a "credit squeeze", such as towards the end of 1955 and early in 1956, it is common for companies to underwrite their offers of shares to their shareholders. Putting that aspect to the side for the moment because it could be said that the underwriter enjoys an unfair advantage in being able to take up the unsubscribed shares, I shall deal with shares offered to shareholders without underwriting. It is normal for the Board of a company to indicate to the shareholders that those wishing to take up more than their allotted proportion of shares may also apply for them, as the Board wishes to make sure that the whole of the issue is subscribed.

In a non-underwritten issue, most shareholders have an opportunity of applying for more than their full quota of shares. On many occasions such applications have exceeded the total number of shares to be

issued. It is then in the hands of the Board to decide to what extent any one application may be granted, and many courses may be adopted. For example, if there was an issue for £1,000,000, and applications exceeded this amount by £200,000—one person may want 10,000 shares, another may apply for 50,000, and several may seek so many hundred shares—it might be decided that all applications for up to 500 shares will be granted *in toto*. The outstanding shares may be allocated on a pro rata basis to the remaining applicants. On another occasion the Board might say, "We will allocate the shares amongst the applicants on a pro rata basis," and each applicant might receive one-fifth of the total number of shares he applies for. On yet another occasion, it might be determined that a minimum number of 50 shares should be allocated to all applicants, who would be permitted to apply for shares in multiples of 50—and the Board would have power to allot to any applicant that number or less. That is about as far as any plan could go. Everybody is given an equal chance to apply. Then we say, "The small applicant should have his full quota of shares, but the number of shares issued to the big applicant should be abated."

Mr. Thompson.—During the negotiations with the Australian Farm Machinery Company, the directors of Freighters Limited acquired certain shares. Would that be a common practice?

Mr. Kirkhope.—No; it is the only such case known to me. At a meeting yesterday of the council of the Institute of Chartered Accountants, I asked whether anyone had encountered a comparable circumstance. Some of my colleagues were in large firms such as Flack & Flack but no one could cite such a case. I should like to deal more fully with the case of Freighters Limited, but I have directed my attention to queries raised about a particular issue of shares following Mr. Dodgshun's remarks.

Before concluding, I should like to refer to one or two other matters that may interest the Committee. Directors, broadly speaking, can fail in their duty through being parties to transactions which are not transactions "at arm's length." If I were going to sell a house to a person whom I did not know, the transaction would be at arm's length. If Mr. Dodgshun were my brother, or my brother-in-law, and I sold him a house, we would be so close together in some other way that it would not be such a transaction. It would not be a transaction at arm's length if a Board allotted to Board members a number of shares. If the recipient of the shares was merely a shareholder, not a member of the Board, the transaction would fall within that category. If a director, as in the case of Freighters Limited, supports a plan to buy shares in a separate company which that director owns, although he is acting in concert with other members of the Board in the purchase of the shares, it is not a transaction at arm's length because he is a member of a group buying his own property.

The first proposition, then, is that a director can get into trouble only if he deals with transactions which are not at arm's length. In the allotment of shares to directors, and in the acquisition of property owned by one or more of them, there is always a risk of people criticizing the transaction because directors are both buyers and sellers. We consider that the question of transactions at arm's length lies right at the core of any criticism that may be made concerning the activities of directors.

A second aspect is that of disclosure. We have a rather strong feeling that disclosure of intent is as important in the normal operations of a company, where a director is both buyer and seller, as it is in the formation of a company. Much evidence must be included in the prospectus where any promoter, director, or proposed director is a party to the acquisition of a business, property, or shares. But when operations start, there is currently not the same need for directors to make a full disclosure to shareholders.

The two points I wish to leave with the Committee are the necessity for having wide disclosure of intent, and the need to protect directors from their own possible misfeasance and to have the right of recovery in the event of a director being guilty of misfeasance. If I could enlarge on those aspects on a future occasion, I should like to do so.

Mr. Sutton.—When you speak of directors, I assume that you really mean the company. The directors run the company; they hold meetings, pass resolutions, and so on.

Mr. Kirkhope.—Legally, they are not the company, although its control is in the hands of the directors, who are the nominees of the shareholders. By law, the directors are both trustees and agents for the company; their responsibilities are intermingled. There is an obligation on every trustee not to make any profit out of his office, and there are reasons why he must not take a profit even though it is disclosed. We are very conscious of the need to preserve the legal concept that a director is both a trustee and an agent, and must not make an improper profit just because he is one of the persons who conduct the company's affairs.

Mr. Barclay.—Would that viewpoint apply to co-operative societies?

Mr. Kirkhope.—By definition, a co-operative society has the intention of trading with its own shareholders. In a cannery, for example, there will be directors who grow fruit, supply it, receive bonuses, and so on. It is fundamental of co-operative societies that all members trade.

Mr. Byrnes.—The number of shares that directors of such societies can buy is limited.

Mr. Kirkhope.—Yes, and other limitations apply.

Mr. Wilcox.—Their responsibilities and duties would be as heavy as those of directors of any other company.

Mr. Kirkhope.—There is no difference. Directors could not get a better price for fruit they supplied than a neighbour who was not a director.

The Committee Adjourned.

THURSDAY, 30TH MAY, 1957.

Members Present:

Mr. Manson in the Chair.

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. W. O. Fulton,	Mr. Lovegrove,
The Hon. R. R. Rawson,	Mr. Sutton.
The Hon. A. Smith,	
The Hon. L. H. S. Thompson.	

Messrs. J. H. Kirkhope and A. Dodgshun, representing the Institute of Chartered Accountants, in attendance.

The Chairman.—We have here with us this morning Mr. Kirkhope who is going to crystallise the two or three points he is particularly going to deal with, and after that he is free to answer questions on these points or any others, whether it be the general problem of the question of companies or the specific problem of Freighters.

Mr. Kirkhope.—Mr. Chairman and gentlemen, the matters to which, so far as I understand your attention has been directed, is contained in a letter from Mr. Rylah, the Attorney-General, on the 16th October, and he invites your attention to three points, firstly, the power of competent inspectors, secondly, the law relating to disclosure by directors of direct and indirect benefits, and lastly, the apparent anomalies in the law relating to the issue of employé shares.

We believe that under the amending Companies Bill the inspector appointed by the Attorney-General will be given all the powers that an inspector should be given because, if a witness refuses to give evidence in the last resort there is practically no remedy against him except by committing him to gaol, and that is a power of the Court. He can be fined, but he still does not disclose his information, and so, as that extreme penalty is one that we believe should be left exclusively in the power of the Court, we feel that, broadly speaking, the inspector is given, by the new Companies Bill, adequate powers for all purposes, except for wilful withholding of information, and as soon as you get to that aspect in an investigation, we say now, "Should an inspector (who may be a member of the Bar)—he could be even an accountant,—be given power over his fellow subjects?"

The Chairman.—Just on that point, may we say the new Companies Bill you are talking about is the Bill which is not yet before Parliament.

Mr. Kirkhope.—That is correct.

Mr. Rawson.—You are mentioning something of which we have no knowledge at all.

Mr. Kirkhope.—The Parliamentary Draftsman has in fact, prepared a Bill. There have been a very limited number of copies printed, and perhaps before it comes to your Committee it is intended by the Parliamentary Draftsman that the Law Institute, the Accountant Societies and so forth, should pass their comment on it, so that you get an informed comment with the Bill.

Mr. Byrnes.—It is going through the usual course —to send the Assembly Bill out into the wide world.

Mr. Rawson.—Could I clear up a point? This is a new Bill.

Mr. Kirkhope.—A completely new consolidation running into some 400 sections.

Mr. Rawson.—It is more than a consolidation.

Mr. Kirkhope.—It is a consolidation and new material.

The Chairman.—It consolidates and amends.

Mr. Kirkhope.—It will not be an amending Bill in the sense of just amending the 1938 Companies Act.

Mr. Byrnes.—That Bill will come before this Committee.

Mr. Kirkhope.—I explained that because Mr. Dodgshun made reference to it yesterday and fortunately we had a little prior knowledge because both of us had an opportunity of skimming it.

Now, in so far as inspectors are concerned, the new Bill will embrace everything that is in the *Companies Act* 1938, plus the amending Bill that was brought in in 1940, and very little more, but it has been a deliberate approach by the Parliamentary Draftsman to what the law should be as he sees it, and to our minds it is just about right from the point of view of investigations.

Then the second point was the disclosure, by directors, of direct and indirect benefits. I left the meeting yesterday indicating to you that I find that, more often than not, directors get into trouble in confusing their personal interest with the company's interest, when a transaction is not at arm's length, and I explained what I meant by that. A disclosure, as all of you know, can take place after you have committed a sin, and it can take place before you propose to do it, and a disclosure after the event is always more embarrassing than if it is announced beforehand, and if a disclosure, by directors, of any transaction in which they are interested, is made beforehand, it does not necessarily follow that the disclosure, by itself, absolves them from all charges of misconduct. It can be cloaked in such a way that although there is a technical disclosure, the reality of the transaction is not disclosed. So I feel that while disclosure is very desirable in every case, whether the transaction is bona fide or whether it is not, there must also be a power to ensure that directors, who are guilty of any misfeasance, run the risk of having a claim for damages instituted against them for recovery.

Now we take the view that disclosure by a director in any transaction, of his interest in that transaction, is paramount, and under the present Companies Act, that is the 1938 Companies Act, a director is required to disclose his interest in any transaction at a Board meeting that is considering the particular transaction. He is required by law to disclose it and if he does not, he could be guilty of an act which gives rise to a right of damages.

The Chairman.—This is before the transaction takes place.

Mr. Kirkhope.—And he has got to disclose it at the time the transaction is before the Board.

Mr. Thompson.—Would you think it more effective that he was required to disclose it to a meeting of shareholders because it is quite possible that all the directors will be interested parties themselves.

Mr. Kirkhope.—I go some distance in meeting you on that because if you consider one director only in a Board of five, to make it fairly easy, that director could either be the paramount director and as it were coerce the others into agreeing, or he could be up against a chairman like myself who would say: "We do not do this." But I feel that I would meet you on this, that if two or more directors, that is, if more than one director is involved in any transaction, then I am getting to the point where I feel that disclosure to shareholders is almost necessary. I take the view that just as there must be a disclosure of the interests of directors in a prospectus when a company is being floated, a comparable type of disclosure should also be required when two or more directors are interested in any transaction affecting the company's property or property to be acquired. And in regard to shares, ordinary shares which a director takes up, I also re-affirm the view that if the directors allot to one or more of their number shares in excess of their pro rata interest, the intention so to do should also be disclosed at the time an offer of the shares is made to the shareholders. You say,—"But supposing a company made an offer of shares to the public, whether underwritten or not underwritten, should there be any limitation placed upon the number of shares which a director would apply for?" To that I would say, "It is impossible for us to recommend that he should be limited as to the number of shares for which he applies in an open offer of shares to the public." Why? Because, gentlemen, an offer of ordinary shares to the public, carries inevitably an element of risk, and if a particular director is pre-

pared to back the venture with his own money, I have the feeling that he should be allowed to do so, because a director is one of those primarily responsible for the success of the enterprise.

May I digress for the moment and just explain to you that under the Companies Act there is no requirement for a company to be managed or a Board to run a company in such a way that profits are earned. No director is responsible if no profits are earned. It is an instinct apparently in human nature and the law takes for granted that any enterprise should be run at a profit.

Mr. Byrnes.—An attempt should be made, in any case.

Mr. Barclay.—It is desirable.

Mr. Kirkhope.—We believe so, because unhappily, if we do not make profits, we cannot maintain staff, we cannot develop and we would never satisfy the people who are backing us. But still the law does not say that an attempt should be made to earn profits, and therefore, if a director backs his judgment in a venture, there is an element of risk, and if it fails, nobody is blameable, and no action can be taken against him, just because profits were not earned. The only two cases where action can be taken against a Board are, (*a*) if they act *ultra vires* the Memorandum of Association that is, they undertake transactions which they are not empowered to do, and (*b*) if they themselves are guilty of some misfeasance or misconduct which affects the assets of the business. They can be the best fools in the world, and there still would be no action for damages against them.

Mr. Byrnes.—That is, in an issue of shares to the public which any person could apply for, without any limitation at all. Any person at all, and it would not put the director on any different basis than any member of the public who wished to risk his money in that venture.

Mr. Kirkhope.—That is correct. And I have advanced the reason why. Now there is a special class of shareholder and a special class of share known as the employé share. Sometimes these employé shares are very restrictive in their character, and sometimes they are not restricted. On certain occasions you will find that a company issues employés with employé shares which are to be paid for over an extended period of time, and special consideration is given to employés which would not be given to a member of the public who is expected to pay for his shares pretty promptly. Then there is another class of employé share where an employé only receives the benefit of those shares during the time that he is employed, and when he terminates his employment the directors can call upon him to transfer those shares to another employé. And the third main bracket is an issue to employés of ordinary shares which, in due course will be available for sale on the market. Quite a number of difficulties have been experienced in practice in dealing with a special class of employé shares where an employé has no rights after he has left; and the general trend at the moment is to allow employés to take up ordinary shares and if they have been fully paid for, and after a period of restraint has passed, to give them the freedom to sell them on the market if they so desire. That freedom to sell, in a measure, takes away one of the purposes for which a special issue of shares to employés is arranged. because he then goes into a money making deal, and as soon as the market price warrants a sale, he will sell his shares. He is really not interested in supporting the company with capital. He is far more interested in making sure that he makes his contribution to the company's activities as an employé, and when he has done that, he has done his main job. But nevertheless it is my firm conviction that the mass—the body of employés—if suitably managed, are the people that make the profits, and as such, they are entitled to consideration as far as humanly possible, so that they share in the rewards that they themselves have contributed to accumulate.

Mr. Dodgshun.—I entirely agree.

Mr. Kirkhope.—For those of you who know anything of the Scriptures, there is a text, "Muzzle not the ox that treadeth out the corn". Now that happens to have been ingrained in me for many, many years, and I have had a number of experiences in my life when my colleagues in several companies with which I am not now associated felt that it was the white-collar boy rather than the man at the bench that makes the profit. I say, "No, it is the man on the bench that is making the profit". He has got to be fed with orders and fed with materials and money put up, but it is his work that makes the business.

Mr. Fulton.—He does the job.

Mr. Kirkhope.—He cannot do it alone as a rule, but it is not the white-collar workers that make the profit—they mostly spend it. We try to spend it wisely, but we still spend it.

Mr. Lovegrove.—You believe in the theory of surplus value and not the theory of the marginal efficiency of capital?

Mr. Kirkhope.—No, it is the surplus value. If you then recognize that employés shares can fall into one or other class and you will allow me to deal with them in the Board, we face this question. "Who are the employés?" The "body" of the employés is obvious, and the questionable ones are the executive directors. Now, an executive director, as a rule, is an employé who, because of his capacity, because of his ability to lead, because of his judgment and discretion, is vouchsafed by the other members of the Board a seat on the Board, so that they can have the advantage of his direct representation to them, and as that he can feel that he is a colleague of theirs, and it is nearly always an honour that is conferred for merit. Now, these executive directors as a rule are those charged with carrying out the policy of the Board and implementing it. In their hands, more than in the Board as a Board, the success of an enterprise or its failure depends. These executive directors might be on £3,500 or £4,000 a year. The responsibilities they carry will involve the use of some one or more millions of pounds of money. It is not uncommon for me and other colleagues of mine to have to say—we can't really give them adequate remuneration. We can't put them on the same plane as a private trader would be if he were running a business of this magnitude and were able to take to himself all the profits. What then can we do? We say, "Well, we don't want him to be pinched by a competitor." He can be attracted away by money, but every time we put his salary up by £1,000 a year, the Taxation Department takes £600, and we really can't give him adequate rewards under present income tax legislation for the work he puts in. Many of my executive directors, of which I have seven or eight, work both day and night, like I do myself. There is no end to the day's work until we fall into bed. We want to reward these executive directors and one of the ways we do it is to ask the shareholders for permission to make an issue of ordinary shares to all employés. Although an executive director may be in a very strong position and be a very competent man, he may not have more than his reasonable share of any employé shares How

do we try and assess his share? When it comes to the point, we generally give rights to employé shares pro rata to the annual salaries or wages, so that if a man is on £1,000 a year and another man is on £2,000 a year, well, the one on £2,000 would be able, if he wanted, to take up twice as many as a man on £1,000 a year. Then we follow that pattern over a successive number of years. Every two or three years, we will go to the shareholders for permission to make another offer of shares to employés, because there are new employés coming in and some going out, and we want everybody in turn to become more effective in the business and in the way it is being handled, and to share in the result of their own activities. So that when it comes back to the fundamental issue—"Should executive directors share in the allocation of employé shares?"—our view is, "Yes, he should", but we go to the next stage and say, "When the shareholders are asked to give consent to an issue of shares to employés, and it is intended that the executive directors be given an opportunity of participating, then the Board should announce that intention at the time these shareholders are asked to confirm the proposed plan of offer."

Mr. Dodgshun.—I think the important point there is that the executive director is an executive first and a director afterwards. In other words, it does not come the other way.

Mr. Kirkhope.—It rarely comes the other way.

Mr. Sutton.—May I take the interruption there? You are dealing with the employé shares. There would not be anything to prevent the employé from buying the shares in the company?

Mr. Kirkhope.—No objection whatsoever. The shares go on the market, and it has not got anything to do with the company. It only changes the name of the shareholder.

Mr. Sutton.—It would be possible for somebody in a minor capacity to hold quite a number of shares.

Mr. Kirkhope.—They do.

Mr. Dodgshun.—Many of them do.

Mr. Kirkhope.—They have to pay the market price, and with an issue of shares you very rarely if at all issue them at the market price.

Mr. Thompson.—What restrictions are placed on a company auditor in regard to holding shares in the company?

Mr. Kirkhope.—In regard to an ordinary issue of shares, absolutely none. Insofar as employé shares are concerned, he is not an employé. In fact, he is debarred from being an auditor, if he is an employé, by the Companies Act. Otherwise you would find the stupid position of an auditor being told as a employé what he was to do in the conduct of his audit. The law has seen fit to keep that issue quite clear. The curious situation in the Freighters case was this, that the Board did not call the shares employé shares. They were shrewd enough to call them an issue of shares to officers and associates, and employés, and by simple definition embraced the word "officer." There is some justification for saying that an auditor is an officer of the company and there is some justification for saying that he is not. An auditor is appointed by the shareholders to represent them and conduct the audit, but he is paid by the company, not by the shareholders as a separate body, and so you can see immediately that with appointment by one group and payment from another there is some room for doubt. We have case law on the subject where an auditor is regarded as an officer, and cases where he is not so embraced. In the case of Freighters, the auditors did participate in an issue of shares which was described as an issue of shares to officers, associates and employés, and at no stage did I see any evidence that they were called employé shares. It is quite a separate matter—what the responsibility of an auditor is, in accepting an offier of shares as happened in Freighters. That affects his professional status, and the matter is *sub judice.* I could not tell you what the outcome of the proceedings will be, but it has been the subject of investigation by the Chartered Institute and it is *sub judice.* On the principle—should an auditor be permitted to share in an issue of employé shares on the basis of their being employé shares—the answer is No. If the Board give to an auditor a preferential right ahead, or to the exclusion of others, to take up a certain number of shares it is also very questionable whether that is wise.

Mr. Dodgshun.—In a public issue?

Mr. Kirkhope.—In any issue. Sometimes I have seen cases where a private company has allotted shares to an auditor. Thirty years ago before the ethics of the profession became sufficiently clarified, I had seen quite a number of accountants coming out from the Income Tax Department and other places, who required, before they undertook any work, that they should have an interest in the company. My own personal practice has been not to do that. We must get this last issue—of employé shares—crystallized. Employé shares should only be issued with the prior consent of the body of shareholders, because it is they who are entitled first in time to participate in any new issue of shares. They have put their money in and they should be given the first right to take up further shares. Therefore, the body of shareholders should give the Board power to issue employé shares. Then executive directors should be permitted to participate and no auditor should in my opinion participate in an employé issue. Where should an auditor stand? Well, in the present situation where more than 80 per cent. of the auditors of public companies are members of the Chartered Institute of Accountants and where there is a code of ethics which has to be, and to my personal knowledge is, very rigidly applied, any impropriety by an auditor can jeopardise his status to call himself a Chartered Accountant, just as in the medical profession if a member of that profession commits a flagrant breach of his ethical duty he can be struck off. The same applies with solicitors. But we do not ask for and we would strongly recommend against any legislative action to cover this risk (of auditors sharing in an issue of shares) just because it might happen. There are other remedies, and if you attempted to cover this subject in general legislation, you could so easily find that a way round the legislation was arranged. You could find a nominee of an auditor taking the shares in the first instance, and so we say "leave it open." If auditors are going to do the wrong thing, let it come into the open, don't drive it underground. Then the professional body comes in and says, "This doesn't look right at all."

Mr. Dodgshun.—And it is the profession dealing with it—and I speak of the Chartered Accountants. I do not know the other bodies, but they are just as strict—in my opinion, and their discipline stops the man from doing the same thing twice.

Mr. Kirkhope.—A chartered accountant has to learn the code of ethics. There is some evidence of these troubles coming up from time to time, but more than 95 per cent. in the profession do play the game in this respect.

Mr. Dodgshun.—And the General Council of the Chartered Institute do not hesitate, if necessary, to exclude a man for misconduct. If he is excluded from the Institute he cannot carry on his work exactly as he did before, and the public knows he is not a chartered accountant.

The Chairman.—Even though he is qualified by examination?

Mr. Dodgshun.—He can practise, but not as a chartered accountant.

Mr. Kirkhope.—We do not deny to a man his livelihood. The penalty is so serious when you have lost status, it is like Lucifer falling from Heaven.

Mr. Lovegrove.—An excellent Trade Union principle, although I have heard it criticized in some other quarters.

Mr. Sutton.—I find it all extremely interesting, and thank you very much for coming here. Will you now bring your evidence into sharper relevance to the subject before us? Would you direct your remarks specifically to Freighters?

Mr. Kirkhope.—I won't take very much time to deal with Freighters, but will deal with the matter generally. There were three problems in Freighters. The first dealt with the Australian Machinery Co., which was acquired by arrangement between the Board of Freighters and the Board of Australian Machinery for cash. In order to raise the needed cash, some of the Board took up shares to the necessary amount at 40s. each, a premium of £1 a share, when the market, according to Mr. Phillips' investigation, was 50s. They gave themselves rights to shares instead of going through the normal pattern of offering them to the whole body of shareholders. That point, I suggest, is covered by the general principle we have enunciated—That no directors should without the foreknowledge of the shareholders give to themselves the right to shares, and they should not allot to themselves shares in excess of their pro rata rights in harmony with the whole body of shareholders. "Nothing in excess" is the point I am making. The second problem was that a small conclave of the Board took over the personal responsibility of distributing some of the products of Freighters, and they formed separate subsidiary companies for the purpose. The net result was that the Board, as a Board, or through the Managing Director, fixed the prices at which the company's products were to be sold to the subsidiary companies for resale by them. The directors concerned, therefore, were in the position of dealing, through the cloak of a company, with themselves and one would naturally expect, especially with a profitable business like Freighters, that there would be some sharing out of the rewards. Again, I feel that an issue like that is covered by the generality of our statement earlier, that a director may be involved in a contract with the company where there is a duality and possible conflict of interest, but where two or more are involved that should be disclosed to the shareholders before the contract is undertaken. That then minimises the possibility of any element of so-called conspiracy.

Mr. Rawson.—Why two or more? Why not one?

Mr. Kirkhope.—If you made it "one", then in a situation where there was one director as either sole or a joint owner of a property—say a freehold property—which a company wanted to acquire, and you had to approach the shareholders in order to establish a bona fide transaction (and this at a time when there were still more directors on the Board than one) then you are going to make for a tremendous amount of unnecessary work. The situation is that if there is misfeasance in any transaction of this type it is going to be caught up in the dragnet anyway. Providing we make, that is if this Committee sees fit to make, some suggestions for protecting shareholders as a body of people from the acts of any director being one of their representatives, if we make that clear, then we need not worry really about a possible non bona fide transaction by a director. It would be by the statute law that he would be liable and his estate would be liable to make good the loss or damage if the transaction were ever challenged. Far more often than not, transactions are perfectly valid. I can think of no words that would completely cover all the types of transaction in which a director, either directly or indirectly, may be involved as a member of another company or a partnership, nor can I find something which would enable us to winnow out the wrong case from the right. We drew attention to the co-operative companies recently. Now, if we are going to make a general statement of what is to be done with regard to shares, or to find words that would cover every type of transaction, to be disclosed and involving directors, the legislation could be completely unworkable and far too burdensome, because one of the fundamental requirements of any plan of this sort would have to be a disclosure of all the profit that was made, and a profit that was made could have arisen out of say, thirty years of holding of property. Any profit has some relation to time, and it has some relation to the risks that were being carried, so we strongly take the view that if only one director is involved then the present Act is adequate, as he has to disclose his interest to the body of the Board at the time that the transaction is being considered. He is not entitled to vote in respect to that transaction. His vote does not count even if he attempts to vote.

Mr. Rawson.—He must disclose it to the Board?

Mr. Kirkhope.—Yes. I am saying that if two or more directors are involved I feel it is for the protection of the body of shareholders as well as for the protection of the other members of the Board that that transaction should be subject to prior disclosure to the body of shareholders and there is a very good reason for saying that. It is not embarrassing, really. You can imagine two directors deciding to hold at bay or to hold at ransom the body by saying, "If you don't buy this now, we won't offer it to the company." They are directors of the company and it is inconsistent for them to take that view. The other directors say, "We must get the consent of the shareholders to this." I think if we were to consider that the company might lose by disclosure, I would say it is a risk better taken than not taken. Now, the third point in Freighters was the subsequent acquisition of the shares in these proprietary companies by Freighters Ltd., the scheme which was implemented having made them profitable. Again, that point is covered by the statement I have already made, that there should be no issue of shares either in excess of the pro rata right of all shareholders or there should be no issue of shares where two or more members of the Board are involved without the shareholders' prior knowledge and consent, so we would have caught that transaction on two legs. Have I made that clear?

The Chairman.—I think so.

Mr. Kirkhope.—That covers the three main points of Freighters so far as the directors are concerned.

Mr. Thompson.—I would just like to thank the witness to-day for the extraordinary clear and comprehensive picture he has given us of the law and the code of ethics relating to the issue of shares.

Mr. Lovegrove.—I also want to join with the other two gentlemen in expressing my very grateful appreciation of the clarity of thought that has been employed in making understood to a layman the ethical side of this proposition in the way it has been made understood to-day. The question I want to ask is this. The purpose of employé shares, I think, has been described with great adequacy. Now, in the case of a company although it issues shares that are not described as employé shares, but are described as officers associates and employé shares, but which ostensibly are for the legitimate purposes which have been described this morning—when these issues are made under circumstances in which this particular issue was made on this occasion, is it his opinion that there should be a legal prevention of a recurrence?

Mr. Kirkhope.—There were only two types of people that were perhaps improperly included in that issue. The first type was the auditor and the second type was the non-executive director. We believe that, as I have already said, the disclosure of the intention to make part of the issue proposed available to executive directors in itself would be adequate for all future occasions. I think also that if suitable words could be found to make it a misfeasance for directors to allot themselves, apart from this particular issue of executive directors, shares in excess of their pro rata interest to other shareholders except with the consent of the body of shareholders—again we will cover your point in two ways, I do not think it can be embraced in one *in toto*—I think we have got to stick to principle.

Mr. Rawson.—My question follows on Mr. Lovegrove's to a certain extent. I am not quite sure whether it is in the Act that the company can make an issue of shares to officers. Is officers mentioned in any Act of Parliament?

Mr. Kirkhope.—No. The issue of shares, and by that word we mean allotment of shares, is reserved in almost all cases to the directors to do so, and if they act bona fide it matters little whether it is an officer of the company that is allotted shares for which he has to pay, or whether it is allotted to a particular member of the public. In many respects, it is better to offer them to officers. In many cases it is better, because they are aware of how the company is being operated. A member of the public has to take the Board on trust anyway, so that the person who is employed, if he will take up the shares, is the obvious one to be given that right as against a member of the public.

Mr. Rawson.—In other words, he takes the risk.

Mr. Kirkhope.—There is nothing wrong with it. It always takes some period of time for a share to be worth more than the amount at which it is first offered.

Mr. Dodgshun.—There is no mention in the Victorian Act of either employé or labour shares. There is a mention in the New South Wales Act of labour shares I think they are called there, but there is no mention of employé shares in the Victorian Act.

Mr. Rawson.—I was puzzled, because it seemed to be under the description of an officer that the auditor was allotted shares.

Mr. Kirkhope.—But an officer is not necessarily an employé. Directors are officers also. They are agents and trustees, but they are also officers. They have a special charge by virtue of their office. I think by definition an officer is one who holds an office, and I do not think you can carry the definition very much further than that.

Mr. Rawson.—Should the law be altered to the extent that an auditor cannot hold shares? Do you think that would be unfair?

Mr. Kirkhope.—My own view is this, that if you made it the case that no auditor could hold shares he could not participate in any shareholders' meeting, yet under the proposed new law he is going to be able to attend shareholders' meetings, and in my experience many of my auditors do attend the shareholders' meetings.

Mr. Dodgshun.—There is a feeling amongst the chartered accountants, quite a few of them, that an auditor should not hold shares in the companies which he is auditing. That is their own feeling. In our own case, except in one or two special circumstances—and these happen to be small proprietary companies—we do not hold shares in the companies for which we are auditors.

Mr. Kirkhope.—Of course, if you are going to make it a rule such as the Hon. Mr. Rawson, I think, meant, it would apply to the proprietary companies as well after the new proposals, so it would be very awkward.

Mr. Dodgshun.—And very often it would be to the detriment of a proprietary company, because at the present time very often the auditor or the partner of an auditor is a director of the proprietary company.

Mr. Rawson.—Why not public companies only, because they are the people we are trying to protect who are buying shares in the open market?

Mr. Dodgshun.—Frankly, I do not think it is necessary. I feel that under our proposals the auditor is excluded anyway from taking any rights other than are due to the general public, and I think if he feels that way he should be entitled to take any rights that are due to the general public, because it does not affect his auditing.

The Chairman.—We must not lose sight of the fact that there have only been two cases in ten years.

Mr. Lovegrove.—What is the difference between a chartered accountant, and one who is not?

Mr. Dodgshun.—That is a difficult one, but a chartered accountant must have served a period of time in a chartered accountant's office before he becomes qualified to carry out an audit on his own. In other words, before he becomes a member of the Institute.

Mr. Sutton.—How did the first chartered accountant come about?

Mr. Dodgshun.—In 1928 the Institute of Chartered Accountants came out of the Australasian Corporation of Public Accountants, and that came out of a body which was also comprised of men in public practice. In 1928 His Majesty King George V. decided that we were doing a special job in accountancy, that we were in public practice and in public practice only, and we were given the Charter by His Majesty. Now, if I or any member of our Institute leave public practice, we go on to a separate list. We have no voting power in the Institute. We are just outside the Institute functions themselves. We can go in and listen to discussion and things like that. Members of other bodies can either be in public practice or employed in a company. If I took a position in one of Mr. Kirkhope's companies for a salary, I would immediately lose my status in the Chartered Institute.

Mr. Lovegrove.—Your status does not rest on some precise trade test? It rests on the nature of the functions you perform.

Mr. Kirkhope.—So much so that if you run an inconsistent business, if you are a commission agent or you share fees with a solicitor or an estate agent, then you jeopardise your status as a chartered accountant.

Mr. Sutton.—Under the provisions of the Act you set up an Institute for professional or ethical standards.

Mr. Kirkhope.—Under the provisions of our Charter. The Crown granted the Charter setting out certain conditions to which we had to conform.

The Chairman.—You have already passed a trade test by passing examinations.

Mr. Kirkhope.—The point is that it is not that alone. It is how you function after that.

Mr. Barclay.—I would like to thank Mr. Kirkhope and Mr. Dodgshun for their very explanatory remarks yesterday and to-day. I am not quite clear on this "competent inspector." What do you mean by that? Are not all these inspectors competent?

Mr. Kirkhope.—I think we had better address that remark to Mr. Rylah. He used it. We only know them as inspectors.

Mr. Barclay.—You spoke only of competent inspectors.

Mr. Kirkhope.—Mr. Rylah spoke of competent inspectors.

The Chairman.—I expect he meant one who is qualified by some process.

Mr. Fulton.—Through you, Mr. Chairman, is it the opinion that in an enquiry such as that an inspector should not have the same status as a Judge.

Mr. Kirkhope.—That is so.

The Chairman.—I want to join with my colleagues in thanking you very much for the excellent manner in which you supplied your evidence in the last two days, and being brave enough to indulge in a little discussion on political philosophy.

The Committee adjourned.

THURSDAY, 6TH JUNE, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. P. T. Byrnes,	Mr. Barclay,
The Hon. T. H. Grigg,	Mr. Lovegrove,
The Hon. R. R. Rawson,	Mr. Sutton,
The Hon. A. Smith,	Mr. Wilcox.
The Hon. L. H. S. Thompson.	

Mr. J. Finemore, Assistant Parliamentary Draughtsman, in attendance.

The Chairman.—We have with us today Mr. Finemore who will tell us something about the Freighters Limited inquiry and the point it raises in connexion with the proposed amendment and consolidation of the Companies Acts—where the two fit in so far as he sees it. Is that right, Mr. Finemore?

Mr. Finemore.—Yes. I am not fully cognisant of all the ramifications of the consolidation which was drawn by Mr. Garran and I have just taken it over, but I think it is right to say generally speaking the present proposals make no difference to the matters into which you are inquiring.

So far as my investigations are concerned, the provisions are practically identical with the existing provisions, so the issue that Mr. Phillips raises as to whether a person before the investigator can plead that he might incriminate himself is no more resolved that it is at present.

There is one respect in which the Bill would make a difference. In Clause 104 of the Bill, a provision which at present exists for disqualifying a director for five years from holding a directorship in any company, but which only applies when he has been found to be guilty of fraud when a company is being wound up, is extended to cover cases where a person in the course of a winding up, or from any report made by inspectors under this Act appears to have been guilty of fraudulent trading for which he is liable, whether he has been convicted or not, under the Act, or has otherwise been guilty whilst an officer of the company of any fraud or any breach of duty. In such a case the Court may make an order that that person shall not without the leave of the Court be a director or in any way be directly or indirectly concerned in the management of the company for such period not exceeding five years as is specified by the Court. The effect of that is if the inspector in Freighters had found that the company directors had been guilty of a breach of their duty to the company the Attorney-General could apply to the Court to have those men disqualified for five years.

The Chairman.—A breach of duty to the company or to the shareholders?

Mr. Finemore.—To the company means to the shareholders in that respect. A company director is not really a trustee in the full sense of the word. I notice in Mr. Kirkhope's evidence he referred to him as a trustee.

Mr. Sutton.—A company has an identity apart from the shareholders. It appears to me there is a duty to the company and a duty to the shareholders as a corporate body.

Mr. Finemore.—A company exists for the benefit of its shareholders and if a director does something which is disadvantageous to the company it is disadvantageous to the shareholders.

Mr. Lovegrove.—Do the shareholders exist for the benefit of the company?

Mr. Finemore.—Certainly not, at least they should not.

The Chairman.—In the case of Freighters what happened was they did something which was disadvantageous to the shareholders but was not disadvantageous to the company.

Mr. Byrnes.—It was not disadvantageous to the directors. You are drawing a distinction between the business operation of the company and the actual company, but the company is a group of people who own the business; they are the business. The shareholders are the business owners. They own it and it is theirs really. The directors are simply an executive, with very wide powers, certainly.

Mr. Finemore.—To make it perfectly clear there is no reason why it could not be expressed as "any breach of his duty to the company or to the shareholders of the company."

Mr. Sutton.—That would put it beyond doubt.

Mr. Finemore.—I agree with Mr. Byrnes that from a practical point of view, even with Freighters, you might say their overall operations were not affected by their manoeuvres although the total amount of profit was decreased because it seems to me some of it was diverted into their pockets directly instead of into the general funds of the company where it would have been available for dividend.

Mr. Thompson.—I think in Freighters case it would be very difficult to prove anything they did was in the interest of the company and not in the interest of the shareholders.

Mr. Byrnes.—I cannot dissociate the company and the shareholders. You are looking on the business operations as the company. That is not so, the company is the shareholders.

The Chairman.—When they acquired the shares of the other company that was a good thing for the body of the company corporate but it was a bad thing for the shareholders. That is why I say in this instance although they did something which was good for the company their method of doing it was bad for the shareholders because they did not participate. It was the exact opposite of the case raised by Mr. Finemore.

Mr. Byrnes.—Nobody brought evidence at any time to show the directors conspired in any shape or form to buy an asset that was not full value. The assets they were buying were of full value to the company, it was the shareholders. The company acquired the assets and they were not any loss to the company, in fact it quite fitted in with the company's business, but in the course of that transaction they made a profit to themselves which was not available to the company.

Mr. Smith.—Or the shareholders.

Mr. Byrnes.—The shareholders are the company.

Mr. Finemore.—Mr. Manson's point keeps on appearing in company law and I think it is one of the major things in dealing with this problem, no matter how many provisions we make about what a director must not do, a director who floats himself into a company, either himself or twice removed, it may be in his wife's name, he gets so far away that our provisions just do not catch him. If a company acts to sell products to another company, XY company, in which he may have some small shareholding, or he may have none, it may be all his family, and that company makes much more profit than the parent company I do not know of any successful way of overcoming that and it is a major problem. We are only making their machinations more involved by trying to prohibit them specifically from doing some of these things.

In explanation, I notice some remarks made by Mr. Byrnes about this Bill. It has been drawn largely by the Parliamentary Draughtsman, Mr. Garran, after making an investigation of the recent amendments in New Zealand and England and after having had representations made by accountants, lawyers, and so forth. There have been no policy decisions made on it; it has not been to Cabinet. The Attorney-General knows the general lines of it but it is quite up in the air as far as any firm decisions of policy go. At this stage it is more an attempt to reduce the bulk of the Companies Act to get it into some order so that you can read it from section 1 to section 450 as though it were a book, and because it is at that stage in a technical form it has only been distributed to people for technical comment. We will no doubt get some matters which will raise policy issues.

The Chairman.—It is a consolidation and an amendment at the same time?

Mr. Finemore.—Yes. One of the things it does, for example, is to try to bring the goldmining companies, the no liability companies, in with the ordinary companies whilst retaining the principle of no liability. We are trying to simplify all these little provisions about goldmining companies, whether we will succeed is another matter.

Mr. Thompson.—Would you agree, Mr. Finemore, that the shareholders are to a company what the Australian citizens are to the Australian nation. Is that a correct analogy?

Mr. Finemore.—I think it is rather a strained one.

Mr. Thompson.—Would you mind pointing out what you think to be wrong in that analogy?

Mr. Finemore.—I think the basis of citizenship is duty rather than right; you have your duty to Queen and country but the shareholder has a very limited duty to the company.

Mr. Lovegrove.—I think the point Mr. Kirkhope made was a very sound one. He made the point that a whole is more than the sum of its parts; that when you assemble a number of parts into a whole you create certain virtues which are not held by any of the parts.

The Chairman.—And could not possibly be held by any of the parts, and he pointed out it was not a dereliction on the part of the director who failed to make a profit. I think it could be held on what Mr. Finemore has said following Mr. Byrnes' train of thought that the job of the shareholder in the company is to make a profit.

Mr. Byrnes.—That is so.

Mr. Lovegrove.—It is conceivable the company could perform its functions quite effectively over a period without making a profit.

The Chairman.—And the directors would not be liable.

Mr. Lovegrove.—That is so.

Mr. Byrnes.—In that case it would be living on its capital.

Mr. Barclay.—Or it might be breaking even.

Mr. Byrnes.—Yes, and not paying any dividends; the shareholders would not be receiving anything from the company at all. The operation of the business is not bringing to the company, that is the shareholders, any profit.

Mr. Lovegrove.—If the wise thing were for the company to stand a siege having an eye to the future equity of shareholders it might be a completely proper decision on the part of the directors to adopt that policy whether the shareholders profit immediately or not.

Mr. Byrnes.—I doubt that because the shareholders would have something to say very quickly if, having funds invested, they were there just to look at, otherwise there is no advantage in them forming a company to carry on a business.

Mr. Lovegrove.—What the shareholders would have to say would depend on the state of the market. If it was a bad market and the shareholders could not see any other outlet for their capital they would say, "We will stick to the devil we know rather than risk the devil we do not know." They might apply the same principles in their company affairs as they apply in their personal affairs.

Mr. Byrnes.—I think Mr. Kirkhope said there was nothing criminally wrong in the directors failing to make a profit, but to say it is not a dereliction of duty, I do not agree. I think it is their duty to run the business at a profit.

The Chairman.—I think he said they were not culpable.

Mr. Finemore.—I think this discussion shows a rather basic point about this company law. A company is one form of corporation. It is only one form. The Housing Commission is a corporation and the Commission is different from its members. The companies we are concerned with I understand are trading companies and I do not think it could really be argued that a trading company does not exist to trade and no-one trades not to make a profit so I think it is right to say the purpose of the trading company is to make a profit but that does not mean to say a director will in any particular circumstances, or in any circumstances, be liable for not making a profit so long as he has acted honestly. He would be liable if they did not make a profit because he has put it into his own pocket or he had sold out to the opposition.

Mr. Lovegrove.—Numbers of corporations during the war said "Here is a national emergency" and they took the relationship of the citizens to the nation that Mr. Thompson outlined and they said "We have to do our part, it is our duty, we will not worry about profit." Some of them did that.

Mr. Finemore.—This discussion really shows the importance of one of the most debated and difficult matters in legal jurisprudence—the problem of the nature of corporate personality. Some say a company has a real personality, just as real in the eyes of the law as J. Finemore or Mr. Manson. Some say it is a mere fiction of the law and it is only by legal formality you put a mark on them and say "We will recognize you as a legal personality."

Mr. Thompson.—My point about Freighters is the transaction as a whole was of benefit to the company and the shareholders but the method by which the directors brought about the transaction was neither in the interests of the company nor of the shareholders.

Mr. Byrnes.—I think it goes a little further than that, that it was to the personal benefit of the directors.

Mr. Thompson.—Yes.

Mr. Byrnes.—That is something you cannot do.

Mr. Barclay.—They seem to me to have done it and got away with it.

The Chairman.—It has only been done twice in ten years.

Mr. Finemore.—This problem has occurred before in relation to trusts and trustees and this Committee recently considered some aspects of the problem in relation to trustee companies. Four or five hundred years ago when the trust was first developed you found people appointed trustees were making a nice thing out of it for themselves, in many cases their beneficiaries did very nicely too, but the Courts of Equity over the years have built up rules such as no person shall make a profit out of his trust, and those rules became very rigid. It even got to the stage that if he treated himself in exactly the same way as any other member of the community he was still liable to account for the profits he made. If a trustee bought a house from the trust and then re-sold it a few years later he would be bound to account for the profits. The tendency in company law has been to make directors more and more like trustees, but the analogy is not complete and the business community anyway believes that it would be wrong to put directors under such a rigid duty as a trustee has to a beneficiary and it is really a question of drawing a line as to how far along the line of trustee you are going to put the director.

The Chairman.—You must leave him some flexibility.

Mr. Finemore.—Yes.

Mr. Byrnes.—A company is bound by its Memorandum and Articles of Association which are very rigid and cannot be altered without complying with certain rigid rules laid down by which they may be altered. The directors must act in accordance with the Memorandum and Articles of Association they are absolutely bound to do it.

Mr. Finemore.—I think it is right to say a director is a trustee for the shareholder of the powers conferred on him as director. That takes it a long way. It means if as a director he has the power to allot shares then he must exercise that in the best interests of the shareholders without regard to his own interests and if he mis-exercises the power so as to benefit himself then he would be liable to account for it. That does not make him criminally liable but it makes him civilly liable.

Mr. Byrnes.—If it were not so you could very easily arrive at a position, if shareholders were not wide awake to their interests, that the directors might eventually own the company or have a controlling interest in it which they acquired by means somewhat doubtful. I think the problem with Freighters, as has been posed to us, is that the directors did something for their personal benefit and how are we going to amend the law to make certain that cannot occur in the future.

The Chairman.—That is the proposition.

Mr. Byrnes.—I think it would be entirely wrong to allow that position to continue.

The Chairman.—We have to be careful we do not go too far to restrict the activities of all directors simply to cover this loophole.

Mr. Thompson.—Could I ask Mr. Finemore what he thinks of the suggestion made by Mr. Kirkhope that when one director is personally interested or stands to gain from a suggested transaction it is his duty to inform the other directors and when more than one director stands to gain the shareholders must be informed.

Mr. Finemore.—I can only answer it from a personal opinion. It seems to me to have the vice of all these arrangements that you vote for me and I will vote for you. Today is my turn and I disclose it, tomorrow it is your turn. These arrangements are infinitely divisible and if you are going to have a few people who are prepared to make a profit at the expense of the company or the shareholder I do not think that would be an effective check.

Mr. Thompson.—In other words, do you think that if we adopt that scheme there would be further loopholes in the law to be exploited?

Mr. Finemore.—Yes, although I may be underestimating the general standard of integrity of Boards. It is assuming that there are at least a majority of the Board who are prepared to get together to play and if you could be sure there were a couple of people on the Board who were virtuous then, Mr. Kirkhope's suggestion has a lot to commend it.

The Chairman.—If you do not accept that suggestion what would you accept, the suggestion that one director has an interest and he disclose it to the shareholder?

Mr. Finemore.—I repeat there is a great deal to be said for that. I am not well up in company organization but it did strike me that perhaps the auditor could be required to disclose in his report any dealings in the shares by the directors other than in the ordinary course of business, that is to say, other than in accordance with the same conditions as for everyone else. I do not think the auditors would like to have that duty thrown upon them but it is one thought that struck me.

Mr. Rawson.—When they were making their report it might be fairly late to correct anything.

Mr. Finemore.—I think it might deter directors if their machinations were to be brought to the public notice.

Mr. Barclay.—You mean the yearly audit?

Mr. Finemore.—Yes.

Mr. Barclay.—That would be every twelve months when there would be a disclosure of the activities.

Mr. Finemore.—That would be super-imposed upon the ordinary rule that the director must disclose contracts in which he is interested.

Mr. Byrnes.—The auditor must give a certificate that there is nothing of an unusual nature that has affected the company during the year?

Mr. Finemore.—Yes.

Mr. Barclay.—That would not affect the company if the directors bought the shares themselves.

Mr. Byrnes.—It would not be covered by that.

Mr. Finemore.—I understand that the auditors have some difficulty in determining what is covered by that matter and they take different views.

Mr. Byrnes.—We strengthened it a little while ago but until recently it was more honored in the breach than the observance. The auditors just said that there was nothing, and that was that, but now they have to be more explicit.

Mr. Finemore.—It is really taking the auditors out of their field at the moment there to say that the accounts are in order. It seems to me that they say there is a voucher for everything, which might mean everything or nothing. The facts that the books are in order does not prove everything is perfect.

Mr. Byrnes.—I think the matter referred to is worth following.

Mr. Finemore.—On Mr. Phillips' point in particular it seems to me that Mr. Phillips is right in saying that at the present time there is no right to plead self-incrimination when a question is asked by the inspector but that is certainly arguable so that if you are going to resolve the difficulty it would seem that you are going backwards if you resolve in favour of saying that a person shall not need to answer a question if he is going to incriminate himself. I think there is a great deal of force in Mr. Phillips' point that where the right to require an answer to a question has been extended from directors and officers of the company to any person that might know something about it that it is harder to justify the removal of the right against self-incrimination but, from a drafting point of view, I cannot see any difficulty in distinguishing between the two. I think a director and an officer of a company is very much in a position of a public servant. You take on a job which has certain advantages and it is not unreasonable that in respect of that position you should be subject to certain unusual duties or be liable to do a particular type of work. To a person who is not connected with the company or who may have been a mere tool it would be more unreasonable to require him to incriminate himself.

The Chairman.—You could distinguish it.

Mr. Finemore.—I think you could. The other point is that you could really distinguish between the duty to answer a question and the right of the Attorney-General or the Prosecutor to use that answer in evidence against him. The inspector's inquiry might be completely useless if everyone that comes along refuses to answer questions but, it is one thing to say, "You are bound to answer the question," and another thing to say, "When you have answered it, it will be used in evidence against you." From the point of view of Parliament in endeavouring to seek information as to the workings of the company world to know the truth about these transactions is perhaps just as important as punishing a particular person. The report of Mr. Phillips on this matter will have done a great amount of good even if the people are never punished in any way, civilly or criminally, and he can only make that report because he received answers to questions. It seems to me that this Committee might consider the two points separately, putting people under a duty to answer them but saying perhaps that unless they have been warned their answers are not to be used in evidence against them.

Mr. Thompson.—You mean in evidence in a Court of law?

Mr. Finemore.—In subsequent criminal proceedings.

Mr. Thompson.—They could be used in evidence against a man?

Mr. Finemore.—For the purposes of the report.

Mr. Sutton.—You mean criminal proceedings, not already pending that would arise from the question?

Mr. Finemore.—Yes.

Mr. Sutton.—One of the things Mr. Phillips referred to was the refusal of the bank to state the financial position or the financial circumstances or something like that and he stressed that he did not want to know the general financial position of the company or of the shareholders but only a particular transaction or a relationship to a particular transaction; it seems to me to be a pertinent question on the part of the inspector. He did not want an analysis of the man's financial circumstances but only in respect of that particular precise transaction.

Mr. Finemore.—I think the bank's position was untenable under the law but if the law is as the banks contended I have no doubt it should be altered but banks are particularly anxious to preserve the veil of secrecy.

Mr. Barclay.—You would not contend that Mr. Phillips should receive the same powers under a new Act as a Judge of the Court?

Mr. Finemore.—No, I do not think that is necessary. The Parliamentary Public Works Committee has the right to compel attendance but if anyone fails to attend he must go before a Court for punishment. I think Mr. Phillips has a stronger point about the inspector being given the right to determine whether there is any basis to this plea of self-incrimination but even then, if the inspector determines it and says

there is no possibility of incrimination, if he refuses to answer, he should in my opinion go to a Court where the matter would be finalized.

The Chairman.—How can the inspector determine whether the man does not answer the question? You ask a man a question and he says he is not going to answer it, then you take it to the next step where the inspector has the right to determine whether it will or will not incriminate him.

Mr. Finemore.—That necessarily implies that he must then disclose the general nature.

The Chairman.—Supposing he still says, "No, I will not tell you?"

Mr. Finemore.—He would have to go to the Court.

The Chairman.—You give a man a power which he could not possibly exercise?

Mr. Finemore.—I do not know that it would work like that.

The Chairman.—In some cases the witness would tell him but he has already half the story.

Mr. Finemore.—I think his counsel would probably put it for him and say, "If we say so-and-so, and so-and-so says so-and-so, we might be held liable for such and such a thing." It is not an answer. It is in relation to how the answer might incriminate.

The Chairman.—In practice and in actual fact it could not possibly incriminate him unless that were the answer?

Mr. Finemore.—Yes.

The Chairman.—Where do you get to in practice?

Mr. Finemore.—Even in Court now, if a man pleads that it might incriminate, the Judge says, "How?" Sometimes the mere question is enough to show that an answer might incriminate him but in some cases it is such a remote possibility that the Judge asks how it is going to incriminate him, and they put it without asking questions direct.

Mr. Wilcox.—If you take away some power of privilege to the witness in these cases you only make the chances a little greater that the investigator will get what he wants, because in Freighters he did get what he wanted. He said, "If you do not tell me, you will have to go to the Court." He did get what he wanted in any case.

Mr. Finemore.—I do not think every inspector would get the evidence.

Mr. Wilcox.—Mr. Phillips at some stage of his report said that a single statutory amendment was required and then, later on, he said that he had attempted a draft but had found it unsatisfactory. What do you think about that? Do you think it would be a simple matter for the draughtsman?

Mr. Finemore.—It would not be very simple, but I think it could be done. I was suggesting to the Chairman previously that some of Mr. Phillips' difficulties could be overcome by distinguishing between directors and officers concerned in the company and this other wide group which worried Mr. Phillips a little. I can see no difficulty about having one rule for those directly connected with the company and another for those remotely connected with the company.

Mr. Wilcox.—Can you indicate at this stage any draft that would cover the position?

Mr. Finemore,—I have not drawn up any.

Mr. Wilcox.—I was not unimpressed by the fact that Mr. Phillips said in his report, "Now that the matter has been raised but not resolved consideration might well be given to putting the issue beyond doubt by a suitable statutory provision," and it says, "This is a relatively simple matter," but I think in his evidence he said, "I had drafted something but in effect I found it was not as simple as I thought."

The Chairman.—Thank you, Mr. Finemore, for your attendance to-day.

The Committee Adjourned.

WEDNESDAY, 12TH JUNE, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. T. H. Grigg,	Mr. Lovegrove,
The Hon. R. R. Rawson,	Mr. Sutton,
The Hon. A. Smith,	Mr. Wilcox.
The Hon. L. H. S. Thompson.	

Professor F. P. Donovan, Professor of Commercial Law, University of Melbourne, was in attendance.

Professor Donovan.—I have prepared a statement, which I now submit to the Committee.

EXHIBIT A.—Statement of Evidence.

Professor Donovan.—In my prepared statement, I have limited myself fairly closely to the letter from the Attorney-General in which he specified certain anomalies or deficiences in the powers of a competent inspector. The first of those anomalies related to the privilege against self-incrimination. In that regard, I pose two questions:—

(*a*) Does the privilege exist in inquiries of this character; and

(*b*) As a matter of policy, ought it to exist?

The first question is a legal one, to which I am not prepared to give a dogmatic answer, "Yes" or "No." I submit some possible arguments either way, and my general conclusion is that the arguments and the legislation to which I refer are probably not sufficiently conclusive to dispose of the questions related to this particular privilege. I refer to section 29 of the Evidence Act which makes reference to the privilege against self-incrimination, but that provision seems to be limited to proceedings that are defined in the Act and limited also to questions that might expose one to punishment for treason, felony or misdemeanour. I take it that it does not cover the possibility of a civil action for damages for fraud or for breach of fiduciary relations. However, I do not think that provision was intended to cover the whole field, and as I think the privilege against self-incrimination is a very wide and pervasive one, I do not think it can be disposed of without bringing down some specific legislation to that effect. I reach the tentative conclusion that probably the privilege does exist in inquiries of this nature.

It seems to me that the second question is much more important than the first. It is a matter for this Committee to decide whether the privilege should exist as a matter of policy in inquiries of this character. My own personal conclusion is that it ought not to exist. I suggest that the whole purpose of these inquiries is protective rather than punitive. The inquiries are made for the purpose of protecting the public or the shareholders of the company. The real

purpose is to obtain information to throw some publicity on dealings of this kind, and so it seems to me there is no purpose in retaining the privilege in such inquiries. Therefore, I suggest certain amendments to the Act. They will be found on page 3 of Exhibit A. I state clearly that the privilege should not exist, and that a person should be compelled to answer relevant questions, but his answers cannot be used in evidence against him in any criminal proceeding other than a prosecution for perjury.

Mr. Thompson.—Would the officer or agent be wide enough to include a banker?

Professor Donovan.—Mr. Thompson has raised a point to which I have not referred in my memorandum but which the Committee might consider. In the draft Bill the term "officer or agent" is used. When I first saw it, I was puzzled as to the narrowness of the phrase. In clause 143 (2) the term "officer or agent" is defined so as to include a person who has any information of relevance in the affairs of the company. It seems to me that this is an awkward way of achieving the end in view because neither a banker nor a third person who may have some vital information could in any sense be termed an officer or agent of the company. Accordingly, some consideration might be given to re-phrasing in that regard.

Mr. Rawson.—Have you any appropriate suggestions?

Professor Donovan.—I have none in particular. A provision should be embodied relating to any officer or agent of the company, or other person having information relevant to the inquiry. It is most misleading to refer only to "officer or agent." In my prepared statement I say that I have excluded civil proceedings from the protection, but although a person should be compelled to answer questions, the evidence so given should not be admissible in criminal proceedings; in other words, it could still be admissible in civil proceedings. The reason for that is that directors should be liable to account for any profits made out of transactions in the company's shares. In other words, I do not want to foreclose that remedy by saying that answers given will not be admissible in civil proceedings.

If the Committee believes that my view of the question is incorrect, and if it considers that the privilege should be retained, it should then give consideration to the doubt raised by the inspector as to whether he had power to inquire into the existence of a bona fide belief in the claim being made by a witness. It seems to me that there is no real difficulty here and that the inspector would be able to make the inquiry. Section 29 of the *Evidence Act* 1928 provides that—

> No witness shall . . . . be permitted to refuse to answer any question . . . . unless the court or person having by law or by consent of parties authority to hear receive and examine evidence is of opinion that the answer will tend to subject such witness to punishment for treason felony or misdemeanour.

In other words, I think it is always clearly envisaged that the person who is conducting an inquiry should be able to make up his own mind on this matter, but I do not feel strongly on this point. If the Committee is of the opinion that the matter needs clarification, it could easily arrange to have inserted a provision somewhat along the lines of section 29 of the Evidence Act, or one to the effect that a witness may refuse to answer questions only if he satisfies the inspector that he has a bona fide and reasonable belief in the claim, and so on. Such a provision could easily be inserted if the Committee thought it necessary and if it was of the opinion that the privilege should be retained.

The second point relates to the privilege claimed by the bank.

It seemed to me that, with all due respects to the legal advisers concerned, this could not be claimed under the provisions of the Companies Act. The words of the Act say nothing in this Act which shall require disclosure by a company's bankers as such of any information as to the affairs of their customers, other than the company. Mr. Phillips found that the bank in question, which had claimed the privilege, was not the banker of the company. Later the customer did not object to the bank disclosing the information.

The Chairman.—I thought it was the banker of the company as well as of the individual.

Professor Donovan.—My impression is that it was not. The transcript of evidence of the inquiry at page 26 states, "The particular bank in question was not the company's banker." As the Chairman has pointed out, by a coincidence the director or other person being inquired into might have selected the same bank as the company. Then there might be a possibility of the privilege extending to the bank. If there is any doubt, I am perfectly in accord with the suggestion of the inspector that you should add the words to the clause, "If such information could not itself properly be required to be disclosed."

The Chairman.—It would tighten up the legislation?

Professor Donovan.—Yes. I was puzzled by that claim of privilege.

Mr. Wilcox.—In this case the bank did disclose the information.

Professor Donovan.—Yes, on questioning by the inspector as to whether their client really did have objection to it, and the client apparently said, "No, let it go." The next issue raised by the Attorney-General in his letter was that of employés' shares. I have no comments to offer in that regard. This seems to raise a matter of policy and I think little could be achieved by legislative enactment to prevent such shares going to directors. In fact, I do not think the Companies Act refers to employés' shares. I think it would be quite a step for the legislature to attempt to include a definition of such shares, and no useful purpose would be served.

Mr. Wilcox.—They are only a class of shares and a company could have a number of different classes of shares, according to its memorandum and articles.

Professor Donovan.—Yes. It could have some relevance if it were still necessary to obtain the Federal Treasurer's approval to capital issues. Consent might be given on the basis that the shares were to be issued to employés. As that control has now lapsed, I do not know what could be achieved by legislating in regard to it. The third point concerned the duties of directors. In my report I referred to the report of the Cohen Committee. In paragraphs 86 and 87 that Committee says that it is impossible to restrict directors from dealing in shares but a useful safeguard against unfortunate suspicion on such transactions is to ensure that disclosure is made of all transactions entered into by directors in relation to shares or debentures of the company. The Committee answered the argument that such action might have unfortunate public effects. For example, if it were known that a director was selling large blocks of shares in his company, it might cause public confidence to drop. However, that seems to have been done in the United States without unfortunate results.

The Chairman.—Could you enlighten us as to where we could obtain a copy of the Cohen Committee Report, and who constituted the Committee?

Professor Donovan.—The Cohen Committee was set up by the Lord Chancellor in England in 1945 (Command Paper 6659/45). The report is a command White Paper published in England. Lord Cohen is a member of the House of Lords and a commercial lawyer.

The Chairman.—Your reference is the first we have heard of the report.

Professor Donovan.—I was under the impression that you would have had your attention directed to the report previously. Paragraphs 86 and 87 of that report deal with the problem of share transactions by directors. At a later stage in the report the Committee made certain recommendations regarding disclosures. To some extent those recommendations were incorporated in the *English Companies Act* of 1948. Section 195 of that Act requires a company to keep a complete register showing the number, description and amount of any shares or debentures in the company which are held by or in trust for a director. The register must be available at least fourteen days before the general meeting of the company and must be open for inspection during the meeting. Section 198 makes it a duty of the director to disclose the information that is necessary for compiling this register, and imposes a penalty for failure to do so. It seemed to me that the real difficulty in all of these cases is the lack of means of obtaining information. It is difficult to find out what is happening, and if the directors are acting in concert then there is a strong possibility that no information will ever be made available. In the *Regal (Hastings) Limited* v. *Gulliver* case, to which Mr. Phillips referred, the members of the House of Lords said that if the directors had taken the precaution of obtaining the approval of the company at a general meeting—this would have been merely a matter of form—then no question of their rights to retain the profits could have arisen. This restricts one's ability to "get at" the directors for any profits they may have made. The most one can hope to achieve, by legislative means, is a certain basic amount of publicity. For many reasons, of course, this can never be complete, nor is it always desirable that it should be so.

I suggest that the English Act imposes too great a burden upon a company without any corresponding benefits. Provision for a complete register was a heavy load to place on a company. My suggested amendment does not provide for any register to be kept. I adopt the somewhat simple procedure as found in section 149 of the Companies' Act, which is contained in clause 106 of the draft Bill:—

> It shall be the duty of any director who makes a declaration stating the number, description, etc., of any shares or debentures of the company which are held by or in trust for him or in which he has any interest direct or indirect.

My next point is wider and warrants careful consideration. Consideration might be given to an extension of this so as to include shares in which the immediate members of a director's family are similarly interested. I do not know how far it is necessary to go; this is a difficult matter to police.

Mr. Wilcox.—Could Professor Donovan intimate whether he is referring to public companies or private companies?

Professor Donovan.—I am referring to public companies in general. In fact, most of my remarks are applicable to public companies. I further suggest that the declaration should be made at a meeting of directors. It may appear that insufficient publicity is being given to the matter, but if these things are brought into the open at all, a certain amount of protection is provided—it is not possible to get much more than that.

Mr. Lovegrove.—I should like to ask a question in connexion with the use of the word "company." At a previous meeting of the Committee the question of the attitude of the British law towards the term was raised. What is the difference between the British law and the Australian law on the interpretation of this expression?

Professor Donovan.—In general, we follow their approach to the matter. Furthermore, we tend to follow their amendments. In connexion with commercial law, it is desirable to have as much uniformity as possible, and in company law, this practice has been followed. As previously stated, the extra load placed upon the company does not carry with it any corresponding public benefit.

The Chairman.—Should not this information be made available to all shareholders instead of to directors only?

Professor Donovan.—If it was considered that more protection would be provided by making the information known to shareholders, it could be provided and that the declaration should be made at the next annual general meeting. I do not hold strong views on this question, but I consider that a certain basic amount of publicity is necessary. If, in the Committee's view, this would not be properly achieved at a meeting of directors, it could be decided that the appropriate time should be at the annual general meeting. Of course, meetings of this nature are not held as frequently as meetings of directors, and consequently, the damage may have been done before the annual general meeting is held.

My fourth suggestion on this aspect is much wider and probably more controversial. It is in the following terms:—

> Further, without affecting any general legal (or equitable) right which the company might have to recover profits made by directors from dealings in the company's shares as a direct result of their position, a specific remedy might be given to the company to recover any profits made in respect of undisclosed shareholdings.

It is possible, in certain circumstances and under general common law principles, for the company to recover certain profits from the director. I do not wish to upset or take away that general right. My final suggestion attempts to counteract what the court said in the Hastings case, and I state it in this way. This specific remedy should not be affected by any general resolution of the company purporting to ratify the actions of the directors. If the company adopts these actions it should debar itself from recovery. I do not desire to press the point, which is a difficult one. My only purpose is to ensure that the company has some real remedy against directors who have abused their position. The general common law rules may not be adequate to cover this sort of case.

Mr. Thompson.—I am concerned about a point of legal terminology. You stated that section 28 of the Evidence Act states the full scope of privilege, but there is a limit in respect of liability for treason, felony or misdemeanour?

Professor Donovan.—They would be criminal offences. I was thinking of civil proceedings.

Mr. Thompson.—Could this matter ever be regarded as a criminal offence?

Professor Donovan.—Yes—for example, actions for fraudulent misrepresentation, and so on. I was discussing only civil actions for damages or fraud. I have prepared a short paper on "Privilege against Self-Incrimination" for the assistance of the Committee. It is as follows:—

This can be discussed in two phases:

(A) Historical evolution.

(B) Modern rationale.

(A) *Historical Evolution.*

Ecclesiastical courts developed in the thirteenth century a new form of procedure whereby a person might be required to answer on oath certain specific questions directed to him by the presiding official. This was always subject to canonist restrictions based on the general idea that no man should be required to accuse himself. In effect this meant the oath could not be administered unless there was some specific accusation by an official or by a private person. The judge could only act *ex officio mero* (on his own initiative) if he could show some common report or notorious suspicion of the crime. In other words, a man should not have to submit to a "fishing" interrogation about his crimes, or make the *first* charge against himself.

The opposition to the *ex officio* oath essentially turned on the question "Who should administer it?", that is, the real conflict was one of jurisdiction between ecclesiastical and civil jurisdiction. Only after this is settled does the argument turn on "methods," that is *how* should oath be administered. Certainly up to 1650 there was *no* general Common Law principle against self-incrimination. "During all the period of agitation against the inquisitorial oath of the ecclesiastical courts . . . . it was the unchallenged practice of the common law judges in criminal trials to question the accused and bully him to admit his guilt."

The high water mark of the inquisitorial procedure (outside the Common Law) was reached in the seventeenth century with the special courts, e.g., High Commission and Star Chamber. The odium that attached to these Courts attached likewise to the procedure they had developed to a high degree of efficiency. These Courts were abolished in 1641 and over the next period legal opinion gradually "settled against the exaction of an answer under any form of procedure, in matters of criminality or forfeiture." This became accepted as a binding principle by common law judges in trials in their Courts (1660). Moreover, the privilege is extended to ordinary witnesses as well as the party charged.

Thus "a movement, which was directed, originally and throughout, against a method of procedure in ecclesiastical Courts (produced) in its ultimate effect a rule against a certain kind of testimony in common law Courts."

(B) *Modern Rationale.*

The modern explanation seems rather linked to the idea of due process, the insistence on a fair trial, that a man should have to answer not only specific charges properly presented but that convictions should be based on external evidence not on that which he might be forced to supply. Phipson advances a somewhat different rationale: "The privilege is based on the policy of encouraging persons to come forward with evidence in Courts of Justice, by protecting them, as far as possible, from injury, or needless annoyance, in consequence of so doing."

It may be, as my colleague Mr. Brett has pointed out, that the time has come to re-examine the basic assumption on which the privilege is based—namely that a man under compulsion and on oath will tell the truth about his own activities.

The Committee adjourned.

THURSDAY, 13TH JUNE, 1957.

Members Present:

Mr. Manson in the Chair.

Council.	*Assembly.*
The Hon. T. H. Grigg,	Mr. Lovegrove,
The Hon. R. R. Rawson,	Mr. Sutton.
The Hon. A. Smith,	
The Hon. L. H. S. Thompson.	

Mr. J. S. Elder, representing the Law Institute of Victoria, was in attendance.

Mr. Elder.—The Law Institute of Victoria appointed a special sub-committee to examine the position that has arisen as a result of the inquiry into the affairs of Freighters Ltd. and in the course of our investigations we held a conference with a sub-committee from the Bar Council, which had also examined the matter. I understand that the Bar Council does not propose to give any evidence before this Committee, but from the discussions we had with representatives of that Council, I can say that both the Institute and the Council found themselves practically unanimous in their views. Probably the Bar Council is operating on the basis that we can put forward the views of both bodies.

We felt that there were three matters arising from the report of the inspector which called for comment on our part. The first is the question of privilege, and it can be divided into the privilege of directors and other officers of the company which is being investigated and the privilege of banks. It will be recalled that Mr. Phillips raised this point as some of the directors who were called before him declined to answer questions on the grounds that the answers might incriminate them. It looked at one time as if the inquiry might be entirely stultified because of this attitude, but when Mr. Phillips informed the reluctant witnesses that he proposed to refer their refusal to answer to the Court, apparently they decided to answer the questions put to them. The result was that the claim of privilege did not impede the course of the inquiry conducted by Mr. Phillips. In his report, he indicated that he did not feel that privilege existed, although that is open to some doubt in the case of an inquiry such as he was conducting. He suggested, firstly, that some legislative provision should be introduced to make it quite clear that privilege does not exist in such cases, and secondly, that the inspector appointed under the Act should have the power to inquire into any privilege claim and, presumably, deal with the matter. I do not know whether Mr. Phillips proposed that the inspector should be given power to deal with any contempt, but that would seem to me to follow naturally from the granting of power to inquire into whether or not privilege existed. Presumably, Mr. Phillips' view was that the inspector should have power to take more drastic action than merely referring the matter to Court when he found that the privilege claimed did not exist.

The Law Institute's view is that the privilege or right to refuse to answer a question which may tend to incriminate is a fundamental one which has its origin in the common law. I do not know exactly when it was evolved, but it is just as fundamental as many of the rights that stem from Magna Charta and it should not be removed unless very good cause is shown. It is only a privilege to refuse to answer a particular question or questions. A witness called before an investigator cannot refuse to be sworn. If he is asked a question which he feels, on reasonable grounds, may tend

to incriminate him or his wife, or expose him to a penalty or a forfeiture he has the right to refuse to answer it.

The Chairman.—Do you state categorically that right relates specifically to one or two or three questions, and that a person cannot say, "I refuse to make any statement because anything I say may incriminate me"?

Mr. Elder.—It may eventually come to that. He could not decline to state his name on the ground that to do so might tend to incriminate him.

The Chairman.—Supposing a person gave his name and address, and standing in the company, what could happen from there on?

Mr. Elder.—He could refuse to answer every question, which would be tantamount to refusing to give evidence. But the privilege actually relates only to each particular question.

The Chairman.—A person could claim privilege with respect to each question?

Mr. Elder.—Yes, if he had reasonable grounds for supposing that he might incriminate himself. One of Mr. Phillips' difficulties was that he felt he did not have the power to enquire into the grounds for the claiming of the privilege, and that therefore the inquiry was stultified. In actual fact, it was not. I imagine that he would have the power, quite clearly, to ask questions of the witness in order to ascertain on what grounds privilege was claimed. The witness would not be bound to answer. If an investigator finds that he can not make progress, he has power to certify to the Court under section 136 and the Court has the right to deal with the matter and may direct that the question be answered; if it is not answered, the Court has power to punish the offender for contempt. That seems to us to be a perfectly adequate state of affairs, and we feel that that was proved in this inquiry, because as soon as Mr. Phillips found he could not get any further, he took out appropriate proceedings. However, before he had to go to the Court, the witnesses took further advice and decided to answer the questions.

Mr. Smith.—Do you think he more or less bluffed them into it?

Mr. Elder.—They may have tried to bluff him out of it, and he called their bluff. We feel that, until there is a concrete case where some inquiry of this nature has been completely stultified as a result of the claim of privilege, the matter should not be interfered with as it is regarded as one of the fundamental liberties of the subject. The very fact that this inquiry was not interfered with in any way by the claim of privilege seems to justify that view. There is some doubt as to whether the privilege exists or not. Without being very specific about it, Mr. Phillips seemed to think that the balance was on the side that it does not exist.

The Chairman.—Why should there be a doubt as to whether it exists?

Mr. Elder.—Because of the provisions of the *Evidence Act* 1928, and I refer to sections, 14, 15 and 16. Section 14 deals with any board appointed or to be appointed by the Governor in Council to summon by writing under the hand of the Chairman any person whose evidence in the judgment of the Board or any member thereof is material. The section empowers the Board to summon witnesses and ask for the production of papers. Section 15 authorizes the Board to examine witnesses on oath, and section 16 imposes a penalty for non-attendance. The committee did not examine thoroughly the question of whether or not the privilege does exist.

The Chairman.—Would not this fact be fundamental to any decision as to whether a move could be made?

Mr. Elder.—At the moment, the privilege is claimed to exist. Our view is that the privilege should exist and that if any legislative provision is inserted in the Act it should be for the purpose of showing beyond any doubt that it does exist. The balance of opinion of the committee was that it does exist and that nothing in the Evidence Act takes it away. But the question is open to argument.

The Chairman.—There is no case history on the subject?

Mr. Elder.—No. It appears never to have been decided positively, and until it is decided by a Court nobody can say definitely that the privilege exists.

The Chairman.—In your view, the only way to safeguard the claim of privilege is to incorporate in the legislation a definite provision?

Mr. Elder.—Yes. I would think the appropriate Act to be amended would be the Evidence Act. A provision could be inserted in it to state that the privilege does exist.

Mr. Lovegrove.—Why has that not been done up to date.

Mr. Elder.—The right exists in common law, and the question that arises is whether anything in the Evidence Act takes it away. I would not have thought there was any doubt, but Mr. Phillips seemed to feel that there was a doubt. It is with great respect that I advance my own view, because Mr. Phillips knows more about the question than I do. At the joint meeting we had with the Bar, the general consensus of opinion was that the privilege did in fact exist. To summarize our view, let me say that it is that this privilege is a fundamental right, and unless there is some extraordinarily good reason for removing it, we do not think it should be removed; we do not think any reason has yet been advanced to justify the removal of such a fundamental right.

Mr. Sutton.—It seems that in these cases the public never "gets a go." Recently, in connection with the Trustees Companies Bill, we heard a considerable volume of evidence, but there was none from a client.

Mr. Elder.—This is akin to the principle that a man accused of a criminal offence must be proved positively guilty beyond any reasonable doubt, and that he should not be put in the position where he can convict himself out of his own mouth. That is absolutely fundamental and I think every member of the public would agree with that approach to the problem.

The Chairman.—You are relating your remarks to directors and officers of companies, and believe that they should have this fundamental right?

Mr. Elder.—That is so.

Mr. Lovegrove.—In his evidence to the Committee yesterday Professor Donovan stated that the right to a privilege existed in connection with treason, felony, or misdemeanour. It is not correct to say that it is not of universal application?

Mr. Elder.—I should not think it was so restricted. The view of the sub-committee was that the privilege exists, although it is hedged about with a number of restrictions.

Mr. Lovegrove.—I direct Mr. Elder's attention to section 29 of the *Evidence Act* 1928.

Mr. Elder.—That is a statutory provision. It may well be a fundamental question whether the Evidence Act has taken away the common law privilege. When I say that the privilege exists, I mean that it exists as common law. As I mentioned previously, there is a doubt whether it has been cut down, but that question has not been decided. The exact extent of section 29 of the Evidence Act is open to two opinions.

The Chairman.—How many members are there in the Law Institute of Victoria and how many were appointed to the sub-committee?

Mr. Elder.—There are about 1,300 members of the Law Institute. There are sixteen members of the Council. Three of those members were appointed to the sub-committee and two outside members were co-opted. Perhaps I should refer to section 30 of the *Evidence Act* 1928 which purports to give protection to persons who, at an inquiry, are compelled to answer questions. That section provides—

> No statement made by any person in answer to any question before any board or commission empowered under the provisions of this Act or other like body or person empowered under any other Act to summon witnesses shall .... be admissible in evidence in any proceedings civil or criminal against him, nor be made the ground of any prosecution action or suit against him....

On the face of it, that provision appears to give a very satisfactory protection, but if a person, in the course of any inquiry, gives an answer that is incriminating, that answer may not be used as evidence in a subsequent prosecution, but a lead will have been given which will enable the Crown to obtain the necessary evidence to bring a prosecution. Accordingly, in the opinion of the sub-committee, section 30 does not give adequate protection.

Mr. Sutton.—The two aspects are separate. The inspector has to inquire into a specific matter, within certain terms of reference. He is vested with considerable authority under the Act and under the terms of appointment. I cannot see why he should be deprived of every facility to extract or extort the revelant information from witnesses. I know that in America a strong view to the contrary is taken. I point out, however, that in Australia when a libel action against a newspaper is being heard, a journalist cannot take the stand that he obtained his information from sources that he will not disclose.

Mr. Elder.—I agree that there is no case of privilege so far as journalists are concerned, but there is always a question of privilege with respect to answers that might tend to incriminate.

Mr. Thompson.—It seems that the primary purpose of an inquiry such as that which we have been discussing is to determine whether there has been anything irregular in the conduct of directors. Consequently, does Mr. Elder not think that to insist on this so-called privilege defeats the very purpose of the inquiry?

Mr. Elder.—It has not defeated it yet, and that would seem to indicate that there is no real danger of an inquiry being stultified. I do not think anyone could produce a concrete case where the inquiry has been impeded by the claim of privilege. Why, therefore, make an inroad into the privilege until such action is justified?

Mr. Sutton.—In this case, did not the directors, after demurring, consent to give evidence?

Mr. Elder.—Yes. It may be inferred that they made the claim as a tactical move, possibly in an attempt to bluff the inspector, but he called their bluff. They had no privilege because there was no tendency to incriminate.

Mr. Sutton.—After all, the banks—and others—are not asked to disclose information other than that related to specific matters that are before the inspector.

Mr. Elder.—That is so.

Mr. Thompson.—Does Mr. Elder think that a director who has nothing to hide has anything to fear from the disappearance of privilege?

Mr. Elder.—That would depend on what he had done. We are not putting our argument forward in an attempt to protect directors as such. A fundamental principle of British justice is involved. Unless there is some very good reason for taking away the right of the subject, we believe it would be dangerous to do so. We say, "Where is the good reason?" There is no stultification of the inquiry.

Mr. Sutton.—Happily, there is not in this case, because of the consent of the witness.

The Chairman.—The witness must be dealt with as a director rather than as a British subject. That is the first fallacy of the argument. The fact that there has not been a case until now does not necessarily mean that there could not be one. In the course of this inquiry we have found that there have been only two cases of this character in the last twenty years. It may be that inquiries will reveal a necessity to change the inspector's powers.

Mr. Elder.—In that event, we would be prepared to reconsider our view. I submit, with respect, that although you, Mr. Chairman, were thinking of the director as such, he is in reality an individual and cannot be considered apart from his private capacities and his private rights. He is in the same position as any other subject, even though he is appointed to the directorship of a company.

The Chairman.—He is examined only on his actions as a director—not as a citizen.

Mr. Elder.—He may have committed a criminal offence. He may have embezzled some money. In other words, his actions may have been criminal in relation to the company's affairs.

Mr. Lovegrove.—What happens in the case of an interrogatory in which, first of all, the inspector asks the director a question but the director, claiming privilege, refuses to answer on the ground that he would be incriminated, and then the inspector says to the director "How does it incriminate you?" Is the director obliged to answer the second question?

Mr. Elder.—He could decline to answer the question. Probably, he could give an answer that may not satisfy the inspector and the inspector has no further power other than to refer the matter to the court.

Mr. Lovegrove.—The sub-committee of the Law Institute takes the view that that procedure should be continued?

Mr. Elder.—That is so.

Mr. Rawson.—Is not one of the problems whether or not the inspector should have the powers of a judge? If he were given those powers it would then be unnecessary for him to take the witness before a judge.

The Chairman.—There is a double problem. Either you give the inspector the power or you take away the privilege from the individual.

Mr. Elder.—The most drastic action would be to take away the privilege. Another way of tackling the problem would be to give the inspector more powers of inquiry, but that does not take the matter much further. It would be completely wrong to put the inspector in the same position as a judge and give him power to punish for contempt.

Mr. Rawson.—Could not the inspector follow up his questions, if he had the power of a judge, and ask the witness to state why he considered so and so?

Mr. Elder.—Do you mean as to whether a witness has given a satisfactory answer to a question?

The Chairman.—I think what Mr. Rawson means is that an inspector should be in a position to question a witness to the same extent as a judge can, without having the power of punishment.

Mr. Elder.—I do not quite follow what advantage that would be to an inspector. If the matter were later referred to a judge, he would still have to canvass the whole question.

The Chairman.—I think Mr. Rawson assumes that if the inspector had those additional powers the judge would accept the inspector's submission.

Mr. Sutton.—The logical extension of the view put forward by the sub-committee of the Law Institute would be that a man could go before an inspector and plead insanity and would not be required to answer any question.

Mr. Elder.—The inspector could overcome that situation by issuing a certificate to the court. Another aspect is that in the case being referred to the inspector appointed was a barrister well versed in the law relating to evidence. In other cases it may be desirable that a person without a legal background be appointed. Then difficulties would arise if inspectors were given greater powers. I consider that at the moment there is nothing to prevent an inspector from inquiring into the reasons for claiming privilege. He may not get the necessary answers, but he can still refer the matter to the court. If he threatens to use that weapon, it may produce the desired result.

Mr. Grigg.—Could you give the committee any idea of how many cases have been referred to the court in relation to this matter?

Mr. Elder.—There have been few inquiries of this nature, and to the best of my knowledge none under the Companies Act has been referred to the court. Of course, there have been other cases in which boards of inquiry have referred matters of privilege to the court. A Royal Commissioner, generally, has power to deal with the matter immediately. Newspapers have frequently claimed privilege. There was the case of the Attorney-General against McGuiness in which privilege was claimed.

Mr. Thompson.—Would it not be easier to insert a provision in the Bill that the inspector appointed must be a barrister and solicitor of the Supreme Court?

Mr. Elder.—I cannot see any need for such a provision.

Mr. Thompson.—You said that you were quite happy as long as the person conducting the inquiry had a legal background.

Mr. Elder.—It is quite obvious that an accountant or a scientist could be the appropriate man to inquire into a particular subject.

Mr. Grigg.—In such a case it would not be feasible to invest on such a person the powers of a judge.

Mr. Elder.—That is so.

The Chairman.—Is there not a third category concerning directors—"Other persons who may have knowledge"?

Mr. Elder.—They have no special privilege, and it is not suggested that they should have. But there is no suggestion that if I were called before an inquiry I would not have the ordinary privilege, except to the extent that it is taken away by the Evidence Act. The Law Institute is of the opinion that every person who is called as a witness before an inquiry of this nature should have his common law privilege.

The next question referred to was that of privilege of banks. This matter arose because of the provisions of section 387 of the Companies Act, which was amended only two years ago by adopting section 175 of the English Act. The view of the sub-committee of the Law Institute was that paragraph (*b*) of section 387 should be repealed because it puts the bankers of a company in a far better position than the bankers of an individual. There is no reason why the position should obtain. It is rather significant that the English section follows immediately after the provision relating to inspection in Part V. The English Act is divided into different Parts to the Victorian Act. In the Victorian Act, Part I. covers the whole field of companies which are not mining companies. When the legislation was amended in 1955 that fact was overlooked. It seems to be completely anomolous that a company's bankers should be differently situated to an individual's bankers. If the banker of an individual is summoned before an inquiry, there is no privilege whatsoever—no restriction, except on grounds of relevance, as to what can be directed at him. However, if a company's bankers are so summoned, they appear to fall within this particular provision. We cannot see any reason for that and we feel that the particular provision should be repealed.

The Chairman.—Is that sub-section in the English Act?

Mr. Elder.—Yes, but there it clearly related to the bankers of the company, the affairs of which are being investigated. We cannot see why that should be so.

The Chairman.—You would not have that provision in the Act at all?

Mr. Elder.—We would not have paragraph (*b*) included. Paragraph (*a*) is a slight extension of the original provision and that deals with a solicitor's client and a solicitor's privilege in relation to that client's affairs. It is merely a repetition of the position as at common law.

Mr. Thompson. You would not agree with the legal interpretation placed on that clause by the bank's legal officers who claim that it gives them privilege as well? It was suggested that by virtue of the fact that the company had been protected, they, too, had been protected.

Mr. Elder.—That construction could be placed upon it, but if the matter was contested, that point of view would not in my opinion be sustained.

The next point relates to disclosure of share transactions by directors and the Law Institute approached this question from the point of view that there is a well-recognized right on the part of individuals that they should not be required to disclose, for the benefit of the general public, particulars of their assets or incomes. We appreciate that in the Freighters case, if disclosure could have been compelled, it would have produced very desirable results. It would be difficult to see how one could frame any really satisfactory and effective provision which would produce the result required and compel disclosure by a director who is determined not to disclose anything at all. It would be possible to include in the Act, a provision requiring disclosure, but it could not be enforced if a director was determined to get away with it.

The Chairman.—He would be liable under the Act.

Mr. Elder.—Probably, he would never be found out.

Mr. Thompson.—It was discovered in the case of Freighters, but it was not an offence against the Act. Would it not be an added deterrent if it could be provided in the Act that disclosure was compulsory?

Mr. Elder.—There is a certain type of person whose behaviour is rather contitioned on whether he will be found out or not and, in such cases, the very fact that he was required by law to disclose would probably make him respectable. The main damage is done when someone refuses to disclose.

Mr. Sutton.—Would not the trouble be minimized if that aspect were covered in the company's articles of association?

Mr. Elder.—Possibly. It is difficult to see how one could adopt any provision which would prove really effective and which would not place the respectable director—the vast majority of directors fall within that category—in an unsatisfactory position.

Mr. Sutton.—Have you read Burnham's "Managerial Revolution"?

Mr. Elder.—No.

Mr. Sutton.—He pointed out that in practice, when the affairs of the company were carried on by executives, self-respecting and respectable directors might not know what was happening.

Mr. Elder.—In that case the director would have nothing to fear.

The Chairman.—Would you accept either of the following alternatives—(1) that a director must disclose to his fellow directors what he is doing with shares, or (2) that a director must disclose by circular or other informative manner to the shareholders —not the general public—what he is doing?

Mr. Elder.—We consider that neither of those alternatives would be effective. Disclosure to fellow directors in the case of Freighters would not have done much good unless Mr. Siddons had been there. When he returned he discovered sufficient to make him disgusted with the whole matter.

The Chairman.—If a director was not available he could be informed by letter.

Mr. Elder.—It may be unwise to make it a condition or any action that it must be disclosed to all directors. For example, a director may be overseas or inaccessible and some delay could occur with a projected deal. I suggest we should not go as far as that.

The Chairman.—Can you see any harm in writing such a requirement into the Act?

Mr. Elder.—The sub-committee did not direct its attention particularly to disclosure of that nature. We considered that if all the directors banded together in a desire to do something, as in this case, disclosure would not do much good. In regard to the second point, namely, disclosure to shareholders, a section, 195, was placed in the English Act with the idea of doing that. A register of directors' shareholdings is kept and the Act places an obligation on directors to supply the secretary with the necessary information. I think the register is open for inspection for ten days prior to the annual meeting and at that meeting. Our objection is that that compels disclosure by directors of their personal affairs without producing any certainty or probability that the director who is behaving improperly will comply with the provision.

Mr. Thompson.—But would it not mean that if some directors acted as did those of Freighters, they could be judged guilty? At present the spirit of the law has been broken but the directors concerned may say airily, "We have acted in the interests of the company."

Mr. Elder.—If they did not disclose they would be guilty of an offence against the Act, but that would not cover the position where they made a disclosure and shareholders queried it. They would not have committed an offence.

The Chairman.—But would it not catch them before they did any real damage?

Mr. Elder.—It is unfortunate that most shareholders are lethargic and do not pursue their investment in the company with much interest as long as everything appears alright on the surface.

The Chairman.—But suppose they received a circular informing them that the directors were unloading shares?

Mr. Elder.—We would be opposed to any idea of circularization, which would be going further than the English Act. There is a possibility that a director might be selling some shares for a very good private reason. If that became known a wave of selling might occur.

The Chairman.—That could not be any more unfavourable than what happened in this instance.

Mr. Elder.—But it would be quite unjustified.

Mr. Thompson.—I understand it is the practice in the U.S.A. to require disclosure of directors' transactions. It is not clear that that has had any unfortunate results.

Mr. Elder.—That was the view of the Cohen committee.

Mr. Lovegrove.—On the assumption that a director possesses certain rights—such as to conceal his assets—is there not an ethical question whether he should have such a right?

Mr. Elder.—I think the committee's reaction is that if it could be shown that any real advantage would be derived from such disclosure, perhaps it should be made, but we considered that the proposal would not get anywhere. We doubt whether it would stop the sort of thing that occurred in the case of Freighters.

My only other point concerns the question of employés' shares. There is no distinction in the Victorian Companies Act between employés' shares and

those held by non-employés. Therefore, the remarks I have made regarding shares generally apply to employés' shares. Provision is included in some articles of association in respect of employés' shares, but I can see no reason for it in the Companies Act. It seems to be purely a matter for the company concerned.

Mr. Thompson.—Do you not think that, if we do not endeavour to change the law as the result of the evidence that was brought to light by the inquiry, we would be giving legal sanction in some degree to the actions of the directors of Freighters—by inference?

Mr. Elder.—I would not agree. One of the worst things you, as legislators, could do would be to hurry into amendments for the purpose of dealing with one isolated case. In the case of Freighters the report was made and it was found that the directors had not committed any criminal offence or offence against the Companies Act. It was suggested that they may have committed an offence or breach of duty as directors which would entitle the company or its shareholders to proceed against them and require them to account for their actions. I do not think there was anything in the report which suggested that there was a need for any particular legislative action in relation to disclosure.

Mr. Thompson.—You would not agree with the theory that they exploited loopholes in the Companies Act.

Mr. Elder.—No, I think they had a rather unusual idea of their responsibilities as directors and they proceeded upon a course of conduct accordingly. My sub-committee felt they would have pursued that course whether there were any further provisions in the legislation or not.

Mr. Lovegrove.—Does that argument apply generally to the criminal code as well.

Mr. Elder.—I do not quite follow.

Mr. Lovegrove.—Penalties are laid down for various types of crimes and I suppose it can be argued that those penalties deter one section of the community but not another.

Mr. Elder.—That is true, but there is also the very well-known maxim that there is nothing worse than imposing a penalty which is incapable of being enforced. That brings the whole system into disrepute.

The Committee adjourned.

WEDNESDAY, 19TH JUNE, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. R. R. Rawson,	Mr. Sutton,
The Hon. A. Smith.	Mr. Wilcox.

Mr. H. C. Collingwood, Chairman, Mr. G. Noall, a member of the Committee, and Mr. D. S. Rogers, Secretary, of The Stock Exchange of Melbourne, were in attendance.

Mr. Collingwood.—I shall present a statement authorized by the Committee of The Stock Exchange of Melbourne on matters arising from the investigation by an inspector of Freighters Ltd. Mr. Noall, who is well versed in our practices and customs, and has been active in company formation, is well qualified to answer any questions that members of the Statute Law Revision Committee may wish to ask.

My Committee very much appreciates the opportunity to express its views on matters arising from the investigation by Mr. P. D. Phillips, Q.C., of transactions in the shares of Freighters Limited and the opportunity to consider possible legislation to be recommended by your Committee to prevent the recurrence of similar happenings in the future.

I would like to refer firstly to the three matters raised in the letter from the Attorney-General dated 16th October, 1956, to the Secretary of the Statute Law Revision Committee as follows:—

1. *Powers of Inspectors.*—

This question was raised because certain persons summoned to give evidence before Mr. Phillips claimed privilege and for a time refused to answer questions.

This issue is of such a technical legal character that my Committee does not consider itself qualified to express an opinion on it.

We feel, however, and in this I think we are in agreement with the Institute of Chartered Accountants in Australia, that any necessary penalty for wrongful refusal to answer questions should be a matter for a court of law and not for the Inspector concerned.

2. *Disclosure by Directors of Benefits arising from their Office.*—

This question arises out of the circumstances in which certain directors of Freighters Limited received Freighters shares in connexion with—

(*a*) the Australian Machinery Company transaction;

(*b*) the acquisition by Freighters of the various sales franchise companies owned by those directors.

May I say at the outset that in the opinion of my Committee legislation should not be invoked to impose excessive restraints upon the activities of company directors. It is our firm belief that the great majority of directors of public companies in this State act with a firm sense of responsibility to the shareholders whom they represent and to the best of their ability in the interests of those shareholders. In the interests of shareholders, every effort should be made to attract the most suitably qualified people to accept positions on the Boards of public companies without subjecting them to unreasonable and impracticable restraints.

I may sum up our views as follows:—

(*a*) If a director of a company is also a shareholder of that company, he should not because of his dual capacity be deprived of his right in common with all other shareholders to participate pro rata in any issue of his company's shares.

The Chairman.—Can a man be a director without being a shareholder?

Mr. Noall.—Only for the period of two months allowed for him to acquire his qualification shares.

The Chairman.—He does not get them automatically on becoming a director?

Mr. Noall.—No. He must acquire them. There could be a new issue of shares in the company before he has acquired his qualification shares.

Mr. Collingwood.—The statement continues—

(*b*) In the case of an offer of shares to the public, which is not underwritten, directors should be free to take up any shares not applied for provided this is clearly stated in the prospectus issued in connexion with the issue;

(*c*) In the case of an offer of shares to shareholders which is not underwritten the circular referring to the issue should state that shares not applied for will be dealt with at the discretion of the directors;

(*d*) No allotment of shares by the Board to any of the directors should be made without the consent of shareholders or unless the shares have previously been offered to shareholders;

(*e*) Restrictions on directors with respect to their purchase or sale of shares in their company are impracticable and the matter must largely be left to their own good sense and conception of what is right and proper.

Mr. Rawson.—I understood you to say that no issue of shares could be made to the directors without the consent of the shareholders?

Mr. Noall.—The point is that unless shares have previously been offered to shareholders, no allotments should be made to directors. The directors cannot say, "We want another £25,000 worth. We will allot these shares to ourselves and pay for them." In our opinion, the only time they can be so allotted is when the shares have previously been offered to shareholders, some of whom have not exercised or sold their rights, and there are shares left over. Then the matter should be left in the hands of the directors to do what they think best.

Mr. Rawson.—What is the position of the directors as shareholders?

Mr. Noall.—They would be entitled to a pro rata allocation.

Mr. Sutton.—Mr. Collingwood said, "The matter must largely be left to their own good sense and conception of what is right and proper." The good business sense of the directors of Freighters dictated their action—successfully, it appears. The conception of directors as to what is right and proper could be a purely subjective outlook. We want an objective approach to be adopted, so that it will not be a question of looking at a matter one way or another, and so that it would not be open to adjudication by a third person.

Mr. Noall.—Our view is that any legislation which may be introduced must not restrict the right of directors to sell shares if they want to buy property or to buy shares in the ordinary way of investment. We could not find any principle on which to base legislation designed not to restrict the director who is completely honest and merely acting as an investor or a seller, if he wishes to raise funds.

Mr. Collingwood.—My statement continues—

(*f*) The present law in Victoria with reference to company investigations by inspectors only authorizes official action in the case of indictable or criminal offences but leaves civil offences to the company concerned. We favour the adoption of legislation on the lines of section 169 (4) of the United Kingdom Companies Act which would enable the Attorney-General to bring civil actions in the name of the company concerned.

We have considered the submission of a previous witness, Mr. John Kirkhope, that where more than one director is interested, the statutory requirement that such directors must disclose their interest to the Board should be extended to provide that they should disclose their interest to shareholders. We do not believe that such a requirement should be introduced by legislation.

The Chairman.—Why?

Mr. Noall.—Because all sorts of difficulties could arise if the interests of directors had to be disclosed to the shareholders of the proposed purchasing company before anything could be done. Furthermore, it would be extraordinarily difficult to enact legislation to control the very rare case of someone trying to take advantage of his position for his personal benefit without at the same time restricting to a greater extent those honest people who try to act in the best interests of the company concerned.

The Chairman.—Is it not one of the difficulties that the action of Freighters Limited did not constitute an offence because there was no relevant law?

Mr. Noall.—That is so.

The Chairman.—Should it not be possible to take appropriate action when an offence is committed?

Mr. Noall.—There is already a statutory provision to the effect that a director must disclose his interest to the Board. Mr. Kirkhope's suggestion was that he should disclose it to the shareholders also. I believe that would be impracticable and, frankly, I do not see how it could be done without running the risk of depriving the company of some real advantages.

The Chairman.—Mr. Kirkhope's suggestion was that directors in any company should disclose their holdings to the shareholders.

Mr. Noall.—My understanding was that Mr. Kirkhope suggested they should disclose to shareholders their interest in any other company with which they were likely to be doing business.

The Chairman.—The question is whether they should disclose their holdings to the parent company, particularly when there is a re-allotment. Suppose that 500,000 shares were issued and the shareholders purchased 400,000. Should not the directors be obliged to tell the shareholders how the remaining 100,000 shares were allotted?

Mr. Noall.—I do not think that was Mr. Kirkhope's argument at all. Presumably at the next annual meeting the shareholders would be advised how the 100,000 shares not applied for had been allotted.

The Chairman.—Would that be of any value?

Mr. Noall.—Generally speaking, I do not suppose the company would make public whether or not the shares had been fully applied for by the shareholders. The circular issued at the time would probably make it clear that the shares would be dealt with as the directors thought fit. Any director seeking to help the company by taking up shares personally would run the risk of placing the company at a disadvantage if the matter of non-application by shareholders were made public.

Mr. Collingwood.—As Mr. Noall has stated, often when there are a few shares left over the directors take them up among themselves—sometimes at their personal inconvenience.

Mr. Noall.—It is by no means unusual for a company to sell on behalf of shareholders shares that have not been applied for and to distribute the profit among the shareholders. If the share issue had been underwritten, any shares unallotted would revert to the underwriters.

Mr. Collingwood.—My statement proceeds—

3. *Directors Participating in Issues of Employé Shares.*—

Here again, I would like to say at the outset that in the opinion of my Committee legislation should not be invoked to impose excessive restraints upon

the widespread practice of companies making share issues to employés. Shareholders readily appreciate the benefit of such issues and almost invariably the aggregate allotment to employés is small in relation to the total issue.

I may summarize our views as follows:—

(*a*) The Stock Exchange considers that no directors other than executive directors should participate in employé issues. However, as the terms and allocation of such shares are usually determined by the Board of which they are members, the Stock Exchange has the following listing requirement which was introduced after the employé issue by Freighters Limited:— "(10) Where a company makes an issue of shares to employés and allots any portion to a director holding office in an executive capacity either with the company or a subsidiary thereof, official quotation of the whole issue will be withheld until such time as shareholders have approved of the specific allotment made to any such director.

NOTE.—Unless a director holds office in an executive capacity he should not participate in an issue of shares to employés."

Mr. Smith.—If a director does not abide by the rules of the committee, what penalities are imposed?

Mr. Collingwood.—We would probably not quote the shares. Any new issue of shares must go before the committee of the Stock Exchange before it is quoted. If we find that it is an employé issue, then we look for the names of the directors. If directors who are not executive directors are involved, we complain to the company, but if executive directors are to participate we insist that such action must be confirmed at the next meeting of the company.

The statement continues:—

This provision clearly indicates the views of our committee on the subject.

(*b*) We consider that so far as Mr. Phillips' report on Freighters Limited is concerned, it did not disclose any anomalies in the law relating to employé share issues. Freighters Limited, of course, made an issue to "officers, associates and employés" and it disclosed two unsatisfactory features—

(i) the auditor of Freighters Limited and the auditor of a New South Wales subsidiary company were allowed to participate;

(ii) certain directors participated to an abnormal extent—and in each case the shareholders were not consulted in any way nor were they advised at the next annual meeting. Criticism of this transaction should not be allowed to cast doubt on the right of any board of directors of a company to make a placement of shares to outside people or groups (whether called "associates" or not) to whom it is in the company's interest to make such an issue.

(*c*) We would have no objection to an amendment of the Companies Act which would, in effect, adopt note (10) of our listing requirements;

(*d*) We do not consider it necessary to introduce legislation prohibiting auditors from holding shares in companies audited by them. My committee is fully aware of the high ethical standards specified by the Institute of Chartered Accountants for observance by its members and is equally aware of the zealous way in which the members of this Institute uphold the ethics of their profession. Through this medium, we believe that adequate protection is provided to ensure that improper practice will not occur in the vast majority of cases involving members of that Institute and that it is therefore not necessary to specifically legislate for the actions of public company auditors.

4. *General.*—

We have now outlined for your Committee the opinions we hold in respect to the particular matters referred to you by the Attorney-General, and you will have observed that our reference has been frequently to public companies, the great majority of which in Australia are listed for quotation on the Stock Exchange. We have confined our remarks to that type of company, as proprietary companies do not come within the scope of our normal activities.

Mr. Wilcox.—In that event, anything that you have said refers only to public companies?

Mr. Noall.—That is so; proprietary companies are not listed on the Stock Exchange.

Mr. Wilcox.—You have not applied your mind to the effect on proprietary companines?

Mr. Noall.—No. Our only contact with proprietary companies is when they are subsidiaries of public companies.

Mr. Collingwood.—The statement continues—

We would like to stress to you how rarely such a situation as that which developed in Freighters Limited occurs, secondly, to outline to you the way in which the Exchange can assist in either preventing or discovering such unsatisfactory situations.

At 30th September last, securities of 837 companies were listed for quotation on The Stock Exchange of Melbourne. Of these companies, 140 were in the mining section and the balance of 697 in the industrial list. More than 500 of these companies were Melbourne based companies for the purposes of Stock Exchange quotation and it is of note that within the last seven years only two cases of serious character have called for investigation in the conduct of company directors, namely, Corio Guarantee Corporation Limited (and its associate company, C. G. Corporation Limited) and Freighters Limited.

The Chairman.—On a number of occasions, disciplinary action by the committee has "stopped the rot."

Mr. Collingwood.—Not to any extent; sometimes we make enquiries, if companies are late in complying with our requirements, but I would not say that we have frequent trouble in that regard. As a rule, the management of companies by directors in Victoria is satisfactory, but there will always be exceptions.

Mr. Wilcox.—I think both Mr. Potter and Mr. Collingwood had given evidence that the only two cases in which there have been enquiries by an investigator or by a court in respect of the activities of directors of public companies relate to Freighters Limited and Corio Guarantee Corporation Limited. Are there any other such cases?

Mr. Rogers.—Not to my knowledge.

Mr. Noall.—A point that might be of assistance to the Committee is that before a company listed on the Stock Exchange makes a new issue of another type of shares it must submit the relevant information to Mr. Rogers. Many points would then be picked up and the company would be advised that it was not acting in the right manner.

Mr. Wilcox.—That was the distinction I was endeavouring to make. Mr. Rogers might have to make certain enquiries.

Mr. Noall.—That is so; that would prevent any wrong action being taken.

Mr. Collingwood.—To refer briefly to Corio Guarantee Corporation Limited, the Stock Exchange made enquiries into the company's affairs which lead to suspension from quotation of the company's shares as from 21st April, 1953. A body of shareholders then took action to publicize the company's difficulties and to institute machinery to displace the managing director and to salvage the company's assets insofar as such action was possible.

Turning to Freighters Limited, as early as 1951 the Stock Exchange was informed that transactions by certain persons associated with Freighters Limited might constitute grounds for Stock Exchange intervention. However, it was not possible to obtain a clear statement in the form of a direct allegation of malpractice against these persons. The Exchange therefore had no option but to await the submission of evidence which would be sufficient to require an approach to the company. By 1953 the committee considered that sufficient doubts had been raised as to the bona fides of the so called employé share issue in May, 1951, to require an investigation of that allotment. A leading firm of accountants was therefore instructed by the committee to carry out at the expense of the Exchange an investigation of the allotment.

The result of this investigation due to the lack of legal power available to such an investigator was not sufficiently conclusive for action to be taken at that stage by the Exchange, and accumulation of evidence continued, in nature similar to the evidence subsequently placed before the inspector appointed to enquire into the company's affairs. In due course, frequent discussions took place between the Exchange and Senior Detective Garvie who was instructed to enquire into the company's affairs by the Crown Law Office. Discussions were also held with the Crown Solicitor, Mr. Mornane, and immediately it was announced that an inspector would be appointed to investigate certain aspects of the company's affairs, the shares were suspended from quotation on The Stock Exchange of Melbourne.

It should be clearly understood at this stage that the position of the Stock Exchange, in view of the company's prosperity required careful consideration in the best interests of shareholders as a whole. Ultimate action of the Exchange on matters of this nature is to suspend quotation or, if necessary, delist the company. Such action creates a hardship for the shareholders and the power of suspension or delisting is therefore one which the Exchange must exercise with very great care.

Mr. Sutton.—You indicated that this matter was discussed with Mr. Mornane and others. Was it as a result of such discussions that the inquiry into Freighters Limited was instigated?

Mr. Rogers.—Our investigations and inquiries were conducted simultaneously with those of the Attorney-General's Department. The Attorney-General had to be satisfied that a prima facia case had been made out, and we were of assistance in that direction, although it was purely an independent and separate investigation.

Mr. Sutton.—It is to the credit of the Stock Exchange that an investigation was carried out.

Mr. Collingwood.—The exchange incurred considerable expense in having investigations made. My statement continues:

Suspension from quotation of the shares in Freighters Limited was therefore invoked on 28th June, 1956, following the announcement by the Attorney-General of the appointment of Mr. Phillips as inspector. Quotation, however, was resumed on 11th July following a further statement by the Attorney-General to the effect that the subject of the investigation did not in any way reflect upon the financial stability of the company. Following the presentation of the report by the inspector on the results of his investigation, the representatives of the Exchange on the 12th October met the Solicitor-General Mr. (now Sir Harry) Winneke who in effect informed the delegation that the only action available to the Government was probably to order the winding up of the company and that the question whether further action should be taken rested with the shareholders of the company.

The Committee of the Exchange then decided to request the company's Board of Directors to appear before it. At its meeting with the full Board of Freighters Limited on 15th October, the Exchange outlined to the Board a course of action whereby the shareholders of the company would be given an opportunity "as early as possible to appoint a new Board of Directors capable of giving independent consideration to Mr. Phillip's report and deciding what action (if any) would be taken in consequence of it."

The Committee's proposal ultimately lead to a reconstruction of the Board and to this point of time, the Exchange has no evidence that the reconstructed Board of the company has failed in any way to observe its agreement with the Exchange and we understand that the Committee of the Board, which comprises the four new members, has proceeded a considerable way in its consideration of Mr. Phillips' report.

It will be seen that we were not idle; we took what action we could.

My statement continues:

The function of the Stock Exchange in matters of this nature should be clearly understood. The Exchange is primarily a market place for company securities but in order to encourage the growth of public ownership through investment in Australia's industrial development and to assist in the maintenance of high standards in the management and control of public companies, it takes upon itself a responsibility to act wherever possible and necessary to ensure that members of the public investing in company securities receive a measure of protection for their investment.

In the last resort, however, the Committee must rely upon the following:—

(*a*) The integrity of company auditors.
(*b*) The integrity of directors of public companies.
(*c*) The force of the Official List Requirements and Listing Agreements of the Exchange.
(*d*) The provisions of relevant statutory legislation.

The Chairman.—Do either Mr. Rogers or Mr. Noall desire to add to Mr. Collingwood's statement?

Mr. Noall.—It may be advisable to elaborate on the listing requirements and agreements of the Exchange. Every company applying for listing must sign a form which covers a wide range of prohibited acts. Probably, that is the most effective method of trying to control any attempts at wrong-doing. As Mr. Collingwood emphasized, the only redress we have in normal circumstances is either to suspend or delist a company. Such action cannot be taken lightly. So far as the management of companies in Melbourne is concerned, the standard of integrity attained has been extremely high.

The Chairman.—What effect would the delisting of a company have on a shareholder who may have shares to sell?

Mr. Noall.—It denies him a public market, and if he made an attempt to sell privately, he would have to sell at very much below their real value. The committee regards delisting as a serious action to be taken only in extreme cases.

Mr. Sutton.—Has a company any right of appeal against delisting?

Mr. Noall.—No.

Mr. Collingwood.—All companies must sign an agreement to the effect that they remain on the official list at the pleasure of the committee. The effect on the shareholders of delisting is that they immediately "get busy" and want to know what is the matter, and where the company directors have failed. If it is apparent that the directors are not fit and proper persons to direct the company's activities, they are dismissed. A decision to delist a company immediately alerts the shareholds to the fact that there is something wrong, and it is then their duty to rectify the position.

Mr. Rawson.—You do not suggest that the law should be altered?

Mr. Collingwood.—We mentioned that the Attorney-General should have power to bring civil action in the name of the company concerned.

Mr. Noall.—Furthermore, we consider that our Official List Requirement number 10 could be incorporated in the law.

Mr. Rawson.—You were not very emphatic on that point.

Mr. Noall.—I think we were. Perhaps we could amend our submission to state that we would approve of such an amendment to the Companies Act.

The Committee adjourned.

APPENDIX "A."

MEMORANDUM FROM PROFESSOR DONOVAN.

The Attorney-General has referred to this Committee certain matters arising out of the report by Mr. P. D. Phillips, Q.C., who was appointed a competent inspector under the provisions of the *Companies (Special Investigations) Act* 1940 to investigate the affairs of Freighters Limited. That report indicated certain deficiencies and anomalies in specified fields of company law and in the powers of a competent inspector. This Committee was asked to examine these matters and make such subsequent report and recommendation as it thought proper as the result of such examination.

I have been asked to submit to the Committee any views I may have on the matters raised by this reference. I should like, with respect, to submit the following points for consideration.

1. *Powers of Competent Inspector.*

(A) *Privilege against Self-incrimination.* The Inspector pointed out that certain individuals who had appeared pursuant to a summons to give evidence in the course of the investigation, at a relatively early stage in their interrogation declined to answer questions relating to the transactions under investigation. The reason given in each case was that their answers might tend to incriminate them and that therefore they were privileged to refuse to answer. The claim was based on legal advice tendered by their counsel.

Two general questions are raised here:

(*a*) Does such a privilege exist in the case of an investigation such as this? If yes, then

(*b*) *Ought* such a privilege to exist in investigations of this nature?

(*a*) This first question is a legal one. The privilege against self-incrimination has become a settled common law rule since the middle of the seventeenth century. It is a general and pervasive principle which, it is suggested, should not be regarded as being abrogated in the absence of clear and express legislation to that effect. The powers of a Competent Investigator, as set out in the *Companies (Special Investigations) Act* 1940, are assimilated to those of an Inspector under relevant sections of the Companies Act. Section 136 (5) of that Act provides:

"(*a*) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect of the affairs of the company, the inspectors may certify the refusal under their hand to the Court.

(*b*) The Court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court."

This procedure contains no specific reference to the privilege under consideration. But, as submitted above, this should not lead to the inference that the privilege is not available in these cases.

Reference might also be made to the Evidence Act, section 29, which provides:

"No witness shall on the trial of any issue joined or of any matter of question or on any inquiry arising in any suit action or proceeding whether civil or criminal be permitted to refuse to answer any question which is relevant and material to the matter in issue on the ground that the answer may expose him to any penalty or forfeiture or may disgrace or criminate himself, unless the Court or person having by law or by consent of parties authority to hear receive and examine evidence is of opinion that the answer will tend to subject such witness to punishment for treason felony or misdemeanour."

"Legal Proceeding" is defined in section 3 so as to include "any civil criminal or mixed proceeding and any inquiry in which evidence is or may be given before any Court or person acting judicially." It is submitted that the type of investigation under discussion does *not* come within the terms of section 28. If, therefore, section 28 is intended to state the full scope of the privilege (and it is further limited to liability for "treason felony or misdemeanour") then it may well be that it is not to be regarded as available in an investigation of this nature.

My conclusion, however, is that this argument is not sufficiently conclusive to dispose of the existence of the privilege.

(*b*) The second question is a pure question of policy. In my opinion the whole purpose of the investigatory procedure under discussion is *protective* rather than *punitive*. Section 2 (3) of the 1940 Act, for example, speaks of a law officer being satisfied that a prima facie case has been established that it is necessary for the protection of the public or of the shareholders or creditors (of a company) that the affairs of (such) company should be investigated under the Act.

Since thus the procedure is designed to bring to light certain matters in the general public interest, it seems to me that to allow this type of privilege would largely nullify the investigatory procedure itself and thus fail in the achievement of the purposes for which the Act is designed. The privilege does, in the words of Professor McCormick (Evidence, 1954 p. 252) run "counter to any rational system of investigation."

Phipson is setting out the rationale of the privilege states, "A sensible compromise has, however, been adopted in several modern statutes by compelling the disclosure, but indemnifying the witness in various respects from its results." The Bankruptcy Act compels a bankrupt to "answer all such questions as the Court puts or allows to be put to him" (s. 68 (8)). Section 70 states "Unless the Court otherwise directs, a bankrupt shall not be excused from answering any question . . . by reason only that the answer thereto may expose him to punishment." In general, such answers are admissible in subsequent proceedings against him. However, it has been held that section 70 is limited to the bankrupt and that other witnesses can take advantage of the general principle.

The Commonwealth Royal Commissions Act (section 6) makes it an offence for a witness to refuse to answer any question relevant to the inquiry put to him by any of the Commissioners. But by 6 DD such evidence "shall not (except in proceedings for an offence against this Act) be admissible in evidence against him in any civil or criminal proceedings in any Commonwealth or State Court or any Court of any Territory of the Commonwealth."

Suggested Amendment. I would propose an amendment to the Companies Act in the following form. (The reference is to Clause 146 (4) of the Draft Bill, 1957.)

"(4) No officer or agent of the company shall refuse to produce to the inspectors any book or document when so required, or refuse to answer any question relevant to the inquiry put to him by the inspectors, on the ground that the production or answer may criminate or tend to criminate him; but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury."

The sub-section could then go on to set out the present procedure for certification to the Court and for punishment by the Court.

It will be noted that I exclude civil proceedings from the proposed section, for reasons appearing below—and also retain the principle that punishment should be a matter for the Courts, not for the Inspector.

It seems to me that a provision of this nature adequately protects witnesses in inquiries of this nature.

If, however, it is felt that the privilege should be retained then consideration must be given to the difficulty suggested by the inspector, namely that he has no power to inquire into the existence of a bona fide belief in the claim. I do not see any real difficulty here. It seems to me that the Inspector must be able to satisfy himself on this point. If he concludes there is no such bona fide belief, or if no indication is given of the basis of the belief, then he must rule against the claim. If the witness still refuses to answer, then the Inspector can have he matter tested in Court.

If it is felt that the position needs clarification, then a provision could easily be inserted to the effect that a witness may refuse to answer if he satisfies the Inspector that he has a bona fide and reasonable belief that the answer may tend to criminate him and that the claim of privilege is made solely for the purpose of protection.

(B) *Privilege claimed by Bank.* In the course of investigating the conduct of certain directors of Freighters Ltd., the Inspector summoned as witnesses officers of the banks of such directors. One of these, acting on legal advice, refused to reveal any knowledge or information which had come into his bank's possession arising out of the relation between that bank and its customer, the director. The claim of privilege was based on the Companies Act, section 387 (as amended by Act No. 5935 of 1955). That Act provides "Nothing in this Part shall require disclosure . . . by a Company's bankers as such of any information as to the affairs of any of their customers other than the Company." (This provision is based on the

United Kingdom Act section s. 175 and is retained in the proposed new Companies Bill, clause 257 (b)). It seems unarguable that this section conferred no privilege whatever on the bank in question since that bank was not the Company's bank nor was it being examined as such. But it is possible that this provision might limit the usefulness of an investigation if, by coincidence or design, the director whose conduct was being investigated dealt with the same bank as the Company. If his affairs are within the terms of reference of the inquiry, then there seems no point in retaining this privilege. I would therefore agree with the suggestion of the Inspector that an amendment should be made to the present section 387 along the lines he suggests. This is to the effect that section 387 (as amended) should be further amended by adding after the words "customers other than the Company" the clause "if such information could not itself properly be required to be disclosed by virtue of the provisions of this Act."

2. *Employee Shares.*

This raises matters of policy and it seems to me that there is little that can be done by way of legislative enactment which could prevent such shares going to directors. The problem might well come within the scope of Stock Exchange supervision or control.

3. *Duties of Directors.*

The original legal view of the director as a strict trustee was whittled down considerably by the Courts from the latter part of the nineteenth century onwards. However, the case of *Regal (Hastings) Limited* v. *Gulliver* referred to by the Inspector shows that some vestiges of that concept remain.

Clearly the directors are not to be regarded as trustees, pure and simple, of the Company or of the shareholders. But for certain purposes and in respect of certain activities they will be considered as standing in a fiduciary relation to the company. The practical result of this view is the principle enunciated in the *Regal* case; a person who stands in some fiduciary relation to another is bound to account to that other for any profit made by reason of and in course of that relationship. It is irrelevant that he may have acted in good faith throughout. Nor does it matter that the other person could not have made the profit anyway or has not in anyway suffered any loss.

Important applications of this principle arise in connexion with dealings by directors in the shares of their company. The Cohen Committee dealt with this matter in the following paragraphs of their Report:

"86. *Share transactions by directors.* Whenever directors buy or sell shares of the company of which they are directors, they must normally have more information than the other party to the transaction and it would be unreasonable to suggest that they were thereby debarred from such transaction; but the position is different when they act not on their general knowledge but on a particular piece of information known to them and not at the time known to the general body of shareholders, e.g. the impending conclusion of a favourable contract or the intention of the board to recommend an increased dividend. In such a case it is clearly improper for the director to act on his inside knowledge, and the risk of his doing so is increased by the practice of registering shares in the names of nominees. None the less we do not recommend a prohibition on directors holding shares in the names of nominees. This is a useful convenience to the director and prohibition could be readily evaded, e.g. through the medium of a company controlled by the director. We do, however, consider that the law should be altered so as to discourage improper transactions of the kind we have indicated. Even if the legislation is not entirely successful in suppressing improper transactions, a high standard of conduct should be maintained, and it should be generally realized that a speculative profit made as a result of special knowledge not available to the general body of shareholders in a company is improperly made. We would add that some directors who would not themselves take advantage of inside information do not so clearly appreciate the impropriety of letting it be known to their friends that events as yet unknown to the shareholders have made the shares of the company an attractive purchase.

87. *Disclosure of share transactions by directors.* The best safeguard against improper transactions by directors and against unfounded suspicions of such transactions is to ensure that disclosure is made of all their transactions in the shares or debentures of their companies. The fact that disclosure is obligatory will of itself be a deterrent to improper conduct, and the shareholders can, if they think fit, ask for an explanation of transactions disclosed in the return which we recommend. It has been represented to us that disclosure by directors of their transactions in shares of their companies might be injurious to the shareholders; for example, if a director for legitimate private reasons sold his holding, the disclosure of the sale might give rise to an unwarranted rumour that the company had experienced misfortune, and the price of the shares would fall. We think, however, that the very fact that disclosure of transactions by directors was compulsory, would tend to negative this false impression, and in the event of misconception it would always be open to the director to make a statement as to the reasons for his transactions. The practice in the United States of America is to require the disclosure of directors' transactions and it does not appear that this has had any unfortunate results."

They recommended:

"(1) A director of a company shall in writing declare his interest, direct or indirect, in any shares or debentures of the company, or of any of its subsidiary companies, or of any company in relation to which it is a subsidiary company, at a meeting of the directors of the company, and such declaration shall be made on the coming into force of this Act or on the acquisition of the interest, whichever shall last occur. He shall also notify in writing any sale or cesser of such interest at the first board meeting held after such sale or cesser.

(2) A record of the interest, whether direct or indirect, of each director in any shares or debentures of the company, or of any of its subsidiary companies, or of any company in relation to which it is a subsidiary company, and a record of the sales and purchases made by or on behalf of each director of such interest in shares or debentures, showing the dates of the transactions and the prices received or paid, shall be made in a book kept specially for the purpose. Such book shall, for fourteen days before the annual general meeting, excluding Saturdays, Sundays and Bank holidays, be open to inspection at the registered office by any member or debenture-holder, who shall be entitled to take copies, and shall be laid on the table at the annual general meeting. The Board of Trade shall be entitled to inspect such book and to require copies thereof at any time.

(3) (i) A director of a company shall be deemed for the purposes of this section to have an interest in any such shares or debentures which are held by or on behalf of any company in which the director has a controlling interest and any sales or purchases of such shares or debentures or any interest therein by such a company shall be deemed to be sales or purchases made on behalf of the director but, save as aforesaid, a director shall not be deemed to have an interest in such shares or debentures by reason only of the dealing therein by a company in which he has an interest.

(ii) An option over a share or debenture or a right to acquire, sell or dispose of a share or debenture, conditionally or unconditionally, shall be deemed to be an interest in such share or debenture within the meaning of this section.

(4) If a director knowing of his interest fails to comply with sub-section (1), he shall be liable to a default fine for each day that the default continues, and if a company fails to comply with sub-section (2) every officer of the company who is in default, shall be liable to a default fine."

These recommendations were, to some extent, incorporated in the English Act (1941), sections 195, 198. Section 195 requires every company to keep a "register showing as respects each director the number, description and amount of any shares in or debentures of the company . . . . which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not)." This register has to be available for inspection at the company's office during a period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion. It must also be produced at the annual general meeting and remain open and accessible during the meeting. Section 198 imposes on directors a duty to give notice to the company of such matters relating to himself as may be necessary for the purposes of compiling the register. It must also be given at a meeting of directors. A penalty is provided for failure to comply with the sections.

I agree with the general opinion of the Inspector that problems of this kind are difficult, if not impossible, to avoid or solve by legal restrictions or penalties. It depends in the last resort almost entirely on the business and ethical standards of directors.

The initial difficulty is always the lack of means of information. If all directors decide to act in concert and if they have a control over a majority of shares, it is likely their activities will never come to light. Indeed, in the very case referred to above (*Regal* case) the members of the House of Lords pointed out that, if the directors concerned had taken the precautions of obtaining the approval of the company at a general meeting (and this would have been only a matter of form if they had a controlling majority), no question of their right to retain the profit would have arisen.

It seems to me that the most one can hope to achieve, by legislative means, is a certain basic amount of publicity. For many reasons, of course, this can never be complete —nor is it always desirable that it should be so.

I consider that the English provision of sections 195-198 imposes too great an administrative burden on the company without any clear or greater corresponding public benefit or protection to the shareholder. To my mind it would be sufficient to adopt the simpler form of declaration required, for example under section 149 (Cf. clause 106 of the Draft Bill).

I do not propose to set out a detailed provision, but the amendment could provide as follows:—

"1. It shall be the duty of any director to make a declaration stating the number, description, &c., of any shares or debentures of the company which are held by or in trust for him or in which he has any interest direct or indirect. Consideration might be given to an extension of this so as to include shares in which the immediate members of a director's family are similarly interested.

2. The declaration should be made at a meeting of directors.

3. Failure to make the declaration should make the director liable to a fine of, say, £500.

4. Further, without affecting any general legal (or equitable) right which the company might have to recover profits made by directors from dealings in the company's shares as a direct result of their position, a specific remedy might be given to the company to recover any profits made in respect of undisclosed share holdings. This specific remedy should not be affected by any general resolution of the company purporting to ratify the actions of the directors. Such a remedy would, I realize, require careful consideration and would present quite a few difficulties."

APPENDIX "B."

MEMORANDUM FROM THE AUSTRALIAN SOCIETY OF ACCOUNTANTS.

(1) Referring to the invitation to the Australian Society of Accountants to submit its views upon the matters referred to in the letter of the Attorney-General dated 16th October, 1956, and adverted to in the Joint Secretary's letter of the 8th May, 1957, you are advised that the Victorian Divisional Council of the Society referred the matter to its Company Law Revision Committee for any requisite action.

(2) It is the view of my Committee that the report of the learned Inspector appointed in the matter of Freighters Limited does not disclose any sufficient ground for going beyond the provisions of the draft Bill for a new Companies Act, except as referred to herein.

(3) Regarding the matter of disclosure of direct and indirect benefit to directors, my Committee recommend incorporation in the Companies Act of the principles underlying the decision of the House of Lords in the case of Regal (Hastings) Limited v. Gulliver 1942, (1 A.E.R.379).

(4) In the matter of privileged communications, my Committee recommend an addition to Clause 25 of the Draft Bill of additional words suggested on page 26 of the printed copy of the learned Inspector's report.

(5) (*a*) In connexion with anomalies in relation to the issue of employees shares, the observations of my Committee are as follows:—

"Employee" shares such as were issued in the case of Freighters Limited were merely ordinary shares purporting to be issued to a limited class of persons, and with restrictions on transfer for a limited period.

"Workers" shares in the true sense are of the type envisaged in section 165 of the New South Wales Companies Act 1936, and section 59 of the New Zealand Companies Act 1933.

(*b*) As my Committee sees the matter, the problem is not in relaton to the issue of "employee" shares, but in the issue of shares to a restricted list of persons.

(*c*) It is thought by my Committee that the new Act should include provisions similar to those in New South Wales and New Zealand each relating to "workers" shares.

(*d*) With regard to the problem raised by the case of Freighters Limited, my Committee is of opinion that the Act should require Directors to inform shareholders within some specified period of time of any special issue of shares which were not offered to shareholders generally, giving all reasonable particulars relating to such issue or issues. My Committee would not desire to restrict Directors acting in the interests of their respective Companies from making special issues of shares, such as for the acquisition of assets, rights or services which will benefit the Company, and which deals might be prejudiced by premature disclosure. It is thought, however, that shareholders should be supplied with adequate details of any such transactions not later than the report issued with the statement of accounts first after the issues of such shares.

(6) My Committee does not wish to give any evidence if this letter and the draft recommendations which it made in December, 1955, for amendment of the Companies Acts of all Australian States can be accepted as an indication of its views. If, however, your Committee consider it desirable for oral evidence to be given, the undersigned will, upon advice to that effect, attend a sitting of your Committee for such purpose. He may be contacted through the Society's office or direct to his own office at 105 Queen-street, Melbourne (Telephone MU 3574).

19th June, 1957.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57

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VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

SECTIONS 471, 472 AND 572 OF THE CRIMES ACT 1928

TOGETHER WITH

MINUTES OF EVIDENCE AND APPENDICES

Ordered by the Legislative Council to be printed, 3rd *September,* 1957.

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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Honorable the Attorney-General, by letter dated the 14th May, 1957, recommended to the Statute Law Revision Committee that it should examine an alleged anomaly in Part III., Division 1, sub-division (21) of the *Crimes Act* 1928 relating to the power of a Court to order restitution of property stolen, embezzled, extorted, converted or received. The Committee adopted this recommendation and commenced its enquiries.

2. Appended to this Report is the evidence given by the following witnesses who appeared before the Committee :—

Mr. T. F. E. Mornane, Crown Solicitor ;

Mr. A. J. B. Aird, Legal Assistant to the Police Department ; and

Detective Sergeant R. M. Braybrook, Lecturer in Law and Police Procedure, C.I.B. Training School.

Also appended to the Report are memoranda which were submitted to the Committee by Associate Professor Norval Morris, the Chief Justice's Law Reform Committee and the Crown Solicitor.

3. Section 471 of the *Crimes Act* 1928 provides that where a person is convicted of " stealing taking obtaining extorting embezzling converting or disposing of any property, or as is mentioned in Division one of Part II. of this Act in knowingly receiving any property, the court may order the restitution thereof, in a summary manner, to the owner or his representative ". Section 472 makes similar provision with regard to restitution in cases where the person charged is aquitted.

4. The Committee was informed that, in the view of the Crown Solicitor and of Associate Professor Norval Morris the word " restitution " in these sections must be read in its restricted sense of returning to the owner the stolen goods in the condition in which they are at the date of the court's order, and hence the court is not empowered to order the convicted person to compensate the owner of the stolen goods for their loss or for damage thereto.

5. Section 572 of the *Crimes Act* 1928 empowers the court convicting for felony to award " any sum of money not exceeding the value of the property lost stolen injured or destroyed by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony ". Since this section is limited in its application to felonies it follows that in cases of stealing which do not constitute a felony, the court may merely order the return of the goods in their then state to the owner as referred to in paragraphs 3 and 4 *ante* but cannot order compensation.

6. A number of sections of the *Crimes Act* 1928 classify the stealing of particular kinds of goods as misdemeanours (e.g. section 134 relating to the stealing of books from any public library), or as offences punishable summarily (e.g. section 105 concerning the stealing of plants from a garden or orchard). It would appear again that in these cases the court could not order compensation, merely restitution. Such a procedure leaves the aggrieved person free, of course, to resort to his ordinary civil remedies at law.

7. It appears to the Committee anomalous, therefore, that in respect of some criminal offences the court may order compensation, whereas in others it may not, particularly when it is considered that the power to order compensation is given in cases of conviction for " felony "—a class of crime comprising the more serious offences—but not in respect of what are generally regarded as less serious offences. An exception is to be found in the *Crimes (Amendment) Act* 1955 section 5 of which provides that a court convicting for the misdemeanour of illegally using a motor car may also order payment of compensation for damage or destruction.

8. The Committee has received advice that it is doubtful whether the existing section 572 covers damage to property which falls short of *loss* of property. Thus the anomalous position may well exist whereby in appropriate cases a court may order restitution pursuant to sections 471 or 472 where the property is still in existence, or compensation pursuant to section 572 where the property has become a total loss, but may not, subject to the exception referred to in paragraph 7 hereof, order compensation for damage to the property which falls short of total loss.

9. The Committee, in order to remove any doubt from the section, and to assure the removal of the anomalies referred to, recommends the amendment of section 572 to extend the power of awarding compensation to include—(*a*) compensation for *damage* to property; and (*b*) cases of misdemeanours and offences punishable summarily.

Committee Room,

24th July, 1957.

MINUTES OF EVIDENCE

TUESDAY, 9TH JULY, 1957.

Members Present:

Mr. Manson in the Chair;

Council.	*Assembly.*
The Hon. T. H. Grigg,	Mr. Lovegrove,
The Hon. R. R. Rawson,	Mr. Wilcox.
The Hon. Arthur Smith,	

Mr. T. F. E. Mornane, Crown Solicitor, was in attendance.

Mr. Mornane.—In the Crimes Act, from sections 471 to 473, provision is made in certain circumstances for the restitution of stolen property being ordered by the court before which an offender is convicted, or in certain circumstances before which the man accused is acquitted. The difference arises in this way: Where a man is convicted of stealing property, the court is satisfied that it belongs to the man who is alleged to be the owner. It is reasonable that an order should be made that the goods be returned to him. On the other hand, there are cases where an accused man is acquitted, but the basis of his acquittal is that he denies any knowledge of the property. He may be charged with stealing or receiving property; it may be found, say, in a house occupied by him or in a car owned by him. His reaction to the police visit may be, "That is not mine. I did not know it was there. I do not know anything about it." He may advance this defence, and the jury may acquit him. He makes no claim for the property, and it is rational that the court should order that it be restored to the man who swears that it belongs to him.

The suggestion is now made that, in addition to the court having power to order the restitution of property, it should also have power to make an order that the person convicted of stealing it and dealing with it in various other ways akin to stealing, should pay the costs of restoring the property to the state it was in before it was stolen. Section 5 of the *Crimes (Amendment) Act* 1955 provides that that may be done with regard to the stealing or illegal use of motor cars. Under that section, the court is empowered, where a man is convicted of stealing or illegally using a motor car, to order the person convicted to pay the owner of the damaged or destroyed motor car or property—that refers to property which is part of a motor car, such as a spare wheel—such sum as the Judge, chairman or court of petty sessions fixes as compensation in whole or in part for the damage or destruction, and the sum so ordered to be paid may be directed to be paid by instalments and shall, so far as relates to its payment or recovery, and to the consequences of failure to pay, be regarded as a fine or penalty imposed by the court upon a conviction in the exercise of its ordinary criminal jurisdiction. That is the only instance I am aware of where the legislature has made such a provision. It is rather too early to discuss its effects, as it is still in the experimental stage. In the General Sessions and the Supreme Court in Melbourne, there have been only two occasions on which an order of this type has been made. Each time, the accused has more or less adopted the attitude that he was not greatly worried —he had no money and could not pay, and whether an order was made against him did not matter much. Leaving that aside, the objection I have to this proposal is that, first, the court would have to have evidence as to the condition in which the goods were before they were stolen and also as to the cost of repairing them. That would involve a separate inquiry, apart from that upon which the jury embarks. I am referring now to the higher courts and not to petty sessions. After the jury had returned its verdict of guilty—and it is only where a man has been convicted that such an order could be made—the Judge would have to undertake an investigation to ascertain the damage caused to the goods. This would necessitate the owner giving evidence, and that would be easy because he would normally be in attendance, having given evidence as to ownership of the goods. It would probably also necessitate other persons giving evidence as to the cost of repairs. The power would be a discretionary one, and the Judge might or might not exercise it. It would mean that there would be people waiting around the court in anticipation of the possibility of the Judge exercising the power.

The Chairman.—Why should it be discretionary and not mandatory?

Mr. Mornane.—If it is mandatory, a stage may be reached where there is a very large field as to the cost of repairs. Although motor cars are not here considered, there could be questions as to the cost of repairs to machinery, as to which there was a wide difference of opinion. Evidence could be called on either side, and the Judge might say that in such a case he did not propose to make an order, but that the man whose property had been stolen could pursue his ordinary civil remedies. The only circumstances in which this proposal would be of much use would be where the thief was a man of some means and could make good the damage. If the stage was reached where the whole matter of damages was disputed, it would be desirable to proceed according to the ordinary civil rules, where there is an issue put before a court by virtue of the pleadings before the case comes for trial.

One factor is the extra inquiry upon which the court has to embark, involving the calling of other witnesses. Furthermore, as I have pointed out previously, the criminal courts are at present overloaded, and anything which tends to lengthen proceedings is undesirable. In such a case as this, it may be only a matter of the evidence of one witness, and the Judge could make an order. On the other hand, if the matter was contested, prospective jurors would be kept hanging around for the next case at a cost of £2 10s. or £3 a day, and there are the ordinary costs of Judge, counsel, and others. They are the reasons why I do not think it desirable that this provision, or one along these lines, should be introduced at the present stage.

Concerning the collection of the money, unless it was paid the court must adopt the means provided for the recovery of fines imposed. So far as the General Sessions and the Supreme Court are concerned, that necessitates proceedings under the Crown Remedies and Liability Act. A writ would have to be issued under section 6 to start the proceedings, and if judgment was obtained, a warrant of execution would have to be taken out against the

property of the person against whom the order was made. It is a warrant which directs the sheriff to levy the amount of the fine and to take into custody the person of the man who fails to obey the order until the amount is paid. That is all done at the expense of the Crown, and it does not involve very much more in the way of work. But it does seem that, when a person has his ordinary civil rights, he may just as well exercise them.

The Chairman.—You speak about ordinary civil rights with a great deal of background knowledge which some of us lack. Suppose I am a small shopkeeper selling electrical goods, and that someone breaks in and steals two television sets and six radio sets. Eventually, he is apprehended by the police, taken to court and convicted. The goods are returned, but I find that none of the sets works. What is my civil remedy?

Mr. Mornane.—To issue a summons against him, either in a court of petty sessions, the County Court or the Supreme Court, according to the value of the goods.

Mr. Wilcox.—Assuming that the man has been convicted.

Mr. Mornane.—No; apart from the question of conviction, damages could still be claimed. I take it that the Chairman refers to a case where there is a conviction, since the power we are discussing is one to be exercised only on conviction.

The Chairman.—At the moment, there are civil remedies where there is a conviction?

Mr. Mornane.—There are civil remedies which cannot always be enforced unless there is a prosecution for the theft. The stage we have reached is that the person charged is convicted, and the goods are returned, but the sets will not work because of the damage done. The procedure is to issue a summons with the object of recovering an amount equal to the value of the damage caused. There is one difference. If an order cannot be obtained, a summons can be issued.

The Chairman.—If a summons is issued, is not exactly the same procedure followed? It would be necessary to call expert witnesses as regards the damage?

Mr. Mornane.—That is true. The expert witness is called to appear before a court which is already prepared for the hearing of the case, and you know that the case will proceed and, in the normal course of events, an order will be made. On the other hand, if the criminal court has a discretionary power in the matter, it may very well be that no order is made—that the court does not propose to embark on an inquiry leading to the making of an order, and the expert witness is not called—and you have to drop back to your ordinary civil rights.

The Chairman.—That would seem to be a good argument in favour of making it mandatory for the court to act as proposed.

Mr. Mornane.—If it is made mandatory, the criminal court will have to cease dealing with its criminal business in order to hear evidence of a civil claim.

The Chairman.—The argument is not really against the obtaining of damages but against the use of the criminal court for the purpose?

Mr. Mornane.—Yes. It is a matter of convenience. Concerning the payment of damages, an owner's rights would be much stronger under a provision such as that suggested than they would be in the ordinary civil case. In a civil action, say, in the County Court, a person issues a warrant of execution, having obtained an order, but the defendant may have no goods which can be seized.

It comes back *nulla bona.* The only other step that can be taken, if he has the means to pay, is to have him examined under the Fraudulent Debtors Act. An order obtained would be similar in effect to a fine. It would mean providing more weight with which to enforce payment, assuming the man concerned had the money with which to pay.

The Chairman.—In other words, if the matter could be kept out of the criminal jurisdiction administratively, the proposed alteration would be a good one, in your view?

Mr. Mornane.—That is so.

Mr. Wilcox.—Would it be possible for the trial to be conducted in the usual way and then at its conclusion for the Crown to ask the Judge whether he would be prepared to consider granting a restitution order? In that case a separate hearing could be arranged.

Mr. Mornane.—In that case I think it would be better, if the Judge determined that an order should be made, to refer the matter to one of the Masters of the Supreme Court or the Registrar of the County Court, as the case may be, to decide the amount of compensation payable as damages. The Judge would not be required to hear the expert evidence. Such a course would dispose of my objections, which are the waste of time in an overcrowded jurisdiction and the undesirability of having witnesses waiting around without it being known whether or not they would be required to give evidence.

The Chairman.—Our task is not to clear up administrative problems, but to decide the principle, although to some extent in this case the two aspects hang together.

Mr. Rawson.—You are opposed to the suggested alteration of the law. Do you know who favours it?

Mr. Mornane.—I think the matter arose in this way. A bicycle belonging to a lad of fifteen was stolen, but when it was recovered it was smashed. The case was reported in the press. Someone wrote to the Attorney-General asking whether the court could make an order granting the boy the cost of repairs. The Attorney-General replied that the only order the court could make would be one relating to restitution of the bicycle, and that separate proceedings would have to be taken to recover the cost of repairs.

The Chairman.—Have you any idea of the number of such cases that occur?

Mr. Mornane.—No. Motor cars are covered, but in the case of ordinary property I suppose it depends a good deal on how long it is before the property is recovered. I doubt whether there would be a great number of cases of the kind.

The Chairman.—They would be numbered in tens rather than in hundreds?

Mr. Mornane.—Yes.

Mr. Smith.—The number of cases in which the property could be recovered would be few?

Mr. Mornane.—That is so. The case may end up with the man in gaol but the goods not having been recovered.

Mr. Grigg.—Could civil action be taken against the man after he came out of prison?

Mr. Mornane.—Yes, or while he is still in prison if he has property which could be recovered.

Mr. Grigg.—Your view is that criminal matters should be kept separate from civil proceedings, is it?

Mr. Mornane.—Yes, subject to Mr. Wilcox's suggestion, which achieves my object without interfering with the running of criminal courts.

Mr. Grigg.—If a motor car is stolen and recovered damaged, has the insurance company an obligation to replace it or repair the damages?

Mr. Mornane.—It depends on the type of policy. That would be so in the case of a comprehensive policy.

Mr. Wilcox.—That would apply to many other cases in which the goods were covered by insurance.

Mr. Mornane.—That is so.

Mr. Wilcox.—Do you consider that there is need for such a change as is proposed?

Mr. Mornane.—It is difficult for me to say. The greatest need for such provision would be in relation to summary prosecutions. The police would know much more about that than I. Of course, in many cases those concerned would not be able to afford to embark on litigation.

Mr. Lovegrove.—Why is it that there have been only two test cases?

Mr. Mornane.—Only two cases have arisen in General Sessions and the Supreme Court. I do not know why that is so. In many cases cars are not damaged, and in other cases the vehicle is covered by insurance. Many cases may have occurred in courts of petty sessions, of which we have no knowledge. Of course, the Act is fairly new.

Mr. Wilcox.—Do you know whether they have actually awarded damages to the owner?

Mr. Mornane.—On two occasions they did. With regard to illegal using and stealing, I should not think more than about 50 a year would be handled in the Supreme Court or General Sessions. More such cases would be dealt with in courts of petty sessions.

The Chairman.—How do you reconcile sections 471 and 472 with section 572 of the *Crimes Act* 1928?

Mr. Mornane.—To a large extent, these provisions seem to cover your problem. I must confess I had overlooked section 572. The provisions contained in sections 471, 472 and 473 relate to restitution. The other provision relates to compensation for damages, which we are now discussing. Section 572 covers the position generally with one exception, namely, that it is limited to felony. In most cases, it is the felony of larceny as opposed to that of illegally using. I must confess that I had overlooked section 572 previously.

Mr. Wilcox.—What is a felony?

Mr. Mornane.—That is a difficult matter to explain. Some offences are catalogued as felonies, while others are called misdemeanours. The distinction is historical. In days gone by a felon's property would be forfeited to the Crown whereas that condition would not apply to a person convicted of a misdemeanour.

Mr. Rawson.—Stealing is a felony.

Mr. Mornane.—That is so. However, there is another way of obtaining goods or property, namely, by false pretences. That would be regarded as a misdemeanour.

The Chairman.—Are the separate classifications of felony and misdemeanour still needed?

Mr. Mornane.—Not really. The classification is important from the point of view that the police have the power of arresting any person whom they suspect of having committed a felony. Normally, they have no power to arrest, without a warrant, for a misdemeanour. The ordinary citizen has power to arrest any person who has committed a felony, but the police have the wider power of arresting on suspicion of a felony. With respect to a misdemeanour, an arrest without a warrant cannot be made, with the exception of some misdemeanours where it has been specifically provided that such an arrest can be made. That is the general position. I cannot see any valid reason why section 572 should not cover the position adequately.

Mr. Lovegrove.—When the 1955 legislation was brought forward, there were two schools of thought. Having regard to the published intention of the legislature, I do not understand why the matter has been tested in only two cases. Is it because the judiciary does not approve of the legislation or is it because the opportunities have not presented themselves? Further, is it possible to procure the relevant statistics?

Mr. Mornane.—Details of cases in the Court of General Sessions and the Supreme Court could be obtained. We have no record of cases heard in courts of petty sessions.

Mr. Lovegrove.—Do you know whether the incidence of car stealing is the same?

Mr. Mornane.—I cannot say. I am cognizant only of cases that come up for trial. In actual fact, prior to the passing of the 1955 Act, it was uncommon for a car stealing charge to be brought before the courts because in most cases it could not be proved that the offender intended to retain the property permanently. Our statistics will be only from January, 1956, until the present time as far as committals for trial are concerned.

Mr. Wilcox.—One possible reason for failure to invoke the new law is that the owner has not suffered any real loss because his car has been recovered in relatively good condition, and he has been compensated by his insurance company for any damage caused.

Mr. Mornane.—That is probably so. A case could probably be made out against an offender where the stolen car had been completely wrecked. Taking all factors into consideration, I should think that section 572 was probably overlooked when the 1955 legislation was drafted.

Mr. Wilcox.—If the widest use were to be made of section 572, might it not be necessary to amend that provision by deleting the word "felony"?

Mr. Mornane.—It might be preferable to insert after the word "felony" the words "misdemeanour or summary offence." It might also be desirable to insert the words "or damage thereto" after the words "loss of property." I shall be pleased to review that aspect and advise the Committee concerning it.

Mr. Wilcox.—Is there likely to be any difficulty concerning the words "immediately after the conviction of any person" in section 572?

Mr. Mornane.—I do not think so. The whole design there is to prevent the matter being brought back to the court that is dealing with the case a week later, when the details have become obscure. It is fair enough for a man to have that right. If he chooses not to use it, he still has the ordinary civil right.

The Committee adjourned.

WEDNESDAY, 10TH JULY, 1957.

Members Present:

Mr. Manson in the Chair.

Council	*Assembly.*
The Hon. W. O. Fulton,	Mr. Lovegrove,
The Hon. T. H. Grigg,	Mr. Sutton.
The Hon. R. R. Rawson,	
The Hon. Arthur Smith,	
The Hon. L. H. S. Thompson.	

Mr. A. J. B. Aird, Legal Assistant to the Police Department, and Sergeant R. M. Braybrook, Lecturer in Law and Police Procedure, C.I.B. Training School, were in attendance.

Sergeant Braybrook.—Upon examination, it would appear that the matter referred to me, as contained in Mr. Rylah's memorandum, is, in fact, covered to a degree by sections 571 and 572 of the Crimes Act. In New South Wales, the matter is dealt with in section 437 of the *Crimes Act* 1900, which provides—

> Where a person is convicted of any felony or misdemeanour the court in which he was tried or any Judge thereof may on such conviction or at any time thereafter direct that a sum not exceeding £500 be paid out of the property of the offender to any aggrieved person by way of compensation for injury or loss sustained through or by reason of such felony or misdemeanour.

The Chairman.—Does the loss referred to in that section mean loss to the person or the property?

Sergeant Braybrook.—It is paid out of the property of the offender to any aggrieved person by way of compensation for injury or loss.

Mr. Sutton.—What does "aggrieved" mean? Does it refer to the person affected—the victim?

Sergeant Braybrook.—Not only the victim; it would apply if the criminal concerned, who had obtained the property by theft or false pretences, then parted with it to an unsuspecting purchaser and the property was recovered by the Police and restored by the court to the lawful owner, in which case the person who is out of pocket would be the party aggrieved.

Section 572 of the Victorian Crimes Act deals only with a conviction for a felony; no order can be made for a misdemeanour. False pretences and larceny by trick are so close at times that the legislature has seen fit to make it possible for there to be an acquittal on one charge and a conviction for the alternative offence under the same circumstances. If it is contemplated that section 572 should be amended, then I think that misdemeanours should be covered.

The Chairman.—Would that cover the whole problem?

Sergeant Braybrook.—No, not fully; an order for compensation made under section 572 can be carried out only in accordance with section 571, which is similar to the procedure adopted for a civil debt. Therefore, it is similar to a garnishee under the Fraudulent Debtors Act or by distress of a person's goods. As I set out in my report, the provisions in the present law appear to have fallen into disuse. Perhaps that has been brought about by the manner in which the courts have power only to enforce an order.

The Chairman.—What do you mean by that?

Sergeant Braybrook.—If there was a provision for a penalty of imprisonment in default of non-compliance with the order, I think in many cases criminals who have benefited by the larceny or false pretence would be more prone to assist in the recovery of property that they have stolen or of which they have defrauded people in order that they may avoid heavier punishment. I have not examined fully the question of the drawbacks to section 437 of the New South Wales Act. Detectives from other States who have performed inter-change duty could very likely speak fully on the advantages and disadvantages of such a section.

The Chairman.—Do you know of any advantages or disadvantages?

Sergeant Braybrook.—I was on duty in Queensland in 1947 and I did notice that the detectives in that State took extreme measures in an endeavour to recover stolen property. If the property was not recovered, then a request was made to the court for an order for restitution. Of course, in default imprisonment was ordered. A similar provision exists in Victoria in relation to the Act which deals with motor-car driving offences. I have before me a form which is used by the Department to record criminal histories and prior convictions of offenders. This particular form refers to Queensland convictions and includes information concerning the conviction of an offender before the Cunnamulla Court of Petty Sessions on 13th September, 1955 for stealing. In that case a bond was granted. At Richmond, in Queensland, the same offender was convicted of two charges of false pretences on 3rd February, 1956. On the first charge he was fined 10s. and it was ordered that the property be returned to the owner. On the second charge he was convicted and fined £5, it being further ordered that he make restitution of £8 7s. 6d., in default fourteen days imprisonment.

Mr. Thompson.—What was actually stolen, money or goods?

Sergeant Braybrook.—The records do not show. This form contains information concerning a conviction at the Balmain Court of Petty Sessions on the 18th July, 1949. In this case money was stolen and the person convicted was sentenced to three months' imprisonment, the sentence being suspended on his entering into his own recognizance with a surety of £30 to be of good behaviour for three years. He was also ordered to pay compensation of £7 10s. at a rate of £2 a week. For a default in payment he was sentenced to fifteen days imprisonment. On a second charge of stealing money he was discharged upon his entering into his own recognizance of £20 to be of good behaviour for three years and to appear for conviction and sentence if called upon and to pay compensation of £8 10s. at the rate of £2 a week. A term of imprisonment was imposed in event of default.

The Chairman.—Is not the problem in Victoria that the law says that the court may or may not order compensation?

Sergeant Braybrook.—That is so.

The Chairman.—Could we make it mandatory and say that the court shall order compensation?

Sergeant Braybrook.—I think it is best for the court to have a discretion. Frequently, when persons report a larceny of property they place an enhanced value on it. Members of the force often find that the person apprehended is more honest about the value than the person from whom the property was stolen. Frequently, the property stolen is insured and in order to ensure that he does not lose anything the owner values it at a greater amount than it is really worth.

The Chairman.—What happens when an owner is caught in such circumstances?

Sergeant Braybrook.—Quite often a criminal is a person of bad character and it is implied that he is not to be believed. After speaking to criminals, we know that at times we can be satisfied that they are giving a true version. Quite often a Judge or a Magistrate will give credence to the statements of prisoners. Perhaps the Judge is not impressed by the evidence given by the loser of the property.

The Chairman.—Have you any explanation of why there have been only two cases of compensation since 1956?

Sergeant Braybrook.—Probably because once an order is made it is enforceable only as a civil debt and the person aggrieved is unwilling to spend good money to chase bad money.

Mr. Rawson.—I was not quite clear on the relevance of section 571. You mentioned a link between section 571 and section 572.

Sergeant Braybrook.—Section 571 sets out the manner in which an order for compensation can be made against the convicted person for the expenses of prosecution, and section 572 states that any person aggrieved by the felony can make an application to a court for compensation.

Mr. Sutton.—Was not there a recent amendment to the Crimes Act providing for compensation for damage occasioned to a motor car which had been stolen?

Sergeant Braybrook.—I was under the impression that we were referring to section 572.

The Chairman.—Mr. Mornane stated yesterday that there had been only two cases relating to stolen cars under that Act.

Sergeant Braybrook.—I made enquiries this morning from Sergeant Jackson, the Officer-in-Charge of the motor car stealing squad, and he told me that the courts will make orders under the new Act. I have a couple of instances of such orders having been made. In addition, yesterday, I believe, four or five men were convicted by the City Court of having illegally used a car to which they had caused damage estimated at £200. It was ordered that the compensation payable be charged equally to all those concerned.

Mr. Lovegrove.—Does the motor car stealing squad keep records of the results of their work in the courts?

Sergeant Braybrook.—They keep their own arrest book up to date and record the convictions in respect of the men they deal with personally.

Mr. Lovegrove.—The books to which you refer would cover the whole of the metropolitan area.

Sergeant Braybrook.—Yes, the men concerned go to the various courts.

The Chairman.—Apparently it would entail extracting statistics from the various books. Presumably no central record is kept.

Mr. Aird.—There is no central record kept of these particulars. I could arrange for Sergeant Jackson to give evidence of his experience if the Committee so desired.

The Chairman.—What the Committee wishes to obtain is statistical data revealing whether we are considering something large in volume, say, 200 or 300, or whether only 10 or 20 cases are involved.

Mr. Aird.—On that aspect, I spoke to Inspector Hubbard, who acts as prosecutor in the City Court. His opinion was to the effect that although there is legislative power to recover damages it does not achieve the best results mainly because of the fact that the sum involved is recoverable as a civil debt. He felt that if power was granted to impose a term of imprisonment as an alternative to the present procedure a better result might be obtained. At least the loser would have some personal satisfaction in feeling that although he did not recover damages the offender would have to serve a prison sentence in respect of those damages.

The Chairman.—It would be necessary to assess the amount of compensation payable.

Mr. Aird.—I do not think that the power should be mandatory nor should the court be compelled to provide for a prison sentence in every case, because circumstances arise wherein it would be undesirable to make such an order. I believe that the court should be given an option, but I feel that power to impose a sentence would be helpful. Inspector Hubbard's criticism is that some magistrates will not accept estimated calculations and that frequently cases come before courts shortly after the incidents concerned and a long time before the actual damage is assessed. Therefore, the courts may not be in a position to find that the estimated damage was actually caused by the incident under consideration.

The Chairman.—On the other hand, there is a school of thought which believed that any assessment of damage should be made as quickly as possible.

Mr. Aird.—That is so. Any estimate made and given to the court should be reasonably accurate.

The Chairman.—One of Mr. Mornane's objections to any change in the legislation is that it might tend to clutter up the courts.

Mr. Aird.—That certainly is a danger. I know practically nothing about the procedure in other States in respect to similar matters, but it would be of assistance if our courts could treat estimates of value as the amount to be allowed. For instance, in the case of ordinary larceny the estimate of the owner of the articles stolen is accepted as its value. If some similar scheme could be adopted in the cases we are now considering it would obviate the necessity to call a number of expert witnesses to prove the matter technically. Such evidence and the cross-examination would tend to prolong cases.

The Chairman.—Of course, the point arises as to what is the point of getting an award of £500 damages if the person who has caused the damage has no means.

Mr. Aird.—As I said before, the only satisfaction would be if the court could award a term of imprisonment in default of the payment.

The Chairman.—I should not imagine that would give a great deal of satisfaction.

Mr. Aird.—Perhaps it would not give much satisfaction, but it would be some recompense and would avoid embarking on civil proceedings. The main solution would be to enable courts to make orders which apply not only to felonies but to misdemeanours as well.

The Chairman.—Or to summary charges, in line with the suggestion made yesterday.

Mr. Aird.—In one sense, a summary charge is a misdemeanour. Speaking generally, misdemeanours cover charges which are not regarded as felonies. However, recently courts have taken the view that when considering criminal matters the term "misdemeanours" should be applied to what we regard in a general sense as criminal offences as distinct from small matters such as going against the red light or failing to give the proper hand-signals.

The Chairman.—What is the suggestion of the Police Department? Is it the desire that the law should be changed and if so in what way should it be changed?

Mr. Aird.—It is desired that the law should be made applicable to misdemeanours and that it should be made clear what offences are to be dealt with summarily. We should also like the courts to be enabled to fix a term of imprisonment at the time the assessment of compensation is made. It is difficult to suggest a formula that would not be too rigid. Magistrates are humane men and they do not like to be bound by strict rules. They like to use their imagination in appropriate cases. Perhaps some common rule could be arrived at to the effect that damages may be awarded based on the estimate submitted to the court without any provision for the proving of detailed damages.

The Chairman.—That brings me back to the general problem set out by Sergeant Braybrook that persons who lose anything are generally inclined to overestimate its value.

Mr. Aird.—That is always a danger, but I presume the courts would require some quantum of evidence to support an estimate given.

The Chairman.—Would the opinion of an insurance assessor be sufficient?

Mr. Aird.—Yes, or that of a motor mechanic or engineer.

Mr. Lovegrove.—It is sometimes impossible to get that evidence.

Mr. Aird.—I have examined files in our office which reveal that our mechanics have examined vehicles and estimated the amount of damage that has resulted from an accident, but the actual cost has been a different figure.

Mr. Lovegrove.—Is it possible, in the case of either mechanical or bodywork, to say that certain damage did result at a particular time?

Mr. Aird.—I do not think it is.

Mr. Lovegrove.—For instance, it would not be possible to determine whether injury to bodywork occurred prior or subsequent to the theft of a car.

Mr. Aird.—It would be impossible to say that with any certainty. However, if a man has sufficient experience and knowledge he can give a fairly accurate estimate that certain damage probably was the result of a particular accident. I have obtained some statistics covering the number of reported car thefts as compared with the annual registrations for the last two or three years. In 1954 there were 4379 cases of reported thefts of motor vehicles, and the registrations for the year were 500,441, the percentage being ·875. In 1955 thefts totalled 4,003, registrations were 647,672, and the percentage was ·618. In 1956, the thefts were 4,908, registrations 693,211, and the percentage ·562. Up to the 26th June, 1957, the number of thefts reported was 2,498, and to the 30th June the new registrations were 342,406 whilst the registrations in existence were 704,342. The percentage figures quoted do show a slight decline in thefts in the last three years.

Mr. Lovegrove.—What is this particular statistical method designed to show?

Mr. Aird.—The statistics I have quoted were obtained in response to a question asked of me by Mr. Grose concerning car thefts.

Mr. Lovegrove.—That is probably the result of a question I asked yesterday, but what I want to know now is what are the figures designed to show?

Mr. Aird.—I understood that the Committee wished to know if there had been any decline in car thefts since the amending of the Crimes Act in 1955. I felt that the figures indicating the number of thefts for the different years would not reflect the true position unless some comparison was made, by way of a percentage figure or some other means, between the thefts and the total registrations, as there has been a large increase in motor registrations in each year.

Mr. Lovegrove.—Do I understand that your method of determining the position is to equate the number of offences to the number of car registrations?

Mr. Aird.—That has been the effort here, but I have not sufficient knowledge of statistics to contend that it is the way of presenting the correct picture.

Mr. Lovegrove.—Those are the only two factors you have taken into consideration.

The Chairman.—What else could be taken into account?

Mr. Lovegrove.—There are other calculations that may prove of assistance to the Committee although I do not know they would come within the province of the Police Department. I refer more particularly to calculations of a social character which are taken into account in other parts of the world.

The Chairman.—Most of the discussion has centred around the theft of motor cars. Could you supply information in connexion with the theft of such articles as television sets and other electrical equipment?

Mr. Aird.—The annual report for 1956 has not yet been published. However, the 1955 report contains an appendix entitled, "Crimes Statistics." It is divided into the following sections:—Offences against persons; Offences against property with violence; Offences against property without violence; Forgery; Offences against currency; Offences against good order; and so on. The statistics cover a wide field.

The Chairman.—Members of the Committee could obtain that information from the reports which are available to them.

Mr. Lovegrove.—Could Mr. Aird supply statistics in connexion with the incidence of shopbreaking?

Mr. Aird.—Yes; the 1955 report indicates that during the 1955 calendar year there were 1,493 cases of shopbreaking and stealing, and in the same year there were 319 cases of shopbreaking defined as "smash and grab."

The Chairman.—Are the 1956 figures available?

Mr. Aird.—The 1956 annual report has been prepared but is will not be printed until it has been perused by the Under-Secretary. However, the information could be obtained before the report is printed.

The Chairman.—That information would prove useful to the Committee.

Mr. Aird.—I shall supply the relevant information. I might add that a statistical section is being established in the Police Force and although it might not be able to produce up-to-date information just now, in due course statistics of the type envisaged would be available.

Mr. Rawson.—Mr. Aird, do you think it is sound and desirable to impose a term of imprisonment on a person who cannot make restitution for damage caused?

Mr. Aird.—I think so.

Mr. Rawson.—The imposition of a penalty of that nature would not compensate the person who has lost, but it would merely give him some sort of satisfaction. Do you think that is a sound approach to the problem?

Mr. Aird.—Yes; it short-circuits the process somewhat as an offender could be imprisoned for his action as a result of civil proceedings.

Mr. Rawson.—It would not restore the value of the goods to the person who lost them; it only gives him satisfaction that someone is being punished for the crime. Is it desirable that a person should be encouraged to desire that someone else should be punished just because he is not able to pay or make restitution?

Mr. Aird.—It would have the tendency of lessening the prevalence of thefts if an offender knew that in addition to being punished for his theft he could be punished for damaging the property.

Mr. Rawson.—That is a different aspect. I accept that it would act as a deterrent, but what about the desirability of introducing to the law some means by which a term of imprisonment can give satisfaction in lieu of payment for damage done? That result could be brought about in any case, although probably at considerable expense to the victim. Sergeant Braybrook mentioned that in the New South Wales Act there was included a ceiling of £500. Why is such a ceiling necessary?

Sergeant Braybrook.—I do not know, but possibly the New South Wales Legislature followed the English Act which provides for a ceiling of £500.

Mr. Sutton.—The New South Wales legislation refers to any aggrieved person but that does not necessarily mean in the singular. It could be more than one person; for example, the original owner of the goods and the person who owns them by prescriptive right.

Sergeant Braybrook.—I shall answer that by citing a hypothetical case. A person might purchase a motor car valued at £1,000 and in payment therefor tender a cheque which later proves to be valueless. Before the car trader ascertains that the cheque is valueless the car may have been resold to someone else. As a result of inquiries, the Police might approach the person who purchased the car unwittingly and seize the vehicle as a court exhibit. Under the Goods Act—I think it is section 81—the person who loses the car can disaffirm the contract and claim restitution of the car and the court could order restitution to the original owner. The person who unknowingly purchased the car has been deprived of it and possibly he has lost also the £800 paid to the thief for the car. Why should he not be able to apply to the court as an aggrieved person for an order for the return of his money by the person convicted of misdemeanour. Frequently, by means of false pretences, persons amass a considerable sum of money and property which the court cannot touch.

The Superintendent of the C.I.B. is of the opinion that the party aggrieved should make such applications to the court for compensation and should produce witnesses. The Police Department should not be expected to further its duties by including civil matters in them. It might encourage persons to seek redress against offenders when they know they have nothing to gain. Even though the criminal has no money, the aggrieved person could say, "I want my pound of flesh and therefore I wish to see him prosecuted on my evidence." The provision may not be very good there but, on the other hand, if the aggrieved party has been led to believe that the criminal has some of the proceeds stocked away, possibly in the bank, he should be entitled to claim to the court and get some restitution of that money.

Mr. Smith.—That is the situation at the present time, is it not?

Sergeant Braybrook.—Yes; He must initiate his own claim. It applies only to felony and it does not cover misdemeanour. For example, fraudulent company operators may be charged with conspiracy, which is another misdemeanour. A man named Hammond has had several extensive trips around the world on the proceeds of depriving old women of their life savings. He has "got away with it" in many cases.

The Chairman.—Was there any further information you desired to give to the Committee?

Sergeant Braybrook.—I feel that if a criminal knows that in addition to the punishment for his offences, he is likely to incur an additional punishment for the amount of goods that he has not assisted to recover, it might encourage him to reveal the whereabouts of the goods. Frequently, when apprehended, offenders say, "Yes, I got the property, but I am not going to tell you how I disposed of it." If it is known, as it would become generally known, that restitution is now included in the law and he is likely to incur a heavier punishment by not revealing to whom he disposed of the property, an offender may be induced to "ditch" the receiver, or to assist in the recovery of the stolen property, thereby assisting the persons who lost the property.

The Chairman.—Would you have any statistics indicating in how many cases of theft the property is recovered and in how many cases it is still missing?

Sergeant Braybrook.—It would require a very long and involved process to obtain that information.

Mr. Thompson.—Would you be prepared to estimate approximately in how many cases property is recovered? Would it be in one-half or two-thirds of the total cases?

Sergeant Braybrook.—I would say that in approximately half of the cases of theft, the stolen property is recovered. Of course, frequently, a housebreaker who has been arrested may have committed 100 housebreakings and he has disposed of so much property that he does not know to whom each item was sold. Much of the stolen property is disposed of in hotels or in pawn shops or to second-hand dealers and in such cases it is difficult to recover it.

A graph prepared in the Police Department indicates a substantial fall in car thefts during the month of February, 1955, and a general falling until about the middle of the year. Since about September, 1955, there has been a general increase.

The Chairman.—The members of the Committee greatly appreciate the assistance given by the two witnesses to-day.

The Committee adjourned.

APPENDIX A.

MEMORANDUM BY THE HONORABLE A. G. RYLAH, E.D., M.P., ATTORNEY-GENERAL.

Re Crimes Act 1928.

I wish to bring before the notice of your Committee for examination and report and recommendation to the Legislative Council and the Legislative Assembly what appears to me an anomaly in the criminal law.

Part III. Division 1 sub-division (21) of the *Crimes Act* 1928 empowers the Court before which proceedings are brought in respect of stolen goods to order restitution thereof to the owner.

The expression "restitution" must according to the view of the Crown Solicitor (Mr. T. F. Mornane) be read in its restricted sense of returning to the owner the stolen goods in the condition in which they are at the date of the Court's order.

This view excludes the application of the alternative meaning of the expression of restoring the goods to the owner in the condition in which they were when stolen or payment by thief of damages equal to the cost of so restoring them to that condition.

This leaves the owner with only the remedy of civil action against the thief for damage caused to his property.

In respect of the stealing or illegally using of a motor car the *Crimes (Amendment) Act* 1955 (No. 5917) provides for the making by the Court of an order for damages against the offender caused to the car as a result of the larceny or illegal use and it would seem appropriate that the existing provisions relating to "restitution" in general should be similarly extended.

Mr. Mornane thinks it undesirable to introduce such an extension; but he will make himself available to your Committee when he can state his views.

I feel however that the matter is one well worthy of your Committee's consideration and accordingly submit it for that purpose.

14th May, 1957.

APPENDIX B.

MEMORANDUM FROM ASSOCIATE PROFESSOR NORVAL MORRIS.

1. I have no doubt that Mr. Mornane's interpretation of "restitution" in Part III. Division 1 sub-division (21) of the *Crimes Act* 1928 (sections 471-474) is correct, and that the court is not empowered to order the convicted person to compensate the owner of the stolen goods for their loss or damage to them. As to the wisdom of an extension of the law enabling compensation as distinct from restitution to be ordered might I offer the following observations.

2. Facility of litigation and saving of costs would be the main arguments for such a development of the law, and at first sight they are appealing.

3. It is assumed that the compensation discretion would be given to the trial judge or magistrate; it could hardly be safely left to the jury's decision without gravely risking the lowering of the established standard of proof in criminal cases. If it is left to the judge or magistrate, presumably he should hear evidence on the value of the loss. It is doubtful whether this type of combination of criminal and civil procedures is a happy one. It is suggested that under such a scheme the informant dissatisfied with the award in the criminal case should be able to pursue his civil remedy, the award being treated as if it were a sum paid into court in a civil action, and importing the usual rule concerning costs.

4. Presumably, the convicted person should be able to appeal against the compensation ordered without appealing against his conviction. This is an unusual type of appeal against sentence. Again the combination of two very divergent types of procedures seems unfortunate.

5. Section 472 allows the court to order restitution even though the accused is acquitted—this would be most inappropriate with reference to an order for compensation.

6. Even though the discretion concerning compensation is given to the bench and not mentioned to the jury, there may be a tendency for its existence to lower the established burden of proof in criminal issues.

7. Where the owner has insured against the loss or damage to his goods, say under a householders policy covering theft, the effect of this power in the court to order compensation would benefit only the insurance company which profits from this very risk. This, in itself, is no argument against such a power in the court; but the implications of insurance in this area need to be kept in mind in endeavouring to assess the value of such a change in the law.

8. Information on the use of the compensation provisions with respect to the larceny or illegal user of motor vehicles in the *Crimes (Amendment) Act* 1955 (No. 5917) would be of great value in estimating the value of this suggested extension of the law.

9. I am quite unable to form any opinion on the likely number of cases in which such a compensation power would be of relevance.

10. All in all I would think the onus of proof of justifying this change in the law is not sufficiently carried by paragraph 2 above hence, until I knew more concerning the proposed amendment and the incidence of the mischief it is designed to remedy, I would incline against it.

7th June, 1957.

APPENDIX C.

MEMORANDUM FROM THE SECRETARY, CHIEF JUSTICE'S LAW REFORM COMMITTEE.

Re Crimes Act 1928.

This Committee has considered the reference by the Attorney-General to an anomaly in the Crimes Act relating to the restitution of stolen goods.

This Committee is not in favour of the proposed extension and wishes to direct the attention of your Committee to the present section 572 of the Crimes Act.

18th June, 1957.

APPENDIX D.

MEMORANDUM FROM MR. T. F. E. MORNANE, CROWN SOLICITOR.

Re Crimes Act 1928—*Damage to Stolen Property.*

1. I have checked the number of orders made under Section 5 (1) of the *Crimes Act* 1955 by the Supreme Court or by Courts of General Sessions and find that there is only one instance of such an order being made.

It is as follows:—

At the Supreme Court at Ballarat on 5th May, 1956, Ronald George Williams was convicted of illegally using a motor car and sentenced to be imprisoned for two months and ordered to pay £230 for damage caused to the vehicle. This amount was to be paid by instalments of £3 per week. In all £27 was paid. Williams was again convicted on 16th October, 1956, and sentenced to twelve months' imprisonment and no payments have been made since that date. Upon his release from prison, steps will be taken to have him renew payment of the instalments.

2. The procedure for recovery under section 5 (1) of the *Crimes Act* 1955 appears to be less satisfactory than that under section 572 of the *Crimes Act* 1928. Apart from any special procedure the value of the damages sustained would be recoverable by civil action.

The objection to the value of the damages being recovered as a fine is that non-payment would result in imprisonment and upon the release of the offender from prison the owner of the damaged goods would have no further right against him. On the other hand, if an order is made under section 572, the amount ordered to be paid is deemed to be a judgment debt and the person against whom the order is made is not released from the obligation to pay, except under the *Limitation of Actions Act* 1955, until the amount of the judgment has been paid.

3. The purpose and operation of section 572 of the *Crimes Act* 1928 is made clear, in so far as it deals with property actually destroyed, in the judgment of Hood *J.* in *In* re *Samuel Clements* ex *p. Ralph Bros.* 21 V.L.R. 237 where he says, "I think . . . that it is the duty of the Court to receive evidence after the trial as to the value of the property destroyed, and not to confine itself to materials brought forward at the prisoner's trial. I think the real object of the Legislature was, as has been suggested, to avoid the scandal of a second jury reversing the verdict of the first jury; and for these reasons I think the application was made in proper time, and I shall hear evidence as to the value of the property destroyed."

In this case the prisoner had been remanded for sentence and the application was made immediately after sentence was passed.

4. It is doubtful whether section 572 in its present form covers damage to property which falls short of loss of property. Thus although reference is made to awarding a sum of money "not exceding the value of the property lost stolen injured or destroyed" it is to be awarded by way of satisfaction or compensation "for any *loss of property* suffered by the applicant."

Apart from this it is very doubtful whether the power could be exercised by a court of petty sessions.

5. If it is intended to amend this section for the purpose of enabling orders to be made by courts generally in respect of damaged property, it would be advisable that the Parliamentary Draftsman should be consulted on the precise form of the amendment.

6. I suggest that the following matters be considered in making the amendments:—

(*a*) the power should be extended to courts of petty sessions;

(*b*) the convictions which give rise to the exercise of the power should be extended to include misdemeanours and summary offences;

(*c*) the provision for satisfaction or compensation should be extended to cover damage to property.

7. In so far as what I said before the Committee is modified by what is said herein I would like what is said herein to be taken as expressing my views.

17th July, 1957.

By Authority: W. M. Houston, Government Printer, Melbourne.

1956-57

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

A PROPOSAL TO CONSOLIDATE AND AMEND THE LAW RELATING TO

COUNTY COURTS

Ordered by the Legislative Council to be printed, 3rd September, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

7897/57.—D.—No. 10.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Director of Statutory Consolidation, Mr. R. C. Normand, brought before the Committee a draft of the County Court Bill—a Bill to consolidate and amend the Law relating to County Courts.

In the exercise of the function conferred upon it by section 344 of *The Constitution Act Amendment Act* 1956 to examine *inter alia* "proposals for the consolidation of statutes" the Committee undertook an examination of the proposed consolidation.

2. The evidence of the Director of Statutory Consolidation and of Mr. J. J. Lynch, Parliamentary Draftsman, is appended to this Report.*

3. The draft Bill before the Committee comprises a consolidation of the *County Court Act* 1928 and the various amendments thereto, together with a number of new amendments of an administrative nature.

The Committee has examined the amendments brought to its notice by the Director and the Draftsman and is of opinion that the amendments may be classified into two categories, namely, (*a*) amendments incidental to the consolidation, which as such may properly be included in a proposal for consolidation ; and (*b*) alterations of substance.

4. The Director drew the attention of the Committee to Part VII. of the proposed Bill relating to the making of Rules of Court. The transitory provisions contained in Part X. and in portions of section 87 of the 1928 Act have been omitted from the consolidation as these provisions are now spent.

5. The scheme of judges' retiring allowances, as dealt with in clause 14 of the proposed legislation, was brought to the attention of the Committee. The *Judges Pensions Act* 1949 introduced a new system of pensions which applies to all judges appointed since 1949. The 1949 Act further provided that the new system should also apply to such of the then existing judges as elected to come under its operation. The old scheme now applies to one judge only ; it is obsolescent and will disappear completely when that judge ceases to occupy his present position. Accordingly the Director has omitted the provisions relating to the earlier scheme, but with a saving provision to continue their operation within their present limited sphere.

6. The Director informed the Committee that Part VII. of the *County Court Act* 1928, relating to the enforcement of the payment of interstate debts on a reciprocal basis, is obsolete in view of the provision in the Commonwealth *Service and Execution of Process Act* 1901–1953 of machinery for the enforcement of Australian interstate debts. The Committee was further advised that the necessary proclamation had apparently never issued to apply Part VII. to New Zealand. To all intents, therefore, Part VII. of the *County Court Act* 1928 is inoperative. This Part, together with the 4th to the 11th schedules to the 1928 Act which are dependent upon it, have accordingly been omitted.

7. The Committee has examined all the foregoing amendments and is of opinion that all are incidental to the consolidation and are such as may properly be included in a proposal for consolidation.

* *Minutes of evidence not printed.*

8. The Committee draws the attention of Honorable Members to the following amendments of substance which have been embodied in the proposed Bill :—

(*a*) Clause 4 provides for one county court for the whole of Victoria, sitting at such places as the Governor in Council directs, in lieu of the several courts now existing.

(*b*) Clause 8 (6) provides for the creation of the new position of chairman of judges.

(*c*) Clause 16 relates to the appointment of acting judges instead of deputy judges as at present.

(*d*) The power given to the judges to make rules of practice is now expressed, by clause 78, as being exercisable by a majority of judges instead of by any three judges, as at present.

(*e*) Clause 9 relates to the power to remove judges who neglect to perform their duties and appears in an amended form omitting, as unnecessary, reference to the power to remove for absence from Victoria.

(*f*) Clause 35 validates the sitting of the county court "at Melbourne" at places within ten miles of the Elizabeth-street Post Office.

9. The Committee is of opinion that the matters referred to in paragraph 8 hereof constitute amendments which are not merely incidental to a consolidation of the existing County Court Acts and related legislation. It accordingly refrains from recommending the proposed Bill to Honorable Members as a consolidating measure.

Committee Room,

31st July, 1957.

By Authority: W. M. Hopston, Government Printer, Melbourne.

1956-57

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

A PROPOSAL TO CONSOLIDATE THE LAW

RELATING TO THE

MAINTENANCE OF WIVES AND CHILDREN

AND

RELATED MATTERS

Ordered by the Legislative Council to be printed, 3rd September, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

8632/57.—D.—No. 11.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21st NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21st NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Director of Statutory Consolidation, Mr. R. C. Normand, brought before the Committee a draft of the Maintenance (Consolidation) Bill—a Bill to consolidate the Law relating to the Maintenance of Wives and Children and relating to Confinement Expenses and relating to the Relief of Persons whose Relatives liable to support them reside in another State or a Territory of the Commonwealth or in the Dominion of New Zealand, and to facilitate the Enforcement in Victoria of Maintenance Orders made in England and Northern Ireland and other parts of Her Majesty's Dominions and Protectorates and in other Countries and *vice versa*, and for other purposes.

Section 344 of *The Constitution Act Amendment Act* 1956 provides that one of the functions of the Committee shall be to " examine proposals for the consolidation of statutes ".

The Committee undertook an examination of the proposed consolidation.

2. The evidence of the Director of Statutory Consolidation is appended to this Report.*

3. The Director certified to the Committee that the draft Bill is a true consolidation—that no substantive alterations to the present law are contained in the draft Bill.

The following " verbal " alterations were brought to the notice of the Committee by the Director :—

(*a*) All the jurisdictional provisions have been collected and appear as Part III. ;

(*b*) In Part I. where reference is made in the present law to " any two justices ", there are added the words " or a court of petty sessions ", and throughout the draft a number of verbal alterations has been made in order to make the jurisdictional provisions more intelligible and easy to read ;

(*c*) The word " adequate " has been left out of Clause 5 (4) (*a*). The definition of " means of support " in the draft renders this word superfluous ;

(*d*) In clause 8 the words " reasonable cause " have been deleted because throughout the rest of the measure the expression " without just cause or excuse " has been used ;

(*e*) In clause 20 an inaccuracy has been corrected by replacing reference to making a complaint with reference to laying an information ; and

(f) In clauses 44 (6) and 81 (1) drafting alterations have been made.

4. The Committee accepts the assurance of the Director of Statutory Consolidation that the draft Bill presented by him is a true consolidation of the Maintenance Acts and commends the Bill, when introduced, to Honorable Members for a speedy passage.

Committee Room,
28th August, 1957.

* *Minutes of Evidence not printed.*

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

ESTATE AGENTS (AMENDMENT) BILL 1957

(CLAUSES 2, 5, 6, 8, and 9)

AND THE

ESTATE AGENTS ACT 1956

(SECTION 4)

Ordered by the Legislative Council to be printed, 1st October, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

9532/57—D.—No. 12.—PRICE, 9D.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

TUESDAY, 14TH MAY, 1957.

23. ESTATE AGENTS (AMENDMENT) BILL.—Motion made, by leave, and question—That the proposals contained in clauses 2, 5, 6, 8, and 9, of the Estate Agents (Amendment) Bill be referred to the Statute Law Revision Committee for examination and report (*Mr. Rylah*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Statute Law Revision Committee has examined the proposals contained in clauses 2, 5, 6, 8, and 9 of the Estate Agents (Amendment) Bill—a Bill to amend the *Estate Agents Act* 1956—which was initiated in the Legislative Assembly. On the 14th May, 1957, the second-reading debate on the Bill was adjourned and the Legislative Assembly referred the proposals contained in these clauses of the Bill to the Statute Law Revision Committee for examination and report.

2. The Honorable the Attorney-General by letter dated the 29th of May, 1957, recommended to the Committee that it should examine an anomaly in the *Estate Agents Act* 1956 in that, although the effect of section 4 (2) (*b*) (i) is to exempt solicitors from the requirement of holding an estate agent's licence, the Act does not exclude solicitors from its general application. The Committee adopted this recommendation and undertook inquiries into this matter concurrently with its inquiries into the provisions of the Bill.

3. Appended to this report is the evidence * given by the following witnesses who appeared before the Committee :—

Mr. I. F. McLaren, Acting Chairman of the Estate Agents Committee ;
Mr. R. N. Vroland, representing the Law Institute of Victoria ;
Mr. T. J. Roe and Mr. J. L. Hewison, Solicitor } representing the Real Estate and Stock Institute of Victoria ;
Mr. M. A. R. Synnot, Registrar, Estate Agents Act ;
The Honorable William Slater, M.L.C. ;
Mr. P. P. Connell, M.P. ;
Mr. R. J. Wiltshire, M.P. ; and
Mr. A. L. Turner, Sub-Dean of the Faculty of Law, University of Melbourne.

Also appended to this report are memoranda * which were submitted to the Committee by the Honorable P. V. Feltham, M.L.C., Messrs. T. J. Roe and J. L. Hewison, Mr. M. A. R. Synnot, and Mr. A. L. Turner and Dr. H. A. J. Ford.

Provisions of the Estate Agents (Amendment) Bill.

4. The Committee examined clause 2 of the Bill, the purpose of which is to give to the Estate Agents Committee the power to prescribe the rate of commission chargeable by auctioneers in respect of services relating to the sale by auction of real estate.

The Committee considers this amendment a desirable one. However from an examination of the principal Act it would appear that unless certain consequential amendments are also made the effect of the amendment may well be that, whilst the Estate Agents Committee would be given power to regulate the rate of commission, the Act imposes no obligation or sanction upon auctioneers to observe any such regulations. This view results from an examination of section 4 which exempts from the requirement to observe the provisions of the Act any licensed auctioneer, so long as he sells by auction, and section 33 of the Act which renders it an offence for an estate agent to demand commission in excess of the prescribed rate. The Committee therefore recommends that clause 2 of the Bill be passed into law but that in addition a consequential amendment be made in the *Estate Agents Act* 1956 to make it clear beyond doubt that an auctioneer who charges a rate of commission in excess of that prescribed will be subject to the same penalty as would any estate agent who so acted.

* *Minutes of evidence and appendices not printed.*

The Committee recommends a further consequential amendment to section 4 (2) of the Act to make it abundantly clear that the proposed provisions, together with all existing express provisions of the Act such as section 34, do bind auctioneers.

5. Paragraph (*a*) of clause 5 of the Bill amends section 33 (1) (*b*) of the 1956 Act. The existing provision requires that an agent shall not be able to recover commission unless he holds a written appointment which sets out the rate of commission. The amendment proposes to modify that requirement so that the written appointment will be sufficient if it merely states that the commission to be charged will not exceed that prescribed.

6. The Committee finds it difficult to see that this amendment will achieve any useful purpose. The evidence which has been adduced to the Committee is that the existing provision is impossible of fulfilment because the actual rate of commission will not be known until the price has been finally determined—a stage in negotiations which is reached *after* the giving of the written appointment. The Committee appreciates the difficulties of the present section but considers that the clause as drafted would tell the vendor nothing. The Committee does not recommend the amendment envisaged by paragraph (*a*) of clause 5 nor does it favour the existing provision. It recommends the amendment of section 33 of the Act to require that an agent shall not be entitled to commission unless *inter alia* he gives to the vendor a copy of the Rules of the Estate Agents Committee prescribing the maximum rate of commission chargeable.

It is considered that such a requirement should have the effect of acquainting the vendor of the amount of commission chargeable and should protect him against the possibility of being charged excessive commission.

7. Clause 5 (*b*) of the Bill proposes to amend section 33 (1) (*c*) of the Act which requires that the written appointment referred to in paragraph 5 of this Report is to be held before the agent commences negotiations. The evidence adduced to the Committee indicates that it has been found in practice very difficult to determine the point of time at which negotiations commence. The amendment requires the agent to hold the engagement before obtaining any signatures to the agreement. The Committee recommends its enactment.

8. Section 33 (2) of the Act renders it an offence for any estate agent to demand more commission than the rate prescribed or than the rate specified in his written appointment. It is proposed by clause 5 (*c*) (i) of the Bill to amend this provision to the effect that it will only be an offence if excessive commission is demanded *knowingly*.

The Committee having carefully considered the proposed amendment is of the opinion that it would place upon the prosecution an onus of proof of knowledge on the part of the agent which would be most difficult to satisfy.

Evidence was given to the Committee that at present even if an honest mistake is made in the computation of the amount of commission, the agent would be guilty of an offence.

Even if this view be correct, in the light of the provisions of section 72 of the *Justices Act* 1928 the Committee considers that the courts have an adequate discretion when hearing a charge under section 33 (2) in its present form, to dismiss the case where a purely technical offence has been committed as a result of an honest mistake.

The Committee does not therefore recommend the insertion of the word " knowingly " as proposed by clause 5 (*c*) (i) of the Bill.

The Committee notes that the provisions of section 33 (2) of the Act appear to render it mandatory for the court which imposes a penalty upon an offending agent for a breach of the section, to also order the refund of any excess commission retained by the agent. The Committee is of the opinion that it would be preferable to give such a court discretion with regard to the making of orders, and recommends the amendment of clause 5 of the Bill accordingly.

9. Clause 6 (1) of the Bill proposes to amend section 34 (1) of the principal Act which requires the delivery to the purchaser of a written statement setting out various details concerning the transaction. The effect of the proposed amendment is to require the agent to obtain an acknowledgment for the statement.

The Committee is of the opinion that the amendment proposed by clause 6 (1) in this regard is a desirable one which should facilitate the enforcement of the existing provision, and accordingly recommends its enactment.

10. Clause 6 (2) proposes to amend section 34 (2) (*b*) of the principal Act to provide that the statement shall " state to the best of the knowledge and belief of the agent or auctioneer the name and address of the seller and purchaser respectively ". The Bill proposes to add the underlined words.

The Committee fails to see the necessity for the proposed amendment. Section 34 (3) of the principal Act requires the statement referred to to be given before the purchaser signs the contract. It is the opinion of the Committee that before the agent obtains the signature to a contract be should ascertain the true ownership of the subject property. The Committee accordingly recommends the omission of the underlined words from the amendment proposed in clause 6 (2) of the Bill.

11. Clause 6 (2) of the Bill further provides that the requirement of section 34 (2) (*c*) of the principal Act that there be included in the statement information as to whether any representation has been made concerning the availability of finance, shall relate purely to representations which, when the statement is given, are *material* to the transaction. Evidence was adduced to the Committee that there may be many discussions relating to finance during the course of negotiations but the arrangement of most importance to the purchaser is the one on which his offer to purchase is made and accepted. The Committee, having given this matter careful consideration, is of the opinion that difficulties may be occasioned in arriving at a decision as to which representations would be in a particular case the *material* ones.

It therefore considers that all representations made should be disclosed and accordingly it recommends the omission of the words " which at the time when the statement is given to the purchaser is material to the transaction " from the proposed new sub-section (2) (*c*).

12. The Committee agrees with the amendment to section 34 (2) (*d*) proposed by clause 6 (2) of the Bill to require the statement to contain information as to the source of the finance promised. It considers that the proposed amendment should facilitate matters in the event of legal action.

For the sake of consistency in the Bill the Committee considers that the word " seller " should be used instead of the word " vendor " in this amendment.

13. The Committee agrees with the wisdom of the amendment to be effected by clause 6 (2) of the Bill to remove from section 34 (2) the requirement that the statement should not contain any writing other than that prescribed. It is considered undesirable that the inadvertent insertion of an unnecessary word in the statement might render it invalid.

14. Clause 6 (3) of the Bill proposes to amend section 34 of the Act to provide a right to avoid the contract if the promises embodied in the statement as to provision of finance are not fulfilled.

An effect of this provision would be to remove the existing right of a prospective purchaser to avoid the contract should no such statement be supplied.

The Committee approves the proposal in so far as the prospective purchaser is given the right to avoid if promises as to finance in a statement supplied are not fulfilled, but recommends amendment of clause 6 to ensure that the right to avoid is preserved in the event of no statement being supplied. The clause as drafted would in the opinion of the Committee create an anomaly by placing an agent who fails to supply the statement required by section 34 in a better position than an agent who supplies the required statement.

It is further recommended that, in civil proceedings, the onus of proof of delivery of the statement should rest upon the agent.

The Committee recommends the insertion of the word " has " after the word " and " in clause 6, sub-section (3), page 5, line 5 of the Bill.

15. The Committee has considered clause 6 (4) providing for a penalty where an agent fails to deliver the statement required by section 34 (8) of the Act. The Committee considers the provision a desirable one but is of the opinion that it is unduly harsh to provide a minimum penalty of £50 for the first offence. Considering, therefore, that it is desirable to give the courts discretion to fit the penalty to the circumstances of any particular offence, the Committee recommends the adoption of clause 6 (4) but without the reference to a minimum penalty.

16. Clause 8 of the Bill deals with the question of sole agency and is in substitution for the existing provision of section 36 of the Act, which restricts sole agency agreements to a period no greater than 30 days, but permits of extensions of 30 days from time to time. The proposal in the Bill is to restrict sole agency agreements to no more than 60 days, but with the right to be vested in the Registrar of authorizing longer periods, for which no limit is prescribed in the Bill.

Evidence has been placed before the Committee that the period permitted by the present provision is too short to allow an agent to sell the property, and that in some cases even 60 days is not sufficient. On the other hand it would appear clear that the whole purpose of restricted sole agency is to protect the vendor who may sign a document of appointment without examining or fully understanding it. Bearing this consideration in mind the Committee has been reluctant to recommend any general relaxation of the existing provision which already gives adequate right to extend appointments from time to time. However the Committee is of the opinion that in a sale involving subdivisions an agent may in some cases be unable to complete the preparations for the sale within a period of 30 days and therefore such sales merit special consideration. The Committee, therefore, recommends the omission of clause 8 from the Bill and the amendment of section 36 of the Act to exempt from the restriction on sole agencies transactions involving the sale of subdivided land. For the purposes of this recommendation the Committee considers that " subdivided land " should be defined as " any area of land which has been subdivided into not less than three lots and in respect of which a plan of subdivision has been approved by the proper authorities ".

17. Clause 9 of the Bill proposes to amend section 38 of the principal Act which requires an estate agent to bank trust moneys before the end of the next business day after the day of receipt.

The Bill proposes to relax the requirement so that in cases where trading bank facilities are not available within 10 miles of the agent's place of business the moneys are to be banked within three business days of receipt. The Committee agrees with the proposed amendment and accordingly recommends the enactment of clause 9 of the Bill.

Additional matters not included in the Estate Agents (Amendment) Bill.

18. The Committee considers that the matter brought to its attention by the Honorable the Attorney-General in his letter of 29th May, 1957 (Appendix " A ")* discloses an anomaly in the present Act concerning the position of solicitors. Paragraph (*b*) of sub-section (2) of section 4 of the *Estate Agents Act* 1956 provides that the Act shall not prohibit barristers and solicitors from performing any functions which they could otherwise lawfully have performed. However barristers and solicitors are not included within the classes of persons who are, by virtue of section 4 (2) (*a*) exempted from the obligations of holding a licence and observing the requirements of the Act. Further the definition of " estate agent " contained in the Act is sufficiently wide to include some of the functions normally performed by solicitors. The Act therefore is open to the interpretation that barristers and solicitors must observe its requirements, although this appears to be against the general intention of the legislation.

The Committee recommends, therefore, that to clarify the law the Act should be amended to include solicitors within the classes of persons who are by section 4 (2) (*a*) exempted from the obligation to hold a licence or observe the requirements of the Act. The amendment envisaged should be so framed as to make it clear that where a solicitor also carries on business as an estate agent he should, in respect of that latter business, and only that business, be bound by the requirements of the Act and required to hold a licence thereunder.

* *Not printed.*

19. The Committee gave careful consideration to a suggestion that the *Estate Agents Act* 1956 should be so amended as to render it mandatory that all contracts for the sale of real estate should be prepared by legal practitioners. Whilst of opinion that contracting parties do, in a number of cases, find legal difficulties in connexion with transactions which could have been avoided by seeking expert legal advice at the time, the Committee considers that it would be an unreasonable interference with freedom of contract to legislate as suggested.

20. As legislation relating to estate agents regulates important rights and duties of the community, the Committee recommends the passage of the Bill, together with the amendments and new provisions recommended herein, as soon as may be convenient.

Committee Room,
25th September, 1957.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

UPON THE

PROPOSALS CONTAINED IN THE

COUNTY COURT BILL

Ordered by the Legislative Council to be printed, 25th September, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

9355/57.—D.—No. 13,

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

WEDNESDAY, 11TH SEPTEMBER, 1957.

7. COUNTY COURT BILL.—Motion made, by leave, and question—That the proposals contained in the County Court Bill be referred to the Statute Law Revision Committee for examination and report (*Mr. Rylah*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Statute Law Revision Committee has examined the proposals contained in the County Court Bill—a Bill to consolidate and amend the Law relating to the County Court—which was initiated and read a first time in the Legislative Assembly on 10th September, 1957.

On 11th September, 1957, the Legislative Assembly referred the proposals contained in the Bill to the Committee for examination and report.

2. The Committee's Report on the consolidation aspects of the Bill was laid on the Table of the Legislative Council on 3rd September, 1957, and the Legislative Assembly on 4th September, 1957. (Victorian Parliamentary Papers, D. No. 10, Session 1956-57).

3. The evidence of Mr. J. J. Lynch, Parliamentary Draftsman, is appended to this Report.*

4. The changes in the law proposed by the Bill were outlined to the Committee by the Parliamentary Draftsman as follows :—

(*a*) There will be one county court for Victoria to sit at places nominated by the Governor in Council instead of the present separate county courts at various centres. Thus the county court will be brought into line, to some extent, with the Supreme Court and a sitting of the county court, wherever held, shall have jurisdiction throughout the whole of Victoria ;

(*b*) The Bill proposes a new position of chairman of judges to be appointed by the Governor in Council. The chairman will have power to fix the days and times of sittings of the court and to appoint assistant registrars ;

(*c*) Provision for the appointment of acting judges will replace that relating to deputy judges ;

(*d*) The rule-making power is to be vested in a majority of the judges instead of the present "any three judges" ;

(*e*) Absence from Victoria without approval of the Governor in Council is to be deleted from the listed causes for which a judge may be removed from office ; and

(*f*) Sittings of the court at any court-house within a radius of ten miles from the Elizabeth-street post office and which is specified in that behalf by the Attorney-General are to be for the purposes of the Act sittings of the court at Melbourne.

5. The Committee approves of these proposals, believing them to be of an administrative nature and designed to facilitate the work of the judges, and accordingly commends the Bill both as a consolidating and an amending measure to Honorable Members for a speedy passage.

Committee Room,
25th September, 1957.

* *Minutes of Evidence not printed.*

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57

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VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE PROVISIONS OF

THE INSTRUMENTS ACT 1928

RELATING TO

BILLS OF SALE

Ordered by the Legislative Council to be printed 15*th October*, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

9721/57.—D.—No. 14.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Honorable the Attorney-General by letter dated 30th May, 1957, invited the attention of the Committee to certain anomalies in the provisions of the *Instruments Act* 1928 relating to bills of sale.

2. The Chief Justice's Law Reform Committee recommended to the Attorney-General—

(*a*) that public holidays on which the Registrar-General's Office is closed for business shall not be calculated in determining the time for the filing or registration of bills of sale, and charges under the Companies Acts, and of caveats against such registration ; and

(*b*) that the *Instruments Act* 1928 be amended so that any omission or incorrect or insufficient description or misdescription shall not affect the validity of the bill of sale if the Court is satisfied that it was accidental or due to inadvertence and was not of such nature as to be liable to mislead or deceive any person to his prejudice or disadvantage.

3. Appended to this Report is the evidence* of the following witnesses who appeared before the Committee :—

Mr. J. M. Hambleton, President of the Law Institute of Victoria ;
Mr. W. J. Taylor, Registrar-General ;
Mr. T. S. Welsh, Deputy Registrar-General ; and
Mr. J. Lloyd, Deputy Registrar-General.

4. The Committee agrees with the recommendation of the Chief Justice's Law Reform Committee outlined in sub-paragraph (*a*) of paragraph 2 (above) and recommends its adoption.

5. Section 79 (1) (*b*) (ix) of the *Companies Act* 1938 provides, *inter alia*—

> "No . . . . notice . . . . shall be deemed insufficient or invalid by reason only that in such notice there is an omission or incorrect or insufficient description or a misdescription in respect of the particulars required to be contained in such notice if the court judge or justice before which or whom the validity of such charge comes in question is satisfied that such omission incorrect or insufficient description or misdescription was accidental or due to inadvertence and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage."

The Committee recommends the insertion of a similar provision in the *Instruments Act* 1928.

6. The Law Institute questioned the necessity for section 39 of the *Instruments Act* 1928 which requires the filing of an annual affidavit in order to preserve the validity of a bill of sale. Evidence was adduced to the Committee that bills of sale are the only instruments in respect of which such a statutory requirement exists, and that the requirement occasions considerable difficulty.

* *Minutes of Evidence not printed*

7. The Committee considers that the annual filing of some document makes it clear to interested parties that the chattels are still subject to a bill of sale. The Committee however considers that it is not necessary for the document to take the form of an affidavit, and that a simple form of notice should suffice.

The Committee further recommends that the simple form of notice should be filed within twenty-one days of the expiration of each period of twelve months from the date on which the Bill is filed.

Committee Room,

3rd October, 1957.

By Authority: W. M. Houston, Government Printer, Melbourne.

1956-57

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

UPON

THE PROPOSALS CONTAINED IN THE

STATUTE LAW REVISION BILL

Ordered by the Legislative Council to be printed, 15th October, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

9571/57.—D—No. 15.—PRICE 6D.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

TUESDAY, 24TH SEPTEMBER, 1957.

13. STATUTE LAW REVISION BILL.—The Honorable G. S. McArthur moved, by leave, That the proposals contained in this Bill be referred to the Statute Law Revision Committee for examination and report.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Statute Law Revision Committee has examined the proposals contained in the Statute Law Revision Bill—a Bill to revise the Statute Law and for other purposes—which was initiated and read a first time in the Legislative Council on 10th September, 1957.

On 24th September, 1957, the second reading debate was adjourned and the Legislative Council referred the proposals contained in the Bill to the Committee for examination and report.

2. The evidence of Mr. J. C. Finemore, Assistant Parliamentary Draftsman, who appeared before the Committee, is appended to this Report. *

3. After hearing the evidence of the Assistant Parliamentary Draftsman and examining the explanatory memorandum circulated with the Bill, the Committee believes that the amendments proposed can be classified as follows :—

(*a*) amendments which should have been made as consequential amendments simultaneously with the passage of legislation, but were overlooked (i.e., the amendments proposed to the *Administration and Probate Act* 1928, the *Game Act* 1928, the *Mildura Irrigation and Water Trusts Act* 1928, the *Registration of Births Deaths and Marriages Act* 1928, *The Constitution Act Amendment Act* 1956 and the *Nurses Act* 1956) ;

(*b*) the correction of verbal or grammatical errors (i.e., the amendments proposed to the *Licensing Act* 1928, the *Licensing (Amendment) Act* 1953, the *Superannuation Act* 1928, the *Vegetation Diseases (Fruit Fly) Act* 1947, the *Motor Car Act* 1951, the *Labour and Industry (Amendment) Act* 1957, and the *Land (Improvement Purchase Lease) Act* 1956) ;

(*c*) the correction of a spelling error (i.e., the amendment proposed to the *Sewerage Districts Act* 1928);

(*d*) the correction of incorrect references (i.e., the amendments proposed to the *Mines (Petroleum) Act* 1955, the *Medical (Registration) Act* 1956, the *Local Government (Building Regulations) Act* 1956 and section 104 of the *Police Offences Act* 1957) ;

(*e*) the correction of errors in a consolidation (i.e., the amendments proposed to section 20 of the *Police Offences Act* 1957) ;

(*f*) the correction of printing errors (i.e., the amendments proposed to the *Racing Act* 1957 and section 67 of the *Police Offences Act* 1957) ; and

(*g*) an amendment to the *Evidence Act* 1928 to widen the provisions of section 166 so as to make it applicable to all parts of the world.

4. The Committee is of opinion that all the proposed amendments are such as may properly be included in a Statute Law Revision Bill and accordingly commends the Bill to Honorable Members.

COMMITTEE ROOM,
3RD OCTOBER, 1957.

* *Minutes of Evidence not printed.*

By Authority: W. M. HOUSTON, Government Printer, Melbourne

1956-57

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

THE LAW RELATING TO THE

ENFORCEMENT OF FINES

Ordered by the Legislative Council to be printed, 30th October, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

10469/57.—D.—No. 16

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Honorable the Attorney-General, by memorandum dated 10th July, 1957, drew the attention of the Committee to the requirement of section 116 (2) of the *Justices Act* 1928 that a warrant of distress be issued prior to the issue of a warrant of commitment in respect of the non-payment of fines imposed upon persons not resident in Victoria. The Attorney-General requested that the Committee examine the procedure for enforcement of monetary penalties, and report any anomalies disclosed as a result of that examination to the Parliament, together with recommendations for the removal of such anomalies.

On 8th October, 1957, the Committee commenced its inquiries.

2. Appended* to this Report is the evidence of—

Mr. L. Griffin, Assistant to the Clerk of Petty Sessions, Melbourne ;
Sir Henry Winneke, Q.C., Solicitor-General ;
First Constable F. H. Coad ;
Mr. W. S. Steel, an officer of the Country Roads Board ; and
First Constable C. I. Sinclair.

3. The Committee, on the 10th October, 1957, visited the City Court, Melbourne, and there inspected court registers, summonses, warrants of distress, show cause summonses and warrants of commitment.

4. Section 116 (2) of the *Justices Act* 1928 has been re-enacted as sub-section (2) of section 119 of the *Justices Act* 1957 and provides :—

> Where pursuant to the last preceding section or to sub-section (1) of this section a warrant of distress is issued and it is returned on oath by the member of the police force who had the execution of the warrant of distress that he could find no sufficient goods and chattels whereon he could levy the sum or sums mentioned therein together with the costs of and occasioned by levying the same and that to the best of his knowledge and belief the defendant is not within Victoria, then notwithstanding any rule of law or practice to the contrary the justice before whom the same is returned or any other justice may, without the issue of any summons to show cause, proceed to issue a warrant of commitment in accordance with the provisions of the last preceding section or sub-section (1) of this section (as the case requires).

5. At the time a monetary penalty is imposed by a court of petty sessions the court, bound by the relevant statutory provisions, fixes the method of enforcement as either imprisonment for a term then fixed or distress. Costs may or may not be ordered.

The Committee did not concern itself with the procedures or powers for enforcement of fines where the courts have the power to and do fix a term of imprisonment as the penalty for non-payment, but confined its inquiries to the methods available for enforcement of fines imposed " in default distress ".

6. In respect of a defendant living and remaining in Victoria, the procedure for recovery of fines and associated costs is as follows :—

> A warrant of distress is issued by the clerk of petty sessions and forwarded to the police for execution. This warrant authorizes the police to seize the defendant's goods and, if necessary, sell them to recover the amount stated in the warrant to be due.

* *Minutes of Evidence not printed.*

If the police cannot find sufficient goods of the defendant upon which to levy distress and the fine (and costs where applicable) remain unpaid, a policeman certifies to that effect on the back of the warrant of distress which is returned to the clerk of petty sessions.

Upon receipt of the warrant with the " nulla bona " return, the clerk of petty sessions issues a show cause summons, fixing a day on which the defendant is commanded to show cause to the court why he should not be imprisoned for non-payment of the fine. (The show cause procedure is not applicable to recovery of unpaid costs—and when the collection procedure reaches this stage costs are written off).

A copy of this summons must be served personally on the defendant.

On the day fixed in the show cause summons the court may fix a term of imprisonment as the penalty for non-payment of the outstanding fine upon which being done a warrant of commitment is issued and forwarded to the police for execution. The police are then able to confront the defaulter with the choice of paying the fine or serving the fixed term of imprisonment.

7. In respect of a defendant not in Victoria at the time an attempt is made to execute a warrant of distress the provisions of section 119 (2) of the *Justices Act* 1957 apply—no show cause summons need be issued.

8. The Committee then examined whether Victoria is adhering to an out-dated procedure for the collection of fines and costs which should be replaced by a less expensive and less cumbersome method.

9. The attention of the Committee was drawn to the provisions of Section 82 of the New South Wales Justices Act, which provides :—

82 (1). In no case, except where the conviction or order is made against a corporate body, shall any fine or penalty, or any sum of money, or costs, adjudged to be paid by any conviction or order made by any Justice or Justices founded on this or any other Act past or future, be or be adjudged to be levied by distress.

(2). Whenever by any conviction or order it is adjudged that any fine or penalty, or any sum of money, or costs, shall be paid, the Justice or Justices making the conviction or order shall, except where the conviction or order is made against a corporate body, therein and thereby adjudge that, in default of payment in accordance with the terms of the conviction or order, of the amount thereby adjudged to be paid as ascertained thereby, the person against whom the conviction or order is made shall be imprisoned and so kept for such period, within the limits hereinafter prescribed as to such Justice or Justices seem fit, unless the said amount and, if to such Justice or Justices it seems fit, the costs and charges of conveying him to prison be sooner paid : Provided that this sub-section shall not affect the provisions relating to periodical payments contained in the *Deserted Wives and Childrens Act* 1901, and in the Lunacy Act of 1898.

Where the said amount does not exceed ten shillings such period shall not exceed one day.

Where the said amount exceeds ten shillings such period shall be one day for each ten shillings of such amount or part thereof. Such imprisonment shall be with either hard labour or light labour, as the Justice or Justices in and by the conviction or order adjudge.

2 (A). Whenever any corporate body is, by any conviction or order, adjudged to pay any fine, penalty, sum of money, or costs, such conviction or order shall operate as an order for the payment of money under the *Small Debts Recovery Act* 1899, and any Act amending the same, and be enforceable as such order under the provisions of the said Act. For such purpose such conviction or order may be entered in the records of the Small Debts Court exercising jurisdiction at the Petty Sessions where such order or conviction was made in such manner as may be prescribed by rules made under the said Acts.

(3). Every enactment inconsistent with the provisions of this section is hereby repealed.

(Section 82 does not in New South Wales apply to the recovery of small debts. The Small Debts Courts of New South Wales are governed by separate legislation regarding enforcement of orders made by them. Thus section 82 applies to criminal and quasi-criminal cases before courts of petty sessions).

In New South Wales, therefore, two steps in the procedure for recovery of fines—the warrant of distress and the show cause summons—have been eliminated.

10. The Committee is of opinion that enactment of a provision similar in effect to section 82 of the New South Wales Justices Act would be a drastic change not warranted on the evidence placed before the Committee. The Committee is not convinced that either the proportion or number of cases in which the procedure for enforcement of fines "in default distress" has to be carried beyond the issue and execution of a warrant of distress are high enough to justify any sweeping change in present enforcement procedures.

11. However the Committee believes that difficulty does result from the present system of recovering fines imposed upon highway offenders, particularly those offenders whose domicile is in another State or who are continually moving around Australia, and that some attempt should be made to simplify enforcement of penalties.

The Committee, whilst not prepared to recommend general abolition of distress for enforcement of fines, believes that distress should be abolished in respect of penalties for infringement of the provisions of the Commercial Goods Vehicles Acts and Division 2 of Part IV. of the *Motor Car Act* 1951.

12. The Committee noted that under the New South Wales provision costs are enforceable in the same manner as penalties, and was informed that in the City Court alone about £1,000 per annum in costs is lost because costs are generally considered to be irrecoverable once a warrant of distress has been returned unsatisfied.

13. The amount involved in loss of costs is not, in the opinion of the Committee, sufficient to warrant removal of the long-established principle underlying the differing enforcement procedures—that a fine is a penalty and costs constitute merely a civil debt.

Committee Room,

29th October, 1957.

By Authority: W. M. Houston, Government Printer, Melbourne.

1956-58

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON

THE LAW

RELATING TO THE

UNAUTHORIZED USE OF BOATS

Ordered by the Legislative Council to be printed, 12th November, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

656/58.—D.—No. 19.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Honorable the Attorney-General by letter dated the 27th September, 1957 invited the Committee to examine an anomaly in the Statute Law concerning the unauthorized use of boats. The Committee adopted the suggestion of the Attorney-General and commenced its enquiries into this matter.

2. Appended* to this report is the evidence of the following witnesses who appeared before the Committee :—

Mr. A. J. B. Aird, Legal Assistant to the Police Department, and

Mr. T. F. E. Mornane, Crown Solicitor.

3. The offence of larceny exists at common law only where an intention of permanently depriving the owner of the subject property can be imputed to the accused. Thus it is, at common law, no offence to ride a horse or use a vehicle or boat without the consent of the owner. Upon the common law, however, there have been superimposed a number of statutory provisions to deal with such cases as these. These provisions include :—

(*a*) Section 207 of the *Police Offences Act* 1957, dealing with the illegal use of a vehicle (other than a motor car).

(*b*) Section 81 of the *Crimes Act* 1957, which provides for the offence of illegally using a motor car.

(*c*) Section 85 of the *Crimes Act* 1957 rendering it an offence to take or use cattle without consent of the owner.

4. The Committee considers it anomalous that special provision should be made by statute whereby the offences of illegally using motor cars, vehicles, and cattle have been created, but that no provision has been made for the case where a person uses a boat without the owner's consent. From the evidence before the Committee it appears that it is not uncommon for boats to be so taken and used.

5. To meet the deficiency which at present exists in the law whereby it is not an offence to use a boat without the owner's consent unless there is an intention to permanently deprive the owner of the property, the Committee therefore recommends the amendment of section 207 of the *Police Offences Act* 1957 by the insertion of the words " or any boat, ship or other vessel " after the expression " *Motor Car Act* 1951) ".

Committee Room,

31st October, 1957.

* *Minutes of Evidence not printed.*

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956–57

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

UPON THE

PROPOSALS CONTAINED IN THE

MARRIAGE (AMENDMENT) BILL

(PROPOSED NEW CLAUSE AA)

Ordered by the Legislative Council to be printed, 12th November, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

10677/57.—D.—No. 20.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

TUESDAY, 29TH OCTOBER, 1957

24. MARRIAGE (AMENDMENT) BILL..—The Honorable G. S. McArthur moved, by leave, that the propoals contained in clause AA proposed to be inserted in the Marriage (Amendment) Bill be referred to the Statute Law Revision Committee for examination and report.

Debate ensued.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Statute Law Revision Committee has examined the proposals contained in clause AA proposed to be inserted in the Marriage (Amendment) Bill, which proposals were, on 29th October, 1957, referred by the Legislative Council to the Committee for examination and report.

2. Appended to this Report is the evidence of Mr. John Finemore, Assistant Parliamentary Draftsman and a memorandum from Sir Henry Winneke, Q.C., Solicitor-General.*

3. The new clause proposed to be inserted is as follows :—

AA. A decree of dissolution of marriage made, whether before or after the commencement of this Act, by a competent court in any country outside Victoria—

(*a*) upon the petition of a deserted wife ; and

(*b*) by virtue and in accordance with the provisions of a statutory enactment in force in that country in the like terms or to the like effect as the last paragraph of section seventy-five of the Principal Act—

shall be recognized in Victoria as having and having had from the making thereof the force and effect in dissolving the marriage which it has and had in the country in which it was made.

4. The Committee was advised that the amendment is designed to remove an alleged anomaly in the law of Victoria relating to the recognition of divorce decrees made abroad in favor of deserted wives who were not domiciled in the foreign country at the time of presentation of the petition but were so domiciled at the time when they were deserted.

The alleged anomaly was brought to notice by the decision of the Full Court of Victoria in *Fenton* v *Fenton* (1957 V.L.R. 17), an outline of which decision is contained in the appended memorandum of the Solicitor-General.*

5. If passed, the clause will give to the Victorian Courts power to recognize a divorce decree granted to a deserted wife by a foreign court by virtue of a statutory enactment of that foreign country similar in effect to the provisions of the last paragraph of section 75 of the *Marriage Act* 1928.

The paragraph reads—

"A domiciled person shall for the purposes of this section include a deserted wife who was domiciled in Victoria at the time of desertion, and such wife shall be deemed to have retained her Victorian domicil notwithstanding that her husband may have since the desertion acquired any foreign domicil. No person shall be entitled to petition under this section who has resorted to Victoria for that purpose only."

In *Fenton* v *Fenton* the Full Court of Victoria decided that it was unable to recognize a decree made by the High Court of England by virtue of an English statutory provision similar to that paragraph and granted to a deserted wife.

* *Minutes of Evidence and Appendix not printed.*

6. The Committee agrees that the decision in *Fenton* v *Fenton* did disclose an anomaly in the law and is of the opinion that the proposed new clause will remove that anomaly

7. Some fears have been expressed that the proposal would be too wide in its effect and would allow recognition of foreign decrees granted in circumstances in which decrees would not be granted in Victoria.

The Committee accepts the advice of the Solicitor-General and the Assistant Parliamentary Draftsman that the proposal is strictly limited to recognition of foreign decrees—(*a*) made in those countries which have a statutory enactment similar to the last paragraph to section 75 of the *Marriage Act* 1928; and (*b*) granted to petitioners who did in fact at the time satisfy the domicile provisions of the relevant foreign enactment.

8. The Committee accordingly recommends that the proposed new clause be passed into law.

COMMITTEE ROOM,

7TH NOVEMBER, 1957.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57-58

VICTORIA

REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE

REGULATION OF REPORTS

OF

JUDICIAL PROCEEDINGS

Ordered by the Legislative Council to be printed, 25th March, 1958.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE

D.—No. 22 —2702/58.—PRICE 9D.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows —

1. The Honorable the Attorney-General, by memorandum dated 23rd October, 1957, drew the attention of the Committee to the provisions of the *Judicial Proceedings (Regulation of Reports) Act* 1929, to the Bill to amend that Act—then before Parliament and subsequently passed (Act No. 6113), and to certain alleged anomalies in the law to which reference was made during debate on the 1957 Bill in the Legislative Assembly.

2. Appended to this Report is the evidence of the following persons who appeared before the Committee :—

Mr. John Downey, Assistant Crown Solicitor ;
Mr. S. H. Porter, Chief Commissioner of Police ;
Mrs. Breen, Mrs. Frost, and Mrs. Whitney King } representing the National Council of Women ;
Mr. Campbell Turnbull, M.L.A. ;
Mr. O. White, Mr. J. O'Connor, and Mr. H. Hurst } representing the Australian Journalists Association ;
Mr. L. G. Richards and Mr. E. D. Lloyd } representing Truth and Sportsman Ltd. ;
Mr. J. I. Bourke, solicitor ;
Mr. C. Edwards, editor of the " Herald " newspaper ;
Mr. F. B. Daly, editor of the " Sun News-Pictorial " ;
Mr. K. B. Donaldson, solicitor ;
Miss J. Shewcroft and Mr. T. Duckmanton } representing the Australian Broadcasting Commission ;
Mr. J. O'Kelly, representing the Australian Broadcasting Control Board ;
Mr. P. Alston, representing the " Age" newspaper ; and
Sir Henry Winneke, Q.C., Solicitor-General.

Also appended are memoranda from :—

The Honorable the Attorney-General ;
the Crown Solicitor for New South Wales ;
the Crown Solicitor for South Australia ;
the Acting Solicitor-General for Western Australia ;
the Crown Solicitor for Queensland ;
the National Council of Women ;
the Australian Broadcasting Control Board ;
the Australian Broadcasting Commission ;
Mr. Hume Dow ; and
the Chief Justice's Law Reform Committee.

3. The *Judicial Proceedings (Regulation of Reports) Act* 1929 prohibits the printing or publishing in relation to any judicial proceedings of indecent matter the publication of which would be calculated to injure public morals and substantially restricts publication of matter in relation to matrimonial causes.

The 1957 Act (No. 6113) prohibits the publication in relation to judicial proceedings of identifying particulars or photographs of any female—or male under the age of sixteen years—in respect of whom any offence of a sexual or unnatural kind is alleged to have been committed.

The Attorney-General requested the Committee to examine three possible extensions of the legislation—to regulate reports of proceedings for breach of promise of marriage and appeals therein—to regulate reports of maintenance proceedings on the complaints of deserted wives and appeals therein—and to regulate reports of any class of case in the contemplation of the legislation during the period before such a case comes before a court.

The Attorney-General further suggested that the Committee examine the whole general question of regulation of reports of matter "of this kind".

4. There are, in addition to the legislation under consideration, a number of provisions in other Acts which can affect free publication of reports of judicial proceedings.

Section 124 of the *Marriage Act* 1928 gives to the Court power to try any suit in chambers or, in the interests of public morals, to forbid the publication of the evidence or any part of the evidence and section 157 of that Act provides that unless the Court otherwise orders, proceedings relating to the custody control or religious faith of any infant shall be heard in chambers.

Sections 16 and 28 of the *Maintenance Act* 1957 provide that the public shall be excluded during certain proceedings relating to illegitimate children and confinement expenses and section 88 (1) of that Act prohibits publication of reports of those proceedings.

Section 213 (1) of the *Justices Act* 1957 gives power to courts of general sessions and petty sessions to exclude any person from the court on the grounds of public decency and morality and section 214 (1) of that Act gives to those courts power to prohibit publication of a report of any proceedings or any part thereof on similar grounds.

Publication of any reports or proceedings in children's courts is prohibited by virtue of section 43 of the *Children's Court Act* 1956.

By section 29 of the *Supreme Court Act* 1928 the court is given power on the grounds of public decency and morality, to prohibit publication of reports of proceedings and to exclude the public from the court.

Section 90 of the *County Court Act* 1928 gives to a judge power to exclude the public from the court on the grounds of public decency and morality, and section 89 gives power to prohibit the publication of a report of any proceedings or any part thereof which in his opinion ought not to be published.

5. The Committee supports the principles underlying the provisions of section 2 (1) (*b*) of the *Judicial Proceedings (Regulation of Reports) Act* 1929 and section 2 (1) of the *Judicial Proceedings (Regulation of Reports) Act* 1957, believing that reports of proceedings in matrimonial causes should be so limited and that identification of "innocent victims" in most cases of a sexual or unnatural kind should be prohibited. The Committee believes, however, that there are dangers in such blanket legislative prohibitions and recommends that so far as possible the discretion as to whether or not there should be any prohibition or restriction of reports of proceedings in any particular case should rest with the court which will have heard the evidence and seen the parties.

6. Evidence was received to the effect that the present powers of courts of petty sessions, general sessions and the Supreme Court to restrict publication "on the grounds of public decency and morality" are not sufficiently wide. The Committee believes that the grounds on which such courts have power to restrict publication should be extended to give those courts a complete discretion such as is given to a judge of a county court by virtue of section 89 (1) of the *County Court Act* 1928. The Committee recommends that the amending legislation should be couched in terms sufficiently wide to leave the courts in no doubt that Parliament intends to empower them to prohibit publication of identifying particulars in any case in which it seems to the court just to do so—whether or not in respect of proceedings relating to sexual or unnatual offences, maintenance proceedings or breach of promise or other cases, whether civil or criminal.

7. The Committee, appreciating that the provisions of section 2 (1) (*b*) of the *Judicial Proceedings* (*Regulation of Reports*) *Act* 1929 have been in operation since 1st January, 1930, gave serious consideration to the wisdom or otherwise of recommending that those provisions be dropped in favour of giving a general discretionary power to the Supreme Court to make an appropriate order in each case.

8. The Committee recommends that the provisions of section 2 (1) (*b*) of the *Judicial Proceedings* (*Regulation of Reports*) *Act* 1929 should stand.

9. The Committee does not recommend any change in the law in respect of the printing or publishing in relation to any judicial proceedings of any matter of the kinds enumerated in section 2 (1) (*a*) of the 1929 Act.

10. On the question of whether there should be some regulation of reports of certain crimes during the period before they become the subject of judicial proceedings, the Committee recommends that no legislative action be taken at present.

11. The Committee received some evidence relating to the publication in neighbouring States of prohibited reports in newspapers and magazines and distributing them in Victoria and beleives that Victorian legislation should be framed to prohibit such publication. The attention of Honorable Members is drawn to sub-section (2) of section 2 of the *Judicial Proceedings* (*Regulation of Reports*) *Act* 1929. The Committee is of the opinion that it would be desirable to apply the provisions of the sub-section or similar provisions to all those sections of Acts which either prohibit or restrict publication of reports of judicial proceedings or give power to courts to prohibit or restrict such reports. The doubts as to the meaning of "publish" in the 1957 Act would thus be removed and control of prohibited reports printed outside Victoria thus effected.

12. The Committee examined whether specific provisions should be made to prohibit the publication of reports of any judicial proceedings heard in camera in those instances where no or no sufficient provisions now exist.

13. The Committee believes that if effect is given to the recommendations outlined in paragraphs 5 and 6 of this report, no further action will be necessary as the courts will then have power to make an appropriate order in all circumstances.

14. It would appear that there exists a growing feeling against a section of the press in the community, and an opinion which rejects the assumption that a free press is necessarily one free from certain public controls based upon ethical considerations of justice.

15. The Committee desires to place on record its disapproval of the Australian Journalists' Association publishing in the *Journalist* of January, 1958, matters relative to this inquiry whilst the inquiry was in progress.

16. The Committee wishes to place on record its appreciation of the valuable assistance rendered to it during this inquiry by Mr. John Downey, Assistant Crown Solicitor, whose untiring research greatly facilitated this inquiry.

Committee Room,
18th March, 1958.

By Authority: W. M. Houston, Government Printer, Melbourne.

1956-57-58

VICTORIA

PROGRESS REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON THE LAW RELATING TO

TENANTS' FIXTURES

Ordered by the Legislative Council to be printed, 1st *April,* 1958.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE

D. No. 23.—3270/58.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honorable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Honorable the Attorney-General, by memorandum dated the 8th November, 1957 (Appendix "A")* drew the attention of the Committee to the fact that the usual form of tenancy agreement requiring the tenant on vacating the subject property "to yield and deliver up the premises together with all fixtures and fittings" is such that the provisions of the Landlord and Tenant Act relating to tenants' fixtures give no protection. He acquainted the Committee of the view which had been expressed to him, and with which he concurred, that the surrender of certain items to the landlord as landlord's fixtures is quite anomalous and recommended that the Committee examine the matter and make such recommendations to Parliament as it may think fit.

2. The Committee heard evidence from Mr. Paul McCutcheon, Solicitor, in elaboration of the matter. Mr. McCutcheon's evidence is appended to this Report.* Also appended to this Report is a memorandum (Appendix "B")* submitted by the Real Estate and Stock Institute of Victoria.

The Committee has also invited various other organizations and bodies to submit their views to it but at the time of this Report their evidence has not yet been tendered to the Committee.

3. In view of the forthcoming dissolution of the Legislative Assembly the Committee desires to table this Progress Report together with Mr. McCutcheon's evidence, in order to acquaint Honorable Members of the subject-matter and to facilitate the enquiries of any new committee which may be appointed by the next Parliament.

Committee Room,
1st April, 1958.

* *Minutes of Evidence and appendices not printed.*

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57-58

VICTORIA

PROGRESS REPORT

FROM THE

STATUTE LAW REVISION COMMITTEE

ON A

PROPOSAL FOR THE CONSOLIDATION OF THE STATUTES

TOGETHER WITH

APPENDICES

Ordered by the Legislative Council to be printed, 2nd April, 1958.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE

D. No. 24.—3271/58.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—The Honourable Sir Arthur Warner moved, by leave, That the Honorables P. T. Byrnes, W. O. Fulton, T. H. Grigg, R. R. Rawson, A. Smith, and L. H. S. Thompson be members of the Statute Law Revision Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

WEDNESDAY, 21ST NOVEMBER, 1956.

12. STATUTE LAW REVISION COMMITTEE.—Motion made, by leave, and question—That Mr. Barclay, Mr. Lovegrove, Mr. Manson, Mr. Mitchell, Mr. Sutton, and Mr. Wilcox be appointed members of the Statute Law Revision Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of *The Constitution Act Amendment Act* 1956, has the honour to report as follows :—

1. The Director of Statutory Consolidation, Mr. R. C. Normand, brought before the Committee drafts of various Bills to consolidate the statute law. These measures, the short titles of which are listed as Appendix "A" to this Report, form part of the proposed general consolidation of the laws, and were examined by the Committee in the exercise of the function conferred upon it by section 344 of *The Constitution Act Amendment Act* 1956 to examine *inter alia* "proposals for the consolidation of statutes".

2. To acquaint Honorable Members of the evidence given to the Committee to date, and to advise Parliament of the stage reached by the Committee in its examination of the proposal for the general consolidation of the statutes, the Committee desires to make this Progress Report to Parliament.

3. Appended to this Report is the evidence* of the Director of Statutory Consolidation and Mr. A. T. Smithers, Director of Finance, both of whom appeared before the Committee.

4. In its Report on a Proposed Consolidation of the Law relating to the Amendment of the Constitution (Victorian Parliamentary Papers D. No. 12 of Session 1955–56) the Committee outlined for the information of Honorable Members the procedure which it proposed to follow in examining and reporting upon the various consolidating measures as they come before it. In accordance with the procedure there explained the Committee will inquire into any apparent alterations in the law which occur in any of the draft Bills. It will then in each case report to Parliament as to whether or not these alterations are such as may properly be included in a proposal for consolidation of the statutes. Several of the measures examined by the Committee warrant special mention to Parliament in this regard. For convenience the short titles of these measures are underlined in Appendix "A" to this Report.

5. The Committee will not merely reiterate the information given by the Director in the Comparative Table attached to each draft Bill nor re-state his evidence given to the Committee. The short titles of the measures which it considers to be mere statements of the existing operative law together with alterations of a purely verbal nature or rearrangements of subject-matter, appear in Appendix "A" to this Report and are not underlined. In each of these cases the Committee commends the draft Bill to Parliament as a true consolidating measure.

Administration and Probate.

6. The Director drew the attention of the Committee to clauses 4 and 101 of this measure.

For the reasons adequately set out in the Explanatory Paper and the evidence of the Director, the Committee is satisfied that clause 4 reproduces the existing operative law in a more concise and intelligible form.

Clause 101 is virtually a new provision. Section 149 of the *Administration and Probate Act* 1928 applied to that Act the administrative machinery set up under the *Income Tax Act* 1928. Since the latter Act is no longer operative, the Committee agrees with the Director in his drafting of clause 101 so as to apply to this measure the administrative machinery already provided pursuant to the Public Service Act.

Bakers and Millers.

7. The Committee recommends the omission of sub-clause (2) of clause 14 of the draft Bakers and Millers Bill. Section 14 of the *Labour and Industry Act* 1953 provides that on the "appointed date of transfer" an amendment, the text of which appears as clause 14 (2) of the draft Bill, shall be made in the *Bakers and Millers Act* 1928. The Committee has been advised by the Director that the "appointed date" has not yet been proclaimed and the amendment is therefore not yet operative.

Subject to this recommended minor omission, the Committee commends the measure to Parliament.

Commercial Goods Vehicles.

8. Sub-clause (2) of clause 13 of the above measure is partly a new provision. The *Commercial Goods Vehicles Act* 1955 made express provision (by section 13 (3)) for the mode of recovery of unpaid licence fees, but no such provision was made for the recovery of unpaid permit fees.

The Committee does not agree with the insertion of this new provision for the recovery of unpaid permit fees. Although the provision would not substantially alter the law the Committee does not consider it a function of a consolidating measure to rectify such omissions in the statutes as are instanced by section 12 of the *Commercial Goods Vehicles Act* 1955. The Committee accordingly recommends the omission of the recovery provision of sub-clause (2) of clause 13 from the measure.

9. Clause 14 (2) of the measure provides *inter alia* for permit fees to be paid into the Transport Regulation Fund. The *Commercial Goods Vehicles Act* 1955, which is consolidated into the draft Bill, is silent as to the destination of permit fees received under that Act. The proposed provision, therefore, appears to be an alteration to the existing law.

The Committee having heard evidence from the Director and having obtained from him a memorandum (Appendix "B") in elaboration of his evidence, has given this matter careful consideration. Prior to the 1955 Act it was provided that *all* fees under the Transport Regulation Acts be paid into the Transport Regulation Fund. In 1955 all the then existing transport regulation legislation was repealed and the various provisions were re-enacted with modifications in the *Transport Regulation Act* 1955 and the *Commercial Goods Vehicles Act* 1955, the former Act (by section 41) providing that *all* money received by the Board under that Act was to be paid into the Fund and the latter Act (by section 13 (2)) providing merely that all licence fees and all fines received thereunder be paid into the Fund.

10. Since no provision was made in the *Commercial Goods Vehicles Act* 1955 in respect of permit fees the present position would seem to be that such fees should properly be paid into Consolidated Revenue. In the light of this view the insertion of the provision in question would effect a substantial alteration in the law and one which should not be made in a consolidating measure. The Committee accordingly recommends the omission of the words "all sums in respect of permits" from sub-clause (2) of clause 14 of the draft Bill.

11. Subject to the above recommendations the Committee commends the draft Bill to Parliament as a consolidating measure.

State Electricity Commission.

12. The proposed State Electricity Commission Bill reproduces the existing legislation in a re-arranged form. The consolidation also omits a number of provisions the effects of which are now spent, removes uncertainty between the various component enactments, and brings some of the provisions into conformity with changed circumstances.

13. The Committee, having examined the draft, is of the opinion that nothing is contained therein which may not properly be included in a consolidating measure, but that the attention of Honorable Members should be directed to the financial provisions of the measure.

14. The 1928 Act (No. 3776) contemplated that all moneys required by the State Electricity Commission would be provided by moneys appropriated by Parliament. However in 1932 (by Act 4087) the Commission was authorized to raise loans in order to discharge certain obligations. The conversion of the loan raised under the latter Act was provided for in 1937 by Act No. 4512, and this loan has in fact been converted. The provisions of the 1932 Act, which may be now regarded as spent, have accordingly been omitted from the consolidation.

15. The 1937 Act provided for a scheme of borrowing whereby loans could be raised both by the Commission and the State with an over-all limit on the total amount to be raised.

This Act also provided that no part of the money raised by the State was to be used for the conversion of the loan raised pursuant to the 1932 Act but that the Commission might borrow, for loan conversion purposes only, moneys in excess of the over-all limit. The result of this provision was to authorize a greater amount to be raised by the Commission than that which it was provided could be raised by the State. In the light of the conversion of the loan raised pursuant to the 1932 Act it is no longer appropriate to preserve this difference and therefore in the consolidating Bill the amount of loan money which may be provided by the State is increased to the same amount as may be raised by the Commission.

The Committee is satisfied that no alteration of substance has been made to the law as a result, and that the total amount which can be borrowed by the State and the Commission combined is not in any way affected.

16. Clause 98 of the Bill contains the provisions relating to borrowing in an altered form in the light of the operation of the Commonwealth and States Financial Agreement.

To make it abundantly clear that the statutory limit of £265,500,000 which the State may issue to the Commission out of loan moneys is the limit imposed by the 1937 Act as amended from time to time, the Committee, on the advice of the Director, the Treasury and the Commission, recommends the addition of the following sub-clause to clause 98 :—

> "(4) This section shall not apply with respect to any loan moneys provided by the State for the purposes of the Commission under any Act other than this Act or any Act repealed by this Act."

Amounts raised by the State for the Commission prior to the 1937 Act are completely outside the statutory limit of £265,500,000 recited in clause 98 of the measure ; hence the suggested amendment will in no way alter the law, but will merely clarify it.

17. Sub-section (1) of section 40 of the 1928 Act which provided for the payment of interest by the Commission was in effect superseded by section 25 of the 1937 Act which requires the Commission to pay both interest and sinking fund contributions. Further since the amendment of the 1937 provision by section 2 of the *State Electricity Commission (Borrowing) Act* 1957 the 1928 provision has become completely inconsistent with the later provision. Sub-section (1) of section 40 of the 1928 Act has accordingly been omitted from the consolidating measure.

18. A number of Acts which, at various times, ratified the purchase by the Commission of various undertakings have been repealed in the consolidation. For convenience the undertakings in question have been described in a list of works and undertakings in clause 3 of the proposed Bill.

19. The Committee, having heard evidence from the Director of Statutory Consolidation and Director of Finance, is satisfied that no alteration of substance has been made in the existing law as a result of any of the matters above referred to and accordingly commends the measure to Honorable Members.

CONCLUSION.

20. The Committee, in conclusion, wishes to compliment both the Director of Statutory Consolidation and the Government Printer on the real progress made with the proposed general consolidation of the statutes. At the time of this Report the Committee has had before it 61 measures of the total of approximately 230 which it is expected will constitute the general consolidation.

The consolidation of the laws is long overdue and this fact adds to the difficulties confronting the Director; the progress made is therefore all the more commendable.

Committee Room,

2nd April, 1958.

* *Minutes of evidence not printed.*

APPENDIX A.

TABLE OF CONSOLIDATING MEASURES EXAMINED BY THE COMMITTEE.

(a) *Title of Draft Bill.*	(b) *Page Reference in Transcript.*
Aborigines Bill	14
Acts Interpretation Bill ..	20
Administration and Probate Bill	36–7
Adoption of Children Bill ..	20
Agent-General's Bill	14
Agricultural Colleges Bill ..	37
Agricultural Lime Bill ..	15
Air Navigation Bill	15
Anzac Day Bill	20
Apprenticeship Bill	15
Arbitration Bill	15
Architects Bill	37
Auction Sales Bill	16
Audit Bill	21
Bakers and Millers Bill ..	21–2
Barley Marketing Bill	37–9
Bees Bill	22
Benefit Associations Bill ..	23
Building Societies Bill	24
Business Investigations Bill ..	23
Business Names Bill	24
Cancer Bill	26–7
Carriers and Innkeepers Bill ..	24
Cattle Breeding Bill	27
Cattle Compensation Bill ..	27
Cemeteries Bill	39
Children's Court Bill	27
Children's Welfare Bill.. ..	27
Clean Air Bill	39
Commercial Goods Vehicles Bill	24–5
Commonwealth Arrangements Bill	27–8
Co-operation Bill	28
Co-operative Housing Societies Bill	28
Coroners Bill	39
County Court Bill	28
Crown Proceedings Bill ..	28
Dairy Products Bill	39
Developmental Railways Bill ..	28–30
Dietitians Registration Bill ..	30
Dog Bill	30
Drainage Areas Bill	30
Drainage of Land Bill ..	39
Dried Fruits Bill	39
Education Bill	39
Employers and Employés Bill ..	30
Entertainments Tax Bill ..	39
Essential Services Bill	39
Estate Agents Bill	40
Evidence Bill	40
Farm Produce Agents Bill ..	30
Fisheries Bill	40
Footwear Regulation Bill ..	30
Friendly Societies Bill	41
Fruit and Vegetables Bill ..	41
Gold Buyers Bill	41
Hawkers and Pedlers Bill ..	41
Lifts Regulation Bill	41
Livery and Agistment Bill ..	41
Police Regulation Bill	31–4
State Electricity Commission Bill	1–14, 34–5
Superannuation Bill	1, 14

(NOTE.—The measures the titles of which are underlined are those which, in accordance with Paragraph 4 of this Report, have been made the subject of special mention in the Report.)

APPENDIX B.

MEMORANDUM FROM THE DIRECTOR OF STATUTORY CONSOLIDATION.

re: COMMERCIAL GOODS VEHICLES BILL.

The history of the provision for the destination of permit fees in respect of commercial goods vehicles is rather involved.

However, by Section 34 of the *Transport Regulation Act* 1933 (as re-enacted by Section 7 of the *Transport Regulation* (*Licences and Fees*) *Act* 1947) it was provided that all fees received by the Board under the Act and all fines (including costs) should be paid into the Transport Regulation Fund.

When the *Transport Regulation Act* 1955 and the *Commercial Goods Vehicles Act* 1955 were passed all the then existing transport regulation legislation was repealed and the various provisions (with some modification, of course) were distributed over the two Acts.

In Section 41 of the *Transport Regulation Act* 1955 it was provided that all money received by the Board under that Act should be paid into the Transport Regulation Fund. But Section 13 (2) of the *Commercial Goods Vehicles Act* 1955 provided that all licence fees and all fines (including costs) should be paid into the Transport Regulation Fund, i.e., no provision was made for the payment of fees in respect of permits.

There is now no definite destination for fees paid in respect of permits for commercial goods vehicles. The Secretary of the Transport Regulation Board has indicated that the Auditor had queried the destination of permit fees and on the matter being raised with the Parliamentary Draftsman, the Secretary was informed that the omission of a destination provision for permit fees was a drafting error and that steps would be taken to correct the position at the first opportunity.

What we are doing in Clause 14 (2) of the Commercial Goods Vehicles (Consolidating) Bill is to provide for a destination for these permit fees, i.e., we are anticipating a correction which the Parliamentary Draftsman has undertaken to make at the first opportunity.

18th February, 1958.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57

VICTORIA

FIRST GENERAL REPORT

OF THE

SUBORDINATE LEGISLATION COMMITTEE

Ordered by the Legislative Council to be printed, 9th April, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

4892/57—(D.—No. 4.)

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 10TH OCTOBER, 1956.

5. SUBORDINATE LEGISLATION COMMITTEE.—The Honorable Sir Arthur Warner moved, That the Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne be members of the Subordinate Legislation Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

TUESDAY, 9TH OCTOBER, 1956.

4. SUBORDINATE LEGISLATION COMMITTEE.—Motion made, by leave, and question—That Mr. Brose, Mr. Floyd, and Mr. Rafferty be appointed members of the Subordinate Legislation Committee (*Mr. Bolte*)—put and agreed to.

REPORT

THE SUBORDINATE LEGISLATION COMMITTEE, appointed pursuant to the provisions of the *Subordinate Legislation Committee Act* 1956, has the honour to report as follows :—

1. The Committee was first constituted by motions in the Legislative Assembly on 9th October, 1956, and in the Legislative Council on 10th October, 1956, when Mr. J. A. Rafferty, M.L.A., was appointed Chairman, and the Honorable R. K. Brose, M.L.A., was appointed Deputy Chairman.

This original Committee went out of office on the subsequent prorogation of Parliament but the same personnel was re-appointed on 21st November, 1956.

Again Mr. Rafferty and the Honorable R. K. Brose were appointed Chairman and Deputy Chairman respectively.

2. The enactment of the *Subordinate Legislation Committee Act* 1956, and the subsequent appointment of the Committee, constituted the first steps taken in Victoria to ensure some measure of control over what has become broadly known as " Government by regulation ".

It must be freely acknowledged that, in order to effect proper co-ordination between legislation and administration, close Parliamentary scrutiny should be exercised over the actions of authorities to whom Parliament itself has delegated the power to frame regulatory measures designed to facilitate the implementation of various Statutes.

However, by Section 2 of the Subordinate Legislation Committee Act, the Committee is not empowered to examine all regulations made under Statute but only those which come within the following definition :—

> " ' Regulations ' means regulations or rules which purport to be made under any Act of Parliament and which, by such Act, are required to be laid before both Houses of Parliament."

This definition does not embrace by-laws made under the Railways and other Acts, proclamations under the Fisheries Acts, and Orders in Council under various Acts, most of which have the full force and effect of regulations.

The Committee deemed it desirable that Parliament should have early advice of the Committee's activities and the methods adopted to carry out the powers and duties imposed upon it.

3. At the outset, the Committee realized that legal assistance would be essential in order to fulfil the first of its functions set out in Section 4 of the Act, namely :—

> " 4. The functions of the Committee shall be to consider whether the special attention of Parliament should be drawn to any regulations on the ground that—
>
> (*a*) the regulations appear not to be within the regulation-making power conferred by, or not to be in accord with the general objects of, the Act pursuant to which they purport to be made
> ....."

Consequently, an approach was made to the Honorable the Attorney-General who readily agreed that the services of the Parliamentary Draftsman should be made available to the Committee to advise as to the validity or otherwise of any regulations submitted to him.

4. The Committee sought co-operation of all Ministers of the Crown to obtain from each regulation-making authority under their administration two (2) copies of all operative regulations, as defined in the Subordinate Legislation Committee Act, made prior to 17th October, 1956, the date of the first meeting of the Committee.

This was done in order to ensure that a complete library of operative regulations would be available readily to the Committee for perusal when amending regulations would be the subject of examination.

5. In addition to the request outlined in paragraph four of this Report, the Committee also requested that it be supplied with ten (10) copies of every regulation promulgated after 17th October last, for the use of Members of the Committee and for record purposes. To achieve expeditious handling of these regulations, the Committee has arranged, through the Honorable the Treasurer, for the Government Printer to supply to the originating authority the requisite number of copies of regulations as soon as possible after their publication in the *Government Gazette*.

The originating authority was further requested to supply, with each such regulation, ten (10) copies of a memorandum setting out the reasons for the regulation, and explanation of the effect thereof, and any other relevant data relating to the opinions, &c., of bodies or persons interested in, or likely to be affected by, the proposed regulation.

6. At the date of completion of this Report, the Committee has had placed before it for examination one hundred and three (103) regulations. Of these, ninety-nine (99) have been approved unreservedly, and one (1) is still under consideration. In the other three (3) cases, the Committee has made special reports drawing the attention of Parliament to certain matters contained in the regulations.

7. One important matter which has arisen from the scrutiny of regulations submitted to the Committee is the necessity for every regulation-making authority, when framing regulations which effect a consolidation of existing regulations, to ensure that any obsolete, extraneous, or redundant provisions are not perpetuated in the new regulations.

8. The Committee feels confident that, with the proper exercise of the functions conferred upon it under the provisions of the *Subordinate Legislation Committee Act* 1956 and the close co-operation of all authorities concerned, satisfactory co-ordination of legislation and administration and adequate Parliamentary scrutiny of subordinate legislation will be achieved.

9. The Committee gratefully acknowledges the valuable co-operation and assistance it has been afforded by Mr. Andrew Garran, Parliamentary Draftsman. Acknowledgment of the Committee is also made to Messrs. L. G. McDonald and J. J. P. Tierney for the very efficient secretarial assistance which they have provided. Their work, particularly in the initial stages when it was necessary to develop a smooth-working procedure, is highly commended.

Committee Room,
3rd April, 1957.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57

VICTORIA

FIRST SPECIAL REPORT

OF THE

SUBORDINATE LEGISLATION COMMITTEE

WITH AN

APPENDIX

Ordered by the Legislative Council to be printed, 29th October, 1957.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

D.—No. 18.—10468/57

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 10TH OCTOBER, 1956.

5. SUBORDINATE LEGISLATION COMMITTEE.—The Honorable Sir Arthur Warner moved, That the Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne be members of the Subordinate Legislation Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

TUESDAY, 9TH OCTOBER, 1956.

4. SUBORDINATE LEGISLATION COMMITTEE.—Motion made, by leave, and question—That Mr. Brose, Mr. Floyd, and Mr. Rafferty be appointed members of the Subordinate Legislation Committee (*Mr. Bolte*)—put and agreed to.

REPORT

The Subordinate Legislation Committee appointed pursuant to the provisions of the *Subordinate Legislation Committee Act* 1956, No. 5991, has the honour to report as follows :—

1. It can be stated broadly that the enactment of the Subordinate Legislation Committee Act emanated from a general acknowledgment of the need for retention of adequate Parliamentary control over the exercise of legislative powers which, by Statute, are delegated to some subordinate body, and particularly for the erection of adequate safeguards against misuse of those delegated powers.

2. The Act provides for the constitution of a Subordinate Legislation Committee whose functions are defined in Section 4 as follows :—

> " 4. The functions of the committee shall be to consider whether the special attention of Parliament should be drawn to any regulations on the ground that—
>
> (*a*) the regulations appear not to be within the regulation-making power conferred by, or not to be in accord with the general objects of, the Act pursuant to which they purport to be made ;
>
> (*b*) the form or purport of the regulations calls for elucidation ;
>
> (*c*) the regulations unduly trespass on rights previously established by law ;
>
> (*d*) the regulations unduly make rights dependent upon administrative and not upon judicial decisions ; or
>
> (*e*) the regulations contain matter which in the opinion of the committee should properly be dealt with by an Act of Parliament and not by regulations—
>
> and to make such reports and recommendations to the Council and the Assembly as it thinks desirable as a result of any such consideration."

3. Although a comparatively brief period has elapsed since the appointment of the first Committee it already has become apparent that there exists a firm necessity for a review by Parliament as to whether the real intention of the legislature is achieved by merely the appointment of a Joint Committee of both Houses to scrutinize regulations and, if deemed necessary, to report thereon to Parliament.

4. The Senate of the Commonwealth of Australia each Session appoints a Standing Committee on Regulations and Ordinances charged with duties and functions comparable with those of the Victorian Committee and regulations and ordinances which are the subject of adverse report by the Committee can be disallowed under procedure set out in section 48 of the Commonwealth Acts Interpretation Act 1901–1950. This Section provides (*inter alia*) :—

> " (4) If either House of Parliament passes a resolution (of which notice has been given at any time within fifteen sitting days after any regulations have been laid before that House) disallowing any of those regulations the regulation so disallowed shall thereupon cease to have effect.
>
> (5) If, at the expiration of fifteen sitting days after notice of a resolution to disallow any regulation has been given in either House of the Parliament in accordance with the last preceding sub-section, the regulation has not been withdrawn or otherwise disposed of the regulation specified in the resolution shall thereupon be deemed to have been disallowed.
>
> (6) Where a regulation is disallowed, or is deemed to have been disallowed, under this section, the disallowance shall have the same effect as a repeal of the regulation."

5. The Standing Orders of the Senate provide that a motion for disallowance of a regulation or ordinance shall take precedence of Government and General Business (*vide* Standing Orders Nos. 66A and 119).

6. A motion for disallowance must always be submitted, upon notice, by a Senator, who need not necessarily be a member of the Committee but it is not unusual for a Minister to take prior action to set in motion the machinery for revoking regulations or superseding them by Statute. In some instances prompt action by the regulation-making authority to act upon reports of the Committee has obviated the necessity for a motion regarding the matter to be raised in the Senate.

7. Section 55(1)(*g*) of the South Australian Constitution Act 1934–1949 makes provision for the establishment of a Joint Standing Committee of both Houses to examine and report upon all regulations, rules, &c., made pursuant to any Act of Parliament and Joint Standing Order No. 25 confers upon the Committee duties and functions of a similar nature to those of the Victorian Committee.

8. South Australian legislation also provides that all statutory regulations shall be laid before Parliament and shall be subject to disallowance by either House of Parliament within fourteen days after being presented (*vide* S.A. Acts Interpretation Act 1915–1949, section 38).

9. The practice in that State is that on the presentation of a report from the Subordinate Legislation Committee recommending disallowance of a regulation, the Members tabling the report in each House give notice of motion disallowing the regulation. When the action is completed in one House it is usual for the other to determine prodeedings on the matter as action is only necessary in the one House (*vide* S.A. Acts Interpretation Act, section 38(2) and S.A. Local Government Act, section 675(2)).

10. The South Australian Joint Standing Order No. 27 provides (*inter alia*) that if Parliament is not in session the Subordinate Legislation Committee may report its opinion that a regulation or ordinance be disallowed and the ground thereof to the authority by which the regulation or ordinance was made.

11. In Victorian Legislation there is no general provision as to the disallowance of regulations although specific provision, in various forms, appears in a limited number of Statutes.

12. To the date of this report the Committee has submitted to Parliament thirteen reports upon regulations which have been the subject of examination by the Committee. A brief summary of the subject-matter of each report, together with a notation of any subsequent action which has been taken thereon, is appended to this report.

13. The main purport of this report is to direct the attention of Parliament to the limited extent of Parliamentary control in this State over the activities of bodies enjoying legislative powers delegated by Statute. The decision as to what action (if any) shall be taken with regard to regulations upon which the Committee has reported reverts in most cases to the original framers of the regulations or, in other words, to the Executive.

14. The Committee offers no criticism of the present Executive in this regard as it is aware that prompt action has been taken in some instances to require compliance with its findings whilst in other cases the subject-matter of its reports is receiving close attention.

15. However, the Committee is of opinion that it is undesirable that such decisions should rest entirely with the Executive and considers that Parliament itself should have wider powers with respect to the enforcement of remedial action concerning matters raised in reports of the Committee, particularly the power to enforce the immediate cancellation or withdrawal of regulations which have been found to be *ultra vires* the Statute under which they purport to be made.

APPENDIX.

Reports of Subordinate Legislation Committee.

Subject-matter.	Date.	Findings of Committee.	Subsequent action taken.
Betting Tax Regulations 1956	25.2.57	Regulation 6, clause (2) delegates power to vary a charge prescribed by the Governor in Council Regulation 12 is unnecessary because of existing Statutory provision and in any case is partly without Statutory justification. In addition citation of Act is not specific Regulation 16 unduly interferes with rights of the subject and appears to be beyond power	Regulations 6(2) and 12 dealt with by amending regulations gazetted on 16th October, 1957 Regulation 16 dealt with in amending legislation. See Stamps Bill, clause 36.
Country Fire Authority (Permits) Regulations 1956	20.3.57	Regulation 7, in effect, delegates a power to vary the regulation; also doubt exists as to valid application of regulation to any variations so made Forms of permits provided by Regulations 10(1), 10(3) and the second schedule to regulations do not cover all cases envisaged by section 38 of Act	Amending regulations in course of preparation
Rules of Estate Agents Committee	20.3.57	Rule 4 not sufficiently specific to conform to provisions of Act	Dealt with in amending legislation. See Estate Agents (Amendment) Bill, clause 3
Parking Regulations 1957 ..	15.5.57	Regulations do not express intention with sufficient clarity and completeness	New regulations in course of preparation
Public Service (Public Service Board) Regulation No. 550	15.5.57	Intention of regulation not properly expressed	New regulation gazetted on 18th September, 1957
Camping Regulations 1956 ..	22.5.57	Regulations 8 and 9 are *ultra vires* the Act Incorrect designations used throughout regulations	Under consideration by Minister
Explosives (Carriage) Regulations 1957	29.5.57	Attention drawn to arbitrary powers conferred on Minister by regulations	Minister appeared before Committee and explained necessity for arbitrary power. Consideration will be given to incorporation of this power in legislation when Explosives Act is next amended

REPORTS OF SUBORDINATE LEGISLATION COMMITTEE—*continued.*

Subject-matter.	Date.	Findings of Committee.	Subsequent action taken.
Supreme Court Rules ..	3.7.57	Amending rule invalid as to any operation prior to date of publication in *Government Gazette*	New rule gazetted on 10th July, 1957
Portland Harbour Trust Staff Regulations	3.7.57	Regulation not only beyond power but also unnecessary	Brought under notice of Portland Harbor Trust by Minister
Food and Drug Standards Regulations	20.8.57	Regulations do not express intention with sufficient clarity	Under consideration by Minister
Milk Board Acts Regulations	21.8.57	Regulations *ultra vires* the enabling Statute	Advice of Crown Solicitor is being sought by Department upon Report of Committee
Cancer Institute (Amending) Regulations 1957	21.8.57	Regulations invalid through non-compliance with requirements of Act	Amending regulations gazetted on 2nd October, 1957
Penal Reform Regulations 1957	3.9.57	Specific reference to enabling power should appear in introductory paragraph Regulation 37 probably conflicts with section 59 of *Gaols Act* 1928	Amendment of regulations subject of discussion between Minister and Director of Penal Services

Committee Room,
22nd October, 1957.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1956-57-58

VICTORIA

SECOND GENERAL REPORT

OF THE

SUBORDINATE LEGISLATION COMMITTEE

Ordered by the Legislative Council to be printed, 1st *April,* 1958.

By Authority:
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE

D.—No. 25.—3208/58.—PRICE 6D.

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

WEDNESDAY, 10TH OCTOBER, 1956.

5. SUBORDINATE LEGISLATION COMMITTEE.—The Honorable Sir Arthur Warner moved, That the Honorables D. L. Arnott, R. W. Mack, and I. A. Swinburne be members of the Subordinate Legislation Committee.

Question—put and resolved in the affirmative.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY.

TUESDAY, 9TH OCTOBER, 1956.

4. SUBORDINATE LEGISLATION COMMITTEE.—Motion made, by leave, and question—That Mr. Brose, Mr. Floyd, and Mr. Rafferty be appointed members of the Subordinate Legislation Committee (*Mr. Bolte*)—put and agreed to.

REPORT

The Subordinate Legislation Committee, appointed pursuant to the provisions of the *Subordinate Legislation Committee Act* 1956, No. 5991, has the honour to report as follows :—

1. The present Committee, appointed to office on 21st November, 1956, has held 80 meetings and in all has examined 560 regulations.

2. Whilst a number of regulations which came before the Committee were of a comparatively simple or routine nature, for example, regulations which effected alterations to the salary and classification schedules for officers of the Public Service, many other regulations of a comprehensive and complex nature were, of necessity, subjected to a close and detailed scrutiny.

3. In a Special Report, dated 22nd October, 1957, the Committee stated briefly its findings upon thirteen regulations to which it had been deemed necessary to draw the attention of Parliament and since that date reports upon another four regulations have been made.

4. Those additional regulations and a summary of the Committee's findings thereon are as set out hereunder :—

Subject-matter.	Date of Report.	Findings of Committee.
An amendment to the Supreme Court Office Fees Regulations	13.11.57	Amending rule not within power
An amendment to Regulation IV.(E)—Accountancy Certificate—made under *Education Act* 1928	11.2.58	Regulation in part delegates a power to vary the regulation ; also the regulation needs clarification
An amendment to Regulation XX.(L)—Trained Technical Teacher's Certificate—made under *Education Act* 1928	11.2.58	Regulation requires elucidation
An amendment to the Rules of the Estate Agents Committee	19.3.58	The validity of sub-rule (ii) in its present form is in doubt and in any case the sub-rule does not achieve desired object

5. The Committee desires to commend the various regulation-making authorities for their co-operation. In the main the requirements of the Committee have been attended to expeditiously although it has been necessary, on occasion, to issue reminders that copies of regulations and explanatory memoranda must be forwarded, as soon as available, in order to expedite the work of the Committee.

6. In the course of its examination of regulations the Committee has noticed that, from time to time regulations contain a provision which purports to confer retrospective application on the regulation either as to the whole or a part thereof.

The complexity of the problem connected with the question of retrospectivity in this regard merits a searching and detailed analysis of all its aspects before any conclusion may be reached and although advice has been sought and obtained from certain learned legal sources the Committee feels that it is not in a position to offer any considered opinion at this stage.

7. The Committee made reference in its previous General Report to the valuable co-operation and assistance received from Mr. A. Garran, Parliamentary Draftsman. His successor in office, Mr. J. J. Lynch, and his colleagues, are also deserving of the highest praise.

In addition to certification as to the validity or otherwise of regulations their general advice and co-operation has been, at all times, readily available to the Committee. The Committee places on record its appreciation of their services.

8. The Committee is also grateful to Messrs. L. G. McDonald and J. J. P. Tierney for the very efficient secretarial assistance which they have provided, at all times, in carrying out a most exacting task.

Committee Room,

1st April, 1958.

By Authority: W. M. HOUSTON, Government Printer, Melbourne.

1957.

VICTORIA.

MINUTES OF THE PROCEEDINGS

OF THE

JOINT SITTING

OF THE

HOUSES OF PARLIAMENT OF THE STATE OF VICTORIA

TO CHOOSE A PERSON

TO

HOLD THE PLACE IN THE SENATE

RENDERED VACANT BY THE

DEATH OF SENATOR JOHN JOSEPH DEVLIN

6TH JUNE, 1957.

Held in accordance with the provisions of Section 15 of the Commonwealth of Australia Constitution Act.

By Authority
W. M. HOUSTON, GOVERNMENT PRINTER, MELBOURNE.

5926/57.

MINUTES OF THE PROCEEDINGS

OF THE

JOINT SITTING

HELD IN THE

LEGISLATIVE ASSEMBLY CHAMBER

THURSDAY, 6TH JUNE, 1957.

The Members of the Legislative Council and the Members of the Legislative Assembly having, pursuant to resolutions of the two Houses, assembled in the Legislative Assembly Chamber—

1. ELECTION OF PRESIDENT.—The Honorable W. J. F. McDonald, Speaker of the Legislative Assembly, rose and moved—That the Honorable Sir Clifden Eager, President of the Legislative Council, be appointed President of this Joint Sitting, which motion, being seconded by the Premier, the Honorable H. E. Bolte, M.L.A., was resolved in the affirmative.

The Honorable Sir Clifden Eager, having expressed his acknowledgments for the honour conferred upon him by the Joint Sitting, then took the Chair.

2. RULES OF PROCEDURE.—The Premier, the Honorable H. E. Bolte, M.L.A., submitted the following rules of procedure for the consideration of Honorable Members, and moved that they be adopted as the rules of procedure of this Joint Sitting :—

1. On any debate arising the same shall be conducted according to parliamentary usage.

2. A Member, addressing himself to the President, shall propose a person to hold the vacant place in the Senate and such proposal shall be duly seconded. When any person is so proposed his proposer shall state to the Members present that such person is willing to hold the vacant place if chosen.

3. If only one person be proposed and seconded, the President shall declare—" That has been chosen to hold the place in the Senate rendered vacant by the death of Senator John Joseph Devlin."

4. If more than one person be proposed and seconded, the person to hold the vacant place shall, subject to the following rules, be chosen by ballot.

5. Before giving directions to proceed with the ballot, the President shall ask if any Member desires to propose any other person to hold the vacant place, and, no other person being proposed, the ballot shall be proceeded with, after which no person shall be proposed.

6. Each Member present shall be provided with a ballot-paper initalled by the Clerks of the two Houses, and shall write thereon the name of one of the persons duly proposed, and shall place his ballot-paper in the ballot-box.

7. If two or more persons be proposed and seconded, the proposer of each of such persons shall name some Member present to be a scrutineer. The scrutineers, with the Clerks of the two Houses, shall retire and ascertain the number of votes for each person ; and the scrutineers shall make a written report of the result to the President showing the number of votes for each person.

8. No informal vote shall be taken into account.

9. If on the first ballot no person shall have received an absolute majority of the votes polled, a second ballot shall be taken, and the name of the person who shall have received the fewest votes at the first ballot shall be excluded ; but if at the first ballot the names of only two persons be submitted and the number of votes for such persons be equal, the scrutineers shall by drawing lots determine which of such persons shall be chosen to hold the vacant place, and the person whose name shall be first drawn shall be deemed to have been duly chosen.

10. Until one of the persons proposed obtains an absolute majority of the votes polled, or (as the case may be) is chosen by lot to hold the vacant place, successive ballots shall be taken, and at each such ballot the name of the person who shall have received the fewest votes at the preceding ballot shall be excluded.

11. If on any ballot it shall be necessary to decide between two or more persons as to which one is to be excluded from a subsequent ballot through the number of votes for such persons being equal, a special ballot shall be taken at which the names of only those persons shall be submitted, and the name of the person having the fewest votes at such special ballot shall be excluded; but if on any special ballot it shall be necessary to decide between two or more persons as to which one is to be excluded from a subsequent ballot through the number of votes for such persons being equal, the scrutineers by drawing lots shall determine which one of such persons shall be excluded, and the name of the person last drawn shall be excluded.

12. If at any ballot, other than the first ballot or a special ballot hereinbefore provided for, the names of only two persons be submitted and the number of votes for such persons be equal, the scrutineers shall, by drawing lots, determine which of those persons shall be chosen to hold the vacant place, and the person whose name shall be first drawn shall be deemed to have been duly chosen.

13. As soon as any person obtains an absolute majority of the votes polled, or (as the case may be) is chosen by lot to hold the vacant place, the President shall declare—"That has been chosen to hold the place in the Senate rendered vacant by the death of Senator John Joseph Devlin."

14. The President shall in all cases be entitled to a vote.

15. The records of the proceedings and the ballot-papers shall be retained by the Clerk of the Parliaments of the State of Victoria, who shall be the custodian thereof, and shall keep the ballot-papers safely for one year and thereafter destroy them.

Question—put and resolved in the affirmative.

3. Person Proposed and Chosen to hold the Vacant Place in the Senate.—The President announced that, the rules having been adopted, he was now prepared to receive proposals from Honorable Members of persons to hold the place in the Senate rendered vacant by the death of Senator John Joseph Devlin.

The Honorable John Cain, M.L.A., proposed Charles Walter Sandford, Esquire, as the person to hold the vacant place, and stated that such person was willing to hold the vacant place, if chosen, and named Denis Lovegrove, Esquire, M.L.A., to be a scrutineer, which proposal was seconded by the Honorable A. E. Shepherd, M.L.A.

The President having asked if any Honorable Member desired to propose any other person to hold the vacant place, and no other person being proposed, the President thereupon declared that Charles Walter Sandford, Esquire, had been chosen to hold the place in the Senate rendered vacant by the death of Senator John Joseph Devlin.

4. Notification to His Excellency the Lieutenant-Governor.—The Premier, the Honorable H. E. Bolte, M.L.A., moved—That the President inform His Excellency the Lieutenant-Governor that Charles Walter Sandford, Esquire, has been chosen to hold the place in the Senate rendered vacant by the death of Senator John Joseph Devlin.

Question—put and resolved in the affirmative.

5. Vote of Thanks to the President.—The Premier, the Honorable H. E. Bolte, M.L.A., moved a vote of thanks to the President, which motion was seconded by the Honorable John Cain, M.L.A., and carried unanimously.

The President, having returned thanks, declared the Joint Sitting closed.

H. K. McLACHLAN,
Clerk of the Parliaments and Clerk of the Legislative Assembly.

R. S. SARAH,
Clerk of the Legislative Council.

By Authority: W. M. Houston, Government Printer, Melbourne.


PARLIAMENT OF
VICTORIA

VICTORIA · MINUTES OF THE PROCEEDINGS OF THE LEG. COUNCIL, SESSION 1966-67-68